



2022 South Dakota Legislature

House Bill 1094

Introduced by: **Representative Milstead**

1 **An Act to revise provisions related to medical cannabis for the protection of youth.**

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

3 **Section 1. That § 34-20G-18 be AMENDED:**

4 **34-20G-18.** This chapter does not authorize any person to engage in, and does
 5 not prevent the imposition of any civil, criminal, or other penalty for engaging in, the
 6 following conduct:

7 (1) Undertaking any task under the influence of cannabis, when doing so would
 8 constitute negligence or professional malpractice;

9 (2) Possessing cannabis or otherwise engaging in the medical use of cannabis ~~in any~~
 10 ~~correctional facility~~;

11 (a) In or on any preschool property, public or nonpublic school property, or at
 12 any public or nonpublic school-sanctioned event or activity located off
 13 school grounds, unless authorized pursuant to sections 6 and 7 of this Act;

14 (b) At any outdoor facility, including any appurtenant parking lot, intended for
 15 recreation, open to the public, any portion of which contains apparatus
 16 intended for the recreation of children;

17 (c) At any recreational facility or gymnasium and any appurtenant parking lot,
 18 intended primarily for use by persons under eighteen years of age that
 19 regularly provides athletic, civic, or cultural activities; or

20 (d) On the grounds of any correctional facility;

21 (3) Smoking or vaping cannabis:

22 (a) On any form of public transportation; ~~or~~

23 (b) In any public place or any place that is open to the public; or

24 (c) Within the outdoor living area of a private residence, if the private residence
 25 is within one thousand feet of real property: described in subsections (2)(b)

1 or (2)(c); comprising a preschool, public school, or nonpublic school; or
 2 comprising a playground;

3 (4) Operating, navigating, or being in actual physical control of any motor vehicle,
 4 aircraft, train, or motorboat while under the influence of cannabis, except that a
 5 registered qualifying patient or nonresident cardholder is not considered to be
 6 under the influence of cannabis solely because of the presence of metabolites or
 7 components of cannabis that appear in insufficient concentration to cause
 8 impairment.

9 **Section 2. That § 34-20G-19 be AMENDED:**

10 **34-20G-19.** ~~No school or landlord may refuse to enroll or lease to and may not~~
 11 ~~otherwise penalize a person~~A cardholder may not be refused enrollment by a public school
 12 or a lease by a landlord, or otherwise be penalized by a public school or landlord solely for
 13 the person's status as a cardholder, unless failing to do so would violate federal law or
 14 regulations or cause the public school or landlord to lose a monetary or licensing-related
 15 benefit under federal law or regulation.

16 **Section 3. That § 34-20G-55 be AMENDED:**

17 **34-20G-55.** Not later than ninety days after receiving an application for a medical
 18 cannabis establishment, the department shall register the prospective medical cannabis
 19 establishment and issue a registration certificate and a random ten-digit alphanumeric
 20 identification number if all of the following conditions are satisfied:

- 21 (1) The prospective medical cannabis establishment has submitted all of the following:
- 22 (a) The application fee;
 - 23 (b) An application, including:
 - 24 (i) The legal name of the prospective medical cannabis establishment;
 - 25 (ii) The physical address of the prospective medical cannabis
 26 establishment that is not within one thousand feet of a preschool,
 27 public or private nonpublic school, public or private postsecondary
 28 institution, or any land owned by a preschool, public or nonpublic
 29 school, or public or private postsecondary institution existing before
 30 the date of the medical cannabis establishment application;
 - 31 (iii) The name and date of birth of each principal officer and board
 32 member of the proposed medical cannabis establishment; and
 - 33 (iv) Any additional information requested by the department;

- 1 (c) Operating procedures consistent with rules for oversight of the proposed
2 medical cannabis establishment, including procedures to ensure accurate
3 record keeping and adequate security measures;
- 4 (d) If the city or county where the proposed medical cannabis establishment
5 would be located has enacted zoning restrictions, a sworn statement
6 certifying that the proposed medical cannabis establishment does not
7 violate the restrictions;
- 8 (e) If the city or county where the proposed medical cannabis establishment
9 requires a local registration, license, or permit, a copy of the registration,
10 license, or permit;
- 11 (2) None of the principal officers or board members has served as a principal officer or
12 board member for a medical cannabis establishment that has had its registration
13 certificate revoked;
- 14 (3) None of the principal officers or board members is under twenty-one years of age;
15 and
- 16 (4) At least one principal officer is a resident of this state.

17 **Section 4. That § 34-20G-72 be AMENDED:**

- 18 **34-20G-72.** ~~Not later than October 29, 2021, the~~The department shall promulgate
19 rules pursuant to chapter 1-26:
- 20 (1) Governing the manner in which the department shall consider petitions from the
21 public to add a debilitating medical condition or treatment to the list of debilitating
22 medical conditions as defined by this chapter, including public notice of and an
23 opportunity to comment in public hearings on the petitions;
- 24 (2) Establishing the form and content of registration and renewal applications
25 submitted under this chapter;
- 26 (3) Establishing a system to numerically score competing medical cannabis
27 establishment applicants, in cases where more applicants apply than are allowed
28 by the local government, that includes analysis of:
- 29 (a) The preference of the local government;
- 30 (b) In the case of dispensaries, the suitability of the proposed location and its
31 accessibility for patients;
- 32 (c) The character, veracity, background, qualifications, and relevant experience
33 of principal officers and board members; and

- 1 (d) The business plan proposed by the applicant, that in the case of a cultivation
2 facility or dispensary shall include the ability to maintain an adequate supply
3 of cannabis, plans to ensure safety and security of patrons and the
4 community, procedures to be used to prevent diversion, and any plan for
5 making cannabis available to low-income registered qualifying patients;
- 6 (4) Governing the manner in which the department shall consider applications for and
7 renewals of registry identification cards, that may include creating a standardized
8 written certification form;
- 9 (5) Governing medical cannabis establishments to ensure the health and safety of
10 qualifying patients and prevent diversion and theft without imposing an undue
11 burden or compromising the confidentiality of a cardholder, including:
- 12 (a) Oversight requirements;
- 13 (b) Record-keeping requirements;
- 14 (c) Security requirements, including lighting, physical security, and alarm
15 requirements;
- 16 (d) Health and safety regulations, including restrictions on the use of pesticides
17 that are injurious to human health;
- 18 (e) Standards for the manufacture of cannabis products and both the indoor
19 and outdoor cultivation of cannabis by a cultivation facility;
- 20 (f) Requirements for the transportation and storage of cannabis by a medical
21 cannabis establishment;
- 22 (g) Employment and training requirements, including requiring that each
23 medical cannabis establishment create an identification badge for each
24 agent;
- 25 (h) Standards for the safe manufacture of cannabis products, including extracts
26 and concentrates;
- 27 (i) Restrictions on the advertising, signage, and display of medical cannabis,
28 provided that the restrictions may not prevent appropriate signs on the
29 property of a dispensary, listings in business directories including phone
30 books, listings in marijuana-related or medical publications, or the
31 sponsorship of health or not-for-profit charity or advocacy events;
- 32 (j) Requirements and procedures for the safe and accurate packaging and
33 labeling of medical cannabis;~~and~~
- 34 (k) Certification standards for testing facilities, including requirements for
35 equipment and qualifications for personnel; and

- 1 (l) Restrictions on the marketing of cannabis and cannabis products using
2 names and images that appeal to children;
- 3 (6) Establishing procedures for suspending or terminating the registration certificates
4 or registry identification cards of cardholders and medical cannabis establishments
5 that commit multiple or serious violations of this chapter;
- 6 (7) Establishing labeling requirements for cannabis and cannabis products, including
7 requiring cannabis product labels to include the following:
- 8 (a) The length of time it typically takes for a product to take effect;
- 9 (b) Disclosing ingredients and possible allergens;
- 10 (c) A nutritional fact panel; and
- 11 (d) Requiring that edible cannabis products be clearly identifiable, when
12 practicable, with a standard symbol indicating that it contains cannabis;
- 13 (8) Establishing procedures for the registration of nonresident cardholders and the
14 cardholder's designation of no more than two dispensaries, which shall require the
15 submission of:
- 16 (a) A practitioner's statement confirming that the patient has a debilitating
17 medical condition; and
- 18 (b) Documentation demonstrating that the nonresident cardholder is allowed to
19 possess cannabis or cannabis preparations in the jurisdiction where the
20 nonresident cardholder resides;
- 21 (9) Establishing the amount of cannabis products, including the amount of
22 concentrated cannabis, each cardholder and nonresident cardholder may possess;
23 and
- 24 (10) Establishing reasonable application and renewal fees for registry identification
25 cards and registration certificates, according to the following:
- 26 (a) Application fees for medical cannabis establishments may not exceed five
27 thousand dollars, with this upper limit adjusted annually for inflation;
- 28 (b) The total fees collected shall generate revenues sufficient to offset all
29 expenses of implementing and administering this chapter;
- 30 (c) A sliding scale of patient application and renewal fees based upon a
31 qualifying patient's household income;
- 32 (d) The fees charged to qualifying patients, nonresident cardholders, and
33 caregivers shall be no greater than the costs of processing the application
34 and issuing a registry identification card or registration; and

1 (e) The department may accept donations from private sources to reduce
2 application and renewal fees.

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

5 **Section 5. That § 34-20G-95 be REPEALED:**

6 ~~The Department of Education and the department shall establish policy to allow~~
7 ~~students who are medical cannabis cardholders to have their medicine administered in~~
8 ~~school in accordance with their physician's recommendation. This policy shall be~~
9 ~~implemented the first day of the new school year following passage of this chapter. The~~
10 ~~departments shall implement substantively identical provisions to Colorado Revised~~
11 ~~Statute 22-1-119.3 as of January 1, 2019.~~

12 **Section 6. That chapter 34-20G be amended with a NEW SECTION:**

13 A public school student who is a cardholder may not engage in the medical use of
14 cannabis on school grounds, in a school vehicle, or during a school-related event or activity
15 located off school grounds, unless the school district adopts a policy permitting the medical
16 use of cannabis by students. Any adopted policy must require that cannabis or cannabis
17 products used by a student:

- 18 (1) Is in a form that is not consumed by smoking or vaping;
19 (2) Is administered to the student by the parent or legal guardian who agrees to serve
20 as the student's designated caregiver pursuant to § 34-20G-33;
21 (3) Is administered in a manner that is not disruptive to the educational environment
22 and does not cause exposure to any other student; and
23 (4) Is removed from the school property or school-sanctioned event by the caregiver
24 if any cannabis or cannabis product remains following administration.

25 If a school district adopts a policy pursuant to this section, it shall conspicuously
26 post the policy on its website. If the school district does not have a website, it shall make
27 the policy available upon request.

28 **Section 7. That chapter 34-20G be amended with a NEW SECTION:**

29 A nonpublic school student who is a cardholder may not engage in the medical use
30 of cannabis on school grounds, in a school vehicle, or during a school-related event or
31 activity located off school grounds unless the school adopts a policy permitting the medical

1 use of cannabis by students. If a nonpublic school adopts a policy permitting the medical
2 use of cannabis by students, it is permitted discretion in adopting any reasonable policy.
3 If a nonpublic school adopts a policy pursuant to this section, it shall conspicuously post
4 the policy on its website. If a nonpublic school does not have a website, it shall make the
5 policy available upon request.

6 **Section 8. That chapter 34-20G be amended with a NEW SECTION:**

7 If a school district or nonpublic school adopts a policy pursuant to section 6 or 7 of
8 this Act, no school subject to the policy may discipline a student acting in accordance with
9 the policy.