

STATE OF SOUTH DAKOTA



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MARTY J. JACKLEY
ATTORNEY GENERAL

MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

August 14, 2023

RECEIVED

AUG 14 2023

SD Secretary of State

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

RE: Draft Attorney General's Statement (Proposed Initiated Measure
Repealing SDCL Ch. 34-20G, Medical Cannabis)

Dear Secretary Johnson,

Enclosed is a copy of a proposed Initiated Measure, in final form, that the sponsor submitted to this Office. In accordance with state law, I hereby file the enclosed Attorney General's Statement for this Initiated Measure.

By copy of this letter, I am providing a copy of the Statement to the sponsor.

Very truly yours,

A blue ink signature of Marty J. Jackley, written in a cursive style.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/dd
Enc.

Cc/encl: Travis Ismay
Reed Holwegner – Legislative Research Council

Filed this 14th day of

August 2023

A blue ink signature of Monae L. Johnson, written in a cursive style.

SECRETARY OF STATE

RECEIVED

AUG 14 2023

SD Secretary of State

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An Initiated Measure Repealing South Dakota's Medical Marijuana Program.

Explanation:

In the 2020 General Election, the voters approved the creation of the South Dakota medical marijuana program. By approving that program, the voters legalized the possession, use, cultivation, manufacture, and sale of marijuana and marijuana products, under certain conditions, for medical purposes.

This initiated measure repeals South Dakota's medical marijuana program. If approved, that repeal makes all possession, use, cultivation, manufacture, and sale of marijuana and marijuana products a crime.

This initiated measure does not affect laws dealing with hemp. Marijuana remains illegal under Federal law.

Filed this 14th day of

August 2023

Monae L. Johnson

SECRETARY OF STATE

70162070000017672125

Attorney General

FROM THE DESK OF

JUN 25 2023

Travis Ismay

June 2, 2023

Office of the Attorney General
1302 E Hwy 14
Suite 1
Pierre SD 57501-8501

RECEIVED

AUG 14 2023

SD Secretary of State

Dear Attorney General Marty Jackey,

I have enclosed a ballot initiative to repeal the medical marijuana law in South Dakota. I would like to give a special thanks to the LRC and their staff for informing me on the proper procedure of constructing a ballot initiative. If there's anything that I need to adhere to or change, please contact me by email at tdismay@icloud.com. or call at (605)490-6010 I anxiously await your comments.

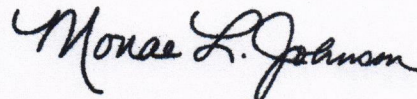
Sincerely yours,

Travis Ismay



Filed this 14th day of

August 2023



SECRETARY 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

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 and two cannabis plants that are not flowering; 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) ~~"Dona 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;~~

- (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: