**MEMORANDUM ON UNLAWFUL HEMP POSSESSION**

TO: Chief Mark A. Keel

FROM: SLED General Counsel

DATE: April 12, 2019

On March 28, 2019, Governor McMaster signed Act 14 (formerly H.3449) into law in South Carolina. This bill makes the possession and storage of unprocessed or raw hemp plant material in South Carolina without a license unlawful. Specifically, S.C. Code Ann. § 46-55-20(A)(1) makes it “**unlawful** for a person to cultivate, **handle**, or process **hemp** in this State without a hemp license” issued by the South Carolina Department of Agriculture.

Hemp is defined in this article as “the plant Cannibis sativa L. and any part of that plant, including the nonsterilized seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with the federally defined THC level for hemp” which is “a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis” using post-decarboxylation or similarly reliable methods. *See* S.C. Code Ann. § 46-55-10(6), (8). Hemp products is also a defined term in this bill; however, this definition specifically excludes raw plant material indicating unequivocally that “[u]nprocessed or raw plant material, including nonsterilized hemp seeds, is not considered a hemp product.” S.C. Code Ann. § 46-55-10(9).

As such, ***only*** individuals and businesses who are licensed by the Department of Agriculture can legally “cultivate, handle, or process hemp” in South Carolina in accordance with this article. “Handling” is defined in this statute as “possessing or storing hemp for any period of time.” It also “includes possessing or storing hemp in a vehicle for any period of time other than during its actual transportation from the premises of a licensed person to cultivate or process industrial hemp to the premises of another licensed person”. *See* S.C. Code Ann. § 46-55-10(7).

In addition, should any raw material contain more than a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis using post-decarboxylation or similarly reliable methods, the product is marijuana punishable by all currently existing South Carolina state and federal laws prohibiting possession, distribution, possession with intent to distribute, and trafficking marijuana.

**RAW PLANT MATERIAL CHEAT SHEET**

As of March 28, 2019, the possession of any and all raw plant material of

the plant Cannabis sativa L. and any part of that plant, including the nonsterilized seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with the federally defined THC level for hemp (a delta‑9 THC concentration of not more than 0.3 percent on a dry weight basis using post‑decarboxylation or other similarly reliable methods)

is illegal unless the product is hemp and the individual or entity in possession of it is licensed by the South Carolina Department of Agriculture and thereby is authorized to “cultivate, handle, or process hemp”.

* If the raw plant material is in fact “hemp” 🡪 S.C. Code Ann. § 46-55-20(A)(1) makes it “unlawful for a person to cultivate, **handle (possess or store for any period of time, or possess or store in a vehicle other than transport from licensee to licensee)**, or process **hemp** in this State without a hemp license” issued by the South Carolina Department of Agriculture.
	+ However, as this provision does not specifically indicate a criminal classification or provide a penalty section, South Carolina common law and S.C. Code Ann. § 17-25-30 would appear to provide the default common law punishment of 10 years and default common law classification as a misdemeanor for this unlawful conduct. *See* State v. Mims, 286 S.C. 553, 554, 335 S.E.2d 237, 238 (1985); S.C. Code Ann. § 17-25-30 (1976); State v. Storgee*,* 277 S.C. 412, 288 S.E.2d 397 (1982). South Carolina Court Administration agrees with this assessment.
* If the raw plant material is in fact “marijuana” (a delta‑9 THC concentration greater than 0.3 percent on a dry weight basis using post‑decarboxylation or other similarly reliable methods) 🡪 all existing marijuana laws govern.
* In addition, S.C. Code Ann. § 46‑55‑60 states that

An individual who manufactures, distributes, dispenses, delivers, purchases, aids, abets, attempts to, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, in a manner intended to disguise the marijuana due to its proximity to industrial hemp, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years, fined not more than three thousand dollars, or both. The penalty provided for in this section may be imposed in addition to any other penalties provided by law.

\*\*This cheat sheet is for raw plant material only – not CBD oil or other “hemp products” as defined by S.C. Code Ann. § 46-55-10(9).