

Title: An initiated measure to legalize marijuana for medical use.

Attorney General's Explanation:

This measure legalizes medical use of marijuana by qualifying patients, including minors. "Medical use" includes the use, delivery, manufacture — and for State residents, cultivation — of marijuana and marijuana-based products to treat or alleviate debilitating medical conditions certified by the patients' practitioners.

South Dakota patients must obtain a registration card from the State Department of Health. Non-residents may use out-of-state registration cards. Patients may designate caregivers to assist their use of marijuana; the caregivers must register with the Department.

Cardholders may possess 3 ounces of marijuana and additional amounts of marijuana products. Additionally, if a resident cardholder is allowed to grow marijuana plants the cardholder may possess a minimum of 3 plants, as well as marijuana and products made from those plants.

The measure legalizes marijuana testing, manufacturing, and cultivation facilities, as well as marijuana dispensaries. These establishments must register with the Department.

The measure legalizes some substances that are considered felony controlled substances under current State law. Marijuana remains illegal under Federal law. The measure limits State and local law enforcement's ability to assist Federal law enforcement authorities.

The 95-section measure contains numerous other provisions not described here. It will likely require judicial or legislative clarification.

Full Initiative Text:

An act to provide for regulation, access and compassionate use of cannabis in South Dakota.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA

Section 1 Terms used in this act mean:

(1) "Allowable amount of cannabis" means:

(a) Three ounces of cannabis or less;

(b) The quantity of cannabis products as established by rules promulgated by the department under section 72 of this Act;

(c) If the cardholder has a registry identification card allowing cultivation, three cannabis plants minimum or as prescribed by physician; 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) A practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner has completed an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;

(b) The practitioner has consulted with the patient with respect to the patient's debilitating medical condition; and

(c) The practitioner is available to or offers to provide follow-up care and treatment to the patient, including, patient examinations;

(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 Act 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 Act 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 act 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; 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 section 26 of this act;

(9) "Department," means the Department of Health.

(10) "Designated caregiver," a person 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 or residential care facility 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:

(1) 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) "Medical cannabis" or "cannabis," marijuana as defined in SD 22-42-1 ;

(15) "Medical cannabis dispensary" or "dispensary," an entity registered with the department pursuant to this Act that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;

(16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility, a

cannabis product manufacturing facility, or a dispensary;

(17) "Medical cannabis establishment agent," an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;

(18) "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 card holder'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;

(19) "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;

(2) 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

(4) Has submitted any documentation required by the department, and has received confirmation of registration;

(20) "Practitioner," a physician 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;

(21) "Qualifying patient," a person who has been diagnosed by a practitioner as having a debilitating medical condition;

(22) "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 sections 29-42 of this Act;

(23) "Written certification," a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition. This document shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient's debilitating medical condition.

Section 2. A cardholder is not subject to arrest, prosecution, or penalty of any kind, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for:

- (1) The medical use of cannabis in accordance with to this Act, if the cardholder does not possess more than the allowable amount of cannabis, and if any cannabis plant is either cultivated in an enclosed, locked facility or is being transported;
- (2) Reimbursement by a registered qualifying patient to the patient's registered designated caregiver for direct costs incurred by the registered designated caregiver for assisting with the registered qualifying patient's medical use of cannabis;
- (3) Transferring the cannabis to a testing facility;
- (4) Compensating a dispensary or a testing facility for goods or services provided;
- (5) Selling, transferring, or delivering cannabis seeds produced by the cardholder to a cultivation facility or dispensary; or
- (6) Offering or providing cannabis to a cardholder for a registered qualifying patient's medical use, to a nonresident cardholder, or to a dispensary if nothing of value is transferred in return and the person giving the cannabis does not knowingly cause the recipient to possess more than the allowable amount of cannabis.

Section 3. That the code be amended by adding a NEW SECTION to read:

No nonresident cardholder is subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, for the transporting, purchasing, possessing, or using medical cannabis in accordance with this Act if the nonresident cardholder does not possess more than three ounces of cannabis and the quantity of cannabis products established by rules promulgated by the department under section 72 of this Act.

Section 4. That the code be amended by adding a NEW SECTION to read:

There is a presumption that a qualifying patient or designated caregiver is engaged in the medical

use of cannabis in accordance with this Act if the cardholder is in possession of a registry identification card and an amount of cannabis that does not exceed the allowable amount of cannabis. The presumption may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating a qualifying patient's debilitating medical condition or symptom associated with the qualifying patient's debilitating medical condition under this Act.

Section 5. That the code be amended by adding a NEW SECTION to read:

No practitioner is subject to arrest, prosecution, or penalty of any kind, or denied any right or privilege, including civil penalty or disciplinary action by the South Dakota Board of Medical and Osteopathic Examiners or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, Nothing in this Act prevents a practitioner from being sanctioned for:

- (1) Issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship; or
- (2) Failing to properly evaluate a patient's medical condition.

Section 6. That the code be amended by adding a NEW SECTION to read:

No attorney is subject to disciplinary action by the State Bar of South Dakota or other professional licensing association for providing legal assistance to a prospective or registered medical cannabis establishment or other related to activity that is not subject to criminal penalties under law of this state

Section 7. That the code be amended by adding a NEW SECTION to read:

No person is subject to arrest, prosecution, or penalty of any kind, or may be denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

- (1) Providing or selling cannabis paraphernalia to a cardholder, nonresident cardholder, or to a medical cannabis establishment;
- (2) Being in the presence or vicinity of the medical use of cannabis that is exempt from criminal or civil penalty by this Act;
- (3) Allowing the person's property to be used for an activity that is exempt from criminal or civil penalty by this Act; or
- (4) Assisting a registered qualifying patient with the act of using or administering cannabis.

Section 8. That the code be amended by adding a NEW SECTION to read:

No dispensary or a dispensary agent is subject to prosecution, search, or inspection, except by the department pursuant to section 69 of this Act, seizure, or penalty in any manner; or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this Act to:

- (1) Possess, transport, or store cannabis or cannabis products;
- (2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;
- (3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;
- (4) Purchase or otherwise acquire cannabis from a cultivation facility or dispensary, and cannabis products from cannabis product manufacturing facility or dispensary; and
- (5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cardholder, nonresident cardholder, or dispensary.

Section 9. That the code be amended by adding a NEW SECTION to read:

No cultivation facility or a cultivation facility agent is subject to prosecution, search, or inspection, except by the department pursuant to section 69 of this Act, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this Act to:

- (1) Possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, or store cannabis;
- (2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;
- (3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;
- (4) Purchase or otherwise acquire cannabis from a cultivation facility;
- (5) Purchase cannabis seeds from a cardholder, nonresident cardholder, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction; or
- (6) Deliver, sell, supply, transfer, or transport cannabis, cannabis paraphernalia, or related supplies or educational materials to a cultivation facility and dispensary.

Section 10. That the code be amended by adding a NEW SECTION to read:

No cannabis product manufacturing facility or a cannabis product manufacturing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to section 69 of this Act, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this Act to:

- (1) Purchase or otherwise acquire cannabis from cultivation facility, and cannabis products or cannabis from a cannabis product manufacturing facility;
- (2) Possess, produce, process, manufacture, compound, convert, prepare, pack, repack, and store cannabis or cannabis products;
- (3) Deliver, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a dispensary or cannabis product manufacturing facility;
- (4) Deliver, transfer, or transport cannabis to testing facility and compensate testing facility for services provided; or
- (5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cannabis product manufacturing facility or dispensary.

Section 11. That the code be amended by adding a NEW SECTION to read:

No testing facility or testing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to section 69 of this Act, seizure, or penalty in any manner, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this Act to:

- (1) Acquire, possess, transport, and store cannabis or cannabis products obtained from a cardholder, nonresident cardholder or medical cannabis establishment;
- (2) Return the cannabis or cannabis products to a cardholder, nonresident cardholder, or medical cannabis establishment from whom it was obtained;
- (3) Test cannabis, including for potency, pesticides, mold, or contaminants; or
- (4) Receive compensation for services under this section.

Section 12. That the code be amended by adding a NEW SECTION to read:

A cardholder, nonresident cardholder, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction may sell or donate cannabis seeds to a cultivation facility in this state.

Section 13. Any cannabis, cannabis product, cannabis paraphernalia, or other interest in or right to property that is possessed, owned, or used in connection with the medical use of cannabis as allowed under this Act, or acts incidental to such use, may not be seized or forfeited. This Act does not prevent the seizure or forfeiture of cannabis exceeding the amount allowed under this Act, or prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis that is possessed, manufactured, transferred, or used in accordance this Act.

Section 14. That the code be amended by adding a NEW SECTION to read:
Possession of, or application for, a registry identification card does not constitute probable cause or reasonable suspicion, nor may it be used to support a search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any governmental agency.

Section 15. That the code be amended by adding a NEW SECTION to read:
For the purposes of state law, an activity related to medical cannabis is lawful as long as it is conducted in accordance with this Act.

Section 16. That the code be amended by adding a NEW SECTION to read:
No law enforcement officer employed by an agency that receives state or local government funds may expend any state or local resources, including the officer's time, to effect any arrest or seizure of cannabis, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of the federal Controlled Substances Act 21 U.S.C. § 801 et seq if the officer has reason to believe that the activity is in compliance with this Act., No officer may expend any state or local resources, including the officer's time, to provide any information or logistical support related to any activity to any federal law enforcement authority or prosecuting entity.

Section 17. That the code be amended by adding a NEW SECTION to read:
No contract entered into by a cardholder, a medical cannabis establishment, or medical cannabis establishment agent, or by a person who allows property to be used for an activity that is exempt from state criminal penalties by this Act is unenforceable on the basis that activity related to cannabis is prohibited by federal law.

Section 18. That the code be amended by adding a NEW SECTION to read:
This Act does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalty for engaging in, the following conduct:

- (1) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;
- (2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any correctional facility;

(3) Smoking cannabis:

(a) On any form of public transportation; or

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

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

Section 19. That the code be amended by adding a NEW SECTION to read:

No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for the person's status as a cardholder, unless failing to do so would violate federal law or regulations or cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulation.

Section 20. That the code be amended by adding a NEW SECTION to read:

For the purposes of medical care, including organ and tissue transplants, a registered qualifying patient's use of cannabis in accordance with this Act is considered the equivalent of the authorized use of any other medication used at the discretion of a practitioner and does not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.

Section 21. That the code be amended by adding a NEW SECTION to read:

No person may be denied custody of or visitation rights or parenting time with a minor solely for the person's status as a cardholder, and there is no presumption of neglect or child endangerment for conduct allowed under this Act, unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

Section 22. That the code be amended by adding a NEW SECTION to read:

Except as provided in this Act, a registered qualifying patient who uses cannabis for a medical purpose shall be afforded all the same rights under state and local law, as the person would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to:

(1) Any interaction with a person's employer;

(2) Drug testing by a person's employer; or

(3) Drug testing required by any state or local law, agency, or government official.

Section 23. That the code be amended by adding a NEW SECTION to read:

The rights provided by sections 19 to 25, inclusive of this Act do not apply to the extent that they conflict with an employer's obligations under federal law or regulation or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulation.

Section 24. That the code be amended by adding a NEW SECTION to read:

No employer is required to allow the ingestion of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. A registered qualifying patient may not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

Section 25. That the code be amended by adding a NEW SECTION to read:

No school, landlord, or employer may be penalized or denied any benefit under state law for enrolling, leasing to, or employing a cardholder.

Section 26. That the code be amended by adding a NEW SECTION to read:

Any resident of this state may petition the department to add a serious medical condition or treatment to the list of debilitating medical conditions as defined by this Act. The department shall consider a petition in the manner required by rules promulgated by the department pursuant to this Act, including public notice and hearing. The department shall approve or deny a petition within one hundred eighty days of submission. The approval or denial of any petition is a final decision of the department, subject to judicial review.

Section 27. That the code be amended by adding a NEW SECTION to

read: Nothing in this Act requires:

- (1) A government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of cannabis;
- (2) Any person or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to smoke cannabis on or in that property; or
- (3) A landlord to allow the cultivation of cannabis on the rental property.

Section 28. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.

Section 29. That the code be amended by adding a NEW SECTION to read:

No later than one hundred forty days after the effective date of this Act, the department shall issue registry identification cards to qualifying patients who submit the following, in accordance with rules promulgated by the department:

- (1) A written certification issued by a practitioner within ninety days immediately preceding the date of an application;
- (2) The application or renewal fee;
- (3) The name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) The name, address, and telephone number of the qualifying patient's practitioner;
- (5) The name, address, and date of birth of the designated caregiver, or designated caregivers, chosen by the qualifying patient;
- (6) If more than one designated caregiver is designated at any given time, documentation demonstrating that a greater number of designated caregivers are needed due to the patient's age or medical condition;
- (7) The name of no more than two dispensaries that the qualifying patient designates, if any; and
- (8) If the qualifying patient designates a designated caregiver, a designation as to whether the qualifying patient or designated caregiver will be allowed under state law to possess and cultivate cannabis plants for the qualifying patient's medical use.

Section 30. That the code be amended by adding a NEW SECTION to read:

If the qualifying patient is unable to submit the information required by section 29 of this Act due to the person's age or medical condition, the person responsible for making medical decisions for the qualifying patient may do so on behalf of the qualifying patient.

Section 31. That the code be amended by adding a NEW SECTION to read: Except as provided in section 32 of this Act, the department shall:

- (1) Verify the information contained in an application or renewal submitted pursuant to this Act and approve or deny an application or renewal within fifteen days of receiving a completed application or renewal application;
- (2) Issue registry identification cards to a qualifying patient and to a qualifying patient's designated caregivers, if any, within five days of approving the application or renewal. A designated caregiver shall have a registry identification card for each of the qualifying patients; and

(3) Enter the registry identification number of any dispensary the patient designates into the verification system.

Section 32. That the code be amended by adding a NEW SECTION to read:

The department may conduct a background check of a designated caregiver in order to carry out the provisions of section 31 of this Act.

Section 33. That the code be amended by adding a NEW SECTION to read:

The department may not issue a registry identification card to a qualifying patient who is younger than eighteen years of age unless:

(1) The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and

(2) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:

(a) Allow the qualifying patient's medical use of cannabis;

(b) Serve as the qualifying patient's designated caregiver; and

(c) Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying patient.

Section 34. That the code be amended by adding a NEW SECTION to read:

The department may deny an application or renewal of a qualifying patient's registry identification card only if the applicant:

(1) Does not provide the required information, fee, or materials;

(2) Previously had a registry identification card revoked; or

(3) Provided false information.

Section 35. The department may deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted only if:

(1) The designated caregiver does not meet the requirements of a designated caregiver as defined in Section 1 Of this Act

(2) The applicant does not provide the information required;

(3) The designated caregiver previously had a registry identification card revoked; or

(4) The applicant or the designated caregiver provide false information.

Section 36. That the code be amended by adding a NEW SECTION to read:

The department shall give written notice to the qualifying patient of the reason for denying a registry identification card to the qualifying patient or to the qualifying patient's designated caregiver.

Section 37. That the code be amended by adding a NEW SECTION to read:

Denial of an application or renewal under Section 34 or 35 of this Act is considered a final department action, subject to judicial review.

Section 38. That the code be amended by adding a NEW SECTION to read:

Until a qualifying patient who has submitted an application and the required fee to the department receives a registry identification card or a denial, a copy of the patient's application, written certification, and proof that the application was submitted to the department is deemed a registry identification card.

Section 39. That the code be amended by adding a NEW SECTION to read:

Until a designated caregiver whose qualifying patient has submitted an application and the required fee receives a registry identification card or a denial, a copy of the a qualifying patient's application, written certification, and proof that the application was submitted to the department is deemed a registry identification card.

Section 40. That the code be amended by adding a NEW SECTION to read:

Until twenty-five days after the department makes applications available, a valid, written certification issued within the previous year shall be deemed a registry identification card for a qualifying patient.

Section 41. That the code be amended by adding a NEW SECTION to read:

Until twenty-five days after the department makes applications available, the following is considered a designated caregiver registry identification card:

(1) A copy of a qualifying patient's valid written certification issued within the previous year; and

(2) A signed affidavit attesting that the person has significant responsibility for managing the well-being of the patient and that the person has been chosen to assist the qualifying patient.

Section 42. That the code be amended by adding a NEW SECTION to read: A registry identification cards shall contain all of the following:

(1) The name of the cardholder;

- (2) A designation of whether the cardholder is a qualifying patient or a designated caregiver;
- (3) The date of issuance and expiration date of the registry identification card;
- (4) A random ten-digit alphanumeric identification number, containing at least four numbers and at least four letters, that is unique to the cardholder;
- (5) If the cardholder is a designated caregiver, the random identification number of the qualifying patient the designated caregiver will assist;
- (6) A clear indication of whether the cardholder has been designated to cultivate cannabis plants for the qualifying patient's medical use;
- (7) A photograph of the cardholder; and
- (8) The phone number or website address where the card can be verified.

Section 43. That the code be amended by adding a NEW SECTION to read:

A registry identification card expires one year after the date of issue. Unless the practitioner states in the written certification that the qualifying patient would benefit from cannabis until a specified earlier date, then the registry identification card expires on that date.

Section 44. That the code be amended by adding a NEW SECTION to read:

The department shall maintain a confidential list of any person to whom the department has issued a registry identification card and the addresses, phone number, and registry identification number of each person. The list may not be combined or linked in any manner with any other list or database, nor may it be used for any purpose not provided for in this Act.

Section 45. That the code be amended by adding a NEW SECTION to read:

Within one hundred twenty days of the effective date of this Act, the department shall establish a secure phone or web-based verification system. The verification system shall allow law enforcement personnel and medical cannabis establishments to enter a registry identification number and determine whether the number corresponds with a current, valid registry identification card. The system may disclose only:

- (1) Whether the identification card is valid;
- (2) The name of the cardholder;
- (3) Whether the cardholder is a qualifying patient or a designated caregiver;
- (4) Whether the cardholder is permitted to cultivate cannabis plants;
- (5) The registry identification number of any affiliated registered qualifying patient; and

(6) The registry identification of the qualifying patient's dispensary or dispensaries, if any.

Section 46. That the code be amended by adding a NEW SECTION to

read: The following notifications are required:

(1) A registered qualifying patient shall notify the department of any change in the applicant's name or address, or if the patient ceases to have a debilitating medical condition, within ten days of the change;

(2) A registered designated caregiver shall notify the department of any change in the caregiver's name or address, or if the caregiver becomes aware the qualifying patient passed away, within ten days of the change;

(3) Before a registered qualifying patient changes a designated caregiver, the patient shall notify the department;

(4) If a registered qualifying patient changes a preference as to who may cultivate cannabis for the patient, the patient shall notify the department;

(5) If a cardholder loses a registry identification card, the cardholder shall notify the department within ten days of becoming aware the card has been lost; and

(6) Before a registered qualifying patient changes a designated dispensary, the patient shall notify the department;

Section 47. That the code be amended by adding a NEW SECTION to read:

Any notification that a registered qualifying patient is required to make under this Act may be made by the patient's designated caregiver if the qualifying patient is unable to make the notification due to age or medical condition.

Section 48. That the code be amended by adding a NEW SECTION to read:

If a cardholder notifies the department of any item listed in section 46 of this Act, but remains eligible under this Act, the department shall issue the cardholder a new registry identification card with a new random ten-digit alphanumeric identification number within ten days of receiving the updated information and a twenty dollar fee. If the person notifying the department is a registered qualifying patient, the department shall also issue the patient's registered designated caregiver, if any, a new registry identification card within ten days of receiving the updated information.

Section 49. That the code be amended by adding a NEW SECTION to read:

If the registered qualifying patient's certifying practitioner notifies the department in writing that the

registered qualifying patient has ceased to suffer from a debilitating medical condition or that the practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of cannabis, the card is void. However, the registered qualifying patient shall have fifteen days to dispose of or give away any cannabis in the registered qualifying patient's possession.

Section 50. That the code be amended by adding a NEW SECTION to read:

A medical cannabis establishment shall notify the department within one business day of any theft or significant loss of cannabis.

Section 51. That the code be amended by adding a NEW SECTION to read:

Except as provided in section 18 of this Act and this section, a person may assert the medical purpose for using cannabis as a defense to any prosecution involving cannabis, and such defense is presumed valid where the evidence shows that:

(1) A practitioner has stated that, in the practitioner's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide practitioner-patient relationship, the patient has a debilitating medical condition and the potential benefits of using cannabis for medical purposes would likely outweigh the health risks for the person;

(2) The person was in possession of no more than three ounces of cannabis, the amount of cannabis products allowed by department rules, six cannabis plants minimum or as prescribed by a physician, and the cannabis produced by those plants;

(3) The person was engaged in the acquisition, possession, use, manufacture, cultivation, or transportation of cannabis, paraphernalia, or both, relating to the administration of cannabis to treat or alleviate the person's debilitating medical condition or symptoms associated with the person's debilitating medical condition; and

(4) Any cultivation of cannabis and storage of more than three ounces of cannabis occurred in a secure location that only the person asserting the defense could access.

Section 52. That the code be amended by adding a NEW SECTION to read:

An affirmative defense and motion to dismiss shall fail if the prosecution proves that:

(1) The person had a registry identification card revoked for misconduct; or

(2) The purpose for the possession or cultivation of cannabis was not solely for palliative or therapeutic use by the person with a debilitating medical condition who raised the defense.

Section 53. That the code be amended by adding a NEW SECTION to read:

A person is not required to possess a registry identification card to raise the affirmative defense set forth in section 51 of this Act

Section 54. That the code be amended by adding a NEW SECTION to read:

If a person demonstrates the person's medical purpose for using cannabis pursuant to this Act, except as provided in section 18 of this Act, the person is not subject to the following for the person's use of cannabis for medical purposes:

- (1) Disciplinary action by an occupational or professional licensing board or bureau; or
- (2) Forfeiture of any interest in or right to any property other than cannabis.

Section 55. That the code be amended by adding a NEW SECTION to read:

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

- (1) The prospective medical cannabis establishment has submitted all of the following:
 - (a) The application fee.
 - (b) An application, including:
 - (i) The legal name of the prospective medical cannabis establishment;
 - (ii) The physical address of the prospective medical cannabis establishment that is not within one thousand feet of a public or private school existing before the date of the medical cannabis establishment application;
 - (iii) The name and date of birth of each principal officer and board member of the proposed medical cannabis establishment; and
 - (iv) Any additional information requested by the department.
 - (c) Operating procedures consistent with rules for oversight of the proposed medical cannabis establishment, including procedures to ensure accurate record keeping and adequate security measures.
 - (d) If the city or county where the proposed medical cannabis establishment would be located has enacted zoning restrictions, a sworn statement certifying that the proposed medical cannabis establishment does not violate the restrictions.

(e) If the city or county where the proposed medical cannabis establishment requires a local registration, license, or permit, a copy of the registration, license, or permit.

(2) None of the principal officers or board members has served as a principal officer or board

member for a medical cannabis establishment that has had its registration certificate revoked.

(3) None of the principal officers or board members is under twenty-one years of age; and

(4) At least one principal officer is a resident of this state.

Section 56. That the code be amended by adding a NEW SECTION to read:

If a local government has enacted a numerical limit on the number of medical cannabis establishments in the locality and a greater number of applicants seek registration, the department shall solicit and consider input from the local government as to its preference for registration.

Section 57. That the code be amended by adding a NEW SECTION to read:

The department shall issue a renewal registration certificate within ten days of receipt of the prescribed renewal application and renewal fee from a medical cannabis establishment if the establishment's registration certificate is not under suspension and has not been revoked.

Section 58. That the code be amended by adding a NEW SECTION to read:

A local government may enact an ordinance not in conflict with this Act, governing the time, place, manner, and number of medical cannabis establishments in the locality. A local government may establish civil penalties for violation of an ordinance governing the time, place, and manner of a medical cannabis establishment that may operate in the locality.

Section 59. That the code be amended by adding a NEW SECTION to read:

No local government may prohibit a dispensary, either expressly or through the enactment of an ordinance that makes the operation of the dispensary impracticable in the jurisdiction.

Section 60. That the code be amended by adding a NEW SECTION to read:

A local government may require a medical cannabis establishment to obtain a local license, permit, or registration to operate, and may charge a reasonable fee for the local license, permit, or registration.

Section 61. That the code be amended by adding a NEW SECTION to read:

Each medical cannabis establishment shall conduct a background check into the criminal history of each person seeking to become a principal officer, board member, agent, volunteer, or

employee before the person begins working at the medical cannabis establishment.

Section 62. That the code be amended by adding a NEW SECTION to

read: A medical cannabis establishment may not employ any person

who:

- (1) Was convicted of a disqualifying felony offense; or
- (2) Is under twenty-one years of age.

Section 63. That the code be amended by adding a NEW SECTION to read:

Each medical cannabis establishment shall have operating documents that includes procedures for the oversight of the medical cannabis establishment and procedures to ensure accurate record keeping.

Section 64. That the code be amended by adding a NEW SECTION to read:

A medical cannabis establishment shall implement appropriate security measures designed to deter and prevent the theft of cannabis and unauthorized entrance into any area containing cannabis.

Section 65. That the code be amended by adding a NEW SECTION to read:

All cultivation, harvesting, manufacturing and packaging of cannabis shall take place in a secure facility at a physical address provided to the department during the registration process. The secure facility may only be accessed by agents of the medical cannabis establishment, emergency personnel, and adults who are twenty-one years of age and older and who are accompanied by a medical cannabis establishment agent.

Section 66. That the code be amended by adding a NEW SECTION to read:

No medical cannabis establishment other than a cannabis product manufacturer may produce cannabis concentrates, cannabis extractions, or other cannabis products.

Section 67. That the code be amended by adding a NEW SECTION to read:

A medical cannabis establishment may not share office space with or refer a patient to a practitioner.

Section 68. That the code be amended by adding a NEW SECTION to read:

A medical cannabis establishment may not permit any person to consume cannabis on the property of a medical cannabis establishment.

Section 69. That the code be amended by adding a NEW SECTION to read:

A medical cannabis establishment is subject to inspection by the department during business

hours.

Section 70. That the code be amended by adding a NEW SECTION to read:

Before cannabis may be dispensed to a cardholder or nonresident cardholder, a dispensary agent shall:

- (1) Shall make a diligent effort to verify that the registry identification card or registration presented to the dispensary is valid;
- (2) Shall make a diligent effort to verify that the person presenting the documentation is the person identified on the document presented to the dispensary agent;
- (3) May not dispense an amount of cannabis to a person that would cause the person to possess more than the allowable amount of cannabis; and
- (4) Shall make a diligent effort to verify that the dispensary is the current dispensary that was designated by the cardholder or nonresident cardholder.

Section 71. That the code be amended by adding a NEW SECTION to read: A dispensary may not dispense more than three ounces of cannabis to a nonresident cardholder or a registered qualifying patient, directly or via a designated caregiver, in any fourteen day period. A dispensary shall ensure compliance with the limitation under this section by maintaining internal, confidential records that include records specifying how much cannabis is dispensed to a nonresident cardholder or registered qualifying patient and whether it is dispensed directly to a registered qualifying patient or to the designated caregiver.

Section 72. That the code be amended by adding a NEW SECTION to read:

Not later than one hundred twenty days after the effective date of this Act, the department shall promulgate rules pursuant to chapter 1-26:

- (1) Governing the manner in which the department shall consider petitions from the public to add a debilitating medical condition or treatment to the list of debilitating medical conditions as defined by this Act, including public notice of and an opportunity to comment in public hearings on the petitions;
- (2) Establishing the form and content of registration and renewal applications submitted under this Act;
- (3) Establishing a system to numerically score competing medical cannabis establishment applicants, in cases where more applicants apply than are allowed by the local government, that includes analysis of:
 - (a) The preference of the local government;

(b) In the case of dispensaries, the suitability of the proposed location and its accessibility for patients;

(c) The character, veracity, background, qualifications, and relevant experience of principal officers and board members; and

(d) The business plan proposed by the applicant, that in the case of a cultivation facility or dispensary shall include the ability to maintain an adequate supply of cannabis, plans to ensure safety and security of patrons and the community, procedures to be used to prevent diversion, and any plan for making cannabis available to low-income registered qualifying patients;

(4) Governing the manner in which the department shall consider applications for and renewals of registry identification cards, that may include creating a standardized written certification form;

(5) Governing medical cannabis establishments to ensure the health and safety of qualifying patients and prevent diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including:

(a) Oversight requirements;

(b) Record keeping requirements;

(c) Security requirements, including lighting, physical security, and alarm requirements;

(d) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health;

(e) Standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by a cultivation facility;

(f) Requirements for the transportation and storage of cannabis by a medical cannabis establishment;

(g) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent;

(h) Standards for the safe manufacture of cannabis products, including extracts and concentrates;

(i) Restrictions on the advertising, signage, and display of medical cannabis, provided that the restrictions may not prevent appropriate signs on the property of a dispensary, listings in business directories including phone books, listings in marijuana-related or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events;

(j) Requirements and procedures for the safe and accurate packaging and labeling of medical cannabis; and

(k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel;

(6) Establishing procedures for suspending or terminating the registration certificates or registry identification cards of cardholders and medical cannabis establishments that commit multiple or serious violations of this Act.

(7) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis product labels to include the following:

(a) The length of time it typically takes for a product to take effect;

(b) Disclosing ingredients and possible allergens;

(c) A nutritional fact panel; and

(d) Requiring that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;

(8) Procedures for the registration of nonresident cardholders and the cardholder's designation of no more than two dispensaries, which shall require the submission of:

(a) A practitioner's statement confirming that the patient has a debilitating medical condition; and

(b) Documentation demonstrating that the nonresident cardholder is allowed to possess cannabis or cannabis preparations in the jurisdiction where the nonresident cardholder resides;

(9) Establishing the amount of cannabis products, including the amount of concentrated cannabis, each cardholder and nonresident cardholder may possess; and

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

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

A violation of a required or prohibited action under any rule authorized by this section is a Class 2 Misdemeanor

Section 73. That the code be amended by adding a NEW SECTION to read:

A cardholder or medical cannabis establishment who fails to provide a notice required by this Act is subject to a civil penalty of no more than one hundred fifty dollars. Any civil penalty collected shall be deposited in the state general fund.

Section 74. That the code be amended by adding a NEW SECTION to read:

In addition to any other penalty under law, a medical cannabis establishment or an agent of a medical cannabis establishment who intentionally sells or otherwise transfers cannabis in exchange for anything of value to a person other than a cardholder, a nonresident cardholder, or to a medical cannabis establishment or its agent is guilty of a Class 6 felony. A person convicted under this section may not continue to be affiliated with the medical cannabis establishment and is disqualified from any future affiliation with any medical cannabis establishment under this Act.

Section 75. That the code be amended by adding a NEW SECTION to read:

In addition to any other penalty under law, a cardholder or nonresident cardholder who intentionally sells or otherwise transfers cannabis in exchange for anything of value to a person other than a cardholder, a nonresident cardholder, or to a medical cannabis establishment or its agent is guilty of a Class 6 felony.

Section 76. That the code be amended by adding a NEW SECTION to read:

A person who intentionally makes a false statement to a law enforcement official about any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution is guilty of a Class 2 misdemeanor. The penalty is in addition to any other penalty that may apply for making a false statement or for the possession, cultivation, or sale of cannabis not protected by

this Act. If a person convicted of violating this section is a cardholder, the person is disqualified from being a cardholder under this Act.

Section 77. That the code be amended by adding a NEW SECTION to read:

A person who knowingly submits false records or documentation required by the department to certify a medical cannabis establishment under this Act is guilty of Class 6 felony.

Section 78. That the code be amended by adding a NEW SECTION to read:

A practitioner who knowingly refers patients to a medical cannabis establishment or to a designated caregiver, who advertises in a medical cannabis establishment, or who issues written certifications while holding a financial interest in a medical cannabis establishment is guilty of a Class 2 misdemeanor. .

Section 79. That the code be amended by adding a NEW SECTION to read:

It is a Class 2 misdemeanor for any person, including an employee or official of the department or another state agency or local government to breach the confidentiality of information obtained under this Act.

Section 80. That the code be amended by adding a NEW SECTION to read:

The department may on its own motion or on complaint, after investigation and opportunity for a public hearing at which the medical cannabis establishment has been afforded an opportunity to be heard, suspend or revoke a registration certificate for multiple negligent or knowing violations or for a serious and knowing violation by the registrant or any of its agents of this Act.

Section 81. That the code be amended by adding a NEW SECTION to read:

The department shall provide notice of suspension, revocation, fine, or other sanction, as well as the required notice of the hearing, by mailing the same in writing to the medical cannabis establishment at the address on the registration certificate. A suspension may not be for a longer period than six months.

Section 82. That the code be amended by adding a NEW SECTION to read:

A medical cannabis establishment may continue to possess cannabis during a suspension, but it may not dispense, transfer, or sell cannabis. A cultivation facility may continue to cultivate and possess cannabis plants during a suspension, but it may not dispense, transfer, or sell cannabis.

Section 83. That the code be amended by adding a NEW SECTION to read:

The department shall immediately revoke the registry identification card of any cardholder who sells cannabis to a person who is not allowed to possess cannabis for medical purposes under this chapter, and the cardholder is disqualified from being a cardholder under this Act.

Section 84. That the code be amended by adding a NEW SECTION to read:

The department may revoke the registry identification card of any cardholder who knowingly commits multiple unintentional violations or a serious knowing violation of this Act.

Section 85. That the code be amended by adding a NEW SECTION to read:
Revocation under section 80 of this Act is a final decision of the department subject to judicial review.

Section 86. That the code be amended by adding a NEW SECTION to read:
Data in a registration application and supporting data submitted by a qualifying patient, designated caregiver, nonresident cardholder or medical cannabis establishment, including data on designated caregiver or practitioner, is private data that is confidential.

Section 87. That the code be amended by adding a NEW SECTION to read:
Data kept or maintained by the department may not be used for any purpose not provided for in this Act and may not be combined or linked in any manner with any other list or database.

Section 88. That the code be amended by adding a NEW SECTION to read: Data kept or maintained by the department may be disclosed solely for:

- (1) The verification of a registration certificate or registry identification card pursuant to this Act;
- (2) Submission of the annual report required by this Act;
- (3) Notification of state or local law enforcement of an apparent criminal violation of this Act;
- (4) Notification of state and local law enforcement about falsified or fraudulent information submitted for the purpose of obtaining or renewing a registry identification card; or
- (5) Notification of the South Dakota Board of Medical and Osteopathic Examiners if there is reason to believe that a practitioner provided a written certification and the department has reason to believe the practitioner otherwise violated the standard of care for evaluating medical condition.

Section 89. That the code be amended by adding a NEW SECTION to read:
Any information kept or maintained by a medical cannabis establishment may only identify cardholder by registry identification number and may not contain names or other personal identifying information.

Section 90. That the code be amended by adding a NEW SECTION to read:
At the cardholder's request, the department may confirm the cardholder's status as a registered qualifying patient or a registered designated caregiver to a third party, such as a landlord, school, medical professional, or court.

Section 91. That the code be amended by adding a NEW SECTION to read:

Any department hard drive or other data-recording media that is no longer in use and that contains cardholder information shall be destroyed.

Section 92. That the code be amended by adding a NEW SECTION to read:

The Executive Board of the Legislative Research Council shall appoint an oversight committee comprised of: one member of the House of Representatives; one member of the Senate; one Department of Criminal Investigation agent; one staff member from the Office of the Attorney General; two representatives of law enforcement; one representative from the department; one practitioner with experience in medical cannabis issues; one nurse; one board member or principal officer of a cannabis testing facility; one person with experience in policy development or implementation in the field of medical cannabis; and three qualifying patients.

Section 93. That the code be amended by adding a NEW SECTION to read:

The oversight committee shall meet at least two times per year for the purpose of evaluating and making recommendations to the Legislature and the department regarding:

- (1) The ability of qualifying patients in all areas of the state to obtain timely access to high-quality medical cannabis;
- (2) The effectiveness of the dispensaries and cultivation facilities, individually and together, in serving the needs of qualifying patients, including the provision of educational and support services by dispensaries, the reasonableness of their prices, whether they are generating any complaints or security problems, and the sufficiency of the number operating to serve the state's registered qualifying patients;
- (3) The effectiveness of the cannabis testing facilities, including whether a sufficient number are operating;
- (4) The sufficiency of the regulatory and security safeguards contained in this Act and adopted by the department to ensure that access to and use of cannabis cultivated is provided only to cardholders;
- (5) Any recommended additions or revisions to the department regulations or this Act, including relating to security, safe handling, labeling, and nomenclature; and
- (6) Any research studies regarding health effects of medical cannabis for patients.

Section 94. That the code be amended by adding a NEW SECTION to read:

The department shall report annually to the Legislature on the number of applications for registry identification cards received, the number of qualifying patients and designated caregivers approved, the number of registry identification cards revoked, the number of each type of medical cannabis establishment registered, and the expenses incurred and revenues

generated from the medical cannabis program. The department may not include identifying information on a qualifying patient, designated caregiver, or practitioner in the report.

Section 96. That the code be amended by adding a NEW SECTION to read:

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