

**North Dakota**  
**Democratic-NPL**  
**House & Senate Caucus**

02.13.2017

### **Measure 5 Implementation.**

Voters overwhelmingly approved Measure 5 during the 2016 election with the support of activists, advocates, and numerous North Dakotans whose loved ones suffer from serious, sometimes life-threatening ailments. Measure 5 – also known as the Compassionate Care Act – legalized medical marijuana throughout North Dakota, opening the door to long sought-after relief for thousands of patients with conditions like epilepsy, cancer and PTSD.

Unfortunately, implementing Measure 5’s provisions verbatim proved problematic for state regulators. Some of the measure’s provisions were ambiguous; others were unenforceable. For example, the measure did not include decriminalization language, which means patients could still be prosecuted for using marijuana for medical purposes. Additionally, the agencies tasked with implementing Measure 5 are facing funding and staff reductions due to the state’s budget crisis, making implementation even more challenging. Satisfying the 30-day timeline for implementation set forth in Measure 5 was simply not possible.

Republican and Democratic-NPL leaders worked together to address this problem right away, passing [SB 2154](#) to delay implementation of Measure 5 until no later than July 31, 2017. This would provide the Health Department, Attorney General’s office, and sponsor advocates with the time necessary to ensure medical marijuana is implemented safely and effectively. The necessity of passing SB 2154 was so evident to lawmakers of both parties that the bill passed on a vote of 140 “Yeas” and only 1 “Nay.”

The process now moves to a second piece of legislation, [SB 2344](#), which lays out the specifics of how Measure 5’s provisions will be implemented. Like the delay bill, the implementation bill requires two-thirds of the vote in both chambers to pass. But Democratic-NPL lawmakers have raised several areas of concern where SB 2344’s implementation requirements differ significantly from the original provisions set forth in Measure 5.

Democratic-NPL lawmakers are working with their colleagues across the aisle to amend SB 2344 to address these concerns, and are fully committed to ensuring that SB 2344 remains consistent with the original intent and spirit of Measure 5. North Dakotan voters knew what they were doing when they approved Measure 5 by nearly 65 percent statewide. When it comes to implementing Measure 5’s provisions, Democratic-NPL lawmakers are committed to getting the job done right to ensure medical marijuana is safe, effective and accessible for all North Dakotans who need it.

### **Areas of Concern in SB 2344.**

Democratic-NPL lawmakers have identified and are working to address the following areas of concern regarding SB 2344:

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AREA OF CONCERN	ISSUE	PROPOSED SOLUTION
❖ SB 2344 limits the permissible methods of delivery for medical marijuana to only pills and oils.	❖ Evidence shows that for many medical ailments, smoking is the most effective method of delivery.	❖ Amend SB 2344 to allow patients to use whatever method of delivery their doctor sees fit.
❖ SB 2344 defines a “minor” as anyone under the age of 21 years old.	❖ This creates a problem because the law requires a “bona fide physician-patient relationship,” and there are few medical professionals who are allowed to recommend medical marijuana to minors.	❖ Amend SB 2344 to define “minor” as anyone under the age of 19 years old. (Most 19-year-olds have finished high school, so 19 is preferable to 18-years-old in the interest of reducing instances of misuse in schools).
❖ SB 2344 caps the fees for obtaining a patient card at \$300.	❖ Patients cannot access medical marijuana without a patient card. Capping the fees for cards at \$300 would mean North Dakota could have the highest card fees of any state in the nation. In most states, fees are set at under \$100; one state sets the fee at \$1; and two states don’t charge any fees.	❖ Amend SB 2344 to lower the cap for patient card fees or consider a sliding fee scale. Dem-NPL lawmakers also support discounts for veterans to obtain medical marijuana, which is common practice in many states.
❖ SB 2344 does not allow for self-growing.	❖ Measure 5 stated that you can keep and grow your own marijuana for medical use if you are located more than 40 miles from a dispensary.	❖ Amend SB 2344 to restore this provision, or loosen limits on the number of dispensaries so there will be less need for individuals to grow their own plants.
❖ SB 2344 caps the fees for growing and dispensary companies at \$100,000.	❖ Measure 5 capped fees for growing and dispensing at \$25,000.	❖ Democratic-NPL lawmakers have consulted with numerous growers, who say the \$100,000 growing fee is reasonable and in line with fees in other states.

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		However, SB2344 should be amended so that the dispensary fee is \$10,000 or less.
❖ SB 2344 only designates one venue – Burleigh County District Court – for appeals related to the medical marijuana law.	❖ This would be overly burdensome to all parties involved in an appeal, including the Burleigh court, which would have to hear every case.	❖ Amend SB 2344 to allow for other venues for appeals.
❖ SB 2344 comes with a fiscal note that does not seem accurate based on comparisons to medical marijuana programs in other states.	❖ Lawmakers, regulators and citizens need an accurate accounting of the costs related to implementing North Dakota’s medical marijuana law.	❖ A reevaluation is needed of both SB 2344’s fiscal note as well as estimates for the number of FTEs required.
❖ SB 2344 allows the state Department of Health to conduct an “on-site” inspection of a cardholder, without prior notification, if they suspect the cardholder is violating the terms of the medical marijuana law.	❖ This provision of SB 2344 includes no due process for citizens suspected of wrongdoing and lacks judicial oversight.	❖ Amend SB 2344 so that any suspicion of wrongdoing is handled with due process and oversight from the courts.
❖ SB 2344 does not allow a family’s physician to recommend medical marijuana for a child patient; a pediatric specialist must make this recommendation.	❖ In the state of North Dakota, there are only eight pediatric specialists meeting the qualifications specified by SB 2344. Six of the pediatric specialists are located in Fargo; two are in Bismarck. This leaves the rest of the state without reasonable access to pediatric specialists who meet the requirements set forth under SB 2344.	❖ Amend SB 2344 to allow family physicians, in consultation with a pediatric specialist, to recommend medical marijuana to child patients.