

2021 South Dakota Legislature

House Bill 1100**AMENDMENT 1100G FOR THE HOUSE STATE AFFAIRS BILL**

1 **An Act to modify the medical marijuana program and to ~~create an interim committee~~**
2 **~~to recommend implementation of the medical marijuana program~~ require the**
3 **medical cannabis oversight committee to evaluate the implementation**
4 **process.**

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 **Section 1.** The Legislature finds the following facts to be true:

- 7 (1) 2020 Initiated Measure 26 passed by a vote of the people on November 3, 2020,
8 receiving nearly seventy percent of the vote, and will become law on July 1, 2021;
- 9 (2) ~~The Measure legalizes marijuana for medical use by qualifying patients, including~~
10 ~~minors. The Measure requires patients to obtain a registration card from the~~
11 ~~Department of Health, and the Measure allows the acceptance of nonresident~~
12 ~~cards. The Measure authorizes individuals to become designated caregivers and~~
13 ~~grow marijuana in their homes. The Measure authorizes cultivation, manufacture,~~
14 ~~and retail facilities if registered by the Department of Health;~~
- 15 (3) ~~The Measure, however, does not include provisions for:~~
- 16 (a) ~~Tracking marijuana or marijuana products;~~
- 17 (b) ~~Taxing medical marijuana;~~
- 18 (c) ~~Regulating the form of products, maximum potency, or appropriate dosage~~
19 ~~of products for safe human consumption;~~
- 20 (d) ~~Identifying the debilitating medical conditions that qualify for lawful use and~~
21 ~~possession of medical marijuana; and~~
- 22 (e) ~~Permitting, mandating, or prohibiting ownership within different tiers of the~~
23 ~~marijuana supply chain;~~
- 24 (4) ~~The Measure requires the Department of Health to regulate marijuana, which~~
25 ~~conflicts with 2020 Constitutional Amendment A that gives the exclusive power to~~

- 1 ~~regulate marijuana to the Department of Revenue. Amendment A is presently the~~
2 ~~subject of two constitutional challenges in the state courts;~~
- 3 ~~(5) — The Measure does not provide a source of funding for the creation of a new state~~
4 ~~program before the work to implement the Measure may occur;~~
- 5 ~~(6) — Included in the Measure are policies outside the subject of a medical marijuana~~
6 ~~program in the following areas;~~
- 7 ~~(a) — Employment law;~~
8 ~~(b) — Landlord and tenant rights;~~
9 ~~(c) — School policy;~~
10 ~~(d) — Correctional health;~~
11 ~~(e) — Family law; and~~
12 ~~(f) — Contract law;~~
- 13 ~~(7) — 2020 Constitutional Amendment A passed by a vote of the people on November 3,~~
14 ~~2020, receiving fifty four percent of the vote. South Dakota became the first state~~
15 ~~to adopt recreational and medicinal marijuana in the same election;~~
- 16 ~~(8) — The constitutionality of Constitutional Amendment A is currently being challenged~~
17 ~~in two lawsuits: In the matter of election contest as to Amendment A, Sixth Circuit~~
18 ~~Case No. 32CIV20 186, and Sheriff Kevin Thom, in his official capacity as~~
19 ~~Pennington County Sheriff and Colonel Rick Miller, in his official capacity as~~
20 ~~Superintendent of the South Dakota Highway Patrol v. Steve Barnett, in his official~~
21 ~~capacity as South Dakota Secretary of State, Sixth Circuit Case No. 32CIV20 187.~~
22 ~~On February 8, 2021, the circuit court issued its decisions in these cases, and in~~
23 ~~the latter case, held that Amendment A was unconstitutional. These decisions,~~
24 ~~however, are subject to appeal and final, nonappealable decisions are not expected~~
25 ~~during the 96th Legislative Session;~~
- 26 ~~(9) — The implementation, administration, and regulation of a medical marijuana~~
27 ~~program would be significantly impacted by the final outcome of the Amendment~~
28 ~~A litigation, and establishing a medical marijuana program without certainty as to~~
29 ~~the legality of adult use marijuana would waste limited taxpayers' resources;~~
- 30 ~~(10) — A state of emergency was declared on March 13, 2020, and continues to exist in~~
31 ~~every county of this state. The Department of Health, which the Measure charges~~
32 ~~with regulating medical marijuana, has been preparing, planning, researching,~~
33 ~~managing, communicating, and using every available resource at its disposal to~~
34 ~~fight the unprecedented, global pandemic of the novel coronavirus, which causes~~
35 ~~the severe respiratory disease, COVID 19, since January 2020, and has been~~

~~developing, launching, tracking, and administering the state's vaccine distribution plan continuously since the Measure passed;~~

~~(11) The Measure requires the Department of Health to implement, administer, and regulate a new program and industry less than eight months from when the Measure passed. The time frame is insufficient to successfully launch a reliable, stable, and prudent medical marijuana program;~~

~~(12) The Measure conflicts with federal law by legalizing a substance that remains illegal under federal law, which adds further complexity to implementation;~~

~~(13) The Measure fails to adequately consider the complexities and detail needed to successfully create and operate a medical marijuana program;~~

~~(14) Due to the pending litigation, the Department of Health's continued efforts against COVID-19, and the complexity of marijuana's status under federal law, the State needs more time to establish a medical marijuana program with integrity and prudence than its current effective date of July 1, 2021; and~~

~~(15)(3) Therefore, a delay of the implementation of the Measure is appropriate and necessary.~~

~~Section 2. Notwithstanding the provisions of § 2-1-12, §§ 34-20G-1 to 34-20G-95, inclusive, are effective July 1, 2022.~~

Section 2. That § 34-20G-29 be AMENDED.

34-20G-29. [Effective July 1, ~~2022~~ 2021] Information required for issuance of registry identification cards--Fee.

No later than ~~November 18, 2021~~ November 21, 2022 January 31, 2022, the department shall issue registry identification cards to qualifying patients who submit the following, in accordance with rules promulgated by the department:

- (1) A written certification issued by a practitioner within ninety days immediately preceding the date of an application;
- (2) The application or renewal fee;
- (3) The name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) The name, address, and telephone number of the qualifying patient's practitioner;
- (5) The name, address, and date of birth of the designated caregiver, or designated caregivers, chosen by the qualifying patient;

- 1 (6) If more than one designated caregiver is designated at any given time,
2 documentation demonstrating that a greater number of designated caregivers are
3 needed due to the patient's age or medical condition;
- 4 (7) The name of no more than two dispensaries that the qualifying patient designates,
5 if any; and
- 6 (8) If the qualifying patient designates a designated caregiver, a designation as to
7 whether the qualifying patient or designated caregiver will be allowed under state
8 law to possess and cultivate cannabis plants for the qualifying patient's medical
9 use.

10 **Section 3.** That § 34-20G-45 be AMENDED.

11 **34-20G-45. [Effective July 1, ~~2022~~ 2021] Secure phone or web-based**
12 **verification system.**

13 ~~Within one hundred twenty days of July 1, 2021~~ July 1, 2022 ~~No later than January~~
14 31, 2022, the department shall establish a secure phone or web-based verification system.
15 The verification system shall allow law enforcement personnel and medical cannabis
16 establishments to enter a registry identification number and determine whether the
17 number corresponds with a current, valid registry identification card. The system may
18 disclose only:

- 19 (1) Whether the identification card is valid;
20 (2) The name of the cardholder;
21 (3) Whether the cardholder is a qualifying patient or a designated caregiver;
22 (4) Whether the cardholder is permitted to cultivate cannabis plants;
23 (5) The registry identification number of any affiliated registered qualifying patient;
24 and
25 (6) The registry identification of the qualifying patient's dispensary or dispensaries, if
26 any.

27 **Section 4.** That § 34-20G-51 be AMENDED.

28 **34-20G-51. [Effective July 1, 2021] Medical purpose defense to prosecution**
29 **involving cannabis.**

30 ~~Except as provided in § 34-20G-18 and this section, a person may assert the~~
31 ~~medical purpose for using cannabis as a defense to any prosecution involving cannabis,~~
32 ~~and such defense is presumed valid where the evidence shows that:~~

- 1 (1) A practitioner has stated that, in the practitioner's professional opinion, after
 2 having completed a full assessment of the person's medical history and current
 3 medical condition made in the course of a bona fide practitioner-patient
 4 relationship, the patient has a debilitating medical condition and the potential
 5 benefits of using cannabis for medical purposes would likely outweigh the health
 6 risks for the person;
- 7 (2) The person was in possession of no more than ~~three ounces of cannabis, the~~
 8 ~~amount of cannabis products allowed by department rules, six cannabis plants~~
 9 ~~minimum or as prescribed by a physician, and the cannabis produced by those~~
 10 ~~plants;~~
 11 (a) Three ounces of cannabis;
 12 (b) A quantity of cannabis products containing no more than twenty-four grams
 13 of cannabis concentrate or a greater amount if allowed by department rules;
 14 (c) Six cannabis plants kept in or on the grounds of a single residence at one
 15 time and any cannabis produced by those six plants provided that the
 16 cannabis is located at the same property where the plants were cultivated;
 17 or
 18 (d) Any combination of subsections (a), (b), or (c) thereof;
- 19 (3) The person was engaged in the acquisition, possession, use, manufacture,
 20 cultivation, or transportation of cannabis, paraphernalia, or both, relating to the
 21 administration of cannabis to treat or alleviate the person's debilitating medical
 22 condition or symptoms associated with the person's debilitating medical condition;
 23 and
- 24 (4) Any cultivation of cannabis and storage of more than three ounces of cannabis
 25 occurred in a secure location that only the person asserting the defense could
 26 access.

27 **Section 5.** That § 34-20G-72 be AMENDED.

28 **34-20G-72. [Effective July 1, ~~2022~~ 2021] Promulgation of rules--Violation of**
 29 **required or prohibited action as misdemeanor.**

30 Not later than ~~October 29, 2021~~ October 31, 2022 January 31, 2022, the
 31 department shall promulgate rules pursuant to chapter 1-26:

- 32 (1) Governing the manner in which the department shall consider petitions from the
 33 public to add a debilitating medical condition or treatment to the list of debilitating

- 1 medical conditions as defined by this chapter, including public notice of and an
2 opportunity to comment in public hearings on the petitions;
- 3 (2) Establishing the form and content of registration and renewal applications
4 submitted under this chapter;
- 5 (3) Establishing a system to numerically score competing medical cannabis
6 establishment applicants, in cases where more applicants apply than are allowed
7 by the local government, that includes analysis of:
- 8 (a) The preference of the local government;
- 9 (b) In the case of dispensaries, the suitability of the proposed location and its
10 accessibility for patients;
- 11 (c) The character, veracity, background, qualifications, and relevant experience
12 of principal officers and board members; and
- 13 (d) The business plan proposed by the applicant, that in the case of a cultivation
14 facility or dispensary shall include the ability to maintain an adequate supply
15 of cannabis, plans to ensure safety and security of patrons and the
16 community, procedures to be used to prevent diversion, and any plan for
17 making cannabis available to low-income registered qualifying patients;
- 18 (4) Governing the manner in which the department shall consider applications for and
19 renewals of registry identification cards, that may include creating a standardized
20 written certification form;
- 21 (5) Governing medical cannabis establishments to ensure the health and safety of
22 qualifying patients and prevent diversion and theft without imposing an undue
23 burden or compromising the confidentiality of a cardholder, including:
- 24 (a) Oversight requirements;
- 25 (b) Record-keeping requirements;
- 26 (c) Security requirements, including lighting, physical security, and alarm
27 requirements;
- 28 (d) Health and safety regulations, including restrictions on the use of pesticides
29 that are injurious to human health;
- 30 (e) Standards for the manufacture of cannabis products and both the indoor
31 and outdoor cultivation of cannabis by a cultivation facility;
- 32 (f) Requirements for the transportation and storage of cannabis by a medical
33 cannabis establishment;

- 1 (g) Employment and training requirements, including requiring that each
2 medical cannabis establishment create an identification badge for each
3 agent;
- 4 (h) Standards for the safe manufacture of cannabis products, including extracts
5 and concentrates;
- 6 (i) Restrictions on the advertising, signage, and display of medical cannabis,
7 provided that the restrictions may not prevent appropriate signs on the
8 property of a dispensary, listings in business directories including phone
9 books, listings in marijuana-related or medical publications, or the
10 sponsorship of health or not-for-profit charity or advocacy events;
- 11 (j) Requirements and procedures for the safe and accurate packaging and
12 labeling of medical cannabis; and
- 13 (k) Certification standards for testing facilities, including requirements for
14 equipment and qualifications for personnel;
- 15 (6) Establishing procedures for suspending or terminating the registration certificates
16 or registry identification cards of cardholders and medical cannabis establishments
17 that commit multiple or serious violations of this chapter;
- 18 (7) Establishing labeling requirements for cannabis and cannabis products, including
19 requiring cannabis product labels to include the following:
- 20 (a) The length of time it typically takes for a product to take effect;
- 21 (b) Disclosing ingredients and possible allergens;
- 22 (c) A nutritional fact panel; and
- 23 (d) Requiring that edible cannabis products be clearly identifiable, when
24 practicable, with a standard symbol indicating that it contains cannabis;
- 25 (8) Establishing procedures for the registration of nonresident cardholders and the
26 cardholder's designation of no more than two dispensaries, which shall require the
27 submission of:
- 28 (a) A practitioner's statement confirming that the patient has a debilitating
29 medical condition; and
- 30 (b) Documentation demonstrating that the nonresident cardholder is allowed to
31 possess cannabis or cannabis preparations in the jurisdiction where the
32 nonresident cardholder resides;
- 33 (9) Establishing the amount of cannabis products, including the amount of
34 concentrated cannabis, each cardholder and nonresident cardholder may possess;
35 and

- 1 (10) Establishing reasonable application and renewal fees for registry identification
2 cards and registration certificates, according to the following:
- 3 (a) Application fees for medical cannabis establishments may not exceed five
4 thousand dollars, with this upper limit adjusted annually for inflation;
 - 5 (b) The total fees collected shall generate revenues sufficient to offset all
6 expenses of implementing and administering this chapter;
 - 7 (c) A sliding scale of patient application and renewal fees based upon a
8 qualifying patient's household income;
 - 9 (d) The fees charged to qualifying patients, nonresident cardholders, and
10 caregivers shall be no greater than the costs of processing the application
11 and issuing a registry identification card or registration; and
 - 12 (e) The department may accept donations from private sources to reduce
13 application and renewal fees.

14 A violation of a required or prohibited action under any rule authorized by this
15 section is a Class 2 misdemeanor.

16 **Section 6.** That § 34-20G-92 be AMENDED.

17 **34-20G-92. [Effective July 1, 2021] Oversight committee membership.**

18 A medical cannabis oversight committee shall be appointed. The Executive Board
19 of the Legislative Research Council shall appoint ~~an oversight committee comprised of:~~
20 ~~one member of the House of Representatives, one member of the Senate, one Department~~
21 ~~of Criminal Investigation agent, one staff member from the Office of the Attorney General,~~
22 ~~two representatives of local law enforcement, one representative from the department,~~
23 ~~one practitioner with experience in medical cannabis issues, one nurse, one board member~~
24 ~~or principal officer of a cannabis testing facility, one person with experience in policy~~
25 ~~development or implementation in the field of medical cannabis, two representatives of~~
26 ~~tribal governments, and three qualifying two advocates for medical cannabis patients.~~ The
27 speaker shall appoint two members of the House of Representatives. The president pro
28 tempore shall appoint two members of the Senate. The attorney general shall appoint one
29 attorney from the Office of the Attorney General. The Governor shall appoint one
30 representative from each of the Departments of Health, Revenue, and Public Safety, and
31 one representative from local government.

32 **Section 7.** That § 34-20G-93 be AMENDED.

1 **34-20G-93. [Effective July 1, 2021] Oversight committee duties.**

2 The oversight committee shall ~~meet at least two times per year~~ hold a public
3 meeting once per month for the purpose of evaluating the medical cannabis program
4 established by this chapter and making recommendations to the Legislature and the
5 department regarding:

- 6 (1) The ability of qualifying patients in all areas of the state to obtain timely access to
7 high-quality medical cannabis;
- 8 (2) The effectiveness of the dispensaries and cultivation facilities, individually and
9 together, in serving the needs of qualifying patients, including the provision of
10 educational and support services by dispensaries, the reasonableness of their
11 prices, whether they are generating any complaints or security problems, and the
12 sufficiency of the number operating to serve the state's registered qualifying
13 patients;
- 14 (3) The effectiveness of the cannabis testing facilities, including whether a sufficient
15 number are operating;
- 16 (4) The sufficiency of the regulatory and security safeguards contained in this chapter
17 and adopted by the department to ensure that access to and use of cannabis
18 cultivated is provided only to cardholders;
- 19 (5) Any recommended additions or revisions to the department regulations or this
20 chapter, ~~including~~ but not limited to regulations governing cultivation,
21 business operations, testing, dosing, potency, security, safe handling, packaging,
22 labeling, and nomenclature; and
- 23 (6) Any research studies regarding health effects of medical cannabis for patients;
- 24 (7) The ability of the department and other state agencies to meet the deadlines in
25 this chapter while ensuring that the implementation of medical cannabis does not
26 cause public health issues, public safety issues, or other adverse effects to the
27 state;
- 28 (8) The ability of local governments to regulate medical cannabis establishments; and
- 29 (9) Any other public policy issues related to the medical cannabis policy.

30 **Section 8.** That § 34-20G-95 be AMENDED.

31 **34-20G-95. [Effective July 1, ~~2022~~ 2021] Administration of medical**
32 **cannabis to students.**

33 The Department of Education and the department shall establish policy to allow
34 students who are medical cannabis cardholders to have their medicine administered in

1 school in accordance with their physician's recommendation. This policy shall be
2 implemented ~~the first day of the new school year following passage of this chapter. no~~
3 later than January 31, 2022. The departments shall implement substantively ~~identical~~
4 similar provisions to Colorado Revised Statute 22-1-119.3 as of January 1, 2019.

5 **Section 8.** ~~That a NEW SECTION be added:~~

6 **~~Interim marijuana committee membership.~~**

7 ~~An interim marijuana committee shall be appointed. The speaker may appoint five~~
8 ~~members of the House of Representatives. The president pro tempore may appoint five~~
9 ~~members of the Senate. The attorney general may appoint one state's attorney and one~~
10 ~~attorney from the Office of the Attorney General. The Governor may appoint one~~
11 ~~representative from each of the Departments of Health, Revenue, and Public Safety. The~~
12 ~~Governor may also appoint one representative of law enforcement, one health care~~
13 ~~practitioner with knowledge of medical marijuana issues, one nurse, two representatives~~
14 ~~from the medical marijuana cultivators or manufacturers or retail industry, one patient~~
15 ~~with a debilitating condition who intends to use medical marijuana, or one representative~~
16 ~~of local governments. Any consultant hired by the state may serve in an advisory, non-~~
17 ~~voting capacity. If there is a vacancy on the committee, the vacancy may be filled in the~~
18 ~~same manner as the original appointment under this Act. The committee shall be under~~
19 ~~the supervision of the Executive Board of the Legislative Research Council and staffed and~~
20 ~~funded as an interim legislative committee.~~

21 **Section 9.** ~~That a NEW SECTION be added:~~

22 **~~Interim marijuana committee duties.~~**

23 ~~The interim marijuana committee created pursuant to § 34-20G-96 may:~~
24 ~~(1) Research best practices from other medical marijuana programs;~~
25 ~~(2) Determine details of a licensing system that specifies privileges and authorized~~
26 ~~activities, and the implementation thereof;~~
27 ~~(3) Evaluate policies that reduce unlawful access, availability, and use by youths and~~
28 ~~prevent diversion to illicit markets;~~
29 ~~(4) Explore policy measures that balance adequate regulation that ensure safe~~
30 ~~products and support the development of a fair market;~~
31 ~~(5) Study legal consequences and litigation of policy decisions challenged in other~~
32 ~~states;~~

~~(6) Investigate criminal justice and public safety concerns of establishing a marijuana market while guarding against drugged driving or performing tasks under impairment;~~

~~(7) Advise on regulations for cultivation of marijuana without contaminants, pesticides, or heavy metals, for manufacturing of marijuana products without hazardous substances, and for sales of marijuana and marijuana products only to verified patients in appropriate amounts;~~

~~(8) Seek input on appropriate local controls that allow sufficient access;~~

~~(9) Examine appropriate rules or restrictions on the structure, ownership, management, fiscal stability, and practices of marijuana business entities;~~

~~(10) Determine market demand, production management, product tracking, and necessary fees to support the medical marijuana program;~~

~~(11) Review testing advisability and capability, forms of product, and how each product should be approved for human consumption;~~

~~(12) Determine appropriate taxing scheme;~~

~~(13) Provide an opportunity for public input of policy decisions; and~~

~~(14) Determine implementation benchmarks.~~

~~The interim marijuana committee shall report to the Legislature by January 15, 2022. The interim marijuana committee may present any recommended legislation.~~

Section 9. That a NEW SECTION be added:

34-20G-96. Personal cultivation limits.

Notwithstanding any provision of this chapter, a cardholder may not cultivate more than six cannabis plants kept in or on the grounds of a single residence at one time.

Section 10. That a NEW SECTION be added:

34-20G-97. Department and oversight committee reporting requirements.

The following reporting requirements are established:

~~(1) Until January 31, 2022, the department shall provide a monthly report to the medical cannabis oversight committee describing the status of the implementation process of the medical cannabis program and describing the actions taken to meet the deadlines in this chapter;~~

~~(2) No later than December 15, 2021, the medical oversight committee shall provide a report to the Legislature including but not limited to any recommended legislation;~~

1 (3) Beginning March 1, 2022 and in every other month thereafter, the department
2 shall provide a report to the medical marijuana oversight committee describing
3 the current status of the medical cannabis program; and
4 All reports under this section shall be made available to the public upon transmittal.

5 ~~**Section 10.** This Act is effective June 30, 2021.~~

