



August 15, 2023

Hon. Monae L. Johnson  
Secretary of State  
500 E Capitol Avenue  
Pierre, SD 57501

**RECEIVED**

AUG 17 2023

**SD Secretary of State**

Dear Secretary Johnson,

The Legislative Research Council received an initiated measure to repeal the medical cannabis chapter. The initiated measure requires a fiscal note because it was determined it may have an impact on revenues, expenditures, or the fiscal liability of the state or its agencies and subdivisions. SDCL 2-9-30 requires the fiscal note be no longer than fifty words.

The fiscal note examines the fiscal impact associated with repealing the medical cannabis chapter through this initiated measure. The fiscal impact to the State should result in a net zero change, because SDCL 34-20G-72(9) requires the total fees collected shall generate revenues sufficient to offset all expenses of implementing the medical cannabis chapter and states the fees charged shall be no greater than the costs. In fiscal year 2023, the Department of Health collected approximately \$1.7 million in fee revenue and incurred expenses of approximately \$1.4 million.

Enclosed is a copy of the initiated measure, in final form, that was submitted to this office. In accordance with SDCL 2-9-31, I hereby submit the Legislative Research Council's fiscal note with respect to this initiated measure.

Sincerely,

A handwritten signature in blue ink that reads "Reed Holwegner".

Reed Holwegner  
Director

Filed this 17<sup>th</sup> day of  
August 2023

A handwritten signature in black ink that reads "Monae L. Johnson".

**SECRETARY OF STATE**

Cc: Travis Ismay  
Enclosures

SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

FISCAL NOTE

INITIATED MEASURE

---

AN INITIATED MEASURE TO REPEAL MEDICAL CANNABIS.

By repealing the medical cannabis chapter, the State could lose \$1.7 million in fee revenue and reduce expenditures by \$1.4 million.

Approved: Reed Adewegun Date: August 15, 2023

Director, Legislative Research Council

RECEIVED  
AUG 17 2023  
S.D. SEC. OF STATE

Filed this 17<sup>th</sup> day of  
August 2023

Monae L. Johnson

SECRETARY OF STATE

RECEIVED

AUG 17 2023

S.D. SEC. OF STATE

Initiative petition

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following proposed law be REPEALED by the voters of the state of South Dakota at the next general election, on November 5, 2024

Filed this 17th day of

August 2023

Title: The REPEAL of 34-20G the medical cannabis law.

Section 1. That § 34-20G-1. be REPEALED:

—Terms used in this chapter mean:

- (1) "Allowable amount of cannabis,"
  - (a) Three ounces of cannabis or less;
  - (b) The quantity of cannabis products as established by rules promulgated by the department under § 34-20G-72;
  - (c) If the cardholder has a registry identification card allowing cultivation, two flowering cannabis plants, two flowering cannabis plants that are in the flowering stage, and two flowering cannabis plants that are in the vegetative stage; 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 treatment or consulting relationship between a practitioner and patient, during which:
  - (a) The practitioner completes, at the initial visit, an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;
  - (b) The patient is under the practitioner's care for the debilitating medical condition that qualifies the patient for the medical use of cannabis or has been referred by the practitioner caring for the patient's debilitating medical condition that qualifies the patient for the medical use of cannabis to another practitioner;
  - (c) The patient has a reasonable expectation that the practitioner providing the written certification will continue to provide follow-up care to the patient to monitor the medical use of cannabis; and
  - (d) The relationship is not for the sole purpose of providing a written certification for the medical use of cannabis unless the patient has been referred by a practitioner providing care for the debilitating medical condition that qualifies the patient for the medical use of cannabis;
- (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 chapter 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 chapter 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 chapter 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 § 34-20G-26;
- (9) "Department," the Department of Health;
- (10) "Designated caregiver," an individual 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, as defined in § 34-12-1.1, an accredited prevention or treatment facility, as defined in § 34-20A-2, a mental health center, as defined in § 27A-1-1, a child welfare agency, as defined in § 26-6-1, or a community support provider or community services provider, as defined in § 27B-1-17, 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:
  - (a) 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) "Flowering cannabis plant," the reproductive state of the cannabis plant in which the plant shows physical signs of flower budding out of the nodes of the stem;
- (15) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- (16) "Medical cannabis dispensary" or "dispensary," an entity registered with the department pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;

Monae L. Johnson

SECRETARY OF STATE

- (17) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;
- (18) "Medical cannabis establishment agent," an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;
- (19) "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 cardholder'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;
- (20) "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;
  - (b) 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
  - (d) Has submitted any documentation required by the department, and has received confirmation of registration;
- (21) "Practitioner," a physician, physician assistant, or advanced practice registered nurse, 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;
- (22) "Qualifying patient," a person who has been diagnosed by a practitioner as having a debilitating medical condition;
- (23) "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 §§ 34-20G-29 to 34-20G-42, inclusive;
- (24) "Safety sensitive job," any position with tasks or duties that an employer reasonably believes could:
  - (a) Cause the illness, injury, or death of an individual; or
  - (b) Result in serious property damage;
- (25) "Under the influence of cannabis," any abnormal mental or physical condition that tends to deprive a person of clearness of intellect and control that the person would otherwise possess, as the result of consuming any degree of cannabis or cannabis products; and
- (26) "Written certification," a document dated and signed by a practitioner:
  - (a) Stating that the patient has a qualifying debilitating medical condition or symptom associated with the debilitating medical condition;
  - (b) Affirming that the document is made in the course of a bona fide practitioner-patient relationship;
  - (c) Specifying the qualifying patient's debilitating medical condition; and
  - (d) Specifying the expiration date of the qualifying patient's written certification, pursuant to § 34-20G-43.

**Section 2. That § 34-20G-2, be REPEALED:**

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 this chapter, 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 § 34-20G-3, be REPEALED:**

No nonresident cardholder is subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, for transporting, purchasing, possessing, or using medical cannabis in accordance with this chapter 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 § 34-20G-72.

**Section 4. That § 34-20G-4, be REPEALED:**

There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of cannabis in accordance with this chapter 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 chapter.

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

~~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 chapter 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 § 34-20G-6. be REPEALED:**

~~No person licensed by the state or any other governmental entity to engage in any profession, occupation, or other activity is subject to disciplinary action, denial of the rights and privileges of such license, or otherwise penalized by the licensing authority for lawfully engaging in any activity authorized under this chapter or providing any service to a person engaged in activity that is authorized by this chapter merely because that activity is prohibited by federal law.~~

**Section 7. That § 34-20G-7. be REPEALED:**

~~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 chapter;~~
- ~~(3) Allowing the person's property to be used for an activity that is exempt from criminal or civil penalty by this chapter; or~~
- ~~(4) Assisting a registered qualifying patient with the act of using or administering cannabis.~~

**Section 8. That § 34-20G-8. be REPEALED:**

~~No dispensary or a dispensary agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, 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 chapter 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 § 34-20G-9. be REPEALED:**

~~No cultivation facility or a cultivation facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, 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 chapter 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 § 34-20G-10. be REPEALED:**

~~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 § 34-20G-69, 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 chapter 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 § 34-20G-11. be REPEALED:**

~~No testing facility or testing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, 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 chapter 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 § 34-20G-12. be REPEALED:**

~~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. That § 34-20G-13. be REPEALED:**

~~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 chapter, or acts incidental to such use, may not be seized or forfeited. This chapter does not prevent the seizure or forfeiture of cannabis exceeding the amount allowed under this chapter, 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 with this chapter.~~

**Section 14. That § 34-20G-14. be REPEALED:**

~~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 § 34-20G-15. be REPEALED:**

~~For the purposes of state law, an activity related to medical cannabis is lawful as long as it is conducted in accordance with this chapter.~~

**Section 16. That § 34-20G-16. be REPEALED:**

~~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 chapter. 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 § 34-20G-17. be REPEALED:**

~~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 chapter is unenforceable on the basis that activity related to cannabis is prohibited by federal law.~~

**Section 18. That § 34-20G-18. be REPEALED:**

~~This chapter 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 or vaping cannabis:
  - ~~(a) On any form of public transportation;~~
  - ~~(b) In any public place or any place that is open to the public; or~~
  - ~~(c) If under the age of twenty one;~~~~
- ~~(4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis; or~~
- ~~(5) Performing any safety sensitive job under the influence of cannabis.~~

**Section 19. That § 34-20G-19. be REPEALED:**

~~A cardholder may not be refused enrollment by a school or a lease by a landlord, or otherwise be penalized by a school or landlord 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. This section does not prevent a landlord from imposing reasonable restrictions on the medical use of cannabis by a cardholder who resides at the landlord's property.~~

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

~~For the purposes of medical care, including organ and tissue transplants, a registered qualifying patient's use of cannabis in accordance with this chapter 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 § 34-20G-21. be REPEALED:**

~~No person may be denied custody of, visitation rights with, or parenting time with a minor solely because the person is a cardholder. There is no presumption of neglect or child endangerment for conduct allowed under this chapter, unless the person's behavior creates an unreasonable danger to the safety of the minor. Nothing in this chapter supersedes or otherwise affects custody decisions, visitation rights, or parenting time based upon the best interests of the child.~~

**Section 22. That § 34-20G-22. be REPEALED:**

~~Except as provided in this chapter, 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 § 34-20G-23. be REPEALED:**

~~The rights provided by §§ 34-20G-19 to 34-20G-25, inclusive, 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.~~