

Filed this 4th day of
May 09

INITIATIVE PETITION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following proposed law be submitted to the voters of the state of South Dakota at the general election on November 2, 2010 for their approval or rejection pursuant to the Constitution of the State of South Dakota.

Ch. M. ...
SECRETARY OF STATE

RECEIVED
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The substance of the proposed law is as follows:
Be it enacted by the people of South Dakota.

S.D. SEC. OF STATE

An Act to provide safe access to medical marijuana for certain qualified persons.

Section 1. Terms used in this Act mean:

- (1) "Cardholder," a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;
- (2) "Debilitating medical condition," one or more of the following:
 - (a) Cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, amyotrophic lateral sclerosis, Alzheimer's disease, or the treatment of these conditions;
 - (b) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
 - (i) Cachexia or wasting syndrome;
 - (ii) Intractable pain, which is severe, debilitating pain that did not respond to other reasonable medical efforts for at least six months, including in cases where other treatment options produced serious side effects;
 - (iii) Severe nausea;
 - (iv) Seizures, including epileptic seizures;
 - (v) Severe or persistent muscle spasms, including spasms caused by spinal injury, multiple sclerosis, or Crohn's disease; or
 - (c) Any other serious medical condition or treatment for a medical condition adopted by the department pursuant to rules issued under section 28 of this Act;
- (3) "Designated caregiver," a person who meets all of the following requirements:
 - (a) is at least 21 years of age;
 - (b) has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana;
 - (c) is a resident of South Dakota; and
 - (d) has never been convicted of an excluded offense. A designated caregiver may assist no more than five qualifying patients with their medical use of marijuana. The term does not include the qualifying patient's physician;
- (4) "Department," the Department of Health or its successor agency;
- (5) "Enclosed, locked facility," a closet, room, greenhouse, or other enclosed area equipped with locks or other security devices that permit access only by a registered designated caregiver or registered qualifying patient;
- (6) "Excluded offense,"
 - (a) a crime of violence as defined in SDCL § 22-1-2 (9) that was classified as a felony in the jurisdiction where the person was convicted; or
 - (b) a violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted unless the applicant demonstrates by a preponderance that such prior offense consisted of conduct for which this Act would have prevented a conviction, but the conduct either occurred prior to the enactment of this Act or was prosecuted by an authority other than South Dakota;
- (7) "Marijuana," as defined in SDCL § 34-20B-1;
- (8) "Medical use," the acquisition, possession, cultivation, manufacture, use, delivery, internal possession, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the medical condition; as used in this paragraph "internal possession" means the possession of an altered state of marijuana absorbed into the human body;
- (9) "Physician," a medical doctor or doctor of osteopathic medicine

- who is licensed pursuant to SDCL Chapter 36-4, except that in relation to a visiting qualifying patient, "physician" means a person who is licensed as an medical doctor or doctor of osteopathic medicine in the state of the patient's residence;
- (10) "Qualifying patient," a person who has been diagnosed by a physician as having a debilitating medical condition;
- (11) "Registry identification card," a document issued by the department that identifies a person as a qualifying patient with a written certification or as a designated caregiver;
- (12) "Usable marijuana," the dried leaves and flowers of marijuana, a preparation of marijuana, or marijuana contained within any mixture. The term does not include the seeds, stalks, and roots of the plant;
- (13) "Visiting qualifying patient" means a patient with a debilitating medical condition who is not a resident of South Dakota or who has been a resident of South Dakota less than 30 days;
- (14) "Written certification," a document signed by a physician stating that, in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

Section 2. The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this Act.

Section 3. Except as provided in section 4 of this Act, the department shall issue a registry identification card to a qualifying patient who has not previously had a card revoked and who submits the following, in accordance with department rules:

- (1) A written certification issued within 90 days prior to the submission of the application and signed by a physician who is either the applicant's primary physician, the applicant's specialist, or another physician who provides medical care to the applicant independent of providing a written certification;
- (2) An application or renewal fee;
- (3) The name, address, and date of birth of the qualifying patient;
- (4) The name, address, and telephone number of the qualifying patient's certifying physician; and
- (5) If the qualifying patient will not be cultivating marijuana, the name, address, and date of birth of the qualifying patient's designated caregiver, if any. A qualifying patient may only have one designated caregiver at any one time.

Section 4. The department shall issue a registry identification card to a minor only if the materials required under section 3 of this Act are submitted and the custodial parent or legal guardian with responsibility for health care decisions for the minor submits a written certification from two physicians for the qualifying patient and signs and submits a written statement that attests that:

- (1) The minor's physician has explained to that minor and to the custodial parent or legal guardian with responsibility for health care decisions for the minor the potential risks and benefits of the medical use of marijuana; and
- (2) The custodial parent or legal guardian with responsibility for health care decisions for the minor:
 - (a) Consents to the medical use of marijuana by the minor;
 - (b) Agrees to serve as the minor's designated caregiver; and

(c) Agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

Section 5. The department shall issue a registry identification card to the designated caregiver who is named in a qualifying patient's approved application if the designated caregiver meets the requirements of Section 1 (3) of this Act, has not previously had a card revoked, and signs a statement agreeing to provide marijuana only to registered qualifying patients. A designated caregiver may receive reasonable compensation for actual expenses incurred assisting with a qualifying patient's medical use of marijuana to whom he or she is connected through the department's registration process. A designated caregiver may assist no more than five qualifying patients with their medical use of marijuana.

Section 6. The department shall verify the information contained in an application or renewal submitted for a registry identification card and shall approve or deny an application or renewal within fifteen days of receipt of the application or renewal. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this Act, the applicant previously had a registry identification card revoked for violating this Act, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this Act. Any rejection of an application or renewal is considered a final department action, and may be appealed pursuant to SDCL Chapter 1-26.

Section 7. The department shall issue a registry identification card within five days of approving an application or renewal. Registry identification cards expire one year after the date of issuance. A registry identification card must include:

- (1) The name, address, and date of birth of the cardholder;
- (2) A designation as to whether the cardholder is a qualifying patient or designated caregiver;
- (3) If the cardholder is a qualifying patient, a clear designation as to whether the patient has a designated caregiver;
- (4) A clear designation on every designated caregiver card and every card for a qualified patient who does not have a designated caregiver that the cardholder is allowed under state law to cultivate marijuana for medical use;
- (5) The date of issuance and expiration date of the registry identification card;
- (6) A random registry identification number; and
- (7) A photograph, if required by the department.

Section 8. A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or designated caregiver or any change in status of the qualifying patient's debilitating medical condition within ten days of the change. A registered designated caregiver shall notify the department of any change in his or her name or address within ten days of such change. If a change occurs and is not reported to the department, the registry identification card is void. If the registered qualifying patient's certifying physician notifies the department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card is null and void upon notification by the department to the qualifying patient.

Section 9. The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Any individual name or any other identifying information on the list is confidential and is not subject to disclosure, except to:

- (1) An authorized employee of the department as necessary to perform official duties of the department; or
- (2) An authorized employee of a state or local law enforcement agency, only as necessary to verify the validity of a registry identification card.

Section 10. The department shall report annually to the Legislature the number of applications for registry identification cards, the number of qualifying patients and designated caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, designated

caregivers, or physicians.

Section 11. (1) No qualifying patient or designated caregiver who is in possession of a valid registry identification card issued to the qualifying patient or designated caregiver pursuant to this Act may be arrested, prosecuted, or penalized in any manner, or be denied any right or privilege for the medical use of marijuana in accordance with this Act, provided that the qualifying patient or designated caregiver possess an amount of marijuana that does not exceed the amounts listed in section 12 of this Act. This section prohibits a professional licensing board from bringing disciplinary action for the medical use of marijuana in accordance with this Act or for assisting in the medical use of marijuana in accordance with this Act.

(2) No qualifying patient or designated caregiver who is in possession of a valid registry identification card shall be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for offering or providing marijuana to a registered qualifying patient if nothing of value is transferred in return and the person giving the marijuana does not knowingly cause the recipient to possess more marijuana than is permitted by section 12 of this Act.

Section 12. A registered qualifying patient may not possess more than one ounce of usable marijuana, an incidental amount of seeds, stalks, and unusable roots, and, if the registered qualifying patient does not have a designated caregiver, six plants. A registered qualifying patient may not possess marijuana plants if he or she has a designated caregiver. A registered designated caregiver may not possess more than six marijuana plants, an incidental amount of seeds, stalks, and unusable roots, and one ounce of usable marijuana for each qualifying patient to whom he or she is connected through the department's registration process. All plants shall be kept in an enclosed, locked facility, unless they are being transported because the cardholder is moving.

Section 13. A qualifying patient or designated caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or designated caregiver:

- (1) Is in possession of a registry identification card; and
- (2) Is in possession of an amount of marijuana that does not exceed the amount permitted under section 12 of this Act.

The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition in accordance with this Act.

Section 14. No physician may be arrested, prosecuted, or penalized in any manner, or denied any right or privilege, nor may a professional licensing board bring a disciplinary action against a physician solely for providing a written certification or for otherwise stating that, in the practitioner's professional opinion, the potential benefits of the medical marijuana would likely outweigh the health risks for a patient. This shall not prevent a professional licensing board from sanctioning a practitioner for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care.

Section 15. An interest in or a right to property that is possessed, owned, or used in connection with a cardholder's medical use of marijuana in accordance with this Act or any act incidental to the medical use of marijuana in accordance with this Act may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. This does not prevent civil forfeiture if the basis for the forfeiture is unrelated to the medical use of marijuana.

Section 16. No person may be prosecuted under any provision of law solely for being in the presence or vicinity of the medical use of marijuana as permitted pursuant to this Act or for assisting a registered qualifying patient to administer or use medical marijuana.

Section 17. Possession of or application for a registry identification card does not alone constitute probable cause to search 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 possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency. The possession of or application for a registry

identification card shall not preclude the existence of probable cause if probable cause exists on other grounds.

Section 18. A registry identification card or its equivalent issued under the laws of another state, United States territory, or the District of Columbia to permit the medical use of marijuana by a visiting qualifying patient has the same force and effect as a registry identification card issued by the department.

Section 19. No school, employer, or landlord may discriminate against a cardholder by refusing to enroll, employ, or lease to, or otherwise penalize a person solely because of his or her status as a registered qualifying patient or a registered designated caregiver unless failing to do so would put the school, employer, or landlord in violation of federal law or cause it to lose a federal contract or funding.

Section 20. A registered qualifying patient may not be discriminated against for the purpose of qualification for an organ transplant. For purposes of determining eligibility for an organ transplant, the authorized use of marijuana in accordance with this Act is considered the equivalent of the authorized use of a prescription medication used at the discretion of a physician and does not constitute the use of an illicit substance.

Section 21. No person, including an employee or official of the department or other state or local government agency, may disclose confidential information relating to the medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of this Act. A violation of this section is a Class 1 misdemeanor.

Section 22. This Act does not permit any person to do any of the following, nor shall it prevent the imposition of any civil, criminal, or other codified penalties for any such actions:

- (1) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while impaired by marijuana;
- (2) Smoke marijuana in any place where tobacco smoking is prohibited by law or by the rules of the establishment, or in any public place or place open to the public, except in a health care facility by permission of an attending physician;
- (3) Undertake any task while impaired by marijuana if doing so would constitute malpractice or negligent behavior;
- (4) Possess marijuana, or otherwise engage in the medical use of marijuana, in a school bus, on the grounds of any preschool or primary or secondary school, or in any correctional facility;
- (5) Use marijuana if the person does not have a debilitating medical condition and a physician who states that the potential benefits of medical marijuana would likely outweigh the health risks for the person;
- (6) Smoke marijuana where the smoke may be inhaled by a minor child;
- (7) Provide marijuana to any person other than a registered qualifying patient; and
- (8) Operate a medical marijuana dispensary, collective, or cooperative.

Section 23. No more than one qualifying patient or designated caregiver may cultivate marijuana on the same property, unless the property is the primary residence for each of the cardholders

Section 24. Nothing in this Act requires:

- (1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana;
- (2) An employer to accommodate the medical use of marijuana in any workplace. This Act shall in no way limit an employer's ability to discipline an employee for ingesting marijuana in the workplace or working while under the influence of marijuana; or
- (3) Any person or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to use marijuana on or in that property.

Section 25. (1) Except as provided in this section and sections 21 and 22 of this Act, it is an affirmative defense to any criminal offense involving marijuana intended solely for the person's medical use that the person charged with the offense is a qualifying patient who:

- (a) Has a physician who states, in the physician'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 physician-patient relationship, that the person has a

debilitating medical condition and the potential benefits of medical marijuana would likely outweigh the health risks for the person;

- (b) Was engaged in the acquisition, possession, cultivation, internal possession, manufacture, use, or transportation of marijuana or paraphernalia relating solely to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the qualifying patient;
 - (c) Possessed no more than one ounce of usable marijuana, an incidental amount of seeds, stalks, and unusable roots, and either no marijuana plants or, if the qualifying patient does not have a registered designated caregiver, six marijuana plants; and
 - (d) If any marijuana plants were involved, the plants were kept in an enclosed area equipped with locks or other security devices that permit access only by the qualifying patient.
- (2) This defense is not available to any person who previously had a registry identification card revoked for a serious violation of this Act or for multiple violations of this Act.
 - (3) Any interest in or right to non-marijuana, licit property that was possessed, owned, or used in connection with a person's use of marijuana for medical purposes is not forfeited if the person demonstrates his or her medical purpose for using marijuana pursuant to this section.

Section 26. No person may knowingly or purposely fabricate or misrepresent a registry identification card to a law enforcement officer. A violation of this section is a Class 6 felony.

Section 27. (1) Any cardholder who distributes marijuana to a person who is not allowed to use marijuana for medical purposes under this Act shall have his or her registry identification card revoked, and is subject to any other codified penalties for the distribution of marijuana.

- (2) The department may revoke the registry identification card of any cardholder who violates this Act, including by committing acts listed under section 21 and section 22 of this Act, and the cardholder shall be subject to any other codified penalties for the violation.

Section 28. The department shall promulgate rules, pursuant to SDCL Chapter 1-26, governing the manner in which the department shall consider petitions from the public to add any additional medical conditions, or treatments for medical conditions, as debilitating medical conditions. The department shall promulgate rules, pursuant to SDCL Chapter 1-26, to address the manner in which the department will consider applications for and renewals of registry identification cards for qualifying patients and designated caregivers. The rules shall establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering this Act. The department may vary the application and renewal fees along a sliding scale that takes into consideration a qualifying patient's income, so that the fees do not place an undue hardship upon the qualifying patient.

Section 29. No person who has complied with this Act may be prosecuted under any section of law for acts committed in accordance with this Act.

Section 30. (1) Except as provided in subsection (2), a violation of SDCL § 22-42-6 is mitigated, and the court shall reduce the punishment, if the defendant demonstrates all of the following:

- (a) The person possessing or manufacturing marijuana is a registered qualifying patient for whom the amounts of marijuana specified under section 12 of this Act were inadequate to maintain an uninterrupted supply; and
- (b) The amount of marijuana possessed or manufactured by the registered qualifying patient was no more than was reasonably necessary to maintain an uninterrupted supply of medical marijuana for the registered qualifying patient; and

- (2) This section does not apply if the registered qualifying patient was not in compliance with requirements contained in sections 1 to 29 of this Act, other than having an amount of marijuana exceeding the amounts specified under section 12 of this Act.

Section 31. The code counsel shall place this Act in SDCL Title 34, and the provisions of Title 34 apply to this Act.

INSTRUCTIONS TO SIGNERS:

1. Signers of this petition must individually sign their names in the form in which they are registered to vote or as they usually sign their names.
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. If the signer is a resident of a second or third class municipality, a post office box may be used for the residence address.
3. Before the petition is filed, each signer or the circulator must print the name of the signer in the space provided and add the county of voter registration.
4. Abbreviations of common usage may be used. Ditto marks may not be used.
5. Failure to provide all information requested may invalidate the signature.

NAME		RESIDENCE	DATE/COUNTY
1	SIGN	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
	Pat Lynch 610 W. 17th Street Sioux Falls SD 57104	CITY OR TOWN	COUNTY OF REGISTRATION
2	SIGN	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
	Emmett Reistroffer 920 S. 4th Avenue Sioux Falls SD 57104	CITY OR TOWN	COUNTY OF REGISTRATION
3	SIGN	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
	PRINT	CITY OR TOWN	COUNTY OF REGISTRATION
4	SIGN	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
	PRINT	CITY OR TOWN	COUNTY OF REGISTRATION
5	SIGN	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
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6	SIGN	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
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7	SIGN	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
	PRINT	CITY OR TOWN	COUNTY OF REGISTRATION
8	SIGN	STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER	DATE OF SIGNING
	PRINT	CITY OR TOWN	COUNTY OF REGISTRATION

VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section **must** be completed following circulation and before filing.

Print name of the circulator _____ Residence Address _____ City _____ State _____

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

Signature of Circulator

(Seal)

Sworn to before me this _____ day of _____, _____.

Signature of Officer Administering Oath

My Commission Expires _____

Title of Officer Administering Oath