

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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Cannabis equivalent	20
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Schedule 3

Prescribed quantity

Schedule 4

Trafficable and commercial quantities

Schedule 5

5

Laws repealed or amended

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 10
 - (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;
 - (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 50 D offence.

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;
 - (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.

- (2) An adult person who is in possession in a private place of—
- (a) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(d), but which is less than a trafficable quantity of cannabis, is guilty of a Class C offence;
 - (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.
- (3) An adult person who is in possession of cannabis at any place and who—
- (a) fails to store such cannabis in a secure space that is inaccessible to a child; or
 - (b) stores such cannabis in a manner that does not comply with any requirement or standard regarding the storing of cannabis prescribed by regulation,
- is guilty of a Class C 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)(c), but which is less than a trafficable quantity of cannabis, is guilty of a Class C offence;
 - (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.
- (5) Any person who deals in cannabis, is guilty of a Class A offence.
- (6) An adult person who transports cannabis in a vehicle on a public road in a manner that does not comply with any requirement or standard regarding the transportation of cannabis that may be prescribed by regulation, is guilty of a Class C offence.
- (7) Any person who is in possession in a public place of cannabis that is not concealed from public view, is guilty of a Class C offence.

Smoking and consumption offences

5. (1) Any person who smokes or consumes cannabis in a public place, is guilty of a Class D offence.
- (2) Any person who smokes cannabis in a public or private place in the immediate presence of any non-consenting adult person, is guilty of a Class D offence.
- (3) Any person who smokes cannabis in a public or private place in the immediate presence of a child, is guilty of a Class C offence.
- (4) Any person who smokes cannabis in a private place—
- (a) within a distance prescribed by regulation from a window of, ventilation inlet of, doorway to or entrance into another place; or
 - (b) forming part of any place where persons congregate within close proximity of one another and where the smoke is likely to cause a hindrance to any person at that place,
- is guilty of a Class D offence.
- (5) Any person who smokes or consumes cannabis in a vehicle on a public road, is guilty of a Class C offence.

Offences involving child

6. (1) (a) The guardian of a child who permits a child—
- (i) to possess cannabis plant cultivation material or a cannabis plant;
 - (ii) to deal in cannabis plant cultivation material or a cannabis plant;
 - (iii) subject to paragraph (b), to cultivate a cannabis plant;
 - (iv) to possess cannabis;
 - (v) to deal in cannabis; or
 - (vi) to smoke or consume cannabis,
- is guilty of a Class D offence.
- (b) The prohibition referred to in paragraph (a)(iii) does not apply where the child assists with the cultivation of cannabis plants which the guardian of the child may lawfully possess for his or her personal use in a private place, in the presence and under the supervision of that guardian.
- (2) Any person who engages a child, whether for consideration to the child or a third person or not, to deal in—
- (a) cannabis plant cultivation material;
 - (b) a cannabis plant; or
 - (c) cannabis,

is guilty of a Class A offence.

(3) Any person who provides to a child, whether for consideration or not—

- (a) cannabis plant cultivation material;
- (b) a cannabis plant; or
- (c) cannabis,

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is guilty of a Class A offence.

(4) Subject to subsection (1)(b), an adult person who engages a child, whether for consideration to the child or a third person or not, in the cultivation of a cannabis plant, is guilty of a Class A offence.

(5) Any person who administers cannabis to a child, is guilty of a Class A offence. 10

Penalties

7. (1) A person who is convicted of—

- (a) a Class A offence, is liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both a fine and such imprisonment;
- (b) a Class B offence, is liable on conviction to a fine or to imprisonment for a 15 period not exceeding six years or to both a fine and such imprisonment;
- (c) a Class C offence, is liable on conviction to a fine or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment; or
- (d) a Class D offence, is liable on conviction to a fine or to imprisonment for a 20 period not exceeding two years or to both a fine and such imprisonment.

Expungement of criminal records of persons convicted of possession or use of cannabis

8. (1) Where a court has convicted a person of a contravention of—

- (a) section 2(b) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), in that the person used or 25 possessed the dependence-producing drug or plant of cannabis (dagga);
- (b) section 4(b) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), in that the person used or possessed the undesirable dependence-producing substance of cannabis (dagga); or
- (c) any law of the former Republics of Transkei, Bophuthatswana, Ciskei or 30 Venda, or of any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), before the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), that criminalised the use or possession of 35 cannabis (dagga),

the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must be expunged automatically by the Criminal Record Centre of the South African Police Service.

(2) Where the criminal record of a person referred to in subsection (1) has not been expunged automatically as provided for in that subsection, the criminal record of that 40 person must, on his or her written application to the Director-General, in the prescribed form and manner, be expunged.

(3) The Director-General must, on receipt of the written application of an applicant referred to in subsection (2), issue a prescribed certificate of expungement, directing that the conviction and sentence of the person be expunged, if the Director-General is 45 satisfied that the person complies with the criteria set out in subsection (1).

(4) An applicant to whom a certificate of expungement has been issued as provided for in subsection (3) must, in the prescribed manner, submit the certificate to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in 50 accordance with subsection (5).

(5) (a) The head of the Criminal Record Centre of the South African Police Service or a senior person or a person at the rank of Director or above, employed at the Centre, who has been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a person if he or she is furnished by the applicant with a certificate of expungement as provided for in subsection (3). 55

(b) The head of the Criminal Record Centre of the South African Police Service must, on the written request of an applicant, in writing, confirm that the criminal record of the person has been expunged.

(6) Where the Director-General, in terms of subsection (3), has issued a certificate of expungement, and it subsequently appears that the applicant did not qualify for the expungement of his or her criminal record, the Director-General must—

- (a) inform the applicant in writing of the information that has come to his or her attention and that he or she intends to revoke the certificate of expungement; 5
- (b) afford the applicant an opportunity to furnish compelling written reasons to him or her within 90 working days after he or she is informed of the intention to revoke, why his or her record should remain expunged;
- (c) inform the applicant in writing within 30 working days after a decision is made of— 10
 - (i) his or her decision; and
 - (ii) the reasons for revoking the certificate of expungement; and
- (d) inform the head of the Criminal Record Centre of the South African Police Service, in writing within 14 working days after the decision was made, to revoke the certificate of expungement and to reinstate the convictions and 15 sentences in question.

(7) If the applicant fails to furnish compelling reasons contemplated in subsection (6)(b), the Director-General may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), revoke the certificate of expungement.

(8) (a) The Director-General may delegate any power or assign any duty conferred upon or assigned to him or her in terms of subsection (3) or (6) to an appropriately 20 qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

(b) A delegation or assignment in terms of paragraph (a)—

- (i) is subject to any limitation, condition and direction which the Director- 25 General may impose;
- (ii) must be in writing; and
- (iii) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(c) The Director-General may— 30

- (i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this subsection, subject to any rights that may have accrued to a person as a result of the decision; and
- (ii) at any time withdraw a delegation or assignment.

Regulations 35

9. (1) The Minister must make regulations to prescribe—

- (a) the manner of measuring immature cannabis plants and seedlings as contemplated in section 1;
- (b) the requirements or standards regarding the cultivation of cannabis plants in a private place for personal use as contemplated in section 3(2)(b); 40
- (c) the requirements or standards regarding the storing of cannabis as contemplated in section 4(3)(b);
- (d) the requirements or standards regarding the transportation of cannabis as contemplated in section 4(6);
- (e) the distance from a window of, ventilation inlet of, doorway to or entrance 45 into another place as contemplated in section 5(4)(a);
- (f) the form on which a person's written application for the expungement of his or her criminal record must be made, as provided for in section 8(2);
- (g) the certificate of expungement to be issued by the Director-General as provided for in section 8(3); and 50
- (h) the manner in which the Director-General must submit certificates of expungement that have been issued, to the head of the Criminal Record Centre of the South African Police Service, as provided for in section 8(4).

(2) The Minister may make regulations to prescribe—

- (a) the manner in which cannabis plants or cannabis in excess of the prescribed 55 quantity must be disposed of; and
- (b) any other matter which is necessary or expedient to achieve the objects of this Act.

(3) Regulations made in terms of subsection (2)(a) and (b), may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine or 60 imprisonment for a period of six months or both a fine and such imprisonment.

Repeal or amendment of laws

10. The laws mentioned in Schedule 5 are hereby repealed or amended to the extent reflected in the third Column of the Schedule.

Short title and commencement

11. This Act is called the Cannabis for Private Purposes Act, 2020, and comes into operation on a date fixed by the President by Proclamation in the *Gazette*. 5

Schedule 1*(Section 1)***CANNABIS PLANT EQUIVALENT**

Column 1 Class of cannabis plant	Column 2 Quantity that is equivalent to one flowering cannabis plant
Immature cannabis plant	Two plants

Schedule 2*(Section 1)***CANNABIS EQUIVALENT**

Column 1 Class of cannabis	Column 2 Quantity that is equivalent to 1 gram of dried cannabis
(a) Fresh cannabis	Five grams
(b) Cannabis solid concentrates	0,25 gram
(c) Cannabis liquid concentrates	0,25 gram

Schedule 3*(Sections 1 and 2)***PRESCRIBED QUANTITY**

Column 1 Sections	Column 2 Quantity of class
(a) Section 2(1)(a)	Unlimited seeds and seedlings
(b) Section 2(1)(b)	(i) Four flowering cannabis plants or cannabis plant equivalent per adult person; or (ii) eight flowering cannabis plants or cannabis plant equivalent per dwelling which is occupied by two or more adult persons
(c) Section 2(1)(c)	100 grams dried cannabis or cannabis equivalent
(d) Section 2(1)(d)	(i) 600 grams dried cannabis or cannabis equivalent per adult; or (ii) 1200 grams dried cannabis or cannabis equivalent per dwelling which is occupied by two or more adult persons
(e) Section 2(1)(e)	One flowering cannabis plant or cannabis plant equivalent
(f) Section 2(3)(a)	30 seeds or seedlings or any combination thereof
(g) Section 2(3)(b)	One flowering cannabis plant or cannabis plant equivalent
(h) Section 2(3)(c)	100 grams dried cannabis or cannabis equivalent

Schedule 4*(Sections 1, 3 and 4)***TRAFFICABLE AND COMMERCIAL QUANTITIES**

Column 1 Sections	Column 2 Trafficable quantity of class	Column 3 Commercial quantity of class
<i>(a)</i> Section 3(1)(b)	(i) Six flowering cannabis plants or cannabis plant equivalent per adult person; or (ii) twelve flowering cannabis plants or cannabis plant equivalent per dwelling which is occupied by two or more adult persons	
<i>(b)</i> Section 3(1)(c)		(i) Nine flowering cannabis plants or cannabis plant equivalent per adult person; or (ii) Eighteen flowering cannabis plants or cannabis plant equivalent per dwelling which is occupied by two or more adult persons
<i>(c)</i> Section 3(4)(b)	Two flowering cannabis plants or cannabis plant equivalent	
<i>(d)</i> Section 3(4)(c)		Four flowering cannabis plants or cannabis plant equivalent
<i>(e)</i> Section 3(5)(b)	Two flowering cannabis plants or cannabis plant equivalent	
<i>(f)</i> Section 3(5)(c)		Four flowering cannabis plants or cannabis plant equivalent
<i>(g)</i> Section 4(1)(b)	200 grams dried cannabis or cannabis equivalent	
<i>(h)</i> Section 4(1)(c)		300 grams dried cannabis or cannabis equivalent
<i>(i)</i> Section 4(2)(b)	(i) 800 grams dried cannabis or cannabis equivalent per adult; or (ii) 1500 grams dried cannabis or cannabis equivalent per dwelling which is occupied by two or more adult persons	
<i>(j)</i> Section 4(2)(c)		(i) 1000 grams dried cannabis or cannabis equivalent per adult; or (ii) 2000 grams dried cannabis or cannabis equivalent per dwelling which is occupied by two or more adult persons
<i>(k)</i> Section 4(4)(b)	200 grams dried cannabis or cannabis equivalent	

Column 1 Sections	Column 2 Trafficable quantity of class	Column 3 Commercial quantity of class
(l) Section 4(4)(c)		300 grams dried cannabis or cannabis equivalent

Schedule 5

(Section 10)

LAWS REPEALED OR AMENDED

Number and year of law	Short title	Extent of repeal or amendment
Act No. 140 of 1992	Drugs and Drug Trafficking Act, 1992	(a) Part II of Schedule 2 is amended by the deletion of the item: “Dronabinol [(-)-transdelta-9-tetrahydrocannabinol].” (b) Part III of Schedule 2 is amended by the deletion of the items: (i) “Cannabis (dagga), the whole plant or any portion or product thereof, except dronabinol [(-)-transdelta-9-tetrahydrocannabinol]”; and (ii) “Tetrahydrocannabinol”.
Act No. 93 of 1996	National Road Traffic Act, 1996	(a) The Index to the Act is amended by— (i) the substitution for the heading to Chapter XI of the following heading: “RECKLESS OR NEGLIGENT DRIVING, INCONSIDERATE DRIVING, DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, THC OR A DRUG HAVING A NARCOTIC EFFECT, AND MISCELLANEOUS OFFENCES”; and (ii) the substitution for item 65 of Chapter XI of the following item: “<u>Driving or occupying driver’s seat while under the influence of intoxicating liquor[or], a drug having narcotic effect or THC, or with excessive amount of alcohol or THC or a drug having a narcotic effect in blood or breath</u>”; (b) The insertion in section 1— (i) after the definition of “driving licence testing centre” of the following definition: “<u>‘drug having a narcotic effect’</u> means any substance or a combination of substances that have an impairing effect on a person’s ability to control his or her actions, but excludes THC;”; and (ii) after the definition of “testing station” of the following definition: “<u>‘THC’</u> means any substance containing (-)-trans-delta-9-tetrahydrocannabinol;”.

Number and year of law	Short title	Extent of repeal or amendment
		(c) The amendment of section 15 by the substitution in subsection (1) for paragraph (g) of the following paragraph: “(g) if he or she is addicted to the use of any drug having a narcotic effect, or the excessive use of intoxicating liquor or <u>THC</u>; or”. (d) The amendment of section 61 by the substitution in subsection (1) for paragraph (g) of the following paragraph: “(g) not, except on the instructions of or when administered by a medical practitioner in the case of injury or shock, take any intoxicating liquor, <u>THC</u>, or drug having a narcotic effect unless he or she has complied with the provisions of paragraph (f), where it is his or her duty to do so, and has been examined by a medical practitioner if such examination is required by a traffic officer.”. (e) The amendment of section 65— (i) by the substitution for the heading to that section of the following heading: “<u>Driving or occupying driver’s seat while under the influence of intoxicating liquor[or], a drug having narcotic effect or THC, or with excessive amount of alcohol or THC or a drug having a narcotic effect in blood or breath</u>”; (ii) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively: “(1) No person shall on a public road— (a) drive a vehicle; or (b) occupy the driver’s seat of a motor vehicle the engine of which is running, while under the influence of intoxicating liquor, THC or a drug having a narcotic effect or any combination thereof. (2) No person shall on a public road— (a) drive a vehicle; or (b) occupy the driver’s seat of a motor vehicle the engine of which is running, while the concentration of— (i) alcohol; (ii) <u>THC</u>; (iii) <u>a drug having a narcotic effect; or</u> (iv) <u>any combination of (i), (ii) and (iii),</u> in any specimen of blood taken from any part of his or her body is not less than [0,05 gram per 100 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres] <u>the concentration of alcohol, THC or a drug having a narcotic effect or a combination thereof specified in subsection (10).</u>

Number and year of law	Short title	Extent of repeal or amendment
		(3) For purposes of subsection (2) or subsection (5)(a) or (b)(ii), if, in any prosecution for an alleged contravention of a provision of [subsection (2)] those subsections, it is proved that the concentration of alcohol, THC or other drug having a narcotic effect or a combination thereof, in any specimen of blood taken from any part of the body of the person concerned was not less than [0,05 gram per 100 millilitres] the concentration specified in subsection (10) or (11), respectively, at any time within two hours after the alleged contravention, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than [0,05 gram per 100 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,02 gram per 100 millilitres] the concentrations specified in those subsections, respectively, at the time of the alleged contravention.”; (iii) the substitution for subsections (5) and (6) of the following subsections respectively: “(5) No person shall on a public road— (a) drive a vehicle; or (b) occupy the driver’s seat of a motor vehicle, the engine of which is running, while the concentration— (i) of alcohol in any specimen of breath exhaled by such person is not less than [0,24 milligrams per 1 000 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres] the concentration specified in subsection (11); or (ii) of alcohol in any specimen of breath exhaled by such person in combination with THC or drug having a narcotic effect in any specimen of blood taken from any part of the body of the person is not less than the concentration specified in subsection (11). (6) If, in any prosecution for a contravention of a provision of subsection (5), it is proved that the concentration of alcohol in any specimen of breath of the person concerned [was not less than 0,24 milligrams per 1 000 millilitres of breath] taken at any time within two

Number and year of law	Short title	Extent of repeal or amendment
		hours after the alleged contravention was not less than the concentration specified in subsection (11), it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than [0,24 milligrams per 1 000 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,10 milligrams per 1 000 millilitres] the concentration specified in subsection (11) at the time of the alleged contravention.”; (iv) the substitution for subsection (8) of the following subsection: “(8) Except on the instruction of or <u>when administered by a medical practitioner, no person detained for an alleged contravention of any provision of this section shall during his or her detention consume any alcohol, THC or a drug having a narcotic effect, nicotine, or any medication until the specimen referred to in subsection (3) or (6) has been taken.</u>”; and (v) the addition of the following subsection after subsection (9): “(10) (a) Where a person is a professional driver referred to in section 32— (i) a concentration of less than a concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood; (ii) a concentration of less than— (aa) 0,02 gram alcohol per 100 millilitres of blood; (bb) 200 nanograms THC per 100 milliliters of blood; or (cc) 0,01 gram alcohol and 100 nanograms THC per 100 millilitres of blood, without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or (iii) a concentration of less than— (aa) 0,01 gram alcohol and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 milliliters of blood; or (bb) 100 nanograms THC and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood. (b) Where a person is not a professional driver— (i) a concentration of less than a concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood;

Number and year of law	Short title	Extent of repeal or amendment
		(ii) a concentration of less than— <u>(aa) 0,05 gram alcohol per 100 millilitres of blood;</u> <u>(bb) 500 nanograms THC per 100 milliliters of blood; or</u> <u>(cc) 0,025 gram alcohol and 250 nanograms THC per 100 millilitres of blood,</u> <u>without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or</u> (iii) a concentration of less than— <u>(aa) 0,025 gram alcohol and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood; or</u> <u>(bb) 250 nanograms THC and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood.</u> (11) (a) <u>Where a person is a professional driver referred to in section 32—</u> (i) a concentration of less than— <u>(aa) 0,10 milligrams alcohol per 1000 millilitres of breath; or</u> <u>(bb) 0,5 milligrams alcohol per 1000 millilitres of breath and 100 nanograms THC per 100 millilitres of blood,</u> <u>without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or</u> (ii) a concentration of less than 0,5 milligrams alcohol per 1000 millilitres of breath and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood. (b) <u>Where a person is not a professional driver—</u> (i) a concentration of less than— <u>(aa) 0,24 milligrams alcohol per 1000 millilitres of breath; or</u> <u>(bb) 0,12 milligrams alcohol per 1000 millilitres of breath and 250 nanograms THC per 100 millilitres of blood,</u> <u>without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or</u> (ii) a concentration of less than 0,12 milligrams alcohol per 1000 millilitres of breath and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood. (f) The amendment of section 75 by the insertion after subsection (1) of the following subsection: “(1A) <u>The Minister may, in consultation with the Cabinet member responsible for health, prescribe any drug or category or class of such drugs having a narcotic effect and the concentration thereof for purposes of section 65(10) or (11).</u>”.

Number and year of law	Short title	Extent of repeal or amendment
Act No. 75 of 2008	Child Justice Act, 2008	Amendment of Schedule I to the Act, by the addition of the following item, after item 18: <u>“19. An offence provided for in sections 3(6)(a), (7) and (9), 4(7) and 5 of the Cannabis for Private Purposes Act.”</u>

MEMORANDUM ON THE OBJECTS OF THE CANNABIS FOR PRIVATE PURPOSES BILL, 2020

1. PURPOSE OF BILL

- 1.1 In *Minister of Justice and Constitutional Development and Others v Prince*: 2018 (6) SA 393 (CC) (the Judgment), the Constitutional Court declared that—
 - (a) section 4(b) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) (“the Drugs Act”), read with Part III of Schedule 2 of that Act, is unconstitutional and therefore invalid to the extent that it criminalises the use or possession of cannabis by an adult in private for that adult’s personal consumption in private;
 - (b) section 5(b) of the Drugs Act, read with Part III of Schedule 2 and with the definition of “deal in” (“cultivation” is regarded as to “deal in”) in section 1 of that Act, is unconstitutional and therefore invalid to the extent that it criminalises the cultivation of cannabis by an adult in a private place for that adult’s personal consumption in private; and
 - (c) section 22A(9)(a)(i) of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965) (“the Medicines Act”), read with Schedule 7 of Government Notice No. R. 509 of 2003, is unconstitutional and therefore invalid to the extent that it criminalises the use or possession of cannabis by an adult in private for that adult’s personal consumption in private.
- 1.2 The Constitutional Court held that the aforementioned provisions limited the right to privacy entrenched in section 14 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), and that the State did not satisfy the Court that these provisions are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as required by section 36 of the Constitution. The Constitutional Court suspended its order of invalidity from the 18th of September 2018 until the 18th of September 2020 to give Parliament an opportunity to correct the constitutional defects in the Drugs Act and the Medicines Act and granted interim relief by way of a reading-in to the provisions of the two Acts to ensure that during the period of suspension of invalidity it would not be a criminal offence for an adult person—
 - (a) to use or be in possession of cannabis in private for his or her personal consumption in private; and
 - (b) to cultivate cannabis in a private place for his or her personal consumption in private.
- 1.3 The link between hemp, as a variety of cannabis, and cannabis has resulted in several restrictions on the production of hemp. The wide scale commercial production of hemp is prohibited in terms of the Drugs Act and the Medicines Act. The Department of Agriculture, Land Reform and Rural Development has requested that the Drugs Act and the Medicines Act, be amended to provide for the commercial production of hemp in South Africa.
- 1.4 The Cannabis for Private Purposes Bill (“the Bill”), aims to—
 - (a) 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;
 - (b) 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;
 - (c) protect adults and children against the harms of cannabis;
 - (d) provide for the expungement of criminal records of persons convicted of possession or use of cannabis;
 - (e) delete and amend provisions of certain laws; and
 - (f) provide for matters connected therewith.

2. OBJECTS OF BILL

2.1 *Clause 1: Definitions and interpretation*

2.1.1 **Clause 1(1)** contains various definitions aimed at facilitating the interpretation of the Bill. Some of the more important definitions that are applicable to other clauses of the Bill are the following:

(a) ***Cannabis plant cultivation material***

Cannabis plant cultivation material is defined as seeds of a cannabis plant and seedlings. *Seedling* is further defined as a non-flowering cannabis plant that is not taller than 15 centimetres or wider than 15 centimetres, measured according to the criteria prescribed by regulation. A seedling is further not a class of a “cannabis plant” or “cannabis” for purposes of the Bill.

(b) ***Cannabis plant and cannabis plant equivalent***

A *cannabis plant* is defined as a plant of the genus *Cannabis*, but excludes hemp, and for purposes of this Bill, an immature cannabis plant and a flowering cannabis plant are classes of a cannabis plant. An *immature cannabis plant* is defined as a non-flowering cannabis plant that is taller than 15 centimetres or wider than 15 centimetres, measured according to the criteria prescribed by regulation. A *flowering cannabis plant* is in turn defined as the gametophytic or reproductive state of a cannabis plant in which the plant produces flowers, trichomes and cannabinoids characteristic of cannabis. To regulate the quantity of the different classes of a cannabis plant, the Bill makes use of a concept of “*cannabis plant equivalent*”, in terms of which two immature cannabis plants are deemed to be the equivalent of one flowering cannabis plant. In the discussion of the clauses of the Bill, a reference to a flowering cannabis plant includes a reference to its cannabis plant equivalent.

(c) ***Cannabis, cannabis equivalent and THC***

Cannabis is defined as 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 any substance which contains *THC* ((-)-trans-delta-9-tetrahydrocannabinol). For purposes of this definition fresh cannabis, dried cannabis and cannabis concentrate are classes of cannabis. *Dried cannabis* is defined as 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. *Fresh cannabis* is defined as 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. *Cannabis concentrate* is in turn defined as cannabis that has undergone a process to concentrate the THC content and cannabis solid concentrates and cannabis liquid concentrates are classes of cannabis concentrate. To regulate the quantity of cannabis that may be possessed at any given time, the Bill makes use of the concept of “*cannabis equivalent*” in terms of which five grams of fresh cannabis, 0,25 gram of cannabis solid concentrates or 0,25 gram of cannabis liquid concentrates is deemed to be equivalent to one gram of dried cannabis. In the discussion of the clauses of the Bill, a reference to dried cannabis includes a reference to its cannabis equivalent.

(d) ***Hemp***

Hemp is defined as a plant of the genus *Cannabis* which—

- (i) 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
- (ii) is cultivated under authority of, a law that regulates its cultivation.

(e) ***Cultivate and harvest***

“*Cultivate*” is defined as including to plant, propagate, nurture, tend, grow or harvest a cannabis plant and “*harvest*” is in turn defined as to obtain and process cannabis from a cannabis plant.

(f) ***Deal in***

“*Deal in*” is broadly defined as 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.

(g) ***Prescribed quantity, trafficable quantity and commercial quantity***

The “*prescribed quantity*” is a quantitative limitation of cannabis plant cultivation material or dried cannabis that may be possessed or provided, or flowering cannabis plants that may be cultivated, possessed or provided as contemplated in clause 2(1) or (3), read with the definition of “*prescribed quantity*” in clause 1 and *Schedule 3* (see paragraph 2.2.1 below). In terms of clauses 3 (see paragraph 2.3 below) and 4 (see paragraph 2.4 below), it is either a Class C or Class D offence to exceed the prescribed quantities contemplated in clause 2(1) and (3). A Class C offence is punishable with a fine or imprisonment for a period not exceeding four years or with both a fine and such imprisonment and a Class D offence is punishable with a fine or imprisonment for a period not exceeding two years or with both a fine and such imprisonment. Clauses 3 and 4, respectively, read with the definitions of “*trafficable quantity*” and “*commercial quantity*” and *Schedule 4* to the Bill, also ensure that increased penalties can be imposed by a court that are proportional to the quantity by which the “*prescribed quantity*” is exceeded. Trafficable quantity offences are punishable with a fine or imprisonment for a period not exceeding six years or with both a fine and such imprisonment (Class B offence). Commercial quantity offences are punishable with a fine or imprisonment for a period not exceeding 15 years or with both a fine and such imprisonment (Class A offence). Trafficable and commercial quantity offences are aimed at curbing illicit dealing in cannabis.

(h) ***Personal use, private place, public place, possession in private and public view***

“*Personal use*” means for the exclusive use of an adult person. “*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. “*Possess in private*” means to keep, store, transport or be in control of cannabis or a cannabis plant, respectively, in a public place in a manner that conceals it from public view.

2.1.2 **Clause 1(2)** provides that the provisions of the Bill do not apply to any person who is permitted or authorised in terms of any other Act of Parliament to—

- (a) deal in cannabis plant cultivation material, cannabis plants, cannabis or a cannabis product; or
- (b) cultivate cannabis plants.

A “*cannabis product*” is defined as anything that is intended for human or animal consumption which contains THC or any other phytocannabinoid found in a cannabis plant.

2.2 **Clause 2** respects the right of privacy of an adult person to use and possess cannabis and to cultivate cannabis plants as reflected in the Judgment. The clause is however subject to clauses 3, 4, 5 and 6, which impose justifiable limitation on this right, to protect other persons, including children, against the harms of cannabis.

- 2.2.1 In terms of clause 2(1) and (3), an adult person may for personal use—
- (a) possess unlimited cannabis plant cultivation material (clause 2(1)(a) and item (a) of Schedule 3);
 - (b) cultivate four flowering cannabis plants per adult or eight flowering cannabis plants per dwelling which is occupied by two or more adults, in a private place (clause 2(1)(b) and item (b) of Schedule 3);
 - (c) possess in private, 100 grams dried cannabis, in a public place (clause 2(1)(c) and item (c) of Schedule 3);
 - (d) possess 600 grams dried cannabis per adult or 1200 grams dried cannabis per dwelling which is occupied by two or more adults, in a private place (clause 2(1)(d) and item (d) of Schedule 3);
 - (e) possess in private, one flowering cannabis plant, in a public place (clause 2(1)(e) and item (e) of Schedule 3);
 - (f) provide to, or obtain from, another adult person, without the exchange of consideration—
 - (i) 30 seeds or seedlings or any combination thereof (clause 2(3)(a) and item (f) of Schedule 3);
 - (ii) one flowering cannabis plant (clause 2(3)(b) and item (g) of Schedule 3); and
 - (iii) 100 grams dried cannabis (clause 2(3)(c) and item (h) of Schedule 3).

- 2.2.2 In terms of clause 2(2), an adult person may smoke and consume cannabis in a private place.

2.3 **Clause 3** criminalises aspects pertaining to the cultivation, possession, provisioning and dealing in cannabis plants and cannabis plant cultivation material. In terms of—

- (a) clause 3(1), an adult person who in a private place, cultivates a quantity of cannabis plants that—
 - (i) exceeds the prescribed quantity (more than four flowering cannabis plants per adult or eight flowering cannabis plants per dwelling which is occupied by two or more adults), is guilty of a Class C offence (clause 3(1)(a));
 - (ii) are a trafficable quantity (more than six flowering cannabis plants per adult person or 12 flowering cannabis plants per dwelling which is occupied by two or more adults), is guilty of a Class B offence (clause 3(1)(b) and item (a) of Schedule 4); or
 - (iii) are a commercial quantity (more than nine flowering cannabis plants per adult person or 18 flowering cannabis plants per dwelling which is occupied by two or more adults), is guilty of a Class A offence (clause 3(1)(c) and item (b) of Schedule 4);
- (b) clause 3(2), an adult person who cultivates a cannabis plant at any place and who fails to—
 - (i) take reasonable measures to ensure that the cannabis plant is inaccessible to a child; or
 - (ii) 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;
- (c) clause 3(3), an adult person who cultivates a cannabis plant in a public place, is guilty of a Class B offence;
- (d) clause 3(4), an adult person who provides to, or obtains from, an adult person without the exchange of consideration—
 - (i) more than one flowering cannabis plant, is guilty of a Class C offence (clause 3(4)(a));
 - (ii) two or more flowering cannabis plants, is guilty of a Class B offence (clause 3(4)(b) and item (c) of Schedule 4); or
 - (iii) four or more flowering cannabis plants, is guilty of a Class A offence (clause 3(4)(c) and item (d) of Schedule 4);

- (e) clause 3(5), an adult person who is in possession in a public place of—
 - (i) more than one flowering cannabis plant, is guilty of a Class C offence (clause 3(5)(a));
 - (ii) more than two flowering cannabis plants, is guilty of a Class B offence (clause 3(5)(b) and item (e) of Schedule 4); or
 - (iii) more than four flowering cannabis plants, is guilty of a Class A offence (clause 3(5)(c) and item (f) of Schedule 4);
- (f) clause 3(6), any person who deals in—
 - (i) an immature cannabis plant, is guilty of a Class C offence; or
 - (ii) a flowering cannabis plant, is guilty of a Class A offence;
- (g) clause 3(7), any person who deals in cannabis plant cultivation material, is guilty of a Class D offence;
- (h) clause 3(8), an adult person who provides to, or obtains from, an adult person without the exchange of consideration more than 30 seeds or seedlings or any combination thereof, is guilty of a Class D offence; and
- (i) clause 3(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.

2.4 Clause 4 criminalises aspects pertaining to the possession, provisioning and dealing in cannabis. In terms of—

- (a) clause 4(1), any person who is in possession in a public place of a quantity that exceeds—
 - (i) 100 grams dried cannabis, is guilty of a Class C offence (clause 4(1)(a));
 - (ii) 200 grams dried cannabis, is guilty of a Class B offence (clause 4(1)(b) and item (g) of Schedule 4); or
 - (iii) 300 grams dried cannabis, is guilty of a Class A offence (clause 4(1)(c) and item (h) of Schedule 4);
- (b) clause 4(2), an adult person who is in possession in a private place of a quantity that exceeds—
 - (i) 600 grams dried cannabis per adult or 1200 grams dried cannabis per dwelling which is occupied by two or more adults, is guilty of a Class C offence (clause 4(2)(a));
 - (ii) 800 grams dried cannabis per adult or 1500 grams dried cannabis per dwelling which is occupied by two or more adults, is guilty of a Class B offence (clause 4(2)(b) and item (i) of Schedule 4); or
 - (iii) 1000 grams dried cannabis per adult or 2000 grams dried cannabis per dwelling which is occupied by two or more adults, is guilty of a Class A offence (clause 4(2)(c) and item (j) of Schedule 4);
- (c) clause 4(3), an adult person who is in possession of cannabis at any place and who—
 - (i) fails to store such cannabis in a secure space that is inaccessible to a child; or
 - (ii) stores such cannabis in a manner that does not comply with any requirement or standard regarding the storing of cannabis prescribed by regulation,
 is guilty of a Class C offence;
- (d) clause 4(4), an adult person who provides to or obtains from an adult person without the exchange of consideration a quantity that exceeds—
 - (i) 100 grams dried cannabis, is guilty of a Class C offence (clause 4(4)(a));
 - (ii) 200 grams dried cannabis, is guilty of a Class B offence (clause 4(4)(b) and item (j) of Schedule 4); or
 - (iii) 300 grams dried cannabis, is guilty of a Class A offence (clause 4(4)(c) and item (k) of Schedule 4);
- (e) clause 4(5), any person who deals in cannabis, is guilty of a Class A offence;
- (f) clause 4(6), an adult person who transports cannabis in a vehicle on a public road in a manner that does not comply with any requirement or standard regarding the transportation of cannabis that may be prescribed by regulation, is guilty of a Class C offence; and

- (g) clause 4(7), any person who is in possession in a public place of cannabis that is not concealed from public view, is guilty of a Class C offence.

2.5 **Clause 5** criminalises aspects pertaining to smoking and consumption of cannabis. In terms of clause 1, “*consumption*” is defined as to eat, drink or otherwise to self-administer cannabis and “*smoke*” is in turn defined as 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. In terms of—

- (a) clause 5(1), any person who smokes or consumes cannabis in a public place, is guilty of a Class D offence;
- (b) clause 5(2), any person who smokes cannabis in a public or private place in the immediate presence of any non-consenting adult person, is guilty of a Class D offence;
- (c) clause 5(3), any person who smokes cannabis in a public or private place in the immediate presence of a child, is guilty of a Class C offence;
- (d) clause 5(4), any person who smokes cannabis in a private place—
 - (i) within a distance prescribed by regulation from a window of, ventilation inlet of, doorway to or entrance into another place; or
 - (ii) forming part of any place where persons congregate within close proximity of one another and where the smoke is likely to cause a hindrance to any person at that place,
 is guilty of a Class D offence; and
- (e) clause 5(5), any person who smokes or consumes cannabis in a vehicle on a public road, is guilty of a Class C offence (“vehicle” and “public road” have the respective meanings assigned to them in section 1 of the National Road Traffic Act, 1996).

2.6 **Clause 6** creates offences involving children. A child is defined as a person who is under the age of 18 years. In terms of—

- (a) clause 6(1), the guardian of a child (which is defined as a guardian referred to in section 1 of the Children’s Act, 2005), who permits a child to—
 - (i) possess cannabis plant cultivation material, a cannabis plant or cannabis;
 - (ii) deal in cannabis plant cultivation material, a cannabis plant or cannabis;
 - (iii) cultivate a cannabis plant (unless the child assists with the cultivation of cannabis plants which the guardian may lawfully possess in the presence and under the supervision of that guardian); or
 - (iv) smoke or consume cannabis,
 is guilty of a Class D offence;
- (b) clause 6(2), any person who engages a child, whether for consideration to the child or a third person or not, to deal in cannabis plant cultivation material, a cannabis plant or cannabis, is guilty of a Class A offence;
- (c) clause 6(3), any person who provides to a child, whether for consideration or not cannabis plant cultivation material, a cannabis plant or cannabis, is guilty of a Class A offence;
- (d) clause 6(4), an adult person who engages a child, whether for consideration to the child or a third person or not, in the cultivation of a cannabis plant, is guilty of a Class A offence; and
- (e) clause 6(5), any person who administers cannabis to a child, is guilty of a Class A offence.

2.7 **Clause 7** provides for sentences which a court may impose for the offences provided for in clauses 3, 4, 5 and 6.

2.8 **Clause 8** provides for the expungement of criminal records of persons who were convicted under section 2(b) of the repealed Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), section 4(b) of the Drugs Act and any law of the former Republics of Transkei, Bophuthatswana, Ciskei or Venda, or in any former self-governing

territory, as provided for in the repealed Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), of the use or possession of cannabis.

2.9 **Clause 9** provides for regulations to be made to further regulate aspects provided for in the Bill.

2.10 **Clause 10** and **Schedule 5** to the Bill provide for the repeal or amendment of certain provisions of the laws discussed in paragraphs 2.10.1 to 2.10.3, below.

2.10.1 ***Drugs Act***

- (a) Part II of Schedule 2 to the Drugs Act, is amended by the deletion of the item:
 - “Dronabinol [(-)-transdelta-9-tetrahydrocannabinol].”.
- (b) Part III of Schedule 2 to the Drugs Act, is amended by the deletion of the words:
 - (i) “Cannabis (dagga), the whole plant or any portion or product thereof, except dronabinol [(-)-transdelta-9-tetrahydrocannabinol]”; and
 - (ii) “Tetrahydrocannabinol”.
- (c) The Bill therefore removes the entire issue of cannabis from the purview or scope of the Drugs Act, making way for cannabis to be regulated under its own separate legislation, as the Bill does.

2.10.2 ***National Road Traffic Act, 1996 (Act No. 93 of 1996) (the NRTA)***

- (a) Various provisions of the NRTA refer to a drug having a narcotic effect without defining this expression. Section 1 of the NRTA is amended to define—
 - (i) a drug having a narcotic effect as any substance or a combination of substances that have an impairing effect on a person’s ability to control his or her actions, but excludes THC; and
 - (ii) “THC” as any substance containing (-)-trans-delta-9-tetrahydrocannabinol.
- (b) Section 15(1)(g) of the NRTA provides that a person will be disqualified from obtaining or holding a learner’s or driving licence if the person is addicted to the use of any drug having a narcotic effect, or the excessive use of intoxicating liquor. Section 15(1)(g) is amended to provide that a person will be so disqualified if that person is addicted to the use of any drug having a narcotic effect, or the excessive use of intoxicating liquor or THC.
- (c) Section 61(1)(g) of the NRTA imposes obligations on the driver of a vehicle involved in or which contributes to an accident, not to take any intoxicating liquor or drug having a narcotic effect unless he or she has complied with the provisions of paragraph (f), where it is his or her duty to do so, and has been examined by a medical practitioner if such examination is required by a traffic officer. This section is amended also to prohibit the taking of THC under the circumstances provided for in that section.
- (d) Section 65 of the NRTA criminalises the driving of a vehicle or to occupy the driver’s seat of a motor vehicle whose engine is running, on a public road, while under the influence of intoxicating liquor or a drug having a narcotic effect or while the concentration of alcohol in any specimen of blood taken from any part of his or her body or breath is not less than a specified concentration. This section is amended also to criminalise the driving of a vehicle or to occupy the driver’s seat of a motor vehicle whose engine is running, on a public road, while—
 - (i) under the influence of THC or THC in combination with alcohol or a drug having a narcotic effect; or

- (ii) the concentration of THC or drug having a narcotic effect in any specimen of blood or a combination of THC, alcohol or a drug having a narcotic effect in any specimen of blood or breath is not less than a specified concentration, and incidental matters thereto.
- (e) Section 75 of the NRTA is amended, by the insertion of a new subsection (1A) to provide that, the Cabinet member responsible for transport may, in consultation with the Cabinet member responsible for health, prescribe any drug or category or class of such drugs having a narcotic effect and the concentration thereof for purposes of section 65(10) or (11).

2.10.3 *Child Justice Act, 2008 (Act No. 75 of 2008)*

Schedule I to the Child Justice Act, is amended by the addition of item 19, to ensure that the offences contemplated in clauses 3(6), (7) and (9), 4(7) and 5 of the Bill are included in the Schedule. This amendment aims to ensure that the offences in question are subject to a level one diversion as contemplated in section 53(2)(a) of that Act and that the child offender may, unless exceptional circumstances are present, not be arrested or be detained for these offences.

3. DEPARTMENTS/BODIES CONSULTED

The Department of Social Development; Department of Health; Department of Agriculture, Land Reform and Rural Development; Department of Trade, Industry and Competition; Department of International Relations and Cooperation; Department of Transport; South African Police Service; and the National Prosecuting Authority, were consulted on the Bill. Comments received were accommodated where possible.

4. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the State.

5. PARLIAMENTARY PROCEDURE

The Department of Justice and Constitutional Development and the State Law Advisers are of the opinion—

- (a) that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies; and
- (b) that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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