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JUN 09 2015

S.D. SEC. OF STATE

MARTY J. JACKLEY
ATTORNEY GENERAL

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CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

June 9, 2015

Hon. Shantel Krebs
Secretary of State
500 E. Capitol
Pierre, SD 57501

Re: **Attorney General's Statement—initiated measure regarding medical marijuana**

Dear Secretary Krebs,

This Office received an initiated measure regarding medical marijuana. Enclosed is a copy of the initiated measure, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this measure. It is my understanding that the Legislative Research Council will prepare a fiscal impact statement pursuant to SDCL 2-1-19 and file it directly with you.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsor of the initiated measure pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Melissa Mentele
Jason Hancock, Director of LRC

Filed this 9th day of

June 2015

SECRETARY OF STATE

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JUN 09 2015

S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize marijuana for medical use

Explanation:

The measure legalizes medical use of marijuana by qualifying patients, including minors. No person or entity may be penalized, or denied any right or privilege, for conduct that is lawful under the measure.

Qualifying patients must be certified by a practitioner as having a debilitating medical condition. South Dakota patients must obtain a registration card from the State Department of Health ("Department"). Non-resident patients are permitted to use their registration cards from other jurisdictions.

Qualifying patients may designate caregivers to assist with their use of marijuana. A designated caregiver must obtain a registration card from the Department for each qualifying patient.

Allowable amounts of marijuana include three ounces of marijuana, a minimum of six marijuana plants (if cultivation is permitted for that cardholder), and quantities of other marijuana products as determined by the Department.

The measure legalizes marijuana testing, manufacturing, and cultivation facilities, as well as dispensaries where marijuana may be acquired by cardholders. These establishments must register with the Department.

Schools and landlords cannot penalize, or refuse to enroll or lease, based solely on a person's cardholder status, absent federal law to the contrary.

Marijuana possession, use, cultivation and distribution remain illegal under federal law.

Filed this 9th day of

June 2015

Shantel Krebs

SECRETARY OF STATE

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

Section 1 Terms used in this act mean:

- (1) "Allowable amount of cannabis" means:
 - (a) Three ounces of cannabis;
 - (b) The quantity of cannabis products as established by rules promulgated by the department;
 - (c) If the cardholder has a registry identification card allowing cultivation, six 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, but not limited to, 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, without limitation, 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) Cancer, glaucoma, positive status for human immunodeficiency virus, endometriosis, reflex sympathetic dystrophy, epilepsy, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, IBS, ulcerative colitis, agitation of Alzheimer's disease, post-traumatic stress disorder, or the treatment of any of these conditions;

(b) 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

(c) Any other medical condition or its treatment added by the department, as provided for in section 26 of this act;

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

(10) "Designated caregiver," a person who:

(a) Is at least 21 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) A violent crime that was classified as a felony in the jurisdiction where the person was convicted; or

(b) A violation of a state or federal controlled substances law that was classified as a felony in the jurisdiction where the person was convicted, not including:

(i) An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed ten or more years earlier; or

(ii) An offense that consisted of conduct for which this Act would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this Act or was prosecuted by an authority other than the state of South Dakota .

(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, and 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 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 (7);
- (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;
 - (b) Is not a resident of South Dakota or who has been a resident of South Dakota for less 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

*Petition states
(d)*

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

(20) "Practitioner," a person 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," means 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 29-41 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. A written certification 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 who possesses a valid registry identification card is not subject to arrest, prosecution, or penalty in any manner, 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 pursuant to this Act, if the cardholder does not possess more than the allowable amount of cannabis, and if any cannabis plants is either cultivated in an enclosed, locked facility or are 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 for testing;

(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. No nonresident cardholder maybe 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 pursuant to 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.

Section 4. There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of cannabis pursuant to 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 pursuant to this Act.

Section 5. No practitioner maybe subject to arrest, prosecution, or penalty in any manner, 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, However 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. No attorney maybe 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 no longer subject to criminal penalties under state law pursuant to this Act.

Section 7. No person may be subject to arrest, prosecution, or penalty in any manner, or 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 penalties by this Act;
- (3) Allowing the person's property to be used for an activity that is exempt from criminal penalties by this Act; or
- (4) Assisting a registered qualifying patient with the act of using or administering cannabis.

Section 8. No dispensary or a dispensary agent maybe subject to prosecution, search, or inspection, except by the department pursuant to sections 61-71 of this Act , seizure, or penalty in any manner;, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by 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 facilities or dispensaries, and cannabis products from cannabis product manufacturing facilities or dispensaries; and
- (5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cardholders, nonresident cardholder, and dispensary.

Section 9. No cultivation facility or a cultivation facility agent maybe subject to prosecution, search, or inspection, except by the department pursuant to section 61-71 of this Act, seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by 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;
- (c) 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 cardholders, 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. No cannabis product manufacturing facility or a cannabis product manufacturing facility agent maybe subject to prosecution, search, or inspection, except by the department pursuant to section 61to 71 of this Act, seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by this Act to:

- (1) Purchase or otherwise acquire cannabis from cultivation facilities, 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 and 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. No testing facility or testing facility agent maybe subject to prosecution, search, or inspection, except by the department pursuant to sections 61 to 71 of this Act, seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act and rules authorized by this Act to:

- (1) Acquire, possess, transport, and store cannabis or cannabis products obtained from cardholders, nonresident cardholders, and medical cannabis establishments;
- (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 those services.

Section 12. 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.

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 shall not prevent the seizure or forfeiture of cannabis exceeding the amount allowed under this Act, nor does it prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis that is possessed, manufactured, transferred, or used pursuant to this Act.

Section 14. 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. For the purposes of South Dakota state law, an activity related to medical cannabis shall be considered lawful as long as it's conducted in accordance with this Act.

Section 16. No law enforcement officer employed by an agency which 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 if the officer has reason to believe that the activity is in compliance with state medical cannabis laws, no officer may expend any state or local resources, including the officer's time, to provide any information or logistical support related to such activity to any federal law enforcement authority or prosecuting entity.

Section 17. It is the public policy of the state of South Dakota that a contract related to medical cannabis that is entered into by a cardholder, medical cannabis establishment, or medical cannabis establishment agents, and a person who allows property to be used by those persons, is enforceable. It is the public policy of the state of South Dakota that 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. 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. 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. For the purposes of medical care, including organ and tissue transplants, a registered qualifying patient's use of cannabis according to 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. 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 is such that it creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

Section 22. Except as provided in this Act, a registered qualifying patient who uses cannabis for medical purposes shall be afforded all the same rights under state and local law, including those guaranteed under South Dakota law, as the individual 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. The rights provided by sections 19 to 25 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 regulations.

Section 24. 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. 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. Any resident of South Dakota 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. 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. 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. No later than one hundred forty days after the effective date of this Act, the department shall begin issuing 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. If the qualifying patient is unable to submit the information required by section 29 of this Act due to the persons' 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. 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 must have a registry identification card for each of the qualifying patients; and

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

Section 32. The department may conduct a background check of the prospective designated caregiver in order to carry out the provisions of section 31 of this Act.

Section 33. 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. 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 provided 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 provided false information.

Section 36. 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. Denial of an application or renewal is considered a final department action, subject to judicial review.

Section 38. 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 individual's application, written certification, and proof that the application was submitted to the department is considered a registry identification card.

Section 39. Until a designated caregiver whose qualifying patient has submitted an application and the required fee receives a registry identification card or a rejection, a copy of the a qualifying patient's application, written certification, and proof that the application was submitted to the department shall be deemed a registry identification card.

Section 40. 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. 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. A registry identification cards must 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 10-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 web address where the card can be verified.

Section 43. A registry identification card expires one year after the date of issue. However if the practitioner stated 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. The department shall maintain a confidential list of the persons to whom the department has issued a registry identification card and the addresses, phone number, and registry identification number of each person. This confidential 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. 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 must 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. The following notifications and department responses are required:

- (1) A registered qualifying patient shall notify the department of any change in his or her name or address, or if the registered qualifying patient ceases to have a debilitating medical condition, within 10 days of the change;

- (2) A registered designated caregiver shall notify the department of any change in his or her name or address, or if the designated 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 qualifying patient shall notify the department;
- (4) When a registered qualifying patient changes a preference as to who may cultivate cannabis for the qualifying patient, the qualifying patient shall notify the department;
- (5) If a cardholder loses a registry identification card, the card holder 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 qualifying patient must notify the department;

Section 47. Each notification a registered qualifying patient is required to make may instead 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. 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 10-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 registered qualifying patient's registered designated caregiver, if any, a new registry identification card within ten days of receiving the updated information.

Section 49. If the registered qualifying patient's certifying practitioner notifies the department in writing that either 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 null and 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. A medical cannabis establishment shall notify the department within one business day of any theft or significant loss of cannabis.

Section 51. 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. 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 purposes 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. 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. If a person demonstrates the person's medical purpose for using cannabis pursuant to this section, except as provided in section 18 of this Act, the person may not be 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. 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 10-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 1,000 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 recordkeeping 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 is in compliance with 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 South Dakota.

Section 56. 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. 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 establishments' registration certificate is not under suspension and has not been revoked.

Section 58. A local government may enact an ordinance or regulation not in conflict with this Act, or with rules promulgated pursuant to this Act, governing the time, place, manner, and number of medical cannabis establishment operations in the locality. A local government may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of a medical cannabis establishment that may operate in such locality.

Section 59. No local government may prohibit dispensaries, either expressly or through the enactment of an ordinance or regulation which make their operation impracticable in the jurisdiction.

Section 60. 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. Each medical cannabis establishment shall conduct a background check into the criminal history of every 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. 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. Each medical cannabis establishment shall have operating documents that includes procedures for the oversight of the medical cannabis establishment and procedures to ensure accurate recordkeeping.

Section 64. 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. All cultivation, harvesting, manufacture, and packaging of cannabis must 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 and older and who are accompanied by a medical cannabis establishment agents.

Section 66. No medical cannabis establishment other than a cannabis product manufacturer may produce cannabis concentrates, cannabis extractions, or other cannabis products.

Section 67. A medical cannabis establishment may not share office space with or refer a patient to a practitioner.

Section 68. A medical cannabis establishment may not permit any person to consume cannabis on the property of a medical cannabis establishment.

Section 69. A medical cannabis establishment is subject to inspection by the department during business hours.

Section 70. Before cannabis may be dispensed to a cardholder or nonresident cardholder, a dispensary agent shall:

- (1) Make a diligent effort to verify that the registry identification card or registration presented to the dispensary is valid;
- (2) 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) Not believe that the amount dispensed would cause the person to possess more than the allowable amount of cannabis; and
- (4) Make a diligent effort to verify that the dispensary is the current dispensary that was designated by the cardholder or nonresident cardholder.

Section 71. 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 this limitation 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. Not later than one hundred twenty days after the effective date of this Act, the department shall promulgate rules pursuant to sections 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 must include 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, which 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, which may include creating a standardized written certification form;
- (5) Governing medical cannabis establishments with the goals of ensuring the health and safety of qualifying patients and preventing diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including:
 - (a) Oversight requirements;
 - (b) Recordkeeping 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 the provisions of this Act or the rules promulgated pursuant to this section;

(7) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis products' 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 cardholders designation of no more than two dispensaries, which must 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 can 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 must generate revenues sufficient to offset all expenses of implementing and administering this Act;

(c) The department may establish 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 must be no greater than the costs of processing the applications and issuing a registry identification card or registration; and

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

Section 73. A cardholder or medical cannabis establishment who willfully fails to provide a notice required by this Act is guilty of a civil infraction, punishable by a fine of no more than one hundred fifty dollars.

Section 74. In addition to any other penalty applicable in 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 further participation under this Act.

Section 75. In addition to any other penalty applicable in 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. 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. This penalty is in addition to any other penalties 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 further participation under this Act.

Section 77. 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. 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 shall be fined up to one thousand dollars.

Section 79. It is a class 2 misdemeanor for any person, including an employee or official of the department or another state agency or local government who breaches the confidentiality of information obtained pursuant to this Act.

Section 80. A medical cannabis establishment shall be fined up to one thousand dollars for any violation of this Act, or the rules promulgated pursuant to this Act where no penalty is specified. This penalty is in addition to any other penalties applicable in law.

Section 81. 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 or any rules promulgated pursuant to this Act.

Section 82. 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 83. 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 84. 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 further participation under this Act.

Section 85. 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 86. Revocation is a final decision of the department subject to judicial review.

Section 87. Data in a registration applications and supporting data submitted by a qualifying patient, designated caregiver, nonresident cardholder or medical cannabis establishment, including data on designated caregivers or practitioners, is private data that is confidential.

Section 88. 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 89. Data kept or maintained by the department may be disclosed as necessary 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 conditions.

Section 90. Any information kept or maintained by a medical cannabis establishment may only identify cardholder by registry identification numbers and may not contain names or other personally identifying information.

Section 91. 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 92. Any department hard drives or other data-recording media that is no longer in use and that contains cardholder information must be destroyed.

Section 93. The Executive Board of the Legislative Research Council shall appoint a nine-member oversight committee comprised of: one member of the House of Representatives; one representative of the department; one member of the Senate; 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 94. 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 95. 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 that are 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.