

2021 South Dakota Legislature

House Bill 1100**AMENDMENT 1100R FOR THE SENATE BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 An Act to ~~modify~~ implement the medical marijuana program, ~~to create an interim~~
2 ~~committee to recommend implementation of the medical marijuana program,~~
3 ~~and to remove and clarify penalties for marijuana use under certain~~
4 ~~circumstances.~~

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

6 **Section 1.** That § 34-20G-1 be AMENDED.

7 **34-20G-1. [Effective July 1, 2021] Definitions.**

8 Terms used in this chapter mean:

9 (1) "Allowable amount of cannabis," means:

10 (a) ~~Three ounces of cannabis or less;~~

11 (b) ~~The quantity of cannabis products as established by rules promulgated by~~
12 ~~the department under § 34-20G-72;~~

13 (c) ~~If the cardholder has a registry identification card allowing cultivation, three~~
14 ~~cannabis plants minimum or as prescribed by physician; and~~

15 (d) ~~If the cardholder has a registry identification card allowing cultivation, the~~
16 ~~amount of cannabis and cannabis products that were produced from the~~
17 ~~cardholder's allowable plants, if the cannabis and cannabis products are~~
18 ~~possessed at the same property where the plants were cultivated~~ one ounce
19 of marijuana or less, eight grams of marijuana concentrate or less, both
20 one ounce of marijuana or less and eight grams of marijuana concentrate
21 or less, or additional amounts as determined by rules promulgated by the
22 department;

23 (2) "Bona fide practitioner-patient relationship,"

- (a) A practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner has completed an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;
- (b) The practitioner has consulted with the patient with respect to the patient's debilitating medical condition; and
- (c) The practitioner is available to or offers to provide follow-up care and treatment to the patient, including patient examinations;
- (3) "Cannabis products," ~~any concentrated cannabis, marijuana concentrate, cannabis~~ extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures;
- (4) "Cannabis product manufacturing facility," an entity ~~registered with~~ licensed by the department pursuant to this chapter that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis or marijuana products to a medical cannabis dispensary;
- (5) "Cannabis testing facility" or "testing facility," an independent entity ~~registered~~ licensed with the department pursuant to this chapter to analyze the safety and potency of cannabis and marijuana products;
- (6) "Cardholder," a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;
- (7) "Cultivation facility," an entity ~~registered with~~ licensed by the department pursuant to this chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and marijuana products and related supplies to a medical cannabis establishment;
- (8) "Debilitating medical condition,":
- (a) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis; ~~or~~
- (b) ~~Any other medical condition or its treatment added by the department, as provided for in § 34-20G-26 Cancer;~~
- (c) Acquired immune deficiency syndrome;
- (d) Amyotrophic lateral sclerosis;
- (e) Posttraumatic stress disorder;

- (f) Agitation of Alzheimer's disease or related dementia;
- (g) Crohn's disease;
- (h) Spinal stenosis including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;
- (i) Glaucoma;
- (j) Epilepsy;
- (k) Tourette syndrome;
- (l) Ehlers-Danlos syndrome;
- (m) Interstitial cystitis;
- (n) Migraine;
- (o) Rheumatoid arthritis; or
- (p) A terminal illness;
- (9) "Department," means the Department of Health;
- (10) "Designated caregiver," a person who:
- (a) Is at least twenty-one years of age;
- (b) Has agreed to assist with a qualifying patient's medical use of cannabis and marijuana products;
- (c) Has not been convicted of a disqualifying ~~felony~~ offense; and
- (d) Assists no more than ~~five~~ two qualifying patients with the medical use of cannabis and marijuana products, unless the designated caregiver's qualifying patients each reside in or are admitted to a health care facility or residential care facility where the designated caregiver is employed;
- (11) "Disqualifying ~~felony~~ offense," a ~~violent crime~~
- (a) Crime of violence that was classified as a felony in the jurisdiction where the person was convicted;
- (b) Conviction of any violation under this chapter; or
- (c) Conviction or plea of nolo contendere an offense or distribution or intent to distribute marijuana or any controlled substance or drug under the laws of any jurisdiction;
- (12) "Edible cannabis products," any product that:
- (a) Contains or is infused with cannabis or an extract thereof;
- (b) Is intended for human consumption by oral ingestion; and
- (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, or other similar products;

- (13) ~~"Enclosed, locked facility," any closet, room, greenhouse, building, or other enclosed area that is equipped with locks or other security devices that permit access only by a cardholder or a person allowed to cultivate the plants. Two or more cardholders who reside in the same dwelling may share one enclosed, locked facility for cultivation.~~ "Marijuana concentrate," the resin extracted from any part of a marijuana plant and every compound, manufacture, salt, derivative, mixture, or preparation from such resin;
- (14) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- (15) "Medical cannabis dispensary" or "dispensary," ~~an entity registered with~~ licensed by the department pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, drug paraphernalia, or related supplies and educational materials to cardholders;
- (16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;
- (17) "Medical cannabis establishment agent," an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;
- (18) "Medical use," includes the acquisition, administration, ~~cultivation, manufacture,~~ delivery, ~~harvest,~~ possession, preparation, transfer, transportation, or use of cannabis or marijuana products or drug paraphernalia relating to the administration of cannabis or marijuana products to treat or alleviate a registered qualifying patient's debilitating medical condition or symptom associated with the patient's debilitating medical condition. The term does not include:
- (a) ~~The cultivation of cannabis by a nonresident cardholder;~~
- (b) ~~The cultivation of cannabis by a cardholder who is not designated as being allowed to cultivate on the card holder's registry identification card; or~~
- (c) ~~The~~ the extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility;
- ~~(19) "Nonresident cardholder," a person who:~~
- (a) ~~Has been diagnosed with a debilitating medical condition, or is the parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition;~~
- (b) ~~Is not a resident of this state or who has been a resident of this state for fewer than forty-five days;~~

~~(c) — Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and~~

~~(d) — Has submitted any documentation required by the department, and has received confirmation of registration;~~

~~(20)(19) "Practitioner," a physician who is licensed in this state with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence;~~

~~(21)(20) "Qualifying patient," a person who has been diagnosed by a practitioner as having a debilitating medical condition;~~

~~(22)(21) "Registry identification card," a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to §§ 34-20G-29 to 34-20G-42, inclusive; and~~

~~(23)(22) "Written certification," a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition. This document shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient's debilitating medical condition.~~

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

34-20G-2. [Effective July 1, 2021] Cardholders not subject to arrest, prosecution, penalty, or discipline for certain conduct.

A cardholder is not subject to arrest, prosecution, or penalty of any kind, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

(l) The medical use of cannabis or marijuana products in accordance with this chapter, if the cardholder does not possess more than the allowable amount of cannabis; ~~and if any cannabis plant is either cultivated in an enclosed, locked facility or is being transported~~ or marijuana products;

- (2) Reimbursement by a registered qualifying patient to the patient's registered designated caregiver for direct costs incurred by the registered designated caregiver for assisting with the registered qualifying patient's medical use of cannabis or marijuana products;
- (3) ~~Transferring the cannabis to a testing facility;~~
- ~~(4) Compensating a dispensary or a testing facility for goods or services provided; or~~
- ~~(5) Selling, transferring, or delivering cannabis seeds produced by the cardholder to a cultivation facility or dispensary; or~~
- ~~(6)~~(4) Offering or providing cannabis or marijuana products to a cardholder for a registered qualifying patient's medical use, ~~to a nonresident cardholder,~~ or to a dispensary if nothing of value is transferred in return and the person giving the cannabis or marijuana products does not knowingly cause the recipient to possess more than the allowable amount of cannabis or marijuana products.

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

34-20G-3. [Effective July 1, 2021] Nonresident cardholders not subject to arrest, prosecution, penalty, or discipline for certain conduct.

No nonresident cardholder is subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, for transporting, ~~purchasing,~~ possessing, or using medical cannabis or marijuana products in accordance with this chapter if the nonresident cardholder does not possess more than ~~three ounces~~ of cannabis and the quantity of cannabis products established by rules promulgated by the department under § 34-20G-72 the allowable amount of marijuana or marijuana products.

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

34-20G-4. [Effective July 1, 2021] Presumption that qualifying patient or designated caregiver is engaged in the medical use of cannabis--Presumption rebuttable.

There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of cannabis or marijuana products in accordance with this chapter if the cardholder is in possession of a registry identification card and an amount of cannabis or marijuana products that does not exceed the allowable amount of cannabis or marijuana products. The presumption may be rebutted by evidence that conduct related

to cannabis or marijuana products was not for the purpose of treating or alleviating a qualifying patient's debilitating medical condition or symptom associated with the qualifying patient's debilitating medical condition under this chapter.

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

34-20G-5. [Effective July 1, 2021] Practitioners not subject to arrest, prosecution, penalty, or discipline for certain conduct.

No practitioner is subject to arrest, prosecution, or penalty of any kind, or denied any right or privilege, including civil penalty or disciplinary action by the South Dakota Board of Medical and Osteopathic Examiners or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis or marijuana products to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition. Nothing in this chapter prevents a practitioner from being sanctioned for:

- (1) Issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship; or
- (2) Failing to properly evaluate a patient's medical condition.

Section 6. That § 34-20G-7 be AMENDED.

34-20G-7. [Effective July 1, 2021] Persons not subject to arrest, prosecution, penalty, or discipline for certain conduct.

No person is subject to arrest, prosecution, or penalty of any kind, or may be denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

- (1) Providing or selling ~~cannabis-drug~~ paraphernalia to a cardholder, ~~nonresident cardholder~~, or to a medical cannabis establishment;
- (2) Being in the presence or vicinity of the medical use of cannabis or marijuana products that is exempt from criminal or civil penalty by this chapter;
- (3) Allowing the person's property to be used for an activity that is exempt from criminal or civil penalty by this chapter; or
- (4) Assisting a registered qualifying patient with the act of using or administering cannabis or marijuana products.

Section 7. That § 34-20G-8 be AMENDED.

34-20G-8. [Effective July 1, 2021] Dispensaries and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.

No dispensary or a dispensary agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty in any manner; or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:

- (1) Possess, transport, or store cannabis or cannabis products;
- (2) Deliver, transfer, or transport cannabis or marijuana products to a testing facility and compensate a testing facility for services provided;
- (3) Accept cannabis or marijuana products offered by a cardholder ~~or nonresident cardholder~~ if nothing of value is exchanged in return;
- (4) Purchase or otherwise acquire cannabis from a cultivation facility or dispensary, and cannabis or marijuana products from a cannabis product manufacturing facility or dispensary; and
- (5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, ~~cannabis~~ drug paraphernalia, or related supplies or educational materials to a cardholder, ~~nonresident cardholder~~, or dispensary.

Section 8. That § 34-20G-9 be AMENDED.

34-20G-9. [Effective July 1, 2021] Cultivation facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.

No cultivation facility or a cultivation facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:

- (1) Possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, or store cannabis or marijuana products;
- (2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;

- (3) Accept cannabis or marijuana products offered by a cardholder ~~or nonresident cardholder~~ if nothing of value is exchanged in return;
- (4) Purchase or otherwise acquire cannabis or marijuana products from a cultivation facility;
- (5) Purchase cannabis seeds from ~~a cardholder, nonresident cardholder, or~~ the equivalent of a medical cannabis establishment that is licensed or registered in another jurisdiction; or
- (6) Deliver, sell, supply, transfer, or transport cannabis, ~~cannabis~~ drug paraphernalia, or related supplies or educational materials to a cultivation facility and dispensary.

Section 9. That § 34-20G-10 be AMENDED.

34-20G-10. [Effective July 1, 2021] Cannabis product manufacturing facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.

No cannabis product manufacturing facility or a cannabis product manufacturing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:

- (1) Purchase or otherwise acquire cannabis from a cultivation facility, and cannabis or marijuana products ~~or cannabis~~ from a cannabis product manufacturing facility;
- (2) Possess, produce, process, manufacture, compound, convert, prepare, pack, repack, and store cannabis or cannabis products;
- (3) Deliver, transfer, or transport cannabis, cannabis products, ~~cannabis~~ drug paraphernalia, or related supplies or educational materials to a dispensary or cannabis product manufacturing facility;
- (4) Deliver, transfer, or transport cannabis or marijuana products to testing facility and compensate testing facility for services provided; or
- (5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, ~~cannabis~~ drug paraphernalia, or related supplies or educational materials to a cannabis product manufacturing facility or dispensary.

Section 10. That § 34-20G-11 be AMENDED.

34-20G-11. [Effective July 1, 2021] Testing facilities and agents not subject to prosecution, search, seizure, penalty, or discipline for certain conduct.

No testing facility or testing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty in any manner, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:

- (1) Acquire, possess, transport, and store cannabis or cannabis products obtained from a ~~cardholder, nonresident cardholder or~~ medical cannabis establishment;
- (2) Return the cannabis or cannabis products to a ~~cardholder, nonresident cardholder, or~~ medical cannabis establishment from ~~whom~~ which it was obtained;
- (3) Test cannabis or marijuana products, including for potency, pesticides, mold, or contaminants, or as otherwise determined by rules promulgated by the department; or
- (4) Receive compensation for services under this section.

Section 11. That § 34-20G-13 be AMENDED.

34-20G-13. [Effective July 1, 2021] Seizure or forfeiture of cannabis or related property.

Any cannabis, cannabis product, ~~cannabis drug~~ paraphernalia, or other interest in or right to property that is possessed, owned, or used in connection with the medical use of cannabis or marijuana product as allowed under this chapter, or acts incidental to such use, may not be seized or forfeited. This chapter does not prevent the seizure or forfeiture of cannabis or marijuana products exceeding the amount allowed under this chapter, or prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis or marijuana product that is possessed, manufactured, transferred, or used in accordance this chapter.

Section 12. That § 34-20G-16 be AMENDED.

34-20G-16. [Effective July 1, 2021] Enforcement of federal law by state law enforcement officers.

No law enforcement officer employed by an agency that receives state or local government funds may expend any state or local resources, including the officer's time, to effect any arrest or seizure of cannabis, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of the federal Controlled Substances

Act, 21 U.S.C. § 801 et seq., if the officer has reason to believe that the activity is in compliance with this chapter. ~~No officer may expend any state or local resources, including the officer's time, to provide any information or logistical support related to any activity to any federal law enforcement authority or prosecuting entity.~~

Section 13. That § 34-20G-18 be AMENDED.

34-20G-18. [Effective July 1, 2021] Unauthorized conduct.

This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalty for engaging in, the following conduct:

- (1) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;
- (2) Possessing cannabis or marijuana products or otherwise engaging in the medical use of cannabis or marijuana products in any correctional facility;
- (3) Smoking cannabis or marijuana products:
 - (a) On any form of public transportation; ~~or~~
 - (b) In any public place or any place that is open to the public; or
 - (c) In any place where smoking tobacco is prohibited;
- (4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis, ~~except that a registered qualifying patient or nonresident cardholder is not considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.~~

Section 14. That a NEW SECTION be added:

34-20G-18.1. Unauthorized conduct by patient under the age of twenty-one.

This chapter does not authorize a patient under the age of twenty-one to smoke marijuana or marijuana product. For the purposes of this section, smoke, means the act of inhaling lighted or heated marijuana or marijuana product intended for inhalation, in any manner or in any form, including the use of an electronic smoking device which creates an aerosol or vapor.

Section 15. That § 34-20G-26 be REPEALED.

34-20G-26. [Effective July 1, 2021] Petition to add serious medical condition or treatment to list of debilitating medical conditions--Department consideration--Judicial review.

Section 16. That § 34-20G-29 be AMENDED.

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

No later than November 18, 2021, the department shall begin to 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; and
- (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 17. That § 34-20G-42 be AMENDED.

34-20G-42. [Effective July 1, 2021] Contents of registry identification cards.

A registry identification card shall contain all of the following:

- (1) The name of the cardholder;
- (2) A designation of whether the cardholder is a qualifying patient or a designated caregiver;
- (3) The date of issuance and expiration date of the registry identification card;

- (4) A random ten-digit alphanumeric identification number, containing at least four numbers and at least four letters, that is unique to the cardholder;
- (5) If the cardholder is a designated caregiver, the random identification number of the qualifying patient the designated caregiver will assist;
- (6) ~~A clear indication of whether the cardholder has been designated to cultivate cannabis plants for the qualifying patient's medical use;~~
- ~~(7)~~—A photograph of the cardholder; and
- ~~(8)~~(7) The phone number or website address where the card can be verified.

Section 18. That § 34-20G-45 be AMENDED.

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

Within one hundred twenty days of July 1, 2021, 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)~~(5) The registry identification of the qualifying patient's dispensary or dispensaries, if any.

Section 19. That § 34-20G-46 be AMENDED.

34-20G-46. [Effective July 1, 2021] Required notifications to department.

The following notifications are required:

- (1) A registered qualifying patient shall notify the department of any change in the applicant's name or address, or if the patient ceases to have a debilitating medical condition, within ten days of the change;
- (2) A registered designated caregiver shall notify the department of any change in the caregiver's name or address, or if the caregiver becomes aware the qualifying patient passed away, within ten days of the change;

- (3) Before a registered qualifying patient changes a designated caregiver, the patient shall notify the department;
- (4) ~~If a registered qualifying patient changes a preference as to who may cultivate cannabis for the patient, the patient shall notify the department;~~
- (5) ~~—~~If a cardholder loses a registry identification card, the cardholder shall notify the department within ten days of becoming aware the card has been lost; and
- (6)(5) Before a registered qualifying patient changes a designated dispensary, the patient shall notify the department.

Section 20. That § 34-20G-49 be AMENDED.

34-20G-49. [Effective July 1, 2021] Card void upon notice to department that patient no longer qualifies--Disposal of cannabis.

If the registered qualifying patient's certifying practitioner notifies the department in writing that the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of cannabis, the card is void. However, the registered qualifying patient shall have fifteen days to dispose of ~~or give away~~ any cannabis or marijuana products in the registered qualifying patient's possession.

Section 21. That § 34-20G-51 be AMENDED.

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

Except as provided in § 34-20G-18 and this section, a person may assert the medical purpose for using cannabis or marijuana products as a defense to ~~any a criminal prosecution involving for the possession or ingestion of cannabis, or marijuana products, or the possession or use of drug paraphernalia relating to the administration of marijuana or marijuana products,~~ and such defense is presumed valid where the evidence shows that:

- (1) ~~A Prior to the arrest or citation giving rise to the criminal prosecution, a practitioner has stated, in writing, that, in the practitioner's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide practitioner-patient relationship, the patient has a debilitating medical condition and the potential benefits of using cannabis for medical purposes would likely outweigh the health risks for the person;~~

- (2) The person was in possession of no more than ~~three ounces of cannabis, the amount of cannabis products allowed by department rules, six cannabis plants minimum or as prescribed by a physician, and the cannabis produced by those plants~~ the allowable amount of marijuana or marijuana products; and
- (3) The person was engaged in the ~~acquisition, possession, use, manufacture, cultivation, or transportation~~ or ingestion of cannabis, or marijuana products, or the possession or use of drug paraphernalia, or both, relating to the administration of cannabis to treat or alleviate the person's debilitating medical condition or symptoms associated with the person's debilitating medical condition; ~~and~~
- ~~(4) Any cultivation of cannabis and storage of more than three ounces of cannabis occurred in a secure location that only the person asserting the defense could access.~~

Section 22. That § 34-20G-57 be AMENDED.

34-20G-57. [Effective July 1, 2021] Renewal of medical cannabis establishment registration.

The department shall issue a renewal ~~registration certificate~~ license within ten days of receipt of the prescribed renewal application and renewal fee from a medical cannabis establishment if the establishment's ~~registration certificate~~ license is not under suspension and has not been revoked.

Section 23. That § 34-20G-62 be AMENDED.

34-20G-62. [Effective July 1, 2021] Employment restrictions on medical cannabis establishments.

A medical cannabis establishment may not employ any person who:

- (1) Was convicted of a disqualifying ~~felony~~ offense; or
- (2) Is under twenty-one years of age.

Section 24. That § 34-20G-65 be AMENDED.

34-20G-65. [Effective July 1, 2021] Cultivation, harvesting, manufacturing, and packaging of cannabis.

All cultivation, harvesting, manufacturing and packaging of cannabis or marijuana products shall take place in a secure facility at a physical address provided to the department during the ~~registration~~ licensing process. The secure facility may only be

1 accessed by agents of the medical cannabis establishment, emergency personnel, and
2 adults who are twenty-one years of age and older and who are accompanied by a medical
3 cannabis establishment agent.

4 **Section 25.** That § 34-20G-70 be AMENDED.

5 **34-20G-70. [Effective July 1, 2021] Conditions for dispensing cannabis.**

6 Before cannabis or marijuana products may be dispensed to a cardholder~~or~~
7 ~~nonresident cardholder~~, a dispensary agent shall:

- 8 (1) ~~Shall make a diligent effort to verify~~ Verify that the registry identification card ~~or~~
9 ~~registration~~ presented to the dispensary is valid;
- 10 (2) ~~Shall make a diligent effort to verify~~ Verify that the person presenting the
11 documentation is the person identified on the document presented to the
12 dispensary agent; and
- 13 (3) ~~May not dispense an amount of cannabis to a person that would cause the person~~
14 ~~to possess more than the allowable amount of cannabis; and~~
- 15 (4) ~~Shall make a diligent effort to verify~~ Verify that the dispensary is one of the current
16 ~~dispensary~~ dispensaries that was designated by the cardholder~~or nonresident~~
17 ~~cardholder~~.

18 A dispensary agent may not dispense an amount of marijuana or marijuana
19 products to a person that would cause the person to possess more than the allowable
20 amount of marijuana or marijuana products.

21 **Section 26.** That § 34-20G-71 be AMENDED.

22 **34-20G-71. [Effective July 1, 2021] Limitations on amount of cannabis**
23 **dispensed.**

24 A dispensary may not dispense more than ~~three ounces of cannabis~~ the allowable
25 amount of marijuana or marijuana products to a ~~nonresident cardholder or a registered~~
26 ~~qualifying patient, directly or via a designated caregiver, in any fourteen-day period. A~~
27 ~~dispensary shall ensure compliance with the limitation under this section by maintaining~~
28 ~~internal, confidential records that include records specifying how much cannabis~~ or
29 marijuana product is dispensed to a ~~nonresident cardholder or registered qualifying patient~~
30 ~~and whether it is dispensed directly to a registered qualifying patient or to the designated~~
31 ~~caregiver.~~

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

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

Not later than October 29, 2021, 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 license, 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)(2) ~~Governing the manner in which the department shall consider applications for and renewals of registry identification cards, that may include creating a standardized~~ and shall require a written certification form as prescribed by the department;
- (5)(3) ~~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, including inventory management and tracking of marijuana and marijuana product throughout the supply chain;
 - (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 or marijuana products by a medical cannabis establishment;
- (g) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent;
- (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 or~~ marijuana products;
- (j) Requirements and procedures for the safe and accurate packaging and labeling of medical cannabis or marijuana products; and
- (k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel;
- ~~(6)~~(4) Establishing minimum eligibility criteria for licensure of medical marijuana establishments, including relationships between licensees, and establishing procedures for suspending or terminating the registration certificates or registry identification cards of cardholders and licenses of medical cannabis marijuana establishments that commit multiple or serious violations of this chapter;
- ~~(7)~~(5) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis and marijuana product labels ~~to that~~ 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;
- (e) Serving size; and
- (f) Product safety warnings;

~~(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~~

~~(6) Providing for a process by which the department may consider evidence and vary the allowable amount of marijuana or marijuana products for a specific debilitating medical condition;~~

~~(10)(7) Establishing reasonable application, license, and renewal fees for registry identification cards and registration certificates licenses, according to the following:~~

~~(a) Application, license, and renewal 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 and shall be deposited in the state general fund; and~~

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

~~(d) The Application, registration, and renewal 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.~~

(8) Establishing rules for public health, safety, marketing, and educational materials.

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

Section 28. That § 34-20G-74 be AMENDED.

34-20G-74. [Effective July 1, 2021] Intentional cannabis sale or transfer to unauthorized person by medical cannabis establishment or agent as felony-- Disqualification.

In addition to any other penalty under law, a medical cannabis establishment or an agent of a medical cannabis establishment who intentionally sells or otherwise transfers cannabis or marijuana products in exchange for anything of value to a person other than a cardholder, ~~a nonresident cardholder,~~ or to a medical cannabis establishment or its agent is guilty of a Class 6 felony. A person convicted under this section may not continue to be affiliated with the medical cannabis establishment and is disqualified from any future affiliation with any medical cannabis establishment under this chapter.

Section 29. That § 34-20G-75 be AMENDED.

34-20G-75. [Effective July 1, 2021] Intentional cannabis sale or transfer by cardholder to unauthorized person as felony.

In addition to any other penalty under law, a cardholder ~~or nonresident cardholder~~ who intentionally sells or otherwise transfers cannabis or marijuana products in exchange for anything of value to a person other than a cardholder, ~~a nonresident cardholder,~~ or to a medical cannabis establishment or its agent is guilty of a Class 6 felony.

Section 30. That § 34-20G-79 be REPEALED.

34-20G-79. [Effective July 1, 2021] Breach of confidentiality of information as misdemeanor.

Section 31. That § 34-20G-80 be AMENDED.

34-20G-80. [Effective July 1, 2021] Suspension or revocation of medical cannabis establishment registration certificate.

The department may on its own motion or on complaint, after investigation and opportunity for a public hearing at which the medical cannabis establishment has been afforded an opportunity to be heard, suspend or revoke a registration certificate ~~license~~ for ~~multiple~~ two or more negligent or knowing violations or for a serious and knowing violation of this chapter by the registrant licensee or any of its agents ~~of this chapter~~.

Section 32. That § 34-20G-81 be AMENDED.

34-20G-81. [Effective July 1, 2021] Notice of suspension, revocation, or sanction--Notice of hearing--Duration of suspension.

The department shall provide notice of suspension, revocation, fine, or other sanction, as well as the required notice of the hearing, by mailing the same in writing to the medical cannabis establishment at the address on the ~~registration certificate~~ license. A suspension may not be for a longer period than six months.

Section 33. That § 34-20G-82 be AMENDED.

34-20G-82. [Effective July 1, 2021] Permitted and prohibited conduct during suspension.

A medical cannabis establishment may continue to possess cannabis or marijuana products during a suspension, but it may not dispense, transfer, or sell cannabis, marijuana products, drug paraphernalia, or related supplies. A cultivation facility may continue to cultivate and possess cannabis ~~plants~~ during a suspension, but it may not dispense, transfer, or sell cannabis or marijuana products.

Section 34. That § 34-20G-83 be AMENDED.

34-20G-83. [Effective July 1, 2021] Revocation of registry identification card for cannabis sale to unauthorized person--Disqualification.

~~The—~~ In addition to any applicable criminal penalties, the department shall immediately revoke the registry identification card of any cardholder who sells cannabis or marijuana products to a person who is not allowed to possess cannabis or marijuana products for medical purposes under this chapter, and the cardholder is disqualified from being a cardholder under this chapter.

Section 35. That § 34-20G-86 be AMENDED.

34-20G-86. [Effective July 1, 2021] Confidential data.

Data in a registration application and supporting data submitted by a qualifying patient, designated caregiver, ~~nonresident cardholder~~ or medical cannabis establishment, including data on designated caregiver or practitioner, is private data that is confidential.

Section 36. That § 34-20G-88 be AMENDED.

34-20G-88. [Effective July 1, 2021] Permitted disclosure of data maintained by department.

Data kept or maintained by the department under this chapter may be disclosed solely for:

- (1) The verification of a ~~registration certificate~~ license or registry identification card pursuant to this chapter;
- (2) Submission of the annual report required by this chapter;
- (3) Notification of state or local law enforcement of an apparent criminal violation of this chapter;
- (4) Notification of state and local law enforcement about falsified or fraudulent information submitted for the purpose of obtaining or renewing a registry identification card; or
- (5) Notification of the South Dakota Board of Medical and Osteopathic Examiners if there is reason to believe that a practitioner provided a written certification and the department has reason to believe the practitioner otherwise violated the standard of care for evaluating a medical condition.

Section 37. That § 34-20G-92 be REPEALED.

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

Section 38. That § 34-20G-93 be REPEALED.

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

Section 39. That § 34-20G-94 be AMENDED.

**34-20G-94. [Effective July 1, 2021] Annual report to the Legislature--
Information excluded.**

The department shall report annually to the Legislature on the number of applications for registry identification cards received, the number of qualifying patients and designated caregivers approved, the number of registry identification cards revoked, the number of each type of medical cannabis establishment ~~registered~~ licensed, and the expenses incurred and revenues generated from the medical cannabis program. The department may not include identifying information on a qualifying patient, designated caregiver, or practitioner in the report.

Section 40. That § 34-20G-95 be AMENDED.

34-20G-95. [Effective July 1, 2021] 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~~ medical marijuana 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.~~ The departments shall implement substantively identical provisions to Colorado Revised Statute 22-1-119.3 as of January 1, 2019, no later than the first day of the 2022-2023 school year.

Section 41. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council shall change "cannabis" to "marijuana" and correlate and integrate this change within all sections of chapter 34-20G.