

2021 South Dakota Legislature

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

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

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

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

5 (1) 2020 Initiated Measure 26 passed by a vote of the people on November 3, 2020,
6 receiving nearly seventy percent of the vote, and will become law on July 1, 2021;

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

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

14 (a) Tracking marijuana or marijuana products;

15 (b) Taxing medical marijuana;

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

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

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

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

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

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

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

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

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

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

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

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

18 **34-20G-29. [Effective ~~July~~ January 1, 2022] Information required for**
19 **issuance of registry identification cards--Fee.**

20 No later than ~~November 18, 2021~~ ~~November 21, 2022~~ May 15, 2022, the
21 department shall issue registry identification cards to qualifying patients who submit the
22 following, in accordance with rules promulgated by the department:

- 23 (1) A written certification issued by a practitioner within ninety days immediately
24 preceding the date of an application;
- 25 (2) The application or renewal fee;
- 26 (3) The name, address, and date of birth of the qualifying patient, except that if the
27 applicant is homeless, no address is required;
- 28 (4) The name, address, and telephone number of the qualifying patient's practitioner;
- 29 (5) The name, address, and date of birth of the designated caregiver, or designated
30 caregivers, chosen by the qualifying patient;
- 31 (6) If more than one designated caregiver is designated at any given time,
32 documentation demonstrating that a greater number of designated caregivers are
33 needed due to the patient's age or medical condition;

- 1 (7) The name of no more than two dispensaries that the qualifying patient designates,
2 if any; and
- 3 (8) If the qualifying patient designates a designated caregiver, a designation as to
4 whether the qualifying patient or designated caregiver will be allowed under state
5 law to possess and cultivate cannabis plants for the qualifying patient's medical
6 use.

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

8 **34-20G-45. [Effective ~~July~~ January 1, 2022] Secure phone or web-based**
9 **verification system.**

10 ~~Within one hundred twenty days of July 1, 2021~~ July 1, 2022 ~~No later than May~~
11 15, 2022, the department shall establish a secure phone or web-based verification system.
12 The verification system shall allow law enforcement personnel and medical cannabis
13 establishments to enter a registry identification number and determine whether the
14 number corresponds with a current, valid registry identification card. The system may
15 disclose only:

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

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

25 **34-20G-72. [Effective ~~July~~ January 1, 2022] Promulgation of rules--**
26 **Violation of required or prohibited action as misdemeanor.**

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

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

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

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

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

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

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

15 **34-20G-95. [Effective ~~July~~ January 1, 2022] Administration of medical**
16 **cannabis to students.**

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

24 **Section 7.** That a NEW SECTION be added:

25 **34-20G-96. Interim marijuana committee membership.**

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

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

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

9 **34-20G-97. Interim marijuana committee duties.**

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

- 11 (1) Research best practices from other medical marijuana programs;
- 12 (2) Determine details of a licensing system that specifies privileges and authorized
13 activities, and the implementation thereof;
- 14 (3) Evaluate policies that reduce unlawful access, availability, and use by youths and
15 prevent diversion to illicit markets;
- 16 (4) Explore policy measures that balance adequate regulation that ensure safe
17 products and support the development of a fair market;
- 18 (5) Study legal consequences and litigation of policy decisions challenged in other
19 states;
- 20 (6) Investigate criminal justice and public safety concerns of establishing a marijuana
21 market while guarding against drugged driving or performing tasks under
22 impairment;
- 23 (7) Advise on regulations for cultivation of marijuana without contaminants, pesticides,
24 or heavy metals, for manufacturing of marijuana products without hazardous
25 substances, and for sales of marijuana and marijuana products only to verified
26 patients in appropriate amounts;
- 27 (8) Seek input on appropriate local controls that allow sufficient access;
- 28 (9) Examine appropriate rules or restrictions on the structure, ownership,
29 management, fiscal stability, and practices of marijuana business entities;
- 30 (10) Determine market demand, production management, product tracking, and
31 necessary fees to support the medical marijuana program;
- 32 (11) Review testing advisability and capability, forms of product, and how each product
33 should be approved for human consumption;
- 34 (12) Determine appropriate taxing scheme; and

- 1 (13) Provide an opportunity for public input of policy decisions; and
2 (14) Determine implementation benchmarks.
3 The interim marijuana committee shall report to the Legislature by January 15, 2022. The
4 interim marijuana committee may present any recommended legislation.
- 5 **Section 9.** This Act is effective June 30, 2021.