

REPUBLIC OF SOUTH AFRICA

CANNABIS FOR PRIVATE PURPOSES BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43595 of 7 August 2020)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 19—2020]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To—

- respect the right to privacy of an adult person to possess cannabis plant cultivation material; to cultivate a prescribed quantity of cannabis plants; to possess a prescribed quantity of cannabis; and to smoke and consume cannabis;
- regulate the possession of cannabis plant cultivation material; the cultivation of cannabis plants; the possession of cannabis; and the smoking and consumption of cannabis by an adult person;
- protect adults and children against the harms of cannabis;
- provide for the expungement of criminal records of persons convicted of possession or use of cannabis;
- delete and amend provisions of certain laws; and
- provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

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Definitions and interpretation

- 1.** (1) In this Act, unless the context indicates otherwise—
- “**adult person**” means a person who is 18 years or older;
- “**cannabis**” means— 10
- (a) the flowering or fruiting tops and the leaves of a cannabis plant that have been separated from the plant, but excludes any seed, seedling, the stalk and branches without any leaf, fruit or flower, and the roots of a cannabis plant; and
- (b) any substance which contains THC, 15
- and fresh cannabis, dried cannabis and cannabis concentrate, are classes of cannabis;
- “**cannabis concentrate**” means cannabis that has undergone a process to concentrate the THC content, and cannabis solid concentrates and cannabis liquid concentrates are classes of cannabis concentrate;
- “**cannabis equivalent**” means a quantity referred to in Column 2 of Schedule 2, in respect of any class of cannabis referred to in Column 1 of that Schedule which is deemed to be equivalent to one gram of dried cannabis; 20
- “**cannabis plant**” means a plant of the genus *Cannabis*, but excludes hemp, and for purposes of this Act, an immature cannabis plant and a flowering cannabis plant are classes of a cannabis plant; 25
- “**cannabis plant cultivation material**” means seeds of a cannabis plant and seedlings;
- “**cannabis plant equivalent**” means a quantity referred to in Column 2 of Schedule 1, in respect of any class of cannabis plant referred to in Column 1 of that Schedule which is deemed to be equivalent of one flowering cannabis plant;
- “**cannabis product**” means anything that is intended for human or animal consumption which contains THC or any other phytocannabinoid found in a cannabis plant; 30
- “**child**” means a person who is under the age of 18 years;
- “**Children’s Act**” means the Children’s Act, 2005 (Act No. 38 of 2005);
- “**commercial quantity**”, for purposes of the sections referred to in Column 1 of Schedule 4, means the quantity that exceeds— 35
- (a) the quantity of any flowering cannabis plant or its cannabis plant equivalent; or
- (b) the quantity of any dried cannabis or its cannabis equivalent, respectively, referred to in Column 3 of that Schedule;
- “**consideration**” means any form of compensation, gift, reward, favour or benefit; 40
- “**consumption**” means to eat, drink or otherwise self-administer cannabis and
- “**consume**” has a corresponding meaning;
- “**cultivate**” includes to plant, propagate, nurture, tend, grow or harvest a cannabis plant, and “**cultivation**” has a corresponding meaning;
- “**deal in**” means to provide for consideration, receive for consideration, sell, buy, offer for sale, offer to purchase, import, advertise for sale, export and any other conduct to facilitate selling; 45
- “**Director-General**” means the Director-General: Justice and Constitutional Development;
- “**dried cannabis**” means the flowering or fruiting tops and the leaves of a cannabis plant that have been separated from the plant and that have been subjected to a drying process; 50
- “**dwelling**” means any part of a formal or informal structure that is occupied as a residence, or any part of a structure or outdoor living area that is accessory to, and used principally for the purposes of, a residence; 55

- “**flowering cannabis plant**” means the gametophytic or reproductive state of a cannabis plant in which the plant produces flowers, trichomes and cannabinoids characteristic of cannabis;
- “**fresh cannabis**” means the flowering or fruiting tops and the leaves of a cannabis plant that have been separated from the plant and that have not been subjected to a drying process; 5
- “**guardian**” means a guardian referred to in section 1 of the Children’s Act;
- “**harvest**” means to obtain and process cannabis from a cannabis plant;
- “**hemp**” means a plant of the genus *Cannabis* which—
- (a) has a concentration of THC in the leaves and flowering heads that does not exceed the percentage as may be prescribed in terms of; and
 - (b) is cultivated under authority of,
- a law that regulates its cultivation;
- “**immature cannabis plant**” means a non-flowering cannabis plant that is—
- (a) taller than 15 centimetres; or 15
 - (b) wider than 15 centimetres,
- measured according to the criteria prescribed by regulation;
- “**Minister**” means the Cabinet member responsible for the administration of justice;
- “**National Road Traffic Act**” means the National Road Traffic Act, 1996 (Act No. 93 of 1996); 20
- “**personal use**” means for the exclusive use of an adult person;
- “**possess in private**”, for purposes of section 2(1)(c) and (e), means to keep, store, transport or be in control of cannabis or a cannabis plant, respectively, in a manner that conceals it from public view;
- “**prescribed quantity**” means for purposes of the sections referred to in Column 1 of Schedule 3, the quantity that does not exceed— 25
- (a) the quantity of cannabis plant cultivation material;
 - (b) the quantity of any flowering cannabis plant or its cannabis plant equivalent; or
 - (c) the quantity of any dried cannabis or its cannabis equivalent, 30
- respectively, referred to in Column 2 of that Schedule;
- “**private place**” means any place, including a building, house, room, shed, hut, tent, mobile home, caravan, boat or land or any portion thereof, to which the public does not have access as of right;
- “**public place**” means any place to which the public has access as of right; 35
- “**public road**” means a public road as defined in section 1 of the National Road Traffic Act;
- “**seedling**” means a non-flowering cannabis plant that is not—
- (a) taller than 15 centimetres; or
 - (b) wider than 15 centimetres, 40
- measured according to the criteria prescribed by regulation;
- “**smoke**” means to inhale or exhale the smoke produced by ignited cannabis or holding or otherwise having control of ignited cannabis or any device or object that contains ignited cannabis;
- “**THC**” means (-)-trans-delta-9-tetrahydrocannabinol; 45
- “**this Act**” includes the regulations;
- “**trafficable quantity**”, for purposes of the sections referred to Column 1 of Schedule 4, means the quantity that exceeds—
- (a) the quantity of any flowering cannabis plant or its cannabis plant equivalent; or 50
 - (b) the quantity of any dried cannabis or its cannabis equivalent,
- respectively, referred to in Column 2 of that Schedule; and
- “**vehicle**” means a vehicle as defined in section 1 of the National Road Traffic Act.
- (2) The provisions of this Act do not apply to any person who is permitted or authorised in terms of any other Act of Parliament to— 55
- (a) deal in cannabis plant cultivation material, cannabis plants, cannabis or a cannabis product; or
 - (b) cultivate cannabis plants.

Prescribed quantities for personal use by adult person

2. (1) Subject to this Act, an adult person may for personal use— 60

- (a) possess the prescribed quantity of cannabis plant cultivation material;
- (b) cultivate the prescribed quantity of cannabis plants in a private place;
- (c) possess in private, the prescribed quantity of cannabis in a public place;
- (d) possess the prescribed quantity of cannabis in a private place; and
- (e) possess in private, the prescribed quantity of cannabis plants in a public place. 5

(2) Subject to this Act, an adult person may smoke and consume cannabis in a private place.

(3) Subject to this Act and provided there is no exchange of consideration, an adult person may provide to, or obtain from, any adult person, for personal use, the prescribed quantity of— 10

- (a) cannabis plant cultivation material;
- (b) cannabis plants; and
- (c) cannabis.

Cultivation offences

3. (1) An adult person who in a private place cultivates— 15

- (a) more than the prescribed quantity contemplated in section 2(1)(b), but less than a trafficable quantity of cannabis plants, is guilty of a Class C offence;
- (b) a trafficable quantity of cannabis plants, is guilty of a Class B offence; or
- (c) a commercial quantity of cannabis plants, is guilty of a Class A offence.

(2) An adult person who cultivates a cannabis plant at any place and who fails to— 20

- (a) take reasonable measures to ensure that the cannabis plant is inaccessible to a child; or
- (b) comply with any requirement or standard regarding the cultivation of cannabis plants in a private place for personal use as prescribed by regulation,

is guilty of a Class C offence. 25

(3) An adult person who cultivates a cannabis plant in a public place, is guilty of a Class B offence.

(4) An adult person who provides to, or obtains from, an adult person without the exchange of consideration—

- (a) a quantity that exceeds the prescribed quantity contemplated in section 2(3)(b), but which is less than a trafficable quantity of cannabis plants, is guilty of a Class C offence; 30
- (b) a trafficable quantity of cannabis plants, is guilty of a Class B offence; or
- (c) a commercial quantity of cannabis plants, is guilty of a Class A offence.

(5) An adult person who is in possession in a public place of— 35

- (a) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(e), but which is less than a trafficable quantity of cannabis plants, is guilty of a Class C offence;
- (b) a trafficable quantity of cannabis plants, is guilty of a Class B offence; or
- (c) a commercial quantity of cannabis plants, is guilty of a Class A offence. 40

(6) (a) Any person who deals in an immature cannabis plant, is guilty of a Class C offence.

(b) Any person who deals in a flowering cannabis plant, is guilty of a Class A offence.

(7) Any person who deals in cannabis plant cultivation material, is guilty of a Class D offence. 45

(8) An adult person who provides to, or obtains from, an adult person without the exchange of consideration a quantity that exceeds the prescribed quantity of cannabis plant cultivation material contemplated in section 2(3)(a), is guilty of a Class D offence.

(9) Any person who is in possession in a public place of cannabis plant cultivation material or a cannabis plant that is not concealed from public view, is guilty of a Class D offence. 50

Cannabis offences

4. (1) Any person who is in possession in a public place of—

- (a) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(c), but which is less than a trafficable quantity of cannabis, is guilty of a Class C offence; 55
- (b) a trafficable quantity of cannabis, is guilty of a Class B offence; or
- (c) a commercial quantity of cannabis, is guilty of a Class A offence.