

REPUBLIC OF SOUTH AFRICA

CANNABIS FOR PRIVATE PURPOSES BILL

(As presented by the Portfolio Committee on Justice and Correctional Services)
(The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 19B—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 use or possess cannabis;
- regulate the use or possession of cannabis by an adult person;
- provide for an alternative manner by which to address the issue of the prohibited use, possession of, or dealing in, cannabis by children, with due regard to the best interest of the child;
- prohibit the dealing in cannabis;
- provide for the expungement of criminal records of persons convicted of possession or use of cannabis or dealing in cannabis on the basis of a presumption;
- 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 the flowering or fruiting tops of a cannabis plant and includes products made therefrom, but excludes any seed, seedling, the stalk, leaves and branches 20

without any fruit or flower, and the roots of a cannabis plant, including products made therefrom;

“**child**” means a person who is under the age of 18 years;

“**consideration**” means any form of compensation, gift, reward, favour or benefit;

“**cultivate**” includes to plant, propagate, nurture, tend, grow or harvest a cannabis plant, and “**cultivation**” has a corresponding meaning; 5

“**deal in**” means to provide for consideration, receive for consideration, sell, buy, offer for sale, offer to purchase, import, advertise for sale, export, cultivate for the purposes of dealing, and any other conduct to facilitate selling cannabis, but does not include any such activity that is authorised in terms of this Act, or in terms of a permit or licence issued under any other national legislation; 10

“**Director-General**” means the Director-General: Justice and Constitutional Development;

“**Minister**” means the Cabinet member responsible for the administration of justice;

“**private place**” means— 15

(a) 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; and

(b) any part or portion of communal land as defined in section 1 of the Communal Land Rights Act, 2004 (Act No. 11 of 2004), which, in terms of the rules or custom of a community or the standard rules contemplated in section 19(5) of that Act, is a place which is exclusively used to cultivate or use cannabis in a private place, by an adult person as a member of such a community; 20

“**private purpose**” means for the exclusive use, possession and cultivation of cannabis by an adult person with the intention to keep, store, transport or be in control of cannabis, in a manner that conceals it from public view; 25

“**public place**” means—

(a) any place to which the public has right of access; and

(b) any part or portion of communal land which is not exclusively used to cultivate cannabis, as contemplated in paragraph (b) of the definition of “**private place**”; 30

“**public road**” means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“**responsible adult**” means an adult person who is in a position of authority, supervision or care of a child; 35

“**smoke**” means to—

(a) 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; or

(b) inhale or exhale the vapour or aerosol of cannabis produced by a vaping device or holding or otherwise having control of a vaping device producing cannabis vapour or aerosol; 40

“**this Act**” includes the regulations;

“**use of cannabis**” means the consumption of cannabis, including but not limited to the eating, drinking, or smoking of cannabis, or to otherwise self-administer cannabis and “**use cannabis**” has a corresponding meaning; and 45

“**vehicle**” means a vehicle as defined in section 1 of the National Road Traffic Act, 1996.

(2) Offences in section 4(1), (4) and (5) do not apply to any such activities that are expressly authorised in this Act or in terms of a permit or licence issued under any other national legislation. 50

Cannabis for private purpose by adult person

2. (1) An adult person may—

(a) use or possess cannabis; and

(b) without the exchange of consideration per occasion provide to, or obtain from, another adult person, cannabis, 55

in a private place for a private purpose.

(2) Notwithstanding subsection (1), no adult person may use cannabis in a private place for a private purpose—

(a) in the presence of a child or non-consenting adult person; or 60

- (b) (i) within a reasonable distance from a window of, ventilation inlet of, doorway to, or entrance into, another place; or
(ii) that forms part of any public place where persons congregate within close proximity of one another and where the smoke is likely to cause a disturbance or nuisance to any person at that place. 5
- (3) An adult person may possess cannabis in a public place: Provided that such cannabis may not be used in a public place.

Protection of child

3. (1) In all matters regarding a child, the best interest of the child must prevail in the legal response where the child is suspected or alleged to have contravened any legislation relating to the— 10

- (a) use or possession of cannabis, the child must be dealt with in terms of—
(i) the Children’s Act, 2005 (Act No. 38 of 2005);
(ii) the Prevention of and Treatment from Substance Abuse Act, 2008 (Act No. 70 of 2008); or 15
(iii) any other relevant legislation; or
(b) dealing in cannabis, the child must be dealt with in terms of the—
(i) legislation referred to in paragraph (a); or
(ii) Child Justice Act, 2008 (Act No. 75 of 2008).

(2) (a) No adult person may knowingly— 20
(i) permit a child to use or possess cannabis; or
(ii) supply a child with cannabis or a product containing cannabis.

(b) Notwithstanding paragraph (a), a responsible adult may administer cannabis to a child, with or without consent or knowledge of the child, if prescribed by a medical practitioner. 25

(3) An adult person who is in possession of cannabis must take reasonable measures to ensure that such cannabis is inaccessible to a child whether that child is under the authority, supervision or care of that adult person or not.

(4) No person may engage a child to deal in cannabis.

Offences and penalties 30

4. (1) Any person who deals in cannabis, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

(2) An adult person who knowingly permits a child to use or possess cannabis as contemplated in section 3(2)(a)(i), is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment. 35

(3) An adult person who is in possession of cannabis at any place and who fails to store such cannabis in a secure space that is inaccessible to a child, as contemplated in section 3(3), is guilty of an offence and is liable on conviction to a fine not exceeding R2 000. 40

(4) Any person who is in possession of cannabis, either in a private or public place, in an amount which exceeds the maximum amount prescribed for private purpose, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment. 45

(5) Any person who cultivates cannabis plants which exceed the maximum number prescribed for private purpose, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.

(6) Any person who engages a child to deal in cannabis, as contemplated in section 3(4), is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years or to both such fine and imprisonment. 50

(7) Any adult person who provides or administers cannabis to a child, unless prescribed by a medical practitioner, as contemplated in section 3(2)(b), is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment. 55

(8) (a) Any person who transports cannabis in an amount which exceeds the maximum amount, as prescribed for private purpose, is guilty of an offence and is liable

on conviction to a fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.

(b) Any person who transports cannabis and contravenes or fails to comply with any condition, restriction, prohibition, obligation, requirement or standard regarding the transportation of such cannabis, as may be prescribed, is guilty of an offence and is liable on conviction to a fine not exceeding R2 000. 5

(c) Any person who uses cannabis in a vehicle on a public road, is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.

(d) Any person who is a passenger in a vehicle on a public road, and who contravenes or fails to comply with any condition, restriction, prohibition, obligation, requirement or standard regarding the transportation of cannabis, that may be prescribed in respect of such a passenger, is guilty of an offence and is liable on conviction to a fine not exceeding R2 000. 10

(9) Any person who uses cannabis in a public place as contemplated in section 2(3), is guilty of an offence and is liable on conviction to a fine not exceeding R2 000. 15

(10) Any person who uses cannabis in a private place in the immediate presence of a child or non-consenting adult person as contemplated in section 2(2)(a), is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.

(11) Any person who smokes cannabis in a private place—

(a) within a reasonable distance from a window of, ventilation inlet of, doorway to, or entrance into, another place as contemplated in section 2(2)(b)(i); or 20

(b) forming part of any public place where persons congregate within close proximity of one another and where the smoke is likely to cause a disturbance or nuisance to any person at that place as contemplated in section 2(2)(b)(ii), is guilty of an offence and is liable on conviction to a fine not exceeding R2 000. 25

(12) A penalty imposed for payment of a fine without an alternative of imprisonment does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Expungement of criminal records of persons convicted of possession or use of cannabis or dealing in cannabis on the basis of a presumption 30

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

(i) 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 possessed the dependence-producing drug or plant of cannabis (dagga);

(ii) 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 35

(iii) any law of the former Republics of Transkei, Bophuthatswana, Ciskei or 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 cannabis (dagga), 40

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. 45

(b) Where the criminal record of a person referred to in paragraph (a) has not been expunged automatically as provided for in that paragraph, the criminal record of that person must, on that person's written application to the Director-General, in the prescribed form and manner, be expunged. 50

(c) The Director-General must, on receipt of the written application of a person referred to in paragraph (b), issue a prescribed certificate of expungement, directing that the conviction and sentence of the person be expunged, if the Director-General is satisfied that the person complies with the criteria set out in paragraph (a).

(d) An applicant to whom a certificate of expungement has been issued as provided for in paragraph (c) 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 accordance with subsection (3). 55

(2) (a) Where a court has convicted a person of a contravention of—

(i) section 2(a) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971, on the basis of the operation of any presumption in 60

section 21(1)(a)(i), (b), (d) or (e) of that Act, in terms of which it is presumed that the person dealt in the dependence-producing drug or plant of cannabis (dagga);

- (ii) section 5(b) of the Drugs and Drug Trafficking Act, 1992, on the basis of the operation of any presumption in section 21(1)(a)(i), (b), (c) or (d) of that Act, in terms of which it is presumed that the person dealt in the undesirable dependence-producing substance of cannabis (dagga); or
- (iii) any law of the former Republics of Transkei, Bophuthatswana, Ciskei or Venda, or of any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971, before the commencement of the Constitution of the Republic of South Africa, 1993, on the basis of the operation of any presumption similar to the laws in subparagraph (i) and (ii), in terms of which it is presumed that the person dealt in cannabis (dagga),

the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must, subject to paragraph (b), on that person's written application, be expunged.

(b) The Director-General must, on receipt of the written application, in the prescribed form, of a person referred to in paragraph (a), issue a prescribed certificate of expungement, directing that the criminal record of the person be expunged, if the Director-General is satisfied from the application that the person applying for expungement was convicted of the offence of dealing in the undesirable dependence-producing substance of cannabis (dagga), on the basis of the operation of any presumption referred to in paragraph (a).

(c) The Director-General must, in the prescribed manner, submit every certificate of expungement that has been issued as provided for in paragraph (b), to the head of the Criminal Record Centre of the South African Police Service to be dealt with in accordance with subsection (3).

(d) Notwithstanding the provisions of the Child Justice Act, 2008 (Act No. 75 of 2008), a person whose particulars appear in the diversion record administered by the Director-General: Social Development for having used, possessed, cultivated or dealt in cannabis may apply to the Director-General concerned to have that record expunged.

(3) (a) The head of the Criminal Record Centre of the South African Police Service or a senior person or 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 that head or person is furnished with a certificate of expungement as provided for in subsection (1)(d) or (2)(c).

(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.

(4) Where the Director-General has, in terms of subsections (1)(c) and (2)(b), issued a certificate of expungement, and it subsequently appears that the applicant did not qualify for the expungement of that criminal record, the Director-General must—

- (a) inform the applicant in writing of the information that has come to the Director-General's attention and that the Director-General intends to revoke the certificate of expungement;
- (b) afford the applicant an opportunity to furnish compelling written reasons to the Director-General within 90 working days after the applicant is informed of the intention to revoke, why the applicant's record should remain expunged;
- (c) inform the applicant in writing within 30 working days after a decision is made of—
 - (i) that 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 sentences in question.

(5) If the applicant fails to furnish compelling reasons contemplated in subsection (4)(b), the Director-General may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), revoke the certificate of expungement.

(6) (a) The Director-General may delegate any power or assign any duty conferred upon or assigned to the Director-General in terms of subsection (1)(c), (2)(c) or (4), to an appropriately 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-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. 5
- (c) The Director-General may—
- (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 10
 - (ii) at any time withdraw a delegation or assignment.

Regulations

6. (1) The Minister must make regulations to prescribe—
- (a) the maximum amounts contemplated in section 4(4), (5) and (8)(a);
 - (b) the conditions, restrictions, prohibitions, obligations, requirements or standards regarding the transportation of cannabis, by the person transporting cannabis as well as in respect of the passenger in such transport, as contemplated in section 4(7)(a) and (d); 15
 - (c) the form on which a person's written application for the expungement of a criminal record must be made, as provided for in section 5(1)(b) and (2)(a); 20
 - (d) the certificate of expungement to be issued by the Director-General as provided for in section 5(1)(c) and (2)(b); and
 - (e) 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 5(1)(d) and (2)(c). 25
- (2) (a) The Minister may make regulations to prescribe any matter which is necessary or expedient to achieve the objects of this Act.
- (b) Any regulation made in terms of paragraph (a) and subsection (1)(a) or any amendment thereto must, before publication in the *Gazette*, be approved by Parliament. 30

Amendment of laws

7. The laws mentioned in the Schedule are hereby amended to the extent reflected in the fourth Column of the Schedule.

Short title and commencement

8. (1) This Act is called the Cannabis for Private Purposes Act, 2023, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 35
- (2) For purposes of subsection (1) different dates may be proclaimed in respect of different provisions of the Act and the different items of the Schedule to the Act.

Schedule

(Section 7)

LAWS AMENDED

Item No.	Number and year of law	Short title	Extent of repeal or amendment
1.	Act No. 140 of 1992	Drugs and Drug Trafficking Act, 1992	<p>(a) Part II of Schedule 2 is amended by the deletion of the item: “Dronabinol [(-)-transdelta-9-tetrahydrocannabinol].”</p> <p>(b) Part III of Schedule 2 is amended by the deletion of the items:</p> <p>(i) “Cannabis (dagga), the whole plant or any portion or product thereof, except dronabinol [(-)-transdelta-9-tetrahydrocannabinol]”; and</p> <p>(ii) “Tetrahydrocannabinol”.</p>
2.	Act No. 93 of 1996	National Road Traffic Act, 1996	<p>(a) The Index to the Act is amended by—</p> <p>(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</p> <p>(ii) the substitution for item 65 of Chapter XI of the following item: “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”;</p> <p>(b) The insertion in section 1—</p> <p>(i) after the definition of “driving licence testing centre” of the following definition: “‘drug having a narcotic effect’ 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</p> <p>(ii) after the definition of “testing station” of the following definition: “‘THC’ means any substance containing (-)-trans-delta-9-tetrahydrocannabinol;”.</p> <p>(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 THC; or”.</p> <p>(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, THC, 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.”.</p>

Item No.	Number and year of law	Short title	Extent of repeal or amendment
			<p>(e) The amendment of section 65 by—</p> <p>(i) the substitution for the heading to that section of the following heading: “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”;</p> <p>(ii) 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) THC; (iii) a drug having a narcotic effect; or (iv) any combination of (i), (ii) and (iii), 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] the concentration of alcohol, THC or a drug having a narcotic effect or a combination thereof specified in subsection (10). (3) For purposes of subsection (2) or subsection (5)(a) or (b)(ii), [I]f, 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.”;</p>

Item No.	Number and year of law	Short title	Extent of repeal or amendment
			<p>(iii) the substitution for subsections (5) and (6) of the following subsections respectively:</p> <p>“(5) No person shall on a public road—</p> <p>(a) drive a vehicle; or</p> <p>(b) occupy the driver’s seat of a motor vehicle, the engine of which is running,</p> <p>while the concentration—</p> <p>(i) of alcohol in any specimen of <u>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]</u> the concentration specified in subsection (11); or</p> <p>(ii) <u>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).</u></p> <p>(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 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.”;</p> <p>(iv) the substitution for subsection (8) of the following subsection:</p> <p>“(8) Except on the instruction of or 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.”; and</p>

Item No.	Number and year of law	Short title	Extent of repeal or amendment
			<p>(v) the addition of the following subsections after subsection (9):</p> <p>“(10) (a) Where a person is a professional driver referred to in section 32—</p> <p>(i) a concentration of less than a concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood;</p> <p>(ii) a concentration of less than—</p> <p>(aa) 0,02 gram alcohol per 100 millilitres of blood;</p> <p>(bb) 200 nanograms THC per 100 milliliters of blood; or</p> <p>(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</p> <p>(iii) a concentration of less than—</p> <p>(aa) 0,01 gram alcohol and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood; or</p> <p>(bb) 100 nanograms THC and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood.</p> <p>(b) Where a person is not a professional driver—</p> <p>(i) a concentration of less than a concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood;</p> <p>(ii) a concentration of less than—</p> <p>(aa) 0,05 gram alcohol per 100 millilitres of blood;</p> <p>(bb) 500 nanograms THC per 100 milliliters of blood; or</p> <p>(cc) 0,025 gram alcohol and 250 nanograms THC per 100 millilitres of blood, without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or</p> <p>(iii) a concentration of less than—</p> <p>(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</p> <p>(bb) 250 nanograms THC and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood.</p> <p>(11) (a) Where a person is a professional driver referred to in section 32—</p> <p>(i) a concentration of less than—</p> <p>(aa) 0,10 milligrams alcohol per 1000 millilitres of breath; or</p> <p>(bb) 0,5 milligrams alcohol per 1000 millilitres of breath 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</p> <p>(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.</p>

Item No.	Number and year of law	Short title	Extent of repeal or amendment
			<p><u>(b) Where a person is not a professional driver—</u></p> <p><u>(i) a concentration of less than—</u></p> <p><u>(aa) 0,24 milligrams alcohol per 1000 millilitres of breath; or</u></p> <p><u>(bb) 0,12 milligrams alcohol per 1000 millilitres of breath and 250 nanograms THC per 100 millilitres of blood,</u></p> <p><u>without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or</u></p> <p><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.</u></p> <p>(f) The amendment of section 75 by the insertion after subsection (1) of the following subsection:</p> <p><u>“(1A) 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></p>

**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 Prince 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 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 for a period of 24 months (i.e. from 18 September 2018 to 17 September 2020), to give Parliament an opportunity to correct the constitutional defects in the Drugs Act and the Medicines Act, and granted an 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.
- 1.4 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.
- 1.5 In *Centre for Child Law v Director of Public Prosecutions, Johannesburg and Others* [2022] ZACC 35 the Constitutional Court confirmed the order of the Gauteng Local Division, Johannesburg declaring section 4(b) of the Drugs Act to be inconsistent with the Constitution, and invalid to the extent that it criminalises the use or possession of cannabis by a child. In terms of that judgment, it cannot be said that imposing criminal sanctions on a child creates a legal framework for the protection of the child. Channeling a child through the criminal justice system as opposed to social systems, designed to protect children, can lead to exacerbated harm and risk for the child concerned. Cannabis use is a social problem, and an appropriate response, which recognises a child’s rights in section 28 of the Constitution, should be located in social systems as opposed to in the criminal justice system. The Court reiterated the need for a social response to cannabis use or possession by a child, and concluded that the response should be wholly centred on rehabilitation, support and recognising the inherent vulnerability of the child

and as such, the response should not be located within the criminal justice system.

- 1.6 As a result, the Court made the following orders:
- (a) the order of constitutional invalidity is suspended for a period of 24 months (i.e. from 29 September 2022 to 28 September 2024) to enable Parliament to finalise the legislative reform process;
 - (b) during the period of suspension referred to in paragraph (a), no child may be arrested and/or prosecuted and/or diverted for contravening section 4(b) of the Drugs Act insofar as it criminalises the use and/or possession of cannabis by a child;
 - (c) a child apprehended for the use and/or possession of cannabis may be referred to civil processes, including those found in the Children’s Act, 2005 (Act No. 38 of 2005), and the Prevention of and Treatment for Substance Abuse Act, 2008 (Act No. 70 of 2008); and
 - (d) where a court has convicted a child of a contravention of section 4(b) of the Drugs Act for the use and/or possession of cannabis, the criminal record containing the conviction and sentence in question, of that child in respect of that offence may, on application, be expunged by the Director-General: Justice and Constitutional Development or the Director-General: Social Development or the Minister of Justice and Correctional Services, as the case may be, in accordance with section 87 of the Child Justice Act, 2008 (Act No. 75 of 2008).
- 1.7 The offences referred to in section 4(b) of the Drugs Act, which was central to the Constitutional Court’s *Centre for Child Law* judgment (the use and possession of cannabis by a child), are regulated in terms of the Cannabis for Private Purposes Bill (“the Bill”). In terms of the Bill, the use and possession for personal use, of cannabis by children are no longer criminalised. There are various offences in the Bill which criminalise conduct by both adults and children, among others—
- (a) the dealing in cannabis (clause 4(1));
 - (b) the possession in a private or public place of cannabis in excess of the maximum amount prescribed for private purpose (clause 4(4));
 - (c) the cultivation of cannabis plants in excess of the maximum number prescribed for private purpose (clause 4(5));
 - (d) engaging a child (by an adult person or another child) to deal in cannabis (clause 4(6));
 - (e) the transportation of cannabis in an amount exceeding the maximum amount prescribed for private purpose or in contravention of or for failure to comply with a certain prescribed condition, restriction, prohibition, obligation, requirement or standard, or even the use of cannabis in a vehicle on a public road (clause 4(8));
 - (f) the use of cannabis in public (clause 4(9));
 - (g) the use of cannabis in a private place but in the presence of non-consenting adults or children (clause 4(10)); and
 - (h) the smoking of cannabis within a reasonable distance from a window of, ventilation inlet of, doorway to, or entrance into, another place or where its smoke is likely to cause a disturbance or nuisance to any person (clause 4(11)).
- 1.8 The Bill aims to—
- (a) respect the right to privacy of an adult person to use or possess cannabis;
 - (b) regulate the use or possession of cannabis by an adult person;
 - (c) provide for an alternative manner by which to address the issue of the prohibited use, possession of, or dealing in, cannabis by children, with due regard to the best interest of the child;
 - (d) prohibit the dealing in cannabis;
 - (e) provide for the expungement of criminal records of persons convicted of possession or use of cannabis or dealing in cannabis on the basis of a presumption;

- (f) amend provisions of certain laws; and
- (g) 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. The most important definitions that are applicable to other clauses of the Bill are the following:

- (a) **“adult person”** means a person who is 18 years or older;
- (b) **“cannabis”** means the flowering or fruiting tops of a cannabis plant and includes products made therefrom, but excludes any seed, seedling, the stalk, leaves and branches without any fruit or flower, and the roots of a cannabis plant, including products made therefrom;
- (c) **“child”** means a person who is under the age of 18 years;
- (d) **“consideration”** means any form of compensation, gift, reward, favour or benefit;
- (e) **“cultivate”** includes to plant, propagate, nurture, tend, grow or harvest a cannabis plant, and **“cultivation”** has a corresponding meaning;
- (f) **“deal in”** means to provide for consideration, receive for consideration, sell, buy, offer for sale, offer to purchase, import, advertise for sale, export, cultivate for the purposes of dealing, and any other conduct to facilitate selling cannabis, but does not include any such activity that is authorised in terms of this Act, or in terms of a permit or licence issued under any other national legislation;
- (g) **“Director-General”** means the Director-General: Justice and Constitutional Development;
- (h) **“Minister”** means the Cabinet member responsible for the administration of justice;
- (i) **“private place”** means—
 - (i) 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; and
 - (ii) any part or portion of communal land as defined in section 1 of the Communal Land Rights Act, 2004 (Act No. 11 of 2004), which, in terms of the rules or custom of a community or the standard rules contemplated in section 19(5) of that Act, is a place which is exclusively used to cultivate or use cannabis in a private place, by an adult person as a member of such a community;
- (j) **“private purpose”** means for the exclusive use, possession and cultivation of cannabis by an adult person with the intention to keep, store, transport or be in control of cannabis, in a manner that conceals it from public view;
- (k) **“public place”** means—
 - (i) any place to which the public has right of access; and
 - (ii) any part or portion of communal land which is not exclusively used to cultivate cannabis, as contemplated in the definition of **“private place”**;
- (l) **“public road”** means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (m) **“responsible adult”** means an adult person who is in a position of authority, supervision or care of a child;
- (n) **“smoke”** means to—
 - (i) 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; or

- (ii) inhale or exhale the vapour or aerosol of cannabis produced by a vaping device or holding or otherwise having control of a vaping device producing cannabis vapour or aerosol;
- (o) **“use of cannabis”** means the consumption of cannabis, including but not limited to the eating, drinking, or smoking of cannabis, or to otherwise self-administer cannabis and **“use cannabis”** has a corresponding meaning; and
- (p) **“vehicle”** means a vehicle as defined in section 1 of the National Road Traffic Act, 1996.

2.1.2 **Clause 1(2)** makes offences in clause 4(1) (dealing in cannabis), (4) (possessing cannabis) and (5) (cultivating cannabis plants) inapplicable to activities that are expressly authorised in the Bill or in terms of a permit or licence issued under any other national legislation. This clause is intended to ensure that permits or licences issued under or in terms of the Medicines Act, the Plant Improvement Act, 1976 (Act No. 53 of 1976), or any other relevant national legislation are not invalidated by any provision of the Bill.

2.2 **Clause 2** respects the right of privacy of an adult person to use and possess cannabis and to cultivate cannabis plants as contemplated in the Prince Judgment.

2.2.1 An adult person may, in terms of clause 2(1), also provide to, or obtain from, another adult person, cannabis, in a private place for a private purpose but this must be without the exchange of consideration.

2.2.2 Clause 2(2) prohibits an adult person from using cannabis in a private place for a private purpose in the presence of a child or non-consenting adult person or within a reasonable distance from a window of, ventilation inlet of, doorway to, or entrance into, another place or that forms part of any public place where persons congregate within close proximity of one another or where the smoke of such cannabis is likely to cause a disturbance or nuisance to any person at that place.

2.2.3 In terms of clause 2(3), an adult person may possess cannabis in a public place on condition that such cannabis is not used in a public place.

2.3 **Clause 3** is intended to protect children against the adverse effects of cannabis, in consideration of the best interest of the child principle.

2.3.1 The Bill does not give children the right to use, possess or cultivate cannabis and does not criminalise cannabis use, possession or cultivation by children either. However, if a child is found to have contravened any cannabis related legislation, the Bill contemplates that such child be dealt with outside the criminal justice system as directed by the Constitutional Court in the Centre for Child Law judgment. The child must be dealt with in terms of the Children’s Act, 2005, the Prevention of and Treatment from Substance Abuse Act, 2008, or any other relevant legislation.

2.3.2 Dealing in cannabis is recognised by the Bill as a serious offence, and a child found dealing in cannabis must be dealt with in terms of the legislation mentioned in paragraph 2.3.1 above, or the Child Justice Act, 2005.

2.3.3 Adult persons are prohibited by clause 3(2) from permitting a child to use or possess cannabis, or supplying a child with cannabis or a product containing cannabis. However, a responsible adult may administer cannabis to a child, with or without consent or knowledge of that child, if prescribed by a medical practitioner.

2.3.4 Clause 3(3) obliges an adult person who is in possession of cannabis to take reasonable measures of ensuring that such cannabis is inaccessible to a child whether that child is under the authority, supervision or care of that adult person or not.

2.3.5 Clause 3(4) prohibits any person to engage a child to deal in cannabis.

2.4 **Clause 4** provides for offences and penalties which a court may impose for contravention of the provisions of the Bill. These penalties are dependent on the nature of the offence in question, and may be a fine of not exceeding R2 000, or imprisonment for a period not exceeding 12 months, 5 years or 10 years.

2.4.1 An adult person may be penalised with a fine or imprisonment for a period not exceeding 12 months or to both a fine and imprisonment for the following offences:

- (a) permitting a child to use or possess cannabis (clause 4(2)); and
- (b) providing or administering cannabis to a child, unless prescribed by a medical practitioner (clause 4(7)).

2.4.2 A person may be fined up to R2 000 for the following offences:

- (a) as an adult person, for being in possession of cannabis at any place and failing to store such cannabis in a secure space that is inaccessible to a child (clause 4(3));
- (b) transporting cannabis and contravening or failing to comply with any condition, restriction, prohibition, obligation, requirement or standard regarding the transportation of such cannabis, as may be prescribed (clause 4(8)(b));
- (c) using cannabis in a vehicle on a public road (clause 4(8)(c));
- (d) as a passenger in a vehicle on a public road for contravening or failing to comply with any condition, restriction, prohibition, obligation, requirement or standard regarding the transportation of cannabis, that may be prescribed in respect of such a passenger (clause 4(8)(d));
- (e) using cannabis in a public place (clause 4(9));
- (f) using cannabis in a private place in the immediate presence of a child or non-consenting adult person (clause 4(10)); and
- (g) smoking cannabis in a private place—
 - (i) within a reasonable distance from a window of, ventilation inlet of, doorway to, or entrance into, another place; or
 - (ii) forming part of any public place where persons congregate within close proximity of one another and where the smoke is likely to cause a disturbance or nuisance to any person at that place (clause 4(11)).

2.4.3 A person may be penalised with a fine or imprisonment for a period not exceeding five years or to both a fine and imprisonment for the following offences:

- (a) being in possession of cannabis, either in a private or public place, in an amount which exceeds the maximum amount prescribed for private purpose (clause 4(4));
- (b) cultivating cannabis plants which exceed the maximum number prescribed for private purpose (clause 4(5)); and
- (c) transporting cannabis in an amount which exceeds the maximum amount, as prescribed for private purpose, (clause 4(8)(a)).

2.4.4 A person may be penalised with a fine or imprisonment for a period not exceeding 10 years or to both a fine and imprisonment for the following offences:

- (a) dealing in cannabis (clause 4(1)); and
- (b) engaging a child to deal in cannabis (clause 4(6)).

- 2.4.5 In terms of clause 4(12), a penalty imposed for payment of a fine without an alternative of imprisonment does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- 2.5 **Clause 5** 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.
- 2.6 **Clause 6** provides for regulations to be made to further regulate aspects provided for in the Bill.
- 2.6.1 The Minister is obliged to make regulations to prescribe the following aspects:
- (a) the maximum amounts of cannabis that may be possessed, cultivated or transported;
 - (b) the conditions, restrictions, prohibitions, obligations, requirements or standards regarding the transportation of cannabis, by the person transporting cannabis as well as in respect of the passenger in such transport;
 - (c) the form on which a person's written application for the expungement of a criminal record must be made;
 - (d) the certificate of expungement to be issued by the Director-General; and
 - (e) 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.
- 2.6.2 The Minister also has discretion to make regulations to prescribe any matter which is necessary or expedient to achieve the objects of the Bill.
- 2.6.3 The regulations made by the Minister in terms of clause 6(1)(a) and (2)(a) must be approved by Parliament, before publication in the *Gazette*.
- 2.7 **Clause 7** provides for the amendment of certain provisions of the laws, as contained in the **Schedule** to the Bill, discussed in paragraphs 2.7.1 and 2.7.2, below.
- 2.7.1 **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.

2.7.2 *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 to also 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 to also 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).

3. DEPARTMENTS/BODIES CONSULTED

- 3.1 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.
- 3.2 During the Parliamentary process, the Portfolio Committee on Justice and Constitutional Development consulted widely with interested parties when it considered the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

There is no financial implication 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. The Bill was, however, subsequently submitted to the National House of Traditional and Khoi-San Leaders as envisaged in section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), and the comments received from the National House were considered.