



2023 South Dakota Legislature

Senate Bill 1

Introduced by: **Senator** Tobin and **Representatives** Ernie Otten and Rehfeldt at the request of the Medical Marijuana Oversight Committee

1 **An Act to modify debilitating medical conditions for medical cannabis use.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 34-20G-1 be AMENDED:**

4 **34-20G-1.** Terms used in this chapter mean:

5 (1) "Allowable amount of cannabis,":

6 (a) Three ounces of cannabis or less;

7 (b) The quantity of cannabis products as established by rules promulgated by
8 the department under § 34-20G-72;

9 (c) If the cardholder has a registry identification card allowing cultivation, two
10 flowering cannabis plants and two cannabis plants that are not flowering;
11 and

12 (d) If the cardholder has a registry identification card allowing cultivation, the
13 amount of cannabis and cannabis products that were produced from the
14 cardholder's allowable plants, if the cannabis and cannabis products are
15 possessed at the same property where the plants were cultivated;

16 (2) "Bona fide practitioner-patient relationship," a treatment or consulting relationship
17 between a practitioner and patient, during which:

18 (a) The practitioner completes, at the initial visit, an assessment of the patient's
19 medical history and current medical condition, including an appropriate in-
20 person physical examination;

21 (b) The patient is under the practitioner's care for the debilitating medical
22 condition that qualifies the patient for the medical use of cannabis or has
23 been referred by the practitioner caring for the patient's debilitating medical
24 condition that qualifies the patient for the medical use of cannabis to
25 another practitioner;

- 1 (c) The patient has a reasonable expectation that the practitioner providing the
2 written certification will continue to provide follow-up care to the patient to
3 monitor the medical use of cannabis; and
- 4 (d) The relationship is not for the sole purpose of providing a written
5 certification for the medical use of cannabis unless the patient has been
6 referred by a practitioner providing care for the debilitating medical
7 condition that qualifies the patient for the medical use of cannabis;
- 8 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
9 that are infused with cannabis or an extract thereof, and are intended for use or
10 consumption by humans. The term includes edible cannabis products, beverages,
11 topical products, ointments, oils, and tinctures;
- 12 (4) "Cannabis product manufacturing facility," an entity registered with the
13 department pursuant to this chapter that acquires, possesses, manufactures,
14 delivers, transfers, transports, supplies, or sells cannabis products to a medical
15 cannabis dispensary;
- 16 (5) "Cannabis testing facility" or "testing facility," an independent entity registered
17 with the department pursuant to this chapter to analyze the safety and potency of
18 cannabis;
- 19 (6) "Cardholder," a qualifying patient or a designated caregiver who has been issued
20 and possesses a valid registry identification card;
- 21 (7) "Cultivation facility," an entity registered with the department pursuant to this
22 chapter that acquires, possesses, cultivates, delivers, transfers, transports,
23 supplies, or sells cannabis and related supplies to a medical cannabis
24 establishment;
- 25 (8) "Debilitating medical condition,":
- 26 (a) A chronic or debilitating disease or medical condition or its treatment that
27 produces one or more of the following: cachexia or wasting syndrome;
28 severe, debilitating pain; severe nausea; seizures; or severe and persistent
29 muscle spasms, ~~including those characteristic of multiple sclerosis; or~~
- 30 (b) ~~Any other medical condition or its treatment added by the department, as~~
31 ~~provided for in § 34-20G-26~~ Acquired immune deficiency syndrome or
32 positive status for human immunodeficiency virus;
- 33 (c) Amyotrophic lateral sclerosis;
- 34 (d) Multiple sclerosis;

- 1 (e) Cancer or its treatment, if associated with severe or chronic pain, nausea
2 or severe vomiting, or cachexia or severe wasting;
3 (f) Crohn's disease;
4 (g) Epilepsy and seizures;
5 (h) Glaucoma; or
6 (i) Post-traumatic stress disorder;
7 (9) "Department," the Department of Health;
8 (10) "Designated caregiver," an individual who:
9 (a) Is at least twenty-one years of age;
10 (b) Has agreed to assist with a qualifying patient's medical use of cannabis;
11 (c) Has not been convicted of a disqualifying felony offense; and
12 (d) Assists no more than five qualifying patients with the medical use of
13 cannabis, unless the designated caregiver's qualifying patients each reside
14 in or are admitted to a health care facility, as defined in § 34-12-1.1, an
15 accredited prevention or treatment facility, as defined in § 34-20A-2, a
16 mental health center, as defined in § 27A-1-1, a child welfare agency, as
17 defined in § 26-6-1, or a community support provider or community
18 services provider, as defined in § 27B-1-17, where the designated caregiver
19 is employed;
20 (11) "Disqualifying felony offense," a violent crime that was classified as a felony in the
21 jurisdiction where the person was convicted;
22 (12) "Edible cannabis products," any product that:
23 (a) Contains or is infused with cannabis or an extract thereof;
24 (b) Is intended for human consumption by oral ingestion; and
25 (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures,
26 or other similar products;
27 (13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other
28 enclosed area that is equipped with locks or other security devices that permit
29 access only by a cardholder or a person allowed to cultivate the plants. Two or
30 more cardholders who reside in the same dwelling may share one enclosed, locked
31 facility for cultivation;
32 (14) "Flowering cannabis plant," the reproductive state of the cannabis plant in which
33 the plant shows physical signs of flower budding out of the nodes of the stem;
34 (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

- 1 a nonresident cardholder, the term means a person who is licensed with authority
2 to prescribe drugs to humans in the state of the patient's residence;
- 3 (22) "Qualifying patient," a person who has been diagnosed by a practitioner as having
4 a debilitating medical condition;
- 5 (23) "Registry identification card," a document issued by the department that identifies
6 a person as a registered qualifying patient or registered designated caregiver, or
7 documentation that is deemed a registry identification card pursuant to §§ 34-20G-
8 29 to 34-20G-42, inclusive;
- 9 (24) "Safety-sensitive job," any position with tasks or duties that an employer
10 reasonably believes could:
- 11 (a) Cause the illness, injury, or death of an individual; or
12 (b) Result in serious property damage;
- 13 (25) "Under the influence of cannabis," any abnormal mental or physical condition that
14 tends to deprive a person of clearness of intellect and control that the person would
15 otherwise possess, as the result of consuming any degree of cannabis or cannabis
16 products; and
- 17 (26) "Written certification," a document dated and signed by a practitioner:
- 18 (a) Stating that the patient has a qualifying debilitating medical condition or
19 symptom associated with the debilitating medical condition;
- 20 (b) Affirming that the document is made in the course of a bona fide
21 practitioner-patient relationship;
- 22 (c) Specifying the qualifying patient's debilitating medical condition; and
23 (d) Specifying the expiration date of the qualifying patient's written
24 certification, pursuant to § 34-20G-43.

25 **Section 2. That § 34-20G-26 be REPEALED:**

26 ~~Any resident of this state may petition the department to add a serious medical~~
27 ~~condition or treatment to the list of debilitating medical conditions as defined by this~~
28 ~~chapter. The department shall consider a petition in the manner required by rules~~
29 ~~promulgated by the department pursuant to this chapter, including public notice and~~
30 ~~hearing. The department shall approve or deny a petition within one hundred eighty days~~
31 ~~of submission. The approval or denial of any petition is a final decision of the department,~~
32 ~~subject to judicial review.~~

33 **Section 3. That § 34-20G-72 be AMENDED:**

34-20G-72. The department shall promulgate rules pursuant to chapter 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 chapter, 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 chapter;
- (3)(2) 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 includes 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, that 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)(3) Governing the manner in which the department shall consider applications for and renewals of registry identification cards, that may include creating a standardized written certification form;
- (5)(4) Governing medical cannabis establishments to ensure the health and safety of qualifying patients and prevent diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including:

 - (a) Oversight requirements;
 - (b) Record-keeping 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;

- 1 (f) Requirements for the transportation and storage of cannabis by a medical
2 cannabis establishment;
- 3 (g) Employment and training requirements, including requiring that each
4 medical cannabis establishment create an identification badge for each
5 agent;
- 6 (h) Standards for the safe manufacture of cannabis products, including extracts
7 and concentrates;
- 8 (i) Restrictions on the advertising, signage, and display of medical cannabis,
9 provided that the restrictions may not prevent appropriate signs on the
10 property of a dispensary, listings in business directories including phone
11 books, listings in marijuana-related or medical publications, or the
12 sponsorship of health or not-for-profit charity or advocacy events;
- 13 (j) Requirements and procedures for the safe and accurate packaging, labeling,
14 distribution, and tracking of medical cannabis;
- 15 (k) Certification standards for testing facilities, including requirements for
16 equipment and qualifications for personnel; and
- 17 (l) Requirements for samples of cannabis and cannabis products submitted to
18 testing facilities, including batch sizes to not exceed fifty pounds of cannabis
19 intended for retail sale, batch sizes for homogenous cannabis products
20 intended for retail sale, and procedures to ensure representative sampling;
- 21 ~~(6)~~(5) Establishing procedures for suspending or terminating the registration certificates
22 or registry identification cards of cardholders and medical cannabis establishments
23 that commit multiple or serious violations of this chapter;
- 24 ~~(7)~~(6) Establishing labeling requirements for cannabis and cannabis products, including
25 requiring cannabis product labels to include the following:
- 26 (a) The length of time it typically takes for a product to take effect;
- 27 (b) Disclosing ingredients and possible allergens;
- 28 (c) A nutritional fact panel; and
- 29 (d) Requiring that edible cannabis products be clearly identifiable, when
30 practicable, with a standard symbol indicating that it contains cannabis;
- 31 ~~(8)~~(7) Establishing procedures for the registration of nonresident cardholders and the
32 cardholder's designation of no more than two dispensaries, which shall require the
33 submission of:
- 34 (a) A practitioner's statement confirming that the patient has a debilitating
35 medical condition; and

- 1 (b) Documentation demonstrating that the nonresident cardholder is allowed to
2 possess cannabis or cannabis preparations in the jurisdiction where the
3 nonresident cardholder resides;
- 4 ~~(9)~~(8) Establishing the amount of cannabis products, including the amount of
5 concentrated cannabis, each cardholder and nonresident cardholder may possess;
6 and
- 7 ~~(10)~~(9) Establishing reasonable application and renewal fees for registry identification
8 cards and registration certificates, according to the following:
- 9 (a) Application fees for medical cannabis establishments may not exceed five
10 thousand dollars, with this upper limit adjusted annually for inflation;
- 11 (b) The total fees collected shall generate revenues sufficient to offset all
12 expenses of implementing and administering this chapter;
- 13 (c) A sliding scale of patient application and renewal fees based upon a
14 qualifying patient's household income;
- 15 (d) The fees charged to qualifying patients, nonresident cardholders, and
16 caregivers shall be no greater than the costs of processing the application
17 and issuing a registry identification card or registration; and
- 18 (e) The department may accept donations from private sources to reduce
19 application and renewal fees.
- 20 A violation of a required or prohibited action under any rule authorized by this
21 section is a Class 2 misdemeanor.