March 11, 2019

Dear Mr. Speaker and Members of the House of Representatives,

I respectfully return to you House Bill 1191, with my VETO. House Bill 1191 is an Act to legalize the growth, production, and processing of industrial hemp and derivative products in the state.

South Dakota must stand as an example for the rest of the country, not simply go along with others. Our focus must be on leading for South Dakota's next generation. Our state is not yet ready for industrial hemp.

Foremost among the many defects of this bill are the challenges it creates for law enforcement. HB 1191 complicates law enforcement searches and provides a ready-made defense for those breaking our drug laws. This poorly drafted bill changes the definition of marijuana with little regard for the implications elsewhere in our Code. It would create uncertainty for prosecution under our ingestion statute because the source of THC is placed in doubt when industrial hemp products that contain small amounts of THC, such as cannabidiol or CBD, are legalized. As Governor, I will not leave it to our courts to interpret how this bill impacts our prohibition on the active ingredient in marijuana, and I do not believe the Legislature intended to complicate enforcement of our ingestion statute in this way.

Although proponents claim hemp has a wide variety of uses, the legislative debate makes it clear that this bill is less about helping farmers and more about commercial interest in one product: CBD. No other type of hemp producer or processor retained paid lobbyists this Session. HB 1191 rejected critical parts of the amendment my Administration discussed with the bill's sponsors. It would instead allow the immediate, widespread production and use of CBD, as well as other hemp derivatives, even though the Food and Drug Administration ("FDA") has yet to approve them as safe for therapeutic use or for interstate commerce. In fact, the FDA has not yet begun its regulatory process on hemp derivatives, including CBD. South Dakota should be guided by the FDA on these issues, not special interests.

As I first stated many weeks ago, HB 1191 is premature. There is no urgent problem requiring an immediate solution this session. Until the U.S. Department of Agriculture ("USDA") issues its own rules, the regular growth and interstate transport of hemp cannot begin. No industrial hemp will cross into South Dakota without those rules, which USDA has announced it will not issue until late 2019. We have no way of knowing today what those rules will require. What limited structure HB 1191 does create to regulate industrial hemp in our state could very well be in conflict.

Finally, I am concerned that this bill supports a national effort to legalize marijuana for recreational use. I do not doubt the motives of this bill's legislative champions. However, an overwhelming number of contacts I have received in favor of this bill come from pro-marijuana activists. There is no question in my mind that normalizing hemp, like legalizing medical marijuana, is part of a larger strategy to undermine enforcement of the drug laws and make legalized marijuana inevitable.

This issue was never ripe for discussion during this legislative session, and our state government's efforts and resources should be focused elsewhere until the federal government's approach on this issue is clear. For these reasons, I oppose this bill and ask that you sustain my veto.

Respectfully submitted,
Kristi Noem
Governor