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**S. 335**

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Summary: Marijuana Control Act

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\335_20201209.docx)

**A** **BILL**

TO DECRIMINALIZE MARIJUANA AND TO PROVIDE FOR THE REGULATION OF MARIJUANA; TO AMEND SECTION 44-53-190(D)(11) OF THE 1976 CODE, RELATING TO SCHEDULE 1 CONTROLLED SUBSTANCES, TO REMOVE MARIJUANA FROM SCHEDULE 1; TO AMEND SECTION 44-53-370(D)(4) OF THE 1976 CODE, RELATING TO PENALTIES FOR POSSESSION OF SMALL AMOUNTS OF CERTAIN SCHEDULE 1 CONTROLLED SUBSTANCES, TO PROVIDE THAT THE PENALTIES DO APPLY TO THE POSSESSION OF MARIJUANA; TO AMEND SECTION 44-53-370(E)(1) OF THE 1976 CODE, RELATING TO PENALTIES FOR THE POSSESSION OF LARGE AMOUNTS OF MARIJUANA, TO PROVIDE THAT THE PENALTIES DO NOT APPLY TO LICENSED MARIJUANA ESTABLISHMENTS; TO AMEND TITLE 61 OF THE 1976 CODE, RELATING TO ALCOHOL AND ALCOHOLIC BEVERAGES, BY ADDING THE MARIJUANA CONTROL ACT AS CHAPTER 15; TO PROVIDE FOR THE PERSONAL USE OF MARIJUANA, THE AMOUNTS THAT A PERSON AT LEAST TWENTY ONE YEARS OF AGE MAY BE LEGALLY POSSESS, TO PROVIDE THAT MARIJUANA MAY NOT BE CONSUMED IN ANY LOCATION THAT PROHIBITS SMOKING TOBACCO; TO PROVIDE FOR LICENSING OF MARIJUANA CULTIVATORS, MARIJUANA PRODUCT MANUFACTURERS, AND MARIJUANA RETAILERS; TO PROVIDE THE REGULATORY FRAMEWORK FOR THE OPERATION OF MARIJUANA CULTIVATORS, MARIJUANA PRODUCT MANUFACTURERS, AND MARIJUANA RETAILERS; TO PROVIDE THAT COUNTIES AND MUNICIPALITIES MAY PROHIBIT WITHIN THEIR JURISDICTION THE OPERATION OF MARIJUANA CULTIVATORS, MARIJUANA PRODUCT MANUFACTURERS, AND MARIJUANA RETAILERS; TO PROVIDE FOR RESTRICTIONS ON PRODUCT LABELING AND ADVERTISING; TO PROVIDE PENALTIES FOR VIOLATIONS; TO PARDON CONVICTIONS OF CRIMES DECRIMINALIZED BY THE PROVISIONS IN THIS ACT; AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

PART I

The Decriminalization of Marijuana

SECTION 1. Section 44-53-190(D)(11) of the 1976 Code is amended to read:

“11. ~~Marijuana~~ Reserved”

SECTION 2. Section 44-53-370(d)(4) of the 1976 Code is amended to read:

“(4)(i) possession of more than: one gram of cocaine, one hundred milligrams of alpha‑ or beta‑eucaine, four grains of opium, four grains of morphine, two grains of heroin, one hundred milligrams of isonipecaine, ~~twenty‑eight grams or one ounce of marijuana,~~ ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4‑methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to ~~twenty‑eight grams or one ounce or less of marijuana or~~ ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section 44‑53‑450 upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of ~~marijuana or~~ hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections 17‑22‑10 through 17‑22‑160. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

(ii) When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14‑1‑206, 14‑1‑207, or 14‑1‑208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section 14‑1‑205. The assessment portion of the bail must be distributed as provided in Section 14‑1‑206, 14‑1‑207, or 14‑1‑208, whichever is applicable.”

SECTION 3. Section 44-53-370(e)(1) of the 1976 Code is amended to read:

“(1) ten pounds or more of marijuana, if the person is not licensed pursuant to Article 3, Chapter 15 of Title 61, is guilty of a felony which is known as ‘trafficking in marijuana’ and, upon conviction, must be punished as follows if the quantity involved is:”

PART II

The Regulation of Marijuana

SECTION 4. Title 61 of the 1976 Code is amended by adding:

“CHAPTER 15

Marijuana Control Act

ARTICLE 1

General Provisions

Section 61-15-100. This chapter is known and may be cited as the ‘Marijuana Control Act.’

Section 61-15-110. For the purposes of this chapter:

(1) ‘Consuming’ or ‘consumption’ means ingesting, inhaling, or otherwise introducing marijuana into the human body, with or without the use of a marijuana accessory.

(2) ‘Department’ means the Department of Revenue.

(3)(a) ‘Marijuana’ means all parts of any plant of the genus Cannabis not excepted in subitem (b), whether growing or not; the seeds thereof; resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin including tetrahydrocannabinol.

(b) The definition of marijuana does not include:

(i) the mature stalks of the plant; fiber produced from the stalks, oil, or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant; or the sterilized seed of the plant that is incapable of germination; (ii) hemp; or

(iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

(4) ‘Marijuana accessories’ means equipment, products, devices, or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

(5)(a) ‘Marijuana concentrate’ means the resin extracted from any part of the plant of the genus Cannabis and every compound, manufacture, salt, derivative, mixture, or preparation of that resin.

(b) The definition of marijuana concentrate does not include the weight of any other ingredient combined with marijuana to prepare marijuana products.

(6) ‘Marijuana cultivator’ means an entity licensed to cultivate, process, and package marijuana; to deliver marijuana to marijuana establishments; and to transfer marijuana to other marijuana establishments but not to consumers.

(7) ‘Marijuana establishment’ means a marijuana cultivator, marijuana product manufacturer, marijuana retailer, or any other type of licensed marijuana-related business.

(8) ‘Marijuana product’ means a product that has been manufactured and contains marijuana or contains an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for consumption, including edible products, beverages, topical products, ointments, oils, and tinctures.

(9) ‘Marijuana product manufacturer’ means an entity licensed to obtain, manufacture, process, and package marijuana and marijuana products; to deliver marijuana and marijuana products to marijuana establishments; and to transfer marijuana and marijuana products to other marijuana establishments but not to consumers.

(10) ‘Marijuana retailer’ means an entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell, or otherwise transfer marijuana and marijuana products to marijuana establishments and consumers.

Section 61-15-120. The willful violation of any rule or regulation made under the provisions of this chapter constitutes a violation of the Marijuana Control Act. A determination of whether an action constitutes a willful violation shall be made pursuant to the terms within the provisions of this chapter, and no regulation shall be promulgated or enforced that exceeds the requirements of this chapter.

Section 61-15-130. The department may employ inspectors or agents necessary for the proper administration and enforcement of the provisions of this chapter. The department shall set the salaries of these inspectors or agents. The Governor shall commission, as state constables, inspectors or agents that are certified by the department to have adequate authority as peace officers to enforce these provisions.

Section 61-15-140. The department may employ clerical, stenographic, and other personnel, including chemists, as necessary to administer the provisions contained in this chapter and may prescribe their duties and set their compensation. The department shall require any employee to furnish bond conditioned upon the faithful performance of his duty. The bond must be filed with and preserved by the department.

Section 61-15-150. The department must file with the Governor and the General Assembly an annual report, as of June thirtieth of each year, and must report to the Governor on its affairs generally or on special matters as often as he requires.

ARTICLE 2

Personal Use of Marijuana

Section 61-15-200. (A) A person twenty-one years of age or older may legally:

(1) possess, use, purchase, process, or manufacture one ounce or less of marijuana, provided that not more than five grams of marijuana in his possession may be in the form of marijuana concentrate;

(2) within the person’s primary residence, possess up to ten ounces of marijuana and any marijuana produced by marijuana plants cultivated at his primary residence, and possess, cultivate, or process not more than six marijuana plants for personal use;

(3) assist another person who is twenty-one years of age or older in any of the acts permitted pursuant to this section; and

(4) give or otherwise transfer without remuneration up to one ounce of marijuana, except that not more than five grams of marijuana may be in the form of marijuana concentrate, to a person twenty-one years of age or older, as long as the transfer is not advertised or promoted to the public.

(B) A person who violates this section shall be subject to a civil penalty of five hundred dollars and forfeiture of the person’s marijuana.

Section 61-15-210. No person shall consume marijuana or marijuana products in a public place or smoke marijuana in any place where tobacco smoking is prohibited. A person who violates this section shall be subject to a civil penalty of two hundred fifty dollars.

ARTICLE 3

Licensing Marijuana Establishments

Section 61-15-300. (A) The department shall issue, subject to suspension or revocation, a license to a qualified applicant to engage in business as a marijuana establishment.

(B) No licensee shall be issued more than three marijuana retailer licenses, three marijuana product manufacturer licenses, or three marijuana cultivator licenses. A single licensee may be issued up to three licenses to sell at retail, manufacture, or cultivate, or for any combination of the marijuana establishment licenses.

(C) The department has sole and exclusive authority to issue, suspend, and revoke all licenses provided for in this chapter.

Section 61-15-310. The department shall issue, subject to suspension or revocation, to a qualified applicant:

(1) a marijuana cultivator license, which authorizes the licensee to cultivate, process, and package marijuana; to deliver marijuana to marijuana establishments; and to transfer marijuana to other marijuana establishments but not to consumers;

(2) a marijuana product manufacturer license, which authorizes the licensee to obtain, manufacture, process, and package marijuana and marijuana products; to deliver marijuana and marijuana products to marijuana establishments; and to transfer marijuana and marijuana products to other marijuana establishments but not to consumers; or

(3) marijuana retailer licenses, which authorize the licensee to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell, or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

Section 61-15-320. (A) The department shall issue, subject to suspension or revocation, a license to an applicant who:

(1) is twenty‑one years of age or older;

(2) is a legal resident of the United States and has been a resident of South Carolina for at least one year prior to the date of application;

(3) will have actual control and management of the business;

(4) is of good moral character or, if a corporation or association, has a reputation for peace and good order in its community, and its principals are of good moral character;

(5) has not been convicted of a felony within ten years of the date of application;

(6) has not had a license issued under this or another statute regulating marijuana revoked within five years prior to the date of application;

(7) demonstrates that the proposed place of business to be occupied by the applicant is a suitable place; and

(8) demonstrates that the proposed place of business is not located in a county or municipality that has prohibited the operation of the type of marijuana establishment for which a license is sought.

(B) The department may only issue a license to an applicant pursuant to subsection (A) if a sufficient number of licenses have not already been issued in the State, incorporated municipality, unincorporated community, or other community.

(C) Upon the written request of a person who resides in the county where the license is requested to be issued, the department must not issue a permanent license until interested persons have been given an opportunity to be heard.

Section 61-15-330. (A) Upon receipt of an application for licensure, the department shall provide notice of the application through publication at least once a week for three consecutive weeks in a newspaper most likely to give notice to interested citizens of the county, municipality, or community in which the applicant proposes to engage in business. The department shall determine which newspapers meet the requirements of this section based on available circulation figures. However, if a newspaper is published in the county and historically has been the newspaper in which such advertisements are published, then the advertisements published in that newspaper meet the requirements of this section. An applicant for more than one marijuana establishment license may use the same advertisement for both if it is approved by the department. The notice must:

(1) be in the legal notices section of the newspaper or an equivalent section if the newspaper has no legal notices section;

(2) be in large type, covering a space of one column wide and at least two inches deep; and

(3) state the type of license applied for and the exact location of the proposed business.

(B) In addition to the notice requirement in subsection (A), the department shall also provide notice by displaying a sign for fifteen days at the site of the proposed business. The sign must:

(1) state the type of license sought for the site;

(2) state how an interested person may protest the application;

(3) be in bold type;

(4) cover a space at least twelve inches high and eighteen inches wide; and

(5) be posted and removed by an agent of the department.

(C)(1) A person residing in the county in which a marijuana establishment license is requested to be issued or renewed, or a person residing within five miles of the location for which a marijuana establishment license is requested, may protest the issuance or renewal of the license if he files a written protest providing:

(a) the name, address, and telephone number of the person filing the protest;

(b) the name of the applicant for the license and the address of the premises sought to be licensed, or the name and address of the license holder if the application is for a renewal;

(c) the specific reasons why the application should be denied; and

(d) whether or not the protestant intends to attend a contested case hearing before the Administrative Law Court.

(2) Upon receipt of a timely filed protest, the department shall determine the protestant's intent to attend a contested case hearing before the Administrative Law Court. If the protestant intends to attend a contested case hearing, then the department may not issue the permanent license but shall forward the file to the Administrative Law Court.

(3) If the protestant, during the investigation, expresses no intent to attend a contested case hearing and offer testimony, then the protest is deemed invalid, and the department shall continue to process the application and shall issue the license if all other statutory requirements are met.

(4) A person who files a protest and fails to appear at a contested case hearing after affirming his intent to attend the contested case hearing may be assessed a penalty to include court costs.

Section 61-15-340. (A) A person who purchases or acquires a licensed marijuana establishment by lease, inheritance, divorce decree, eviction, or otherwise, upon initiating the application process for a permanent license, may be issued a temporary license by the department at the time of the purchase or acquisition if the location for which the temporary license is sought is not considered by the department to be a public nuisance and if the applicant:

(1) currently holds a valid marijuana establishment license; or

(2) has had a criminal history background check conducted by the State Law Enforcement Division within the past thirty days.

(B) A temporary license issued pursuant to subsection (A) is valid until a permanent license is approved or disapproved by the department, but in no case is it valid for more than one hundred twenty days from the date of issuance.

(C) Notwithstanding subsection (B), the department may revoke a temporary license if the applicant fails to pursue the permanent license in a timely manner, as set forth by the department by regulation.

(D) The department shall collect a fee of five hundred dollars for each temporary license sought.

Section 61-15-350. The department may suspend, revoke, or refuse to renew a license issued pursuant to this article upon finding that:

(1) the applicant no longer meets the requirements of Section 61-15-320;

(2) the applicant has violated a provision of the Marijuana Control Act since the issuance of his license;

(3) the applicant has violated a regulation promulgated pursuant to the Marijuana Control Act since the issuance of his license; or

(4) the applicant permits entertainment on the licensed premises where a person is in a state of undress so as to expose the human male or female genitals, pubic area, or buttocks cavity with less than a full opaque covering.

Section 61-15-360. A marijuana establishment licensee must allow for inspections by the department during the establishment’s hours of operation or at any other reasonable time. A marijuana establishment licensee that prevents, or in any way hinders, an inspection is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars, imprisoned for not more than sixty days, or both.

Section 61-15-370. If a marijuana establishment licensee, or servant, agent, or employee of the licensee, pleads guilty or nolo contendere to, or is convicted of, a criminal offense that occurred on the licensed premises, then the conviction or plea constitutes proof that the offense occurred, and the record thereof is admissible in a contested case hearing before the Administrative Law Court.

Section 61-15-380. The department may suspend or revoke a license issued pursuant to this article if the licensee:

(1) fails to maintain his business in accordance with the provisions contained in this chapter; or

(2) does not maintain his place of business as a suitable place.

Section 61-15-390. (A) For the purposes of this section:

(1) ‘Church’ means an establishment, other than a private dwelling, where religious services are usually conducted.

(2) ‘School’ means an establishment, other than a private dwelling, where the usual processes of education are usually conducted.

(3) ‘Playground’ means a place, other than grounds at a private dwelling, which is provided by the public or members of a community for recreation.

(B) The department shall not issue any license provided for in this article if the place of business is within three hundred feet of any church, school, or playground situated within a municipality or within five hundred feet of any church, school, or playground situated outside of a municipality. The distance shall be computed by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare from the nearest point of the grounds in use as part of the church, school, or playground.

(C)(1) The prohibition contained in subsection (B) does not apply to the renewal of a license or to new applications for locations that are licensed at the time the new application is filed with the department.

(2) An applicant for license renewal or for a new license at an existing location shall pay a twenty-five dollar certification fee to determine if the exemption provided for in this subsection applies.

Section 61-15-400. (A) The department may issue a marijuana cultivator’s license, subject to the requirements of this chapter and payment of a biennial manufacturer license fee of fifty thousand dollars.

(B) A marijuana cultivator may not maintain more than one cultivation operation in any single county of this State.

(C) A marijuana cultivator must, for the purpose of conducting his business under his marijuana cultivator’s license, maintain a separate store or warehouse, and no other goods, wares, or merchandise may be kept or stored therein.

(D) No marijuana cultivator may:

(1) sell, barter, exchange, give, transfer, or deliver marijuana for consumption to a person that does not have a valid marijuana establishment license issued pursuant to this article;

(2) permit the consumption of marijuana on his premises, except as is incidental to cultivation; or

(3) condition the sale of a particular strain of marijuana to a marijuana establishment upon the purchase or receipt of a different strain of marijuana than that ordered by the marijuana establishment.

(E) A marijuana cultivator must file with the department, on or before the first day of each month, a statement showing the stock of fully cured marijuana in his possession during the preceding thirty days, and any additional reports the department requires.

Section 61-15-410. (A) The department may issue a marijuana product manufacturer’s license, subject to the requirements of this chapter and payment of a biennial manufacturer license fee of ten thousand dollars.

(B) A marijuana manufacturer may not maintain more than one manufacturing facility in any single county of this State.

(C) A marijuana manufacturer must, for the purpose of conducting his business under his marijuana manufacturer’s license, maintain a separate store or warehouse, and no other goods, wares, or merchandise may be kept or stored therein.

Section 61-15-420. (A) The department may issue a marijuana retailer license, subject to the requirements of this chapter and payment of a biennial marijuana retailer license fee of five thousand dollars.

(B) A retailer must maintain a separate store or place of business with not more than two means of public ingress or egress, which must be on the front or the same side of the building, except that the doors may be located at the corner of two adjacent sides of the building. One additional door, not in the front, is allowed to be used solely for the receipt of commercial deliveries and as an emergency exit.

(C)(1) A retail dealer must have posted in his place of business signs with the following words printed thereon:

(a)(i) ‘The possession of marijuana or marijuana products by a person under twenty-one years of age is a criminal offense under the laws of this State, and it is also unlawful for a person to knowingly give false information concerning his age for the purpose of purchasing marijuana or marijuana products.’

(ii) A retailer that fails to display this sign is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

(b) ‘A person may legally possess marijuana or marijuana products purchased from a licensed marijuana retail establishment if the person does not possess a quantity prohibited by law.’

(c) ‘The purchase of marijuana or marijuana products from this location by or on behalf of another marijuana retailer licensee is unlawful and will result in the suspension of the purchaser's retail dealer's license.’

(2) The department must prescribe by regulation the size of the lettering and the location of the signs on the retailer’s premises.

(D) A licensed marijuana retailer may sell marijuana accessories used for the consumption of marijuana at his licensed location to any person twenty-one years of age or older.

(E) A licensed marijuana retailer may not:

(1) sell; barter; exchange; give; offer for sale, barter, or exchange; or permit the sale, barter, exchange, or gift of marijuana or marijuana products without regard to the quantity of the marijuana or marijuana products:

(a) between the hours of 7:00 p.m. and 9:00 a.m.;

(b) for consumption on the premises;

(c) to a person under twenty-one years of age;

(d) to an intoxicated person;

(e) to a mentally incompetent person; or

(f) to a person the retail dealer knows is another retail dealer;

(2) permit the consumption of marijuana or marijuana products on the licensed premises;

(3) sell marijuana or marijuana products on credit. However, this item does not prohibit payment by electronic transfer of funds if:

(a) the transfer of funds is initiated by an irrevocable payment order on or before delivery of the marijuana or marijuana products; and

(b) the electronic transfer is initiated by the retailer no later than one business day after delivery; or

(4) purchase; barter; exchange; receive; offer to purchase, barter, exchange, or receive; or permit the purchase, barter, exchange, or receipt of marijuana or marijuana products without regard to the quantity of the marijuana or marijuana products from another retail dealer.

(F) It is unlawful to sell marijuana or marijuana products except during lawful hours of operation. However, during restricted hours, a retail dealer is permitted to receive, stock, and inventory merchandise; provide for maintenance and repairs; and perform other necessary, related functions that do not involve the sale of marijuana or marijuana products.

(G) If a licensed marijuana retailer is licensed to operate in more than one location, then the retailer may move inventory between its licensed locations.

(H) A licensed marijuana retailer may not be licensed under Chapter 41 of Title 34 in order to engage in check-cashing services on the licensed marijuana retail premises.

Section 61-15-430. (A) Notwithstanding the provisions contained in Section 61-15-420(E)(1)(a) and (b) and Section 61-15-420(E)(2) to the contrary, a licensed marijuana retailer that operates a café or restaurant may sell, and a customer may consume, in the café or restaurant marijuana products between the hours of noon on a given day and two o'clock the following morning. The sale or consumption of marijuana products as provided in this subsection does not extend to any portion of the café, restaurant, or property upon which it is located that is designated as or used for parking.

(B) Notwithstanding the provisions contained in Section 61-15-420(E)(1) and (4) to the contrary, a licensed marijuana retailer may sell; barter; exchange; give; offer for sale, barter, or exchange; or permit the sale, barter, exchange, or gift of marijuana products to another licensed marijuana retailer that operates a café or restaurant that allows on-premises consumption of marijuana products. A licensed marijuana retailer that operates a café or restaurant that allows on-premises consumption of marijuana products may purchase; barter; exchange; receive; offer to purchase, barter, exchange, or receive; and permit the purchase, barter, exchange, or receipt of marijuana products from another licensed marijuana retailer.

(C) A café or restaurant that allows on premises consumption of marijuana products as provided in subsection (A) must be maintained as a separate location from all other businesses.

ARTICLE 5

Local Authorization for the Operation of Marijuana Establishments

Section 62-15-500. (A) A county or municipal governing body may by ordinance call a referendum on the question of whether to allow marijuana establishments to operate within the governing body’s jurisdiction. The county or municipal governing body must file a copy of the ordinance with the county or municipal election commission at least sixty days before the date of the referendum. Thereferendummust be conducted at the next general election. The county or municipal election commission shall cause a notice to be published in a newspaper circulated in the county or municipality, as the case may be, at least seven days before the referendum. The state election laws shall apply to the referendum, mutatis mutandis. The county or municipal election commission shall publish the results of thereferendum and certify them to the department.

(B) A referendum on the question of whether to allow marijuana establishments to operate within a county or municipality may also be called upon the petition of at least ten percent but not more than seven thousand five hundred qualified electors of the county or municipality, as the case may be. The petition form must be submitted to the county or municipal election commission not less than one hundred twenty days before the date of the referendum. The names on the petition must be on the petition form provided to county election officials by the State Election Commission. The names on the petition must be certified by the county or municipal election commission within sixty days after receiving the petition form. Thereferendummust be conducted at the next general election. The county or municipal election commission shall cause a notice to be published in a newspaper circulated in the county or municipality, as the case may be, at least seven days before the referendum. The state election laws shall apply to the referendum, mutatis mutandis. The county or municipal election commission shall publish the results of thereferendum and certify them to the department.

(C)(1) In addition to the authority to call for a referendum provided in subsection (A), a municipal governing body may order areferendumon the question of whether to allow marijuana establishments to operate within the municipality if:

(a) parts of the municipality are located in more than one county;

(b) as a result of a favorable vote in a county referendum held pursuant to this section, permits may be issued in only the parts of the municipality located in that county; and

(c) the proposed referendum would authorize the issuance of permits in the remaining parts of the municipality.

(2) The municipal governing body must file a copy of the ordinance with the municipal election commission at least sixty days before the date of the referendum. Thereferendummust be conducted at the next general election. The municipal election commission shall cause a notice to be published in a newspaper circulated in the municipality at least seven days before the referendum. The state election laws shall apply to the referendum, mutatis mutandis. The municipal election commission shall publish the results of thereferendum and certify them to the department.

(3) An unfavorable vote in a municipal referendum called pursuant to this subsectiondoes not affect the authority to issue these permits in the part of the municipality located in a county where these permits may be issued.

Section 61-15-510. Marijuana establishment licenses issued in a county or municipality pursuant to thereferendum provided for at that time may continue to be issued or renewed without the requirement of a further referendum.

Section 61-15-520. Marijuana establishment licenses issued by the department pursuant to this article may be issued in all parts of a municipality if any part of the municipality is located in a county where the issuance of these permits is allowed.

ARTICLE 6

Product Labeling and Advertising

Section 61-15-600. Labeling of a package containing marijuana or marijuana products shall contain:

(1) a symbol, easily recognizable mark, or stamp issued by the department that clearly indicates that the package contains marijuana or a marijuana product;

(2) a symbol, easily recognizable mark, or stamp issued by the department that clearly indicates to children that the product is harmful to children;

(3) the name and contact information of the marijuana cultivator that cultivated the marijuana or the marijuana product manufacturer that produced the marijuana product;

(4) the results of sampling, testing, and analysis conducted by a licensed independent testing laboratory;

(5) a seal or stamp certifying that the marijuana or marijuana product meets testing standards;

(6) a unique batch number identifying the production batch associated with the manufacturing, processing, and cultivation of the marijuana or marijuana product;

(7) a list of ingredients and possible allergens contained in marijuana products;

(8) the THC content;

(9) the number of servings in a package of marijuana products if there are multiple servings;

(10) a use-by date, if applicable; and

(11) a notice stating that: ‘This product has not been analyzed or approved by the Food and Drug Administration. There is limited information concerning the side effects of using this product, and there may be associated health risks. Marijuana use during pregnancy and breast feeding may pose potential harms to a child. It is against the law to drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN.’

Section 61-15-610. (A) For marijuana and marijuana products, there is a prohibition on advertising, marketing, and branding:

(1) that is deceptive, false, or misleading;

(2) by means of television, radio, internet, billboard, or print publication unless at least eighty-five percent of the audience is reasonably expected to be twenty-one years of age or older, as determined by reliable, up-to-date audience composition data;

(3) that utilizes statements, designs, representations, pictures, or illustrations that portray a person younger than twenty-one years of age;

(4) that utilizes mascots, cartoons, brand sponsorships, and celebrity endorsements that are reasonably expected to appeal to a person younger than twenty-one years of age;

(5) that make false or misleading statements about licensees;

(6) that utilize promotional giveaways, coupons, or free marijuana or marijuana products;

(7) that utilize radio or loudspeaker equipment inside or outside of a marijuana establishment for the purpose of attracting attention to the establishment; or

(8) through the use of sponsorships of any kind.

(B)(1) A website maintained by a licensed marijuana establishment must be equipped to verify that an entrant is at least twenty-one years of age.

(2) A licensed marijuana establishment may not utilize unsolicited pop-up advertisements on the internet.

Section 61-15-620. Retail dealers are prohibited from using in an advertisement for marijuana a subject matter, language, or slogan addressed to and intended to encourage persons under twenty-one years of age to purchase or consume marijuana or marijuana products.

ARTICLE 7

Prohibited Actions and Penalties for Violations

Section 61-15-700. (A) A licensed marijuana retailer that knowingly sells marijuana or marijuana products to a person under the age of twenty-one is guilty of a misdemeanor and, upon conviction:

(1) for a first offense, must be fined not less than two hundred dollars and not more than three hundred dollars, imprisoned not more than thirty days, or both; and

(2) for a second or subsequent offense, must be fined not less than four hundred dollars and not more than five hundred dollars, imprisoned not more than thirty days, or both.

(B) Failure of a person to require identification to verify a person's age is prima facie evidence of a violation of this section.

(C) A person who violates the provisions of this section is also required to successfully complete a DAODAS-approved merchant marijuana enforcement education program. The program must be a minimum of two hours, and the cost to the person may not exceed fifty dollars.

Section 61-15-710. (A) It is unlawful for a person under the age of twenty-one to purchase or attempt to purchase marijuana or marijuana products from a licensed marijuana retailer. It is also unlawful for a person to falsely represent his age for the purpose of procuring marijuana or marijuana products from a licensed marijuana retailer.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars and not more than two hundred dollars, must be imprisoned for not more than thirty days, or both.

(C) A person who violates the provisions of this section is also required to successfully complete a DAODAS-approved marijuana prevention education or intervention program. The program must be a minimum of eight hours, and the cost to the person may not exceed one hundred fifty dollars.

(D) The provisions of this section do not apply to a person under the age of twenty-one who is recruited and authorized by a law enforcement agency to test an establishment's compliance with the laws relating to the unlawful transfer or sale of marijuana or marijuana products to a minor. The testing must be under the direct supervision of a law enforcement agency, and the agency must have the person's parental consent.

Section 61-15-720. It is unlawful for a person who purchases marijuana or marijuana products while on licensed premises to give the marijuana or marijuana products to a person to whom they cannot lawfully be sold on the premises. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction:

(1) for a first offense, must be fined not less than two hundred dollars and not more than three hundred dollars, imprisoned not more than thirty days, or both; and

(2) for a second or subsequent offense, must be fined not less than four hundred dollars and not more than five hundred dollars, imprisoned not more than thirty days, or both.

Section 61-15-730. It is unlawful for a person under the age of twenty-one to work as an employee of a licensed marijuana establishment or for a person knowingly to employ another person under twenty-one years of age in a marijuana establishment. A person who violates this section is guilty of a misdemeanor and, upon conviction:

(1) for a first offense, must be fined not less than two hundred dollars and not more than three hundred dollars, imprisoned not more than thirty days, or both;

(2) for a second or subsequent offense, must be fined not less than four hundred dollars and not more than five hundred dollars, imprisoned not more than thirty days, or both; and

(3) for a third or subsequent offense, must be fined not less than six hundred dollars and not more than seven hundred dollars, imprisoned not more than thirty days, or both.

Section 61-15-740. A person who violates any provision of the Marijuana Control Act, except where a different punishment is expressly provided, is guilty of a misdemeanor and, upon conviction, must be punished by a fine, imprisonment, or both, at the discretion of the court of general sessions.”

PART III

Miscellaneous

SECTION 5. On the effective date of this Act, all prior convictions for offenses that are decriminalized pursuant to this act are pardoned and the pardoned convictions are expunged.

SECTION 6. DAODAS shall develop a merchant marijuana enforcement education program for licensed marijuana retailers who violate Section 61-15-700. DAODAS shall also develop a marijuana prevention education or intervention programs for people under twenty-one years of age who violate Section 61-15-710.

SECTION 6. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 7. This act takes effect upon approval by the Governor.

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