



2021 South Dakota Legislature

House Bill 1100

SENATE HEALTH AND HUMAN SERVICES ENGROSSED

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

Introduced by: **Representative** Gosch

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-17, inclusive,
16 §§ 34-20G-19 to 34-20G-50, inclusive, and §§ 34-20G-52 to 34-20G-95, inclusive, are
17 effective January 1, 2022.

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

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

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

24 (1) A written certification issued by a practitioner within ninety days immediately
25 preceding the date of an application;

26 (2) The application or renewal fee;

27 (3) The name, address, and date of birth of the qualifying patient, except that if the
28 applicant is homeless, no address is required;

29 (4) The name, address, and telephone number of the qualifying patient's practitioner;

30 (5) The name, address, and date of birth of the designated caregiver, or designated
31 caregivers, chosen by the qualifying patient;

- 1 (6) If more than one designated caregiver is designated at any given time,
2 documentation demonstrating that a greater number of designated caregivers are
3 needed due to the patient's age or medical condition;
- 4 (7) The name of no more than two dispensaries that the qualifying patient designates,
5 if any; and
- 6 (8) If the qualifying patient designates a designated caregiver, a designation as to
7 whether the qualifying patient or designated caregiver will be allowed under state
8 law to possess and cultivate cannabis plants for the qualifying patient's medical
9 use.

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

11 **34-20G-45. [Effective January 1, 2022] Secure phone or web-based**
12 **verification system.**

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

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

27 **Section 5.** That § 34-20G-51 be AMENDED.

28 **34-20G-51. [Effective July 1, 2021] Medical purpose defense to prosecution**
29 **involving cannabis.**

30 Except as provided in § 34-20G-18 and this section, a person may assert the
31 medical purpose for using cannabis as a defense to any prosecution involving cannabis,
32 and such defense is presumed valid where the evidence shows that:

- 1 (1) A practitioner has stated that, in the practitioner's professional opinion, after
2 having completed a full assessment of the person's medical history and current
3 medical condition made in the course of a bona fide practitioner-patient
4 relationship, the patient has a debilitating medical condition and the potential
5 benefits of using cannabis for medical purposes would likely outweigh the health
6 risks for the person;
- 7 (2) The person was in possession of no more than ~~three ounces of cannabis, the~~
8 ~~amount of cannabis products allowed by department rules, six cannabis plants~~
9 ~~minimum or as prescribed by a physician, and the cannabis produced by those~~
10 ~~plants;~~
- 11 (a) Three ounces of cannabis;
- 12 (b) A quantity of cannabis products containing no more than twenty-four grams
13 of cannabis concentrate or a greater amount if allowed by department rules;
- 14 (c) Six cannabis plants kept in or on the grounds of a single residence at one
15 time and any cannabis produced by those six plants provided that the
16 cannabis is located at the same property where the plants were cultivated;
17 or
- 18 (d) Any combination of subsections (a), (b), or (c);
- 19 (3) The person was engaged in the acquisition, possession, use, manufacture,
20 cultivation, or transportation of cannabis, paraphernalia, or both, relating to the
21 administration of cannabis to treat or alleviate the person's debilitating medical
22 condition or symptoms associated with the person's debilitating medical condition;
23 and
- 24 (4) Any cultivation of cannabis and storage of more than three ounces of cannabis
25 occurred in a secure location that only the person asserting the defense could
26 access.

27 **Section 6.** That § 34-20G-72 be AMENDED.

28 **34-20G-72. [Effective January 1, 2022] Promulgation of rules--Violation of**
29 **required or prohibited action as misdemeanor.**

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

- 32 (1) Governing the manner in which the department shall consider petitions from the
33 public to add a debilitating medical condition or treatment to the list of debilitating

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

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

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

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

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

16 **Section 7.** That § 34-20G-95 be AMENDED.

17 **34-20G-95. [Effective January 1, 2022] Administration of medical cannabis**
18 **to students.**

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

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

27 **34-20G-96. Interim marijuana committee membership.**

28 An interim marijuana committee shall be appointed. The speaker shall appoint five
29 members of the House of Representatives. The president pro tempore shall appoint five
30 members of the Senate. The attorney general shall appoint one state's attorney and one
31 attorney from the Office of the Attorney General. The Governor shall appoint one
32 representative from each of the Departments of Health, Revenue, and Public Safety. The
33 Governor shall also appoint one representative of law enforcement, one health care

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

10 **Section 9.** That a NEW SECTION be added:

11 **34-20G-97. Interim marijuana committee guidance.**

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

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

- 1 (11) Review testing advisability and capability, forms of product, and how each product
- 2 should be approved for human consumption;
- 3 (12) Determine appropriate taxing scheme; and
- 4 (13) Provide an opportunity for public input of policy decisions.

- 5 **Section 10.** This Act is effective June 30, 2021.