



2021 South Dakota Legislature

Senate Bill 187

SENATE ENGROSSED

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: **Senator Brock Greenfield**

1 **An Act to establish provisions concerning the sale of adult-use retail marijuana.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** The Legislature enacts this legislation to put in place a statutory system of laws
 4 for the regulation of the sale, possession, and consumption of adult-use retail marijuana as
 5 authorized by the passage of Constitutional Amendment A at the general election on
 6 November 3, 2020. Although Amendment A was declared unconstitutional by the circuit court
 7 on February 8, 2021, the Legislature recognizes that a majority of voters approved the
 8 legalization of the sale, possession, and consumption of adult-use retail marijuana. The
 9 Legislature does not endorse the decision of the voters to make lawful the sale, possession,
 10 and consumption of adult-use retail marijuana. In recognition of the voters' recent decision
 11 on Amendment A, the Legislature believes it necessary to enact this legislation to properly
 12 ensure the regulated and enforceable administration of laws concerning the sale, possession,
 13 and consumption of adult-use retail marijuana.

14 **Section 2.** That a NEW SECTION be added:

15 **35A-1-1. Definition of terms.**

16 Terms used in this Act mean:

- 17 (1) "Adult-use retail marijuana," marijuana that is sold in a South Dakota retail location
 18 and not sold or provided by a medical cannabis dispensary, as that term is defined
 19 in § 34-20G-1;
 20 (2) "Adult-use marijuana retailer" or "retailer," any person who is licensed to sell
 21 marijuana for other than resale;
 22 (3) "Department," the Department of Revenue;
 23 (4) "Marijuana," the plant of the genus cannabis, and any part of that plant, including
 24 the seeds, the resin extracted from any part of the plant, and every compound,
 25 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its
 26 resin, including hash and marijuana concentrate. The term includes an altered state

- 1 of marijuana absorbed into the human body. The term does not include hemp, or
2 fiber produced from the stalks, oil or cake made from the seeds of the plant,
3 sterilized seed of the plant that is incapable of germination, or the weight of any
4 other ingredient combined with marijuana to prepare topical or oral
5 administrations, food, drink, or other products;
6 (5) "Sale," the transfer, for a consideration, of title to any adult-use marijuana;
7 (6) "Secretary," the secretary of revenue.

8 **Section 3.** That a NEW SECTION be added:

9 **35A-1-2. Secretary of revenue to administer Act--Employment of personnel-**
10 **-Equipment and supplies.**

11 The secretary shall administer the law as set forth in this Act, and may employ
12 such help and purchase such equipment and supplies as are necessary for performance of
13 the secretary's duties.

14 **Section 4.** That a NEW SECTION be added:

15 **35A-1-3. Certain revenue department employees prohibited from engaging**
16 **in marijuana business.**

17 Neither the secretary nor any employee of the division within the department that
18 issues any adult-use retail marijuana license may have any interest, financial or otherwise,
19 in the production, transportation, storage, or sale of marijuana.

20 **Section 5.** That a NEW SECTION be added:

21 **35A-1-4. Traffic in marijuana prohibited--Exceptions.**

22 No person may produce, transport, store, or sell any marijuana except as
23 authorized under the provisions of this Act and under rules promulgated by the
24 department pursuant to chapter 1-26. This section does not apply to medical cannabis
25 pursuant to chapter 34-20G.

26 **Section 6.** That a NEW SECTION be added:

27 **35A-1-5. Unlicensed business prohibited--Violation as misdemeanor.**

28 No person may transact any business as an adult-use marijuana retailer without
29 an adult-use retail marijuana license as provided by this Act and under rules promulgated

1 by the department pursuant to chapter 1-26. A violation of this section is a Class 1
2 misdemeanor.

3 **Section 7.** That a NEW SECTION be added:

4 **35A-1-6. False statement in application or report--Violation as felony.**

5 Any person who, in any application, report, or statement knowingly makes a false
6 statement as to any matter required by any provision of this Act or under rules
7 promulgated by the department pursuant to chapter 1-26 to be set forth in the application,
8 report, or statement, is guilty of a Class 1 misdemeanor.

9 **Section 8.** That a NEW SECTION be added:

10 **35A-1-7. Promulgation of rules.**

11 The secretary shall promulgate rules, pursuant to chapter 1-26, regarding the sale,
12 purchase, distribution, and licensing of adult-use retail marijuana for the effective
13 implementation and enforcement of this Act.

14 **Section 9.** That a NEW SECTION be added:

15 **35A-2-1. Applications submitted to local governing body--Approval.**

16 Any applicant for a new adult-use retail marijuana license or the transfer of an
17 existing adult-use retail marijuana license shall submit an application to the governing
18 body of the municipality in which the applicant intends to operate, or if outside the
19 corporate limits of a municipality, to the governing body of the county in which the
20 applicant intends to operate. The governing body may approve the application for a new
21 adult-use retail marijuana license or the transfer of an existing adult-use retail marijuana
22 license if the governing body considers the applicant suitable to hold the adult-use retail
23 marijuana license and the governing board considers the proposed location to be suitable.

24 Any application for the reissuance of an adult-use retail marijuana license may be
25 approved by the municipal or county governing body without a hearing unless, in the past
26 year, the adult-use retail marijuana licensee or one or more of the adult-use retail
27 marijuana licensee's employees have been subjected to a criminal penalty for violation of
28 the adult-use retail marijuana law or the adult-use retail marijuana license has been
29 suspended.

30 **Section 10.** That a NEW SECTION be added:

1 **35A-2-2. Character requirements.**

2 Any adult-use retail marijuana licensee under this Act shall be a person of good
3 moral character who was never convicted of a felony. If the licensee is a corporation, the
4 managing officers of the corporation shall meet the same qualifications.

5 **Section 11.** That a NEW SECTION be added:

6 **35A-2-3. Adult-use retail marijuana licenses--Requirements.**

7 An applicant for an adult-use retail marijuana license shall meet the following
8 criteria:

9 (1) Obtained a malt beverage license pursuant to chapter 35-2;

10 (2) Submits to a background investigation. If the applicant is a partnership or
11 corporation, the requirement for a background check includes each partner of a
12 partnership and each director and officer and all stockholders in the corporation,
13 its parent corporation, or its subsidiary corporation; and

14 (3) Is a resident of this state. If the applicant is a partnership or corporation, the
15 majority of ownership interest shall be held by residents of this state.

16 **Section 12.** That a NEW SECTION be added:

17 **35A-3-1. Times for selling--Violation as misdemeanor.**

18 No adult-use retail marijuana licensee may sell any marijuana between the hours
19 of two a.m. and seven a.m. A violation of this section is a Class 2 misdemeanor.

20 **Section 13.** That a NEW SECTION be added:

21 **35A-3-2. Department to promulgate rules regarding types of marijuana**
22 **products that may be sold.**

23 The department shall promulgate rules, pursuant to chapter 1-26, establishing the
24 types of marijuana products that may be sold by an adult-use marijuana retailer.

25 **Section 14.** That a NEW SECTION be added:

26 **35A-3-3. Furnishing to a minor prohibited--Violation as misdemeanor.**

27 It is a Class 1 misdemeanor for an adult-use retail marijuana licensee to furnish
28 marijuana to any person under the age of eighteen years.

29 **Section 15.** That a NEW SECTION be added:

1 **35A-3-4. Furnishing to a person eighteen years or older but less than**
2 **twenty-one years prohibited--Violation as misdemeanor.**

3 It is a Class 2 misdemeanor for an adult-use retail marijuana licensee to furnish
4 marijuana to any person eighteen years or older but less than twenty-one years.

5 **Section 16.** That a NEW SECTION be added:

6 **35A-3-5. Sale to underaged person based on false identification document--**
7 **Conviction barred.**

8 No person may be convicted of illegally selling any adult-use retail marijuana to
9 any underage person pursuant to § 35A-3-3 or 35A-3-4, if the underage person was in
10 possession of, and the seller relied upon, any false age-bearing identification document
11 that was furnished to the underage person by any state agency or local law enforcement
12 agency or any agent, employee, contractor, or associate of any state agency or local law
13 enforcement agency for the purpose of attempting to illegally purchase any adult-use
14 retail marijuana.

15 **Section 17.** That a NEW SECTION be added:

16 **35A-3-6. Furnishing to underage person--No criminal penalty imposed--**
17 **Circumstances.**

18 No criminal penalty may be imposed on an adult-use retail marijuana licensee
19 licensed pursuant to this Act if:

- 20 (1) The person making the sale in violation of § 35A-3-3 or 35A-3-4 is an employee or
21 agent of the adult-use retail marijuana licensee;
22 (2) The employee or agent does not own a controlling interest in the adult-use retail
23 marijuana licensee; and
24 (3) The adult-use marijuana licensee or person having a controlling interest in the
25 adult-use retail marijuana licensee is not present at the time of the sale.

26 **Section 18.** That a NEW SECTION be added:

27 **35A-3-7. Purchase, possession, or consumption by person under twenty-one**
28 **years prohibited--Exception--Misrepresentation of age--Violation as**
29 **misdemeanor.**

30 It is a Class 2 misdemeanor for any person under the age of twenty-one years to
31 purchase or attempt to purchase adult-use retail marijuana or to misrepresent the

1 person's age with the use of any document for the purpose of purchasing or attempting
2 to purchase adult-use retail marijuana from any adult-use retail marijuana licensee under
3 this Act.

4 **Section 19.** That a NEW SECTION be added:

5 **35A-3-8. Immunity for possession and consumption--Underage person who**
6 **reports need of emergency assistance.**

7 No person under the age of twenty-one years may be subject to any penalty arising
8 out of underage consumption or possession of marijuana if that person contacts law
9 enforcement or emergency medical services and reports that a person is in need of medical
10 assistance due to marijuana consumption and that person remains and cooperates with
11 medical assistance and law enforcement personnel on the scene.

12 **Section 20.** That a NEW SECTION be added:

13 **35A-3-9. Purchase by adult for person under twenty-one as misdemeanor.**

14 It is a Class 1 misdemeanor for any person twenty-one years of age or older to
15 purchase or otherwise acquire adult-use retail marijuana from a retailer and to give or
16 resell the adult-use retail marijuana to any person under the age of twenty-one years.

17 **Section 21.** That a NEW SECTION be added:

18 **35A-3-10. No civil liability for social hosts and licensees.**

19 No social host or adult-use retail marijuana licensee is civilly liable to any injured
20 person or the injured person's estate for any injury suffered, including any action for
21 wrongful death, or property damage suffered, because of the sale or consumption of any
22 marijuana in violation of the provisions of this chapter.

23 **Section 22.** That a NEW SECTION be added:

24 **35A-4-1. Place used for violation of marijuana laws as common nuisance--**
25 **Maintenance as misdemeanor.**

26 Any structure, conveyance, or place where marijuana is manufactured, sold, kept,
27 bartered, given away, found, consumed, or used in violation of the laws of the state
28 relating to adult-use retail marijuana, and all marijuana and property kept and used in
29 maintaining the same, is hereby declared to be a common nuisance, and any person who
30 maintains such a common nuisance is guilty of a Class 1 misdemeanor.

1 **Section 23.** That a NEW SECTION be added:

2 **35A-4-2. Lien against place of violation for fines and costs assessed--**
3 **Enforcement of lien.**

4 If a person has knowledge or reason to believe that the person's structure,
5 conveyance, or place is occupied or used for the manufacture, sale, bartering, giving away,
6 keeping, consuming, or using of marijuana, contrary to the provisions of the laws of the
7 state, and if the person allows the structure, conveyance, or place to be so occupied or
8 used, the structure, conveyance, or place is subject to a lien for and may be sold to pay
9 all fines and costs assessed against the person guilty of such nuisance for such violation.
10 Any such lien may be enforced by action in any court having jurisdiction.

11 **Section 24.** That a NEW SECTION be added:

12 **35A-4-3. Action to enjoin nuisance--Bond not required.**

13 An action to enjoin any nuisance, as defined in § 35A-4-2, may be brought in the
14 name of the State of South Dakota by the attorney general or by the state's attorney of
15 the county in which the property constituting the nuisance is located. Any action to abate
16 or to enjoin the nuisance may be commenced and conducted as other actions or
17 proceedings for injunction. However, the complaint or affidavit used may be made on
18 information and belief and no bond is required in instituting the proceedings or to secure
19 the issuance of any such injunction.

20 **Section 25.** That a NEW SECTION be added:

21 **35A-4-4. Temporary injunction in action to enjoin nuisance.**

22 If, in an action pursuant to § 35A-4-4, it is made to appear by affidavits or
23 otherwise, to the satisfaction of the court, or judge in vacation, that a nuisance exists, a
24 temporary writ of injunction shall be issued, restraining the defendant from conducting or
25 permitting the continuance of the nuisance until the conclusion of the trial. If a temporary
26 injunction is sought, the court may issue an order restraining the defendant and all other
27 persons from removing, or in any way interfering, with the marijuana or fixtures, or other
28 things used in connection with the violation of the laws of this state constituting the
29 nuisance.

30 **Section 26.** That a NEW SECTION be added:

1 **35A-4-5. Order prohibiting manufacture, sale, or storage of marijuana and**
2 **occupancy of place of violation.**

3 It is not necessary in an action pursuant to § 35A-4-4 for the court to find the
4 property involved was being unlawfully used as described in § 35A-4-2 at the time of the
5 hearing. However, on finding that the material allegations of the petition are true, the
6 court shall order that no marijuana may be manufactured, sold, bartered, or stored in the
7 structure, conveyance, or place. Upon judgment of the court ordering the nuisance to be
8 abated, the court may order that the structure, conveyance, or place not be occupied or
9 used for one year thereafter.

10 **Section 27.** This Act is effective when one or more of the following occurs:

- 11 (1) The South Dakota Supreme Court declares Constitutional Amendment A valid
12 before July 1, 2021, in which case the Act is effective on July 1, 2021, and
13 otherwise on the date the South Dakota Supreme Court declares Constitutional
14 Amendment A valid;
- 15 (2) The federal government decriminalizes or legalizes marijuana before July 1, 2021,
16 in which case the Act is effective on July 1, 2021, and otherwise on the effective
17 date the federal government decriminalizes or legalizes marijuana; or
- 18 (3) The voters of this state pass a constitutional amendment or initiated measure
19 decriminalizing or legalizing marijuana that is unchallenged or determined to be
20 valid by the South Dakota Supreme Court.