March 25, 2022

Dear Mr. President and Members of the Senate,

I respectfully return to you Senate Bill 151 with my VETO. Senate Bill 151 is an Act to revise the automatic removal of certain convictions from a background check record.

This bill provides for the automatic removal from a public background check for Class 1 misdemeanors related to the use or possession of marijuana or any of its derivatives. It also essentially codifies a convicted person's ability to be dishonest about their previous arrest and conviction by not requiring disclosure of the prior drug conviction.

Current South Dakota law does allow for automatic removal for low-level Class 2 misdemeanors. However, Senate Bill 151 expands that policy for marijuana crimes, carving out special exceptions for marijuana, thereby making the use and possession of marijuana the only Class 1 misdemeanors to have an automatic removal in state law.

This bill is also retroactive, which is bad precedent for criminal justice issues where fairness is paramount. Further, even with the legalization of medical cannabis, there must remain consequences for using illegal drugs at a time when the use and possession of marijuana, even for alleged medical purposes, was illegal. Looking ahead, if this bill were to become law, the automatic removal of any future conviction for the use or possession of marijuana in South Dakota would be for the recreational use of this drug or for the use or possession not in accordance with our state's medical cannabis program.

I believe in second chances. Our current laws and criminal procedures already provide sufficient avenues for people who have earned that second chance. But those individuals must at least show good cause or a need for such relief, such as suspended imposition of sentence procedures, county youth diversion programs, or executive clemency that can be requested online at no cost.

For these reasons, I oppose Senate Bill 151 and ask that you sustain my veto.

Respectfully submitted,

Kristi Noem
Governor