

Committee: House Judiciary

Friday, February 24, 2023 10:00 AM

Roll Call

Present: Rep. Fitzgerald, Rep. Kull, Rep. Massie, Rep. Odenbach, Rep. Pourier, Rep. Reimer, Rep. Reisch, Rep. Soye, Rep. St. John, Rep. Teunissen, Rep. Tordsen, Rep. Stevens, and Rep. Hansen

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Hansen

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, FEBRUARY 22ND

Moved by: Soye
Second by: Reisch
Action: Prevailed by voice vote

SB 81 : repeal outdated sections regarding enhanced concealed carry permit requirements.

Presented by: Senator Jim Stalzer

MOTION: DO PASS SB 81

Moved by: Reisch
Second by: Fitzgerald
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 81 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

SB 176 : modify certain requirements for removal from the sex offender registry.

Presented by: Representative Mike Stevens
Proponents: Senator Joshua Klumb
Angel Runnels, self, Sioux Falls

MOTION: DEFER SB 176 TO THE 41ST LEGISLATIVE DAY

Moved by: Fitzgerald
Second by: Pourier
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION: DO PASS SB 176

Moved by: Tordsen
Second by: Soye

Action: Prevailed by Majority Members Elect (11-2-0-0)

Voting Yes: Kull, Massie, Odenbach, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

Voting No: Fitzgerald and Pourier

SB 72 : revise provisions related to the discharge of a defendant restored to competency.

Presented by: Representative Mike Stevens

Proponents: Tiffany Wolfgang, Department of Social Services

MOTION: DO PASS SB 72

Moved by: Kull

Second by: Reisch

Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 72 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

SB 3 : require law enforcement notice to school officials when a student is suspected of violating state drug or alcohol laws or of threatening violence.

Presented by: Representative Fred Deutsch

Opponents: Staci Ackerman, South Dakota Sheriffs' Association, Eureka
Jenna Severyn, South Dakota Police Chiefs Association, Pierre
Grant M. Flynn, South Dakota State's Attorneys Association, Pierre
Cory Borg, Deuel Co. Sheriff, Clear Lake

MOTION: DEFER SB 3 TO THE 41ST LEGISLATIVE DAY

Moved by: Reimer

Second by: Soye

Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

MOTION: REMOVE SB 3 FROM THE TABLE

Moved by: Stevens

Second by: Fitzgerald

Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

SB 3 : require law enforcement notice to school officials when a student is suspected of violating state drug or alcohol laws or of threatening violence.

MOTION: AMEND SB 3

3B

On page 1, line 1, of the Senate Education Engrossed bill, delete "require law enforcement notice to school officials when a student is suspected of violating state drug or alcohol laws or of threatening violence" and insert " prohibit the issuance of a written certification to a pregnant woman or breastfeeding mother for purposes of medical cannabis use"

On the Senate Education Engrossed bill, delete everything after the enacting clause and insert:

Section 1. That § 34-20G-1 be AMENDED:

34-20G-1. Terms used in this chapter mean:

- (1) "Allowable amount of cannabis,"
 - (a) Three ounces of cannabis or less;
 - (b) The quantity of cannabis products as established by rules promulgated by the department under § 34-20G-72;
 - (c) If the cardholder has a registry identification card allowing cultivation, two flowering cannabis plants and two cannabis plants that are not flowering; and
 - (d) If the cardholder has a registry identification card allowing cultivation, the amount of cannabis and cannabis products that were produced from the cardholder's allowable plants, if the cannabis and cannabis products are possessed at the same property where the plants were cultivated;
- (2) "Bona fide practitioner-patient relationship," a treatment or consulting relationship between a practitioner and patient, during which:
 - (a) The practitioner completes, at the initial visit, an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;
 - (b) The patient is under the practitioner's care for the debilitating medical condition that qualifies the patient for the medical use of cannabis or has been referred by the practitioner caring for the patient's debilitating medical condition that qualifies the patient for the medical use of cannabis to another practitioner;
 - (c) The patient has a reasonable expectation that the practitioner providing the written certification will continue to provide follow-up care to the patient to monitor the medical use of cannabis; and
 - (d) The relationship is not for the sole purpose of providing a written certification for the medical use of cannabis unless the patient has been referred by a practitioner providing care for the debilitating medical condition that qualifies the patient for the medical use of cannabis;
- (3) "Cannabis products," any concentrated cannabis, 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 the department pursuant to this chapter that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary;

- (5) "Cannabis testing facility" or "testing facility," an independent entity registered with the department pursuant to this chapter to analyze the safety and potency of cannabis;
- (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 the department pursuant to this chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis 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, except nausea associated with pregnancy; 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;
- (9) "Department," the Department of Health;
- (10) "Designated caregiver," an individual who:
 - (a) Is at least twenty-one years of age;
 - (b) Has agreed to assist with a qualifying patient's medical use of cannabis;
 - (c) Has not been convicted of a disqualifying felony offense; and
 - (d) Assists no more than five qualifying patients with the medical use of cannabis, unless the designated caregiver's qualifying patients each reside in or are admitted to a health care facility, as defined in § 34-12-1.1, an accredited prevention or treatment facility, as defined in § 34-20A-2, a mental health center, as defined in § 27A-1-1, a child welfare agency, as defined in § 26-6-1, or a community support provider or community services provider, as defined in § 27B-1-17, where the designated caregiver is employed;
- (11) "Disqualifying felony offense," a violent crime that was classified as a felony in the jurisdiction where the person was convicted;
- (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;
- (14) "Flowering cannabis plant," the reproductive state of the cannabis plant in which the plant shows physical signs of flower budding out of the nodes of the stem;
- (15) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- (16) "Medical cannabis dispensary" or "dispensary," an entity registered with the department pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;
- (17) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;

- (18) "Medical cannabis establishment agent," an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;
- (19) "Medical use," includes the acquisition, administration, cultivation, manufacture, delivery, harvest, possession, preparation, transfer, transportation, or use of cannabis or paraphernalia relating to the administration of cannabis 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 cardholder's registry identification card; or
 - (c) The extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility;
- (20) "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;
- (21) "Practitioner," a physician, physician assistant, or advanced practice registered nurse, who is licensed 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;
- (22) "Qualifying patient," a person who has been diagnosed by a practitioner as having a debilitating medical condition;
- (23) "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;
- (24) "Safety-sensitive job," any position with tasks or duties that an employer reasonably believes could:
- (a) Cause the illness, injury, or death of an individual; or
 - (b) Result in serious property damage;
- (25) "Under the influence of cannabis," any abnormal mental or physical condition that tends to deprive a person of clearness of intellect and control that the person would otherwise possess, as the result of consuming any degree of cannabis or cannabis products; and
- (26) "Written certification," a document dated and signed by a practitioner:
- (a) Stating that the patient has a qualifying debilitating medical condition or symptom associated with the debilitating medical condition;
 - (b) Affirming that the document is made in the course of a bona fide practitioner-patient relationship;
 - (c) Specifying the qualifying patient's debilitating medical condition; and

(d) Specifying the expiration date of the qualifying patient's written certification, pursuant to § 34-20G-43.

Section 2. That chapter 34-20G be amended with a NEW SECTION:

Nothing in this chapter authorizes a practitioner to provide a written certification to a patient who is pregnant or breastfeeding."

Moved by: Kull
 Second by: Soye
 Action: Prevailed by voice vote

THE CHAIR DEFERRED SB 3 UNTIL MONDAY, FEBRUARY 27TH

SB 4 : modify a court's authority to commit a habitual juvenile offender to the Department of Corrections.

Presented by: Senator Erin Tobin

Proponents: Grant M. Flynn, South Dakota State's Attorneys Association, Pierre
 Greg Sattizahn, Unified Judicial System
 Wade Pogany, Associated School Boards of South Dakota, Pierre
 Sandra Marie Waltman, South Dakota Education Association, Pierre

Opponents: Terra Larson, South Dakota Association of Criminal Defense Lawyers, Pierre

MOTION: AMEND SB 4

4E

On page 2, line 23, of the Senate Engrossed bill, delete "a separate " and insert "separate "
 On page 2, line 24, of the Senate Engrossed bill, delete "act" and insert "acts"
 On page 2, line 24, of the Senate Engrossed bill, after "of " delete "a "
 On page 2, line 24, of the Senate Engrossed bill, delete " episode" and insert " episodes, three or more times"

Moved by: Tordsen
 Second by: Reisch
 Action: Prevailed by voice vote

MOTION: DO PASS SB 4 AS AMENDED

Moved by: Reimer
 Second by: Tordsen
 Action: Prevailed by Majority Members Elect (11-2-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, and Hansen

Voting No: Pourier and Stevens

SB 5 : extend the termination date of the Juvenile Justice Oversight Council and modify its membership requirements.

Presented by: Representative Fred Deutsch

Proponents: Greg Sattizahn, Unified Judicial System
 Dianna Miller, Large School Group (Aberdeen), Aberdeen
 Wade Pogany, Associated School Boards of South Dakota, Pierre
 Sandra Marie Waltman, South Dakota Education Association, Pierre
 Rob L. Monson, School Administrators of South Dakota, Pierre

Kristi Bunkers, Department of Corrections

MOTION: DO PASS SB 5

Moved by: Pourier
Second by: Fitzgerald
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 5 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

SB 6 : authorize community response teams to recommend alternative community-based resources for children alleged to be delinquent and children alleged to be in need of supervision prior to adjudication.

Presented by: Representative Mike Stevens
Proponents: Greg Sattizahn, Unified Judicial System
Sandra Marie Waltman, South Dakota Education Association, Pierre
Dianna Miller, Large School Group (Aberdeen), Aberdeen

MOTION: DO PASS SB 6

Moved by: Fitzgerald
Second by: Reimer
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 6 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

MOTION: ADJOURN

Moved by: Reisch
Second by: Teunissen
Action: Prevailed by voice vote

Janelle Toman, Committee Secretary

/s/ JON HANSEN
Jon Hansen, Chair