

## 2021 South Dakota Legislature

**Senate Bill 187****AMENDMENT 187B FOR THE INTRODUCED BILL**

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

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

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

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

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

16 **35A-1-1. Definition of terms.**

17 Terms used in this Act mean:

- 18 (1) "Adult-use retail marijuana," marijuana that is sold in a South Dakota retail  
19 location and not sold or provided by a medical cannabis dispensary, as that term  
20 is defined in § 34-20G-1;  
21 (2) "Adult-use marijuana retailer" or "retailer," any person who is licensed to sell  
22 marijuana for other than resale;  
23 (3) "Department," the Department of Revenue;

1 (4) "Marijuana," the plant of the genus cannabis, and any part of that plant, including  
2 the seeds, the resin extracted from any part of the plant, and every compound,  
3 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its  
4 resin, including hash and marijuana concentrate. The term includes an altered state  
5 of marijuana absorbed into the human body. The term does not include hemp, or  
6 fiber produced from the stalks, oil or cake made from the seeds of the plant,  
7 sterilized seed of the plant that is incapable of germination, or the weight of any  
8 other ingredient combined with marijuana to prepare topical or oral  
9 administrations, food, drink, or other products;

10 (5) "Sale," the transfer, for a consideration, of title to any adult-use marijuana;

11 (6) "Secretary," the secretary of revenue.

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

13 **35A-1-2. Secretary of revenue to administer Act--Employment of personnel-**  
14 **-Equipment and supplies.**

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

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

19 **35A-1-3. Certain revenue department employees prohibited from engaging**  
20 **in marijuana business.**

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

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

25 **35A-1-4. Traffic in marijuana prohibited--Exceptions.**

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

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

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

2           No person may transact any business as an adult-use marijuana retailer without  
3           an adult-use retail marijuana license as provided by this Act and under rules promulgated  
4           by the department pursuant to chapter 1-26. A violation of this section is a Class 1  
5           misdemeanor.

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

7           **35A-1-6. False statement in application or report--Violation as felony.**

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

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

13          **35A-1-7. Promulgation of rules.**

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

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

18          **35A-2-1. Applications submitted to local governing body--Approval.**

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

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

1 the adult-use retail marijuana law or the adult-use retail marijuana license has been  
2 suspended.

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

4 **35A-2-2. Character requirements.**

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

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

9 **35A-2-3. Adult-use retail marijuana licenses--Requirements.**

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

- 12 (1) Obtained a malt beverage license pursuant to chapter 35-2;  
13 (2) Submits to a background investigation. If the applicant is a partnership or  
14 corporation, the requirement for a background check includes each partner of a  
15 partnership and each director and officer and all stockholders in the corporation,  
16 its parent corporation, or its subsidiary corporation; and  
17 (3) Is a resident of this state. If the applicant is a partnership or corporation, the  
18 majority of ownership interest shall be held by residents of this state.

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

20 **35A-3-1. Times for selling--Violation as misdemeanor.**

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

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

24 **35A-3-2. Department to promulgate rules regarding types of marijuana**  
25 **products that may be sold.**

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

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

1           **35A-3-3. Furnishing to a minor prohibited--Violation as misdemeanor.**

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

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

5           **35A-3-4. Furnishing to a person eighteen years or older but less than**  
6           **twenty-one years prohibited--Violation as misdemeanor.**

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

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

10           **35A-3-5. Sale to underage person based on false identification document--**  
11           **Conviction barred.**

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

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

20           **35A-3-6. Furnishing to underage person--No criminal penalty imposed--**  
21           **Circumstances.**

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

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

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

1           **35A-3-7. Purchase, possession, or consumption by person under twenty-one**  
2           **years prohibited--Exception--Misrepresentation of age--Violation as**  
3           **misdemeanor.**

4           It is a Class 2 misdemeanor for any person under the age of twenty-one years to  
5           purchase or attempt to purchase adult-use retail marijuana or to misrepresent the  
6           person's age with the use of any document for the purpose of purchasing or attempting  
7           to purchase adult-use retail marijuana from any adult-use retail marijuana licensee under  
8           this Act.

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

10           **35A-3-8. Immunity for possession and consumption--Underage person who**  
11           **reports need of emergency assistance.**

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

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

18           **35A-3-9. Purchase by adult for person under twenty-one as misdemeanor.**

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

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

23           **35A-3-10. No civil liability for social hosts and licensees.**

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

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

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

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

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

9           **35A-4-2. Lien against place of violation for fines and costs assessed--**  
10           **Enforcement of lien.**

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

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

19           **35A-4-3. Action to enjoin nuisance--Bond not required.**

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

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

28           **35A-4-4. Temporary injunction in action to enjoin nuisance.**

29           If, in an action pursuant to § 35A-4-4, it is made to appear by affidavits or  
30           otherwise, to the satisfaction of the court, or judge in vacation, that a nuisance exists, a  
31           temporary writ of injunction shall be issued, restraining the defendant from conducting or

1 permitting the continuance of the nuisance until the conclusion of the trial. If a temporary  
2 injunction is sought, the court may issue an order restraining the defendant and all other  
3 persons from removing, or in any way interfering, with the marijuana or fixtures, or other  
4 things used in connection with the violation of the laws of this state constituting the  
5 nuisance.

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

7 **35A-4-5. Order prohibiting manufacture, sale, or storage of marijuana and**  
8 **occupancy of place of violation**

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

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

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

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