2021 South Dakota Legislature

House Bill 1100

AMENDMENT 1100H FOR THE HOUSE STATE AFFAIRS BILL

An Act to modify the medical marijuana program and to create an interim committee to recommend implementation of the medical marijuana program.

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

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

(1) 2020 Initiated Measure 26 passed by a vote of the people on November 3, 2020, receiving nearly seventy percent of the vote, and will become law on July 1, 2021;

(2) The Measure legalizes marijuana for medical use by qualifying patients, including minors. The Measure requires patients to obtain a registration card from the Department of Health, and the Measure allows the acceptance of nonresident cards. The Measure authorizes individuals to become designated caregivers and grow marijuana in their homes. The Measure authorizes cultivation, manufacture, and retail facilities if registered by the Department of Health;

(3) The Measure, however, does not include provisions for:

(a) Tracking marijuana or marijuana products;

(b) Taxing medical marijuana;

(c) Regulating the form of products, maximum potency, or appropriate dosage of products for safe human consumption;

(d) Identifying the debilitating medical conditions that qualify for lawful use and possession of medical marijuana; and

(e) Permitting, mandating, or prohibiting ownership within different tiers of the marijuana supply chain;

(4) The Measure requires the Department of Health to regulate marijuana, which conflicts with 2020 Constitutional Amendment A that gives the exclusive power to regulate marijuana to the Department of Revenue. Amendment A is presently the subject of two constitutional challenges in the state courts;

(5) The Measure does not provide a source of funding for the creation of a new state program before the work to implement the Measure may occur;

(6) Included in the Measure are policies outside the subject of a medical marijuana program in the following areas;

(a) Employment law;

(b) Landlord and tenant rights;

(c) School policy;

(d) Correctional health;

(e) Family law; and

(f) Contract law;

(7) 2020 Constitutional Amendment A passed by a vote of the people on November 3, 2020, receiving fifty-four percent of the vote. South Dakota became the first state to adopt recreational and medicinal marijuana in the same election;

(8) The constitutionality of Constitutional Amendment A is currently being challenged in two lawsuits: In the matter of election contest as to Amendment A, Sixth Circuit Case No. 32CIV20-186, and Sheriff Kevin Thom, in his official capacity as Pennington County Sheriff and Colonel Rick Miller, in his official capacity as Superintendent of the South Dakota Highway Patrol v. Steve Barnett, in his official capacity as South Dakota Secretary of State, Sixth Circuit Case No. 32CIV20-187. On February 8, 2021, the circuit court issued its decisions in these cases, and in the latter case, held that Amendment A was unconstitutional. These decisions, however, are subject to appeal and final, nonappealable decisions are not expected during the 96th Legislative Session;

(9) The implementation, administration, and regulation of a medical marijuana program would be significantly impacted by the final outcome of the Amendment A litigation, and establishing a medical marijuana program without certainty as to the legality of adult use marijuana would waste limited taxpayers' resources;

(10) A state of emergency was declared on March 13, 2020, and continues to exist in every county of this state. The Department of Health, which the Measure charges with regulating medical marijuana, has been preparing, planning, researching, managing, communicating, and using every available resource at its disposal to fight the unprecedented, global pandemic of the novel coronavirus, which causes 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 prudency than its current effective date of July 1, 2021; and

(15) 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~~ January 1, 2022.

Section 3. That § 34-20G-29 be AMENDED.

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

No later than ~~November 18, 2021~~ ~~November 21, 2022~~ May 15, 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;

(6) If more than one designated caregiver is designated at any given time, documentation demonstrating that a greater number of designated caregivers are needed due to the patient's age or medical condition;

(7) The name of no more than two dispensaries that the qualifying patient designates, if any; and

(8) If the qualifying patient designates a designated caregiver, a designation as to whether the qualifying patient or designated caregiver will be allowed under state law to possess and cultivate cannabis plants for the qualifying patient's medical use.

Section 4. That § 34-20G-45 be AMENDED.

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

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

(1) Whether the identification card is valid;

(2) The name of the cardholder;

(3) Whether the cardholder is a qualifying patient or a designated caregiver;

(4) Whether the cardholder is permitted to cultivate cannabis plants;

(5) The registry identification number of any affiliated registered qualifying patient; and

(6) The registry identification of the qualifying patient's dispensary or dispensaries, if any.

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

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

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

(1) Governing the manner in which the department shall consider petitions from the public to add a debilitating medical condition or treatment to the list of debilitating medical conditions as defined by this chapter, including public notice of and an opportunity to comment in public hearings on the petitions;

(2) Establishing the form and content of registration and renewal applications submitted under this chapter;

(3) Establishing a system to numerically score competing medical cannabis establishment applicants, in cases where more applicants apply than are allowed by the local government, that includes analysis of:

(a) The preference of the local government;

(b) In the case of dispensaries, the suitability of the proposed location and its accessibility for patients;

(c) The character, veracity, background, qualifications, and relevant experience of principal officers and board members; and

(d) The business plan proposed by the applicant, that in the case of a cultivation facility or dispensary shall include the ability to maintain an adequate supply of cannabis, plans to ensure safety and security of patrons and the community, procedures to be used to prevent diversion, and any plan for making cannabis available to low-income registered qualifying patients;

(4) Governing the manner in which the department shall consider applications for and renewals of registry identification cards, that may include creating a standardized written certification form;

(5) Governing medical cannabis establishments to ensure the health and safety of qualifying patients and prevent diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including:

(a) Oversight requirements;

(b) Record-keeping requirements;

(c) Security requirements, including lighting, physical security, and alarm requirements;

(d) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health;

(e) Standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by a cultivation facility;

(f) Requirements for the transportation and storage of cannabis by a medical cannabis establishment;

(g) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent;

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(h) Standards for the safe manufacture of cannabis products, including extracts and concentrates;

(i) Restrictions on the advertising, signage, and display of medical cannabis, provided that the restrictions may not prevent appropriate signs on the property of a dispensary, listings in business directories including phone books, listings in marijuana-related or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events;

(j) Requirements and procedures for the safe and accurate packaging and labeling of medical cannabis; and

(k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel;

(6) Establishing procedures for suspending or terminating the registration certificates or registry identification cards of cardholders and medical cannabis establishments that commit multiple or serious violations of this chapter;

(7) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis product labels to include the following:

(a) The length of time it typically takes for a product to take effect;

(b) Disclosing ingredients and possible allergens;

(c) A nutritional fact panel; and

(d) Requiring that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;

(8) Establishing procedures for the registration of nonresident cardholders and the cardholder's designation of no more than two dispensaries, which shall require the submission of:

(a) A practitioner's statement confirming that the patient has a debilitating medical condition; and

(b) Documentation demonstrating that the nonresident cardholder is allowed to possess cannabis or cannabis preparations in the jurisdiction where the nonresident cardholder resides;

(9) Establishing the amount of cannabis products, including the amount of concentrated cannabis, each cardholder and nonresident cardholder may possess; and

(10) Establishing reasonable application and renewal fees for registry identification cards and registration certificates, according to the following:

(a) Application fees for medical cannabis establishments may not exceed five thousand dollars, with this upper limit adjusted annually for inflation;

(b) The total fees collected shall generate revenues sufficient to offset all expenses of implementing and administering this chapter;

(c) A sliding scale of patient application and renewal fees based upon a qualifying patient's household income;

(d) The fees charged to qualifying patients, nonresident cardholders, and caregivers shall be no greater than the costs of processing the application and issuing a registry identification card or registration; and

(e) The department may accept donations from private sources to reduce application and renewal fees.

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

Section 6. That § 34-20G-95 be AMENDED.

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

The Department of Education and the department shall establish policy to allow students who are medical cannabis cardholders to have their medicine administered in school in accordance with their physician's recommendation. This policy shall be implemented ~~the first day of the new school year following passage of this chapter.~~ no later than the first day of the 2022-2023 school year. The departments shall implement substantively ~~identical~~ similar provisions to Colorado Revised Statute 22-1-119.3 as of January 1, 2019.

Section 7. That a NEW SECTION be added:

34-20G-96. Interim marijuana committee membership.

An interim marijuana committee shall be appointed. The speaker ~~may~~ shall appoint five members of the House of Representatives. The president pro tempore ~~may~~ shall appoint five members of the Senate. The attorney general ~~may~~ shall appoint one state's attorney and one attorney from the Office of the Attorney General. The Governor ~~may~~ shall appoint one representative from each of the Departments of Health, Revenue, and Public Safety. The Governor ~~may~~ shall also appoint one representative of law enforcement, one health care practitioner and one nurse with knowledge of medical marijuana issues, ~~one nurse,~~ two representatives from the medical marijuana cultivators or manufacturers

or retail industry, one patient or advocate of a patient with a debilitating condition who intends to use medical marijuana, or one representative of local governments. Any consultant hired by the state ~~may~~ shall serve in an advisory, non-voting capacity. If there is a vacancy on the committee, the vacancy ~~may~~ shall be filled in the same manner as the original appointment under this Act. The committee shall be under the supervision of the Executive Board of the Legislative Research Council and staffed and funded as an interim legislative committee.

Section 8. That a NEW SECTION be added:

34-20G-97. Interim marijuana committee duties.

The interim marijuana committee created pursuant to § 34-20G-96 may:

(1) Research best practices from other medical marijuana programs;

(2) Determine details of a licensing system that specifies privileges and authorized activities, and the implementation thereof;

(3) Evaluate policies that reduce unlawful access, availability, and use by youths and prevent diversion to illicit markets;

(4) Explore policy measures that balance adequate regulation that ensure safe products and support the development of a fair market;

(5) Study legal consequences and litigation of policy decisions challenged in other 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; and

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(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. This Act is effective June 30, 2021.

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