

# MINUTES

## Marijuana Interim Study Committee



Senator Bryan Breitling, Chair  
Representative Hugh Bartels, Vice Chair

First Meeting, 2021 Interim  
May 26-27, 2021

Room 414 – State Capitol  
Pierre, South Dakota

The Marijuana Interim Study Committee was called to order by Senator Bryan Breitling at 9:30 a.m. in Room 414 of the State Capitol, Pierre.

A quorum was determined with the following members answering the roll call: Senators Helene Duhamel (remote), Troy Heinert, Michael Rohl, Arthur Rusch (remote), VJ Smith, Jim Stalzer, and David Wheeler; Representatives Shawn Bordeaux, Kirk Chaffee, Mike Derby, Fred Deutsch, Linda Duba (excused on Wednesday, remote on Thursday), Caleb Finck (remote), Mary Fitzgerald, Tim Goodwin, Rhonda Milstead (remote on Wednesday, in person on Thursday), Tina Mulally, Ernie Otten, Carl Perry, Taylor Rehfeldt, Marli Wiese, and Mark Willadsen; Representative Hugh Bartels, Vice Chair; and Senator Bryan Breitling, Chair.

Staff members present included Amanda Marsh, Principal Research Analyst; Brigid Hoffman, Legislative Attorney; and Cindy Tryon, Administrative Specialist.

### Remarks from the Chair

Senator Breitling welcomed the members and audience to the first meeting of the Marijuana Interim Study Committee and, after the committee members introduced themselves, read the study scope assigned to the committee ([Document #1](#)). Senator Breitling said the committee will analyze Initiated Measure (IM) 26, review current statutes, become familiar with the aspects of legalizing marijuana, and develop legislation directed at fixing conflicts between the law and the will of the voters. Marijuana is a new industry in South Dakota and those involved in the industry need to be aware there will be changes made to related legislation over the next several years.

### South Dakota State Medical Association

**Dr. Benjamin Aaker, President, South Dakota State Medical Association (SDSMA)**, said the SDSMA opposed IM26 and clarified there will be a bias against the legalization of marijuana in his testimony today. Dr. Aaker said the reason the SDSMA opposed IM26 is for health reasons. Marijuana contributes to COPD, higher incidents of psychosis, and has a negative effect on the developing brain. There are some chemicals in marijuana that can be beneficial, but many more chemicals are harmful.

Dr. Aaker explained regarding medical marijuana the physicians will not be prescribing marijuana but rather certifying the patient has a qualifying condition allowing for the legal use of marijuana. The patient will then receive a card from the Department of Health to be used when purchasing marijuana for medical use. According to Dr. Aaker, the patient will not have to see the physician again until the certification needs to be renewed a year later.

Dr. Aaker covered some of the dangers of using marijuana such as no regulation of dosage leading to overdoses, the chemicals causing or exacerbating lung problems, and low birth weight for babies whose mothers use marijuana. Dr. Aaker said he works in the medical emergency department and fears there will be an increase in injuries because of marijuana use including an increase in the number of car accidents. Other states have reported increases in drug-related violence and an increase in abuse.

Dr. Aaker listed some of the health benefits from the use of marijuana such as helping with nausea and vomiting for people going through chemotherapy, reducing some of the symptoms from multiple sclerosis, reducing chronic pain, assisting people who have sleep disturbances, and reducing the symptoms from fibromyalgia.

When establishing criteria regarding medical marijuana, Dr. Aaker said the SDSMA recommends keeping the list of qualifying diagnoses very small. The intent should be to help people who are hurting. There should be diligence in requiring follow-up appointments with the certifying doctor. The association also recommends avoiding the “doc in a box” or the ability for a patient to receive certification of a diagnosis online. There must be strict regulations on where medical marijuana can be sold and who can sell it. The SDSMA hopes medical marijuana will be helpful to patients and it will do more good than harm.

Representative Willadsen said there had been a claim that medical marijuana would benefit patients suffering from PTSD, yet PTSD was not included in Dr. Aaker’s list of health benefits. Dr. Aaker said PTSD is a broad spectrum of symptoms from a stressful event. There has been benefit to some of the symptoms of PTSD, but because PTSD is so broad it is not included in the list.

Representative Finck asked for a list of the diagnoses the SDSMA believe should be included on the list of medical marijuana qualifying diagnoses. Dr. Aaker said SDSMA will provide a list. The list may include symptoms of PTSD but PTSD itself will not be included.

### **Drafter Perspective on Initiated Measure 26**

**Ms. Melissa Mentele, Executive Director, New Approach South Dakota**, said a lot of research and hard work went into the drafting of IM 26, and with the passage of IM 26 the debate regarding the legalization of medical marijuana should be over. The measure does require follow-up visits with the certifying doctor and there does have to be a bona fide doctor-patient relationship which means the “doc in a box” certification will not be an issue. Ms. Mentele said she spent 22 years working in healthcare and IM 26 is intended to treat the patient, not the diagnosis. When writing the measure she wanted to make sure patients have access to medicine that can help.

In response to a question from Representative Fitzgerald, Ms. Mentele said she does not plan to own a business that sells marijuana but has been involved in the industry for many years.

Senator Wheeler asked why IM26 includes a minimum number of plants rather than a maximum number of plants when the patient chooses to cultivate their own marijuana. Ms. Mentele said patients cultivating marijuana for medicinal purposes need to take it seriously and several plants are needed to produce the required amount of oil needed for treatment. One or two plants will not provide enough flower for the patient to obtain the needed dosage. It takes a pound of marijuana to produce enough oil to fill a syringe. The average patient has 6-12 plants.

Senator Breitling questioned Ms. Mentele’s statement that the three largest health systems in the state have opted out of the medical marijuana program. Ms. Mentele said New Approach South Dakota has been inundated with questions from concerned patients claiming their healthcare providers told them they have opted out. Senator Breitling said more information regarding the healthcare systems will be provided but there is no formal information stating the healthcare systems have opted out of the medical marijuana program.

Senator Rohl asked for more information on the growing of a marijuana plant. Ms. Mentele said an average marijuana plant provides about three ounces of usable flower. Three plants can provide up to nine ounces, but the grower has to be knowledgeable about the cultivation process. Depending on the strain of marijuana, it takes about 90 days from seed to flower and then 2-4 weeks before the flower is usable. This allows about three harvests per year.

Representative Deutsch asked if there are states that do not allow home cultivation and where do those patients get their product. Ms. Mentele said each state has different rules and regulations and some do not allow home cultivation. In those states the patient would get their product at a dispensary or from a caregiver. Those who choose home cultivation do so because they want to grow their own medicine to heal their body.

Representative Milstead asked about the section in IM26 that does not allow cultivation facilities and dispensaries to be searched and product seized outside regular business hours. Ms. Mentele explained there were instances in some states where companies were destroyed because law enforcement believed federal law trumped state law. The section was not intended to restrict law enforcement but rather provide a buffer zone in areas where legalization has been so contentious.

Representative Willadsen asked if the physician can rescind the certification for a patient to receive the medical marijuana card. Ms. Mentele said if a physician feels a patient no longer needs medical marijuana the physician can contact the Department of Health and the patient has 15 days to destroy their plants.

### **Review of Relevant Criminal State Law**

**Ms. Brigid Hoffman, Legislative Attorney**, gave a PowerPoint presentation regarding current statutes relating to marijuana use ([Document #2](#)). Ms. Hoffman also gave an update on the Supreme Court case regarding the legality of Constitutional Amendment A. Amendment A was a successful ballot initiative in 2020 and legalized the use of recreational marijuana. The primary focus of the Supreme Court oral argument to not accept the vote on Amendment A was the single subject rule.

### **Psychiatric Clinical Pharmacy**

**Mr. Jeremy Daniel, PharmD, BCPS, BCPP**, gave a PowerPoint presentation, "Clinical Evidence of Marijuana Use" ([Document #3](#)). Mr. Daniel talked about marijuana composition, types of marijuana plants, marijuana effects, how marijuana is consumed, FDA approved marijuana products, and symptoms that are considered treatable with marijuana.

Representative Rehfeldt asked about the method of administration for the FDA approved products. Mr. Daniel said that Epidiolex is an oral liquid and Dronabinol and Nabilone are either liquid or dry capsules.

### **Department of Health**

**Ms. Kim Malsam-Rysdon, Secretary, and Justin Williams, Legal Counsel, Department of Health (DOH)**, gave a PowerPoint presentation regarding the role of DOH as the lead state agency for the implementation of the medical marijuana program ([Document #4](#)).

The process for obtaining medical marijuana starts with the patient visiting their physician. If the physician determines the patient will receive therapeutic or palliative benefit from medical marijuana then a medical certification is issued to the patient. The patient uses the medical certification to obtain a card from the DOH that can be taken to a dispensary to verify their legal right to purchase medical marijuana. Medical marijuana will not be sold through pharmacies and the medical certification is not a prescription. Medical marijuana is not regulated the same way other drugs and medications are regulated.

Secretary Malsam-Rysdon said the DOH and the Department of Revenue (DOR) have hired consultants to help with how the medical marijuana concepts have worked in other states and how those concepts will work regarding IM26. The consultants will help the agencies get a lot of work done in a short amount of time.

The DOH and DOR are working on getting a registration system in place for issuing medical marijuana cards that will also provide a verification system for law enforcement if needed. A request for proposal (RFP) has been issued for the verification system. Between mid-June and July the agencies will negotiate a contract for the system, the system will be in place and ready for testing by October 29, and ready for the program to be up and running in November.

The medical marijuana program is complex and DOH is in the process of hiring staff. At this time, the department will hire a medical marijuana program manager and an attorney.

Mr. Justin Williams presented information on the administrative rules process for the medical marijuana program. Page 8 of document #4 lists several of the issues the DOH will be addressing through the rules process, including setting fees for establishments and cardholders.

The DOH has added medical marijuana to the website and will continue adding information as it becomes available. At this time, the medical marijuana page includes frequently asked questions (FAQs). The most asked question is where can a person access medical marijuana on July 1. The webpage explains the program will not be in place until after the promulgation of rules which should be completed by the end of October. The program for issuing the medical marijuana cards should be up and running by November 15.

Senator Heinert said he is concerned about the gap between July 1 and November 15 and South Dakota citizens believing medical marijuana is legal on July 1. Secretary Malsam-Rysdon said state agencies continue to emphasize this information whenever asked about medical marijuana and it is loud and clear on the DOH website. Any help in getting this information out to the people is appreciated, but it is the responsibility of the citizens to know the law.

Representative Otten asked about packaging and labeling requirements. Mr. Williams said DOH and DOR are working together to make sure the labels are very clear.

Representative Mulally asked if there will be an emergency phone number established in the case of ingestion by a child. Secretary Malsam-Rysdon said she has not yet talked to the Department of Public Safety about that concern but there is a phone number for the poison control center. Other states did see an increase in calls to poison control when marijuana was legalized in those states.

Representative Deutsch asked if there is any estimate on how many people in South Dakota will take part in the medical marijuana program. Secretary Malsam-Rysdon said the consultants are working on obtaining that information as it will be needed to set appropriate fees. As of July 2020, there were about 3,200 participants in North Dakota's medical marijuana program. North Dakota did add some other qualifying conditions as to who can obtain the card.

Senator Breitling asked about the list of qualifying conditions and if the \$5,000 fee to the establishments is a one-time fee or an annual fee. Secretary Malsam-Rysdon said the list of qualifying conditions will most likely continue to evolve. The law is not clear regarding the \$5,000 fee for establishments.

### **Department of Revenue**

**Mr. Jim Terwilliger, Secretary, and Mr. Michael Houdyshell, Chief Legal Counsel, DOR,** gave a PowerPoint presentation regarding the DOR's role in the medical marijuana program ([Document #5](#)). Secretary Terwilliger said the department works closely with DOH in establishing the medical marijuana program in South Dakota. The agencies began educating themselves on this topic immediately following the 2020 election. Secretary Terwilliger asked the committee members to contact his office or the DOH with any questions and not the consultants working with the agencies.

Mr. Houdyshell went through the PowerPoint presenting information on marijuana regulations across the country, federal enforcement guidelines, and common elements of state regulatory programs. The “Cole Memo” was issued during the Obama administration regarding federal regulations, and although it has been rescinded, states continue to use the guidelines when setting regulatory marijuana programs. When setting South Dakota’s guidelines it is important to make sure businesses are able to succeed in this industry. Residency requirements may be the most tenuous of elements in regulating this type of business.

Mr. Houdyshell said there will be strict packaging and labeling requirements. Most states have some type of universal symbol for marking all marijuana products. Some states include an emergency phone number on the packaging. Page 5 of document #5 includes a sample of what is included on many of the labels. Most states have restrictions on any type of child-like product or packaging, and this is strictly regulated. It is common to have required signage at all the retail outlets. States have very strict advertising restrictions for marijuana products.

Mr. Houdyshell explained the various options for taxing marijuana which can be found on page 7 of document #5. The tax exemption on prescription drugs does not apply to medical marijuana as marijuana is not a prescription drug. The most common type of taxation for marijuana is price-based.

In response to a question from Representative Deutsch, Mr. Houdyshell said for the most part the framework in IM26 gives the DOH the parameters for developing the program. The fees listed in IM26 is a lot lower than fee structures in other states. North Dakota’s fees actually make the medical marijuana program self-sustaining.

Representative Mulally asked about residency requirements. Mr. Houdyshell said residency requirements are still being discussed as the agencies work on the administrative rules. South Dakota does have relaxed residency requirements, much more so than other states, and that will be taken into consideration when drafting the rules.

Senator Wheeler asked if the agencies are prepared if the Supreme Court ruling is in favor of Amendment A and adult-use marijuana becomes legal in the state. Secretary Terwilliger said DOR and DOH are working together in preparing for legalized marijuana and will step up and do what needs to be done to address that decision.

### **National Conference of State Legislatures (NCSL)**

**Ms. Karmen Hanson, Program Director, Ms. Samantha Bloch, Policy Associate, and Mr. Jackson Brainerd, Senior Policy Specialist, NCSL**, provided a perspective on what other states are doing regarding the legalization of marijuana.

**Ms. Karmen Hanson, Program Director for Behavioral Health and Pharmaceuticals, NCSL**, gave a PowerPoint presentation, “Overview of State Cannabis Statutes, Rules & Regulations” ([Document #6](#)). Ms. Hanson’s presentation included information on testing, purchase limits, home cultivation, local control, and employer rights. Page 11 of document #6 lists several nearby states’ fees regarding marijuana programs. This information illustrates how the states vary greatly on how fees are applied.

Page 12 of document #6 lists some of the over 100 identified symptoms or conditions covered by medical marijuana programs in other states. Several of the symptoms are associated with pain, but more recently more conditions regarding mental health have been added.

Pages 17-19 of document #6 addresses home cultivation and the various rules regulating home cultivation. There are 17 states in which home cultivation is not allowed. States are trending to prohibiting home grow.

**Ms. Samantha Bloch, Policy Associate, Transportation Program, NCSL**, gave a PowerPoint presentation, “Drug Impaired Driving Laws Overview” ([Document #7](#)). Ms. Bloch talked about the impact the legalization of marijuana

has had on driving arrests and vehicle crashes, marijuana-impaired driving laws, testing for drug presence, and data collection.

Drug use (other than alcohol) among fatally injured drivers who were tested rose from 25% in 2007 to 42% in 2016, and marijuana presence doubled in this time frame. According to the Centers for Disease Control, 12.6 million Americans reported driving after using marijuana or other illicit drugs in 2018. A current concern is multi-drug impairment which includes alcohol. Alcohol and THC was the most common combination in polydrug test results.

Reporting and data collection are critical to understanding the scope of the impaired driving problem. Some states have passed legislation improving the data collection and reporting.

Representative Bartels asked about the impact on insurance costs in states legalizing marijuana. Ms. Bloch said she has not gathered information on insurance costs in states with legalized marijuana but will look into it and report back to the committee.

**Mr. Jackson Brainerd, Senior Policy Specialist, Fiscal Affairs Program, NCSL**, gave a PowerPoint presentation, "Fiscal Overview of Legal Cannabis" ([Document #8](#)). The presentation includes information on tax structures, comparisons of taxation on marijuana in select states, tax revenues, revenue allocation, and costs to the states.

Of the 37 states with comprehensive medical cannabis: 11 states exempt medical cannabis from sale or excise taxes; 10 states apply sales and use taxes; 8 states apply a special excise tax; and 6 states apply both an excise tax and sales tax. Taxes are usually different for medical marijuana than adult-use marijuana. Tax rates that are too high may allow for black market marijuana sales to thrive. There are still a lot of black market sales in legalized states.

States most often have a specific use for revenues from marijuana sales. Many use the funds for education. Detailed information on how states use these revenues can be found in the handout, "Recreational Cannabis Revenue Dedication" ([Document #9](#)).

Senator Breitling asked about the issue for banks to be involved with marijuana businesses when the sale of marijuana is still illegal on the federal level. Ms. Hanson said many states are allowing the businesses to operate on a cash system. NCSL will gather more information on the banking issue and report back to the committee.

### **South Dakota Association of Healthcare Organizations**

**Mr. Tim Rave, President and CEO, and Ms. Sarah Aker, Director, Fiscal Policy, SD Association of Healthcare Organizations (SDAHO)**, gave a PowerPoint presentation, "Medical Marijuana: Impacts on the Healthcare Industry" ([Document #10](#)). Mr. Rave said SDAHO is sharing some of the concerns, challenges, and ramifications with medical marijuana programs in other states. Mr. Rave said there are South Dakota healthcare systems with a presence in North Dakota and they have not instructed the facilities to opt out of the program. The providers make their own decisions as to whether they want to provide certification. That is also the case for South Dakota systems located in Minnesota and will be the same here in South Dakota. There will be providers who choose not to certify patients. The members of SDAHO neither support nor oppose the use of medical marijuana and will comply with the laws and regulations imposed by the state.

Ms. Aker spoke to the PowerPoint which included information regarding physician certification, patient possession and use in healthcare facilities, and the healthcare workforce. Ms. Aker said there is concern with the language "therapeutic or palliative benefit" found in IM26. North Dakota chose to remove that from their statute. Ms. Aker said she will supply the language now found in North Dakota statute.

Ms. Aker said the language in IM26 is not clear regarding what an employer can or cannot limit as far as marijuana use within the workplace. This omission may be challenging for a facility to manage, and SDAHO is concerned for the safety of their patients. In response to a question from Representative Deutsch, Ms. Aker said the members of SDAHO are all non-profit hospitals and other care facilities from across the state.

Representative Rehfeldt asked what other states have done regarding the workforce and use of medical marijuana in medical facilities and if those policies fall under state or local control. Ms. Aker said Oklahoma has a no tolerance policy, and Minnesota and North Dakota do have policies in place but not sure of the specifics. Workforce policies seem to fall most often under local control.

### **Pennington County State's Attorney's Office**

**Ms. Roxanne Hammond, Assistant State's Attorney, Pennington County**, referred to Pennington County Sheriff Thom's notes regarding some of law enforcement's concerns with SDCL 34-20G, the new statute based on IM26 ([Document #11](#)).

Ms. Hammond worked with Pennington County State's Attorney Mark Vargo in developing recommendations for changing SDCL 34-20G that will address concerns from their office. SDCL 34-20G-8 to 34-20G-10 prohibit search and seizure of medical marijuana businesses including dispensaries, cultivation facilities, and cannabis product manufacturing facilities rendering law enforcement unable to take action. Law enforcement needs just cause and a valid warrant to search any facility, but these sections prohibit law enforcement from doing any search of medical marijuana related businesses outside of their normal business hours even with just cause.

Ms. Hammond said the State's Attorney's Office is also concerned with the after-the-fact prescription defense found in SDCL 34-20G-51 which allows a person arrested possessing marijuana but without medical marijuana certification to assert their innocence if they have a medical condition that qualifies for certification. If the legislature wants prosecutors to act on arrests for 3 ounces of marijuana or less then this section must be changed.

Ms. Hammond said SDCL 34-20G-1(11) defines "disqualifying offense" as a violent crime classified as a felony and does not include a history of other crimes such as contributing to the delinquency of a minor or being a drug dealer. According to Ms. Hammond, this definition needs to be expanded.

Ms. Hammond explained other concerns regarding this statute saying the statute needs to be repealed and replaced. The State's Attorney's Office is not trying to make more work for themselves but is trying to make the laws easier for those who have to enforce them. The priority should be to properly regulate distribution.

Senator Breitling asked Ms. Hammond to send written recommendations from the Pennington County State's Attorney's Office to LRC for further committee consideration.

Senator Heinert said repeal and replace is not an option for this statute. It is the job of the legislature now to implement the rules regulating medical marijuana. Senator Heinert continued saying not allowing anyone with any type of criminal record to work in the medical marijuana industry will force them into the black market. Ms. Hammond replied they are not trying to force people into bad behavior but someone with a history of contributing to the delinquency of a minor or illegal drug activity should not be allowed to work in the medical marijuana industry.

### **Recess**

The Marijuana Interim Study Committee recessed at 5:00 p.m. to reconvene at 8:30 a.m. on Thursday, May 27.

### Call to Order - Thursday, May 27, 2021

Senator Breitling called the Marijuana Interim Study Committee back to order at 8:30 a.m., Thursday, May 27, 2021, noting a quorum was present.

### Public Testimony

Senator Breitling opened the meeting to public testimony.

**Ms. Terri Jorgenson, Concerned Women for America of South Dakota, Piedmont**, testified remotely about the dangers of marijuana. The organization requests comprehensive education programs regarding the dangers of marijuana, limiting the amount of THC, discouraging smokable marijuana in homes with children or pregnant women, outlawing marijuana edibles in the form of candies such as gummies or made to look like other food items, and not allowing dispensaries near school bus pickup areas. Ms. Jorgenson said the action committee is also concerned about gun use by people using marijuana.

Ms. Jorgenson will submit a written statement regarding her testimony to the committee.

**Mr. Emmett Reistroffer, Johnson Properties and Presto Corporation, Sioux Falls**, said 225,000 South Dakotans voted for Amendment A. The majority of Americans believe prohibition has not worked. Just because someone voted for Amendment A does not mean that person plans to use marijuana, but rather they believe the current policies do not work. South Dakotans want a system of regulations and taxation regarding marijuana use.

Mr. Reistroffer complimented the state agencies preparing for the implementation of IM26, however, he is concerned about the patchwork results when communities are able to set regulations. By limiting the number of dispensary licenses the state is favoring the larger companies involved in the cannabis industry. The cannabis industry should be an open market. The more this market is restricted the more people will take things into their own hands. If medical marijuana is not available commercially people will grow it at home.

Mr. Reistroffer said he does have financial interest in the marijuana laws as he works in the cannabis industry. Mr. Reistroffer worked on the legalizing cannabis campaign in Denver and then worked in a dispensary in Denver. Since then he has helped businesses throughout the country get started in the states where marijuana is legal.

Representative Milstead asked how much Mr. Reistroffer spent on the campaign for legalizing marijuana in South Dakota. Mr. Reistroffer said he personally invested \$1,000 toward the campaign and Johnson Properties invested between \$70,000-\$100,000.

Mr. Reistroffer said many people look at marijuana as a problem when it should be viewed as an opportunity. Once marijuana is legalized, most states keep expanding the program. Being proactive in the industry includes telehealth and allowing public universities to use tax dollars for research regarding cannabis. Public education is incredibly important, and Johnson Properties will match public dollars put towards public education regarding marijuana.

Representative Deutsch asked how many customers does a dispensary need to break even or be profitable. Mr. Reistroffer said a business with 20 customers a day should be profitable. The businesses selling marijuana rely on the adult-use business to support the medical marijuana use costs. According to Mr. Reistroffer, the state should hit 5,000 certified patients within the first six months. There is a lot of overhead in establishing a dispensary so it is helpful if the dispensary can be included within another business.

**Mr. Jeremiah M. Murphy, Cannabis Industry Association of South Dakota (CIASD), Rapid City**, said he is a registered lobbyist for CIASD which is the trade association responsible for getting Amendment A and IM26 on the

ballot in South Dakota. Some people believe legalizing marijuana will bring a flood of the product into the state. However, marijuana is already in South Dakota. A 2017-2019 survey estimated there are 82,000 marijuana users in the state. South Dakotans decided it is time to legalize marijuana to allow for safety controls, regulations, and tax revenue.

Mr. Murphy pointed out a lot of work has been done in other states regarding the legalization of marijuana. South Dakota can also look at our experiences in alcoholic beverage regulations when working on this. South Dakota allows a person to produce 600 gallons of alcohol in their home per year, which should be considered when discussing how many marijuana plants can be cultivated at home. One problem with the state's alcohol laws is the exorbitant costs to those selling liquor and the state needs to learn from those laws when setting fees for businesses selling marijuana.

Mr. Murphy commended the agencies drafting the administrative rules and the fact the agencies seek input from those in the industry before conducting the more formal public rules hearings. This is a much appreciated practice the Department of Revenue uses when setting rules.

**Mr. Kittrick Jeffries, Dakota Cannabis Consulting, Rapid City**, said he has worked with the marijuana industry in eight states and chose to come back to South Dakota to help with establishing best practices as the marijuana industry regulations are developed in the state. Learning the different aspects of the marijuana business is important. Minnesota has banned vaporization or smoking of cannabis turning users back to the illicit market.

Representative Rehfeldt asked how the product is consumed if it cannot be smoked or vaporized. Mr. Jeffries said the medical marijuana is then consumed using topical products and edibles.

**Ms. Staci Ackerman, Executive Director, SD Sheriffs Association, Eureka**, said the Sheriffs Association has been closely studying the legalization of marijuana in other states. One concern is when dealing with medical professionals granting certification, how is the licensing and background of those granting certification guaranteed. Medical marijuana is considered a medicine and needs to be treated like medicine. Another concern is the financial impact on the counties from the legalization of medical marijuana and all marijuana depending on the Supreme Court decision. There is an association in Colorado willing to speak to the committee regarding the impact the legalization of marijuana had on Colorado counties.

### **Flandreau Santee Sioux Tribe**

**Mr. Seth Pearman, Attorney General, Flandreau Santee Sioux Tribe**, thanked the committee for inviting him to be a part of the meeting. Mr. Pearman shared a video demonstrating how the public incorrectly perceived the tribe's decision to legalize marijuana on the tribe's land in 2015. The decision to legalize marijuana on Flandreau Santee Sioux Tribal land started when the Wilkinson Memorandum from the US Department of Justice was sent to all tribes in October of 2014. Upon receipt of that memo, the Flandreau Santee Sioux Tribe decided to pursue the cultivating and sale of marijuana as a tribal business. The tribe drafted an ordinance in June of 2015. The tribe met with other jurisdictions before approving the ordinance and submitting it to the Department of Justice. A marijuana control commission was established to make sure everything was done the way the tribe intended. The tribe later received a phone call telling the tribe that the Department of Justice would seize all marijuana crops and tools, so the tribe decided to end all plans for the marijuana business and in November of 2015 tribal leaders ordered the marijuana crop to be burned.

On July 12, 2019, the Flandreau Santee Sioux Tribe Executive Committee decriminalized the use of pot on tribal land for anyone 21 years or older. This policy has been good and has alleviated the strain on the courts allowing the Attorney General's office to focus on more serious crimes. This law does have protections in place for public safety.

With the passage of Amendment A and IM26, the tribe was happy to see South Dakota voters were in agreement with the tribe in that marijuana can be used safely in a regulated way.

Mr. Pearman explained the tribes each have their own unique jurisdictions. Some tribes have legalized marijuana, and some have not. If marijuana is taken onto tribal land where it is not legal, the person possessing the marijuana can be prosecuted. The tribes need the revenue from the sale of marijuana. Indian gaming was successful when it first came about but that has declined over the past several years. Tribes want to be independent and generate their own funds. Unemployment is a serious issue for the tribes and this new business venture will help create jobs.

Mr. Pearman said there has been a lot of discussion regarding the medical marijuana program and the large healthcare systems in the state, but Indian Health Services (IHS) needs to be included in these conversations so their doctors have the best information.

Senator Rohl asked if the tribes saw a decrease in opioid use when they decriminalized marijuana on tribal land. Mr. Pearman said there is no scientific data, but it is known that if people have legal access to marijuana they are less likely to use stronger drugs.

Senator Heinert asked about transporting the product from one tribe to another. Mr. Pearman said there will need to be some type certification showing the product is being transported legally.

Representative Finck pointed out the IHS falls under the federal government and asked if that would affect those facilities regarding allowing medical marijuana. Mr. Pearman said the IHS facilities work under the same federal guidelines as the Department of Health when it comes to Medicare and Medicaid, so it will be interesting to see how this works.

Representative Perry asked for advice on how the committee can get more tribes involved with the planning. Mr. Pearman said to keep sending information and requests to the tribal offices. Also, the Great Plains Tribal Chairmen organization is in constant contact with the tribes so they may be able to assist in getting more tribes involved.

Representative Finck asked if the tribe will be running the marijuana business or if they will be licensing other businesses. Mr. Pearman said the tribe is the regulator of the business and the only license for conducting business regarding marijuana is issued to the farm owned by the tribe liability company. The tribe does not anticipate licensing any other marijuana related entities.

### **Rapid City Fire Department**

**Mr. Tim Behlings, Division Chief and Fire Marshal, Rapid City Fire Department**, said South Dakota Fire Marshals request rules be initiated ensuring overall safety regarding fire codes within the marijuana industry. Each community has the authority to establish their own fire codes, but rules set by the state are preferred for consistency purposes. One of the main concerns regarding fire prevention is the growing of the marijuana plants. Plants are not grown in typical greenhouses but rather occupy warehouses, vacant buildings, and even some residences. The multi-tiered assemblies within the buildings are of the biggest concern to firefighters as the multi-tiered platforms make it difficult to identify exits, and the use of a multitude of cables and electrical cords creates the danger of entanglements for the firefighters. The buildings are usually highly secured and are not easy to enter from an emergency standpoint. There needs to be a base set of rules including fire sprinklers required for every part of the business.

Mr. Behlings continued saying there have been a number of incidents from across the country regarding fires due to the use of chemicals and equipment; flammable liquids are used to remove the oil from the plants. Preparation for edibles typically requires heat and that also raises the risk for fire. Fire departments will be expending additional

resources to make sure the facilities are up to code. The cultivation and processing facilities should be restricted to a light industrial area and not be allowed on main street.

Representative Mulally asked about the equipment firefighters need when responding to a fire at this type of business. Mr. Behlings said firefighters use self-breathing apparatus for every call. With a response to this type of business the firefighters also need to consider the danger to their skin. This industry is unique and has a lot of different components.

Representative Deutsch asked about regulations regarding home-cultivation. Mr. Behlings said the firefighters do not support the growth of marijuana within an actual residence.

Representative Chaffee asked if the use of multiple extension cords is covered by UBS or city ordinances already in place. Mr. Behlings said most of these types of businesses would be exempt from those regulations because of the size of the business. Existing fire codes do not address this situation well at all.

Mr. Behlings said his organization is very concerned about the marijuana industry and they do not want to lose one of their own because the fire codes were not sufficient.

### **South Dakota Municipal League**

**Ms. Yvonne Taylor, Executive Director, South Dakota Municipal League (SDML)**, shared a document the SDML prepared for their members clarifying several of the sections in SDCL 34-20G, "IM 26 – A Primer" ([Document #12](#)). Ms. Taylor said SDML does not take a position on either of the ballot measures, Amendment A and IM 26. SDML created a marijuana committee to help address the needs and concerns of its members regarding the legalization of marijuana in the state. SDML issued a sample ordinance the communities can use while waiting for the state agencies to finalize the rules and regulations regarding medical marijuana ([Document #13](#)). Ms. Taylor said SDML does not believe many of their member cities will have medical marijuana dispensaries as there will not be enough customers to support such a business.

SDML does encourage the member communities to set up the dispensaries. Municipalities owning the dispensaries would help removing some of the possible abuses. The communities need to consider the number of facilities that is appropriate as well as locations and ordinances. The association strongly encourages the addition of a definition for municipal ownership of the facilities. There are 150 communities who own their own liquor stores in some way or another which can take a lot of different forms of ownership.

Representative Willadsen asked Ms. Taylor to prepare some sample legislation for the committee to consider regarding SDML's concerns.

### **Request to Allow Convenience Stores to Sell Marijuana**

**Ms. Dawna Leitzke, SD Petroleum & Propane Marketers Association, Pierre**, shared with the committee an article regarding the need for the standardization of cannabis from ASTM International, formerly known as American Society for Testing and Materials, which is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services ([Document #14](#)). Ms. Leitzke said she is speaking today on behalf of the convenience stores and the future use of adult marijuana.

Ms. Leitzke said the convenience stores sell tobacco, wine and beer and are well equipped to sell adult-use cannabis products. When Amendment A passed the convenience stores began working on a licensing program to allow the sale of cannabis through these stores. The organization advocates for the legal product delivery of product to

retailers. Allowing the convenience stores to be included in the licensing program will help eliminate the black market. In many communities the convenience store is the sole source for many products. Convenience stores take safety very seriously and have ID'd more people than the TSA. Technology safeguards allow the stores to handle products safely and legally.

Ms. Leitzke worked with legislators on HB1225 and SB187 during the 2021 session which would have allowed convenience stores to sell adult-use marijuana upon the legalization of adult-use marijuana. The legislation did pass the senate but failed in the house committee. Ms. Leitzke would like the study committee to consider the options that are provided in that legislation.

Representative Fitzgerald said she is concerned about the high turnover of staff in the convenience stores and with that high turnover oftentimes the staff does not worry about the fines the business would have to pay if the rules are not followed. Ms. Leitzke said the retailers take these adult sales very seriously and work hard to keep improper sales from happening.

Senator Rohl said his concern is the amount of training the employees would have to receive in order to sell the adult-use marijuana. The training in the effects and sales of this product can take four to six weeks and most convenience stores are not able to have employees out for that long. Ms. Leitzke said the convenience stores will invest in the training of their employees similar to the training for the sale of tobacco and alcohol. Training is one of the reasons this needs to be established early in the process. Ms. Leitzke said her members know there will be growing pains as the sale of adult-use marijuana becomes a legal business in South Dakota.

### **Pennington County States Attorney**

**Mr. Mark Vargo, Pennington County State's Attorney**, met with the committee during the lunch break to further address the concerns of law enforcement regarding the legalization of marijuana. Mr. Vargo did go through the different sections of SDCL 34-20G-1 and the concerns as shared in [document #11](#).

Representative Bartels asked about sections eight through ten regarding not allowing search and seizures outside of business hours and if these sections also apply to fire inspections. Mr. Vargo said this would apply to fire marshals as well as other law enforcement. Because of these sections, even if there is probable cause regarding illegal activity, no law enforcement can enter the premises outside of regular business hours.

Senator Wheeler said it is his belief that if a business is acting outside this chapter then law enforcement can enter the premises and the fire marshal can do normal inspections. The intent of these sections is to stop the harassment of a business that is working within the law. Mr. Vargo disagreed with the Senator's interpretation.

Mr. Vargo also expressed concern about those certified for medical marijuana cultivating marijuana at home, saying it does not make sense to allow people to grow marijuana within their home if this is supposed to be treated like a medicine.

Representative Otten asked Mr. Vargo to forward his suggestions regarding felonies to the committee.

### **Appointment of Subcommittees**

Senator Breitling said the committee will be divided into two subcommittees. The first subcommittee will study medical marijuana and the subcommittee consists of Representatives Deutsch, Duba, Finck, Otten, Perry, Rehfeldt, and Wiese; and Senators Heinert, Smith, and Stalzer, with Senator Breitling serving as Chair.

The second subcommittee will study adult-use marijuana and the subcommittee consists of Representatives Bordeaux, Chaffee, Derby, Fitzgerald, Goodwin, Milstead, Mulally, Willadsen; and Senators Duhamel, Rohl, Rusch, and Wheeler, with Representative Bartels serving as Chair. The medical marijuana subcommittee will tour facilities in Iowa and the adult-use subcommittee will tour facilities in Colorado.

Meeting dates for upcoming subcommittee meetings will be June 21 for medical marijuana and June 22 for adult-use marijuana; August 4 for medical marijuana and August 5 for adult-use marijuana; and September 1 for medical marijuana and September 2 for adult-use marijuana.

### **Pennington County Sheriff's Office**

**Captain Tony Harrison, Pennington County Sheriff's Office**, said he has worked in narcotics for eight years and has conducted thousands of interviews. Captain Harrison has been to Denver many times to learn how the legalization of marijuana is working there.

Captain Harrison said home cultivation of marijuana will not be taxed and neither will the plants grown by caregivers. Regarding caregivers, in Colorado a caregiver can have up to five patients and can apply for a waiver to have more patients. There can be an issue with overgrowth and overpopulation of plants using the caregiver model. To regulate all of this will put a strain on the department. Captain Harrison asked that the definition for caregiver not be too loose, encouraging the committee to do away with the home grow and caregiver model which is where there is the least amount of control. The use of medical marijuana needs to go through South Dakota doctors and pharmacists and be regulated through the proper chain.

Captain Harrison said it is his opinion that legalizing marijuana does not reduce the use of the black market. Captain Harrison encouraged the committee members to read the law enforcement concerns with SDCL 34-20G-1 found in [document #11](#).

### **Adjourn**

***Senator Heinert moved, seconded by Representative Goodwin, the Marijuana Interim Study Committee be adjourned. Motion prevailed on a voice vote.***

The Marijuana Interim Study Committee adjourned at 2:18 PM.