



2022 South Dakota Legislature

Senate Bill 25

Introduced by: **Senators** Stalzer, Breitling, Duhamel, Rohl, Rusch, and Wheeler and **Representatives** Bartels, Bordeaux, Chaffee, Fitzgerald, Goodwin, Ernie Otten, Perry, Rehfeldt, Wiese, and Willadsen at the request of the Marijuana Interim Study Committee

1 **An Act to provide for the taxation of marijuana.**

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

3 **Section 1. That a NEW SECTION be added to title 10:**

4 Terms used in sections 1 to 6, inclusive, of this Act mean:

5 (1) "Dispensary," a licensed entity that acquires, possesses, stores, delivers, transfers,
6 transports, sells, supplies, or dispenses marijuana, marijuana products, and
7 related supplies to a consumer;

8 (2) "Manufacturer," a licensed entity that acquires, possesses, manufactures, delivers,
9 transfers, transports, supplies, or sells marijuana products to a marijuana facility;

10 (3) "Marijuana facility," an entity licensed to cultivate, test, manufacture, or dispense
11 marijuana or marijuana products;

12 (4) "Marijuana," as defined in § 22-42-1;

13 (5) "Marijuana concentrate," the resin extracted from any part of a marijuana plant
14 and every compound, manufacture, salt, derivative, mixture, or preparation from
15 such resin;

16 (6) "Marijuana product," any product infused with marijuana concentrate and intended
17 for use or consumption by humans.

18

19 **Section 2. That a NEW SECTION be added to title 10:**

20 There is hereby levied on all marijuana an excise tax of fifteen percent that must
21 be calculated based on the average market rate. A manufacturer shall pay the marijuana
22 excise tax on all marijuana manufactured and sold directly to a dispensary. In order to
23 calculate the tax using the average market rate, the weight or unit of marijuana sold must
24 be multiplied by the average market rate and the result must be multiplied by fifteen

1 percent. For purposes of this section, the term, average market rate, means the average
2 prices as determined by the department on all marijuana sold or transferred from
3 manufacturer to dispensary.

4 **Section 3. That a NEW SECTION be added to title 10:**

5 Each manufacturer liable for the payment of taxes levied under this chapter shall
6 file with the secretary of revenue a return, on a form prescribed by the secretary, showing
7 the kind and quantity of marijuana manufactured, received, and in the manufacturer's
8 possession, together with the names of the persons from whom received, the amount of
9 tax due, and any other information prescribed by the secretary. The return, covering the
10 period of one calendar month, together with payment of the tax due, must be transmitted
11 to the Department of Revenue on or before the twenty-fifth day of the second month
12 following the close of the reporting period. A violation of this section is a Class 1
13 misdemeanor.

14 **Section 4. That a NEW SECTION be added to title 10:**

15 Any manufacturer required to file returns or reports under this chapter, who fails
16 to file a return or report or pay the tax when due, is subject to interest and penalty at the
17 rates set forth in § 10-59-6. For reasonable cause shown, the secretary of revenue may
18 reduce or eliminate the penalty. If any manufacturer files a false or fraudulent return, an
19 amount equal to the tax evaded, or attempted to be evaded, shall be added to the tax.
20 Penalty and interest are considered the same as tax for the purposes of collection and
21 enforcement, including liens, distress warrants, and criminal violations. Any payment
22 received for taxes, penalty, or interest is applied first to tax, beginning with the oldest
23 delinquency, then to interest, and then to penalty. No court may enjoin the collection of
24 the tax or civil penalty.

25 **Section 5. That a NEW SECTION be added to title 10:**

26 Any manufacturer liable for the payment of the taxes shall keep, in current and
27 available form on the licensed premises, records of all purchases, sales, quantities on
28 hand, and any other information the secretary of revenue may prescribe by rule
29 promulgated pursuant to chapter 1-26. The secretary of revenue may require from a
30 manufacturer any report necessary to administer the requirements of this chapter. The
31 secretary may require the production of any book, record, document, invoice, and voucher

1 kept, maintained, received, or issued by the manufacturer in connection with the
2 manufacturer's business that, in the judgment of the secretary, may be necessary to
3 administer and discharge the secretary's duties, to secure the maximum of revenue to be
4 paid, and to carry out the requirements of this chapter. A violation of this section is a
5 Class 1 misdemeanor.

6 If default is made, or if any manufacturer fails or refuses to furnish any other
7 relevant reports or information upon request, the secretary may enter the manufacturer's
8 premises where the records are kept and examine the records as necessary to compile
9 the required report. The cost of the examination must be paid by the manufacturer whose
10 reports are in default.

11 **Section 6. That a NEW SECTION be added to title 10:**

12 There is hereby created within the state treasury the marijuana fund into which all
13 funds collected under this chapter shall be deposited. Expenditures from the fund must be
14 appropriated through the normal budget process.

15 **Section 7. That chapter 10-45 be amended with a NEW SECTION:**

16 The tax imposed by this chapter applies to the gross receipts of all marijuana and
17 marijuana products sold to any person by a dispensary.

18 **Section 8. That chapter 10-46 be amended with a NEW SECTION:**

19 The tax imposed by this chapter applies to the gross receipts of all marijuana and
20 marijuana products sold to any person by a dispensary.