



2025 South Dakota Legislature

House Bill 1055

Introduced by: **Representative** Novstrup

1 **An Act to modify medical cannabis certification requirements.**

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;~~

- ~~(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)~~(3) "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)~~(4) "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)~~(5) "Cardholder," a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;
- (6) "Certification," a printed or electronic authorization that is provided to or for a qualifying patient, by a practitioner, and for purposes of this chapter meets the requirements set forth in section 3 of this Act;
- (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, except nausea associated with pregnancy; seizures; or severe and persistent muscle spasms;
- (b) Acquired immune deficiency syndrome or positive status for human immunodeficiency virus;
- (c) Amyotrophic lateral sclerosis;

- 1 (d) Multiple sclerosis;
- 2 (e) Cancer or its treatment, if associated with severe or chronic pain, nausea
- 3 or severe vomiting, or cachexia or severe wasting;
- 4 (f) Crohn's disease;
- 5 (g) Epilepsy and seizures; or
- 6 (h) 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, oils, tinctures, or other
- 26 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; and
- 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; and~~
- 25 ~~(e) Specifying whether the practitioner has previously issued the patient a~~
26 ~~written certification and the date of that written certification.~~

27 **Section 2. That chapter 34-20G be amended with a NEW SECTION:**

28 Except as otherwise provided in this section, a bona fide practitioner-patient
29 relationship must exist before a practitioner may issue a certification to the patient. For
30 purposes of this chapter, a bona fide practitioner-patient relationship exists if:

31 (1) The practitioner is the patient's primary care provider;
32 (2) The practitioner is a board-certified physician, physician assistant, or advanced
33 practice registered nurse, specializing in the provision of care and treatment for a
34 debilitating medical condition with which the patient has been diagnosed; or

1 (3) The practitioner is an individual to whom the patient was referred by:

2 (a) The patient's primary care provider; or

3 (b) A physician, physician assistant, or advanced practice nurse, meeting the
4 requirements of subdivision (2).

5 A bona fide practitioner-patient relationship does not exist if it is for the sole
6 purpose of providing a certification, unless the patient has been referred to the practitioner
7 in accordance with subdivision (3) of this section.

8 A bona fide practitioner-patient relationship is not required if the patient receives
9 health care through the United States Department of Veterans Affairs.

10 **Section 3. That chapter 34-20G be amended with a NEW SECTION:**

11 A certification issued in accordance with this chapter must:

12 (1) Identify the patient's debilitating medical condition;

13 (2) Affirm the existence of a bona fide practitioner-patient relationship, as required by
14 section 2 of this Act, and

15 (a) Specify the criteria under which the relationship exists; or

16 (b) Affirm that the patient is exempt from the requirement because the patient
17 receives health care through the United States Department of Veterans
18 Affairs and include the name and contact information of the provider;

19 (3) Affirm that the practitioner has assessed the patient's medical history, conducted
20 an in-person physical examination of the patient, and assessed the patient's
21 current medical condition;

22 (4) Affirm that the practitioner has, based on the patient's medical history and
23 condition, evaluated and discussed with the patient:

24 (a) Any precautions and contraindications for the use of medical cannabis;

25 (b) Appropriate methods of administration;

26 (c) Tolerability and recommended dosage; and

27 (d) A monitoring strategy;

28 (5) Indicate whether the certification is an initial or a renewed certification;

29 (6) Indicate the date on which the certification expires, in accordance with § 34-20G-
30 43; and

31 (7) Indicate whether the patient has been referred by another practitioner and, if so,
32 provide the name and contact information of the referring practitioner.

33 If the secretary of the Department of Health has reason to believe that a
34 practitioner has issued a certification in violation of this section, the secretary must notify

1 the practitioner's professional licensing board. Upon receiving a notification from the
2 secretary, the board shall initiate an investigation and determine whether the
3 practitioner's act or omission requires disciplinary action.

4 **Section 4. That § 34-20G-5 be AMENDED:**

5 **34-20G-5.** ~~No~~Except as otherwise provided in this section, a practitioner is subject
6 ~~to arrest, prosecution, or penalty of any kind, or may not be arrested, prosecuted,~~
7 ~~penalized, denied any right or privilege, including~~ subjected to a civil penalty, or subjected
8 ~~to disciplinary action by the South Dakota Board of Medical and Osteopathic Examiners or~~
9 ~~by any other occupational or a professional licensing board or bureau, solely for providing~~
10 ~~written certifications~~ a certification, in accordance with the requirements of this chapter,
11 ~~or for otherwise stating that, in the practitioner's professional opinion, a patient is likely~~
12 ~~to receive therapeutic or palliative benefit from the medical use of cannabis to treat or~~
13 ~~alleviate the patient's serious or debilitating medical condition or symptoms to treat or~~
14 alleviate any symptom ~~associated with the serious or debilitating medical condition.~~
15 ~~Nothing in this chapter prevents a practitioner from being sanctioned subject to~~
16 disciplinary action by a professional licensing board for:

- 17 (1) Issuing a ~~written~~ certification to a patient ~~with whom the practitioner does not have~~
18 without having a bona fide practitioner-patient relationship; or
19 (2) Failing to properly evaluate a patient's medical condition, as described in section 3
20 of this Act.

21 **Section 5. That § 34-20G-5.1 be AMENDED:**

22 **34-20G-5.1.** Nothing in this chapter authorizes a practitioner to provide a ~~written~~
23 certification to a patient who is pregnant or breastfeeding.

24 **Section 6. That § 34-20G-5.2 be AMENDED:**

25 **34-20G-5.2.** If a practitioner who is not a patient's primary care provider issues
26 a ~~written~~ certification under this chapter, ~~and if the practitioner is neither the patient's~~
27 ~~primary care provider nor a specialty provider caring for the patient's debilitating medical~~
28 ~~condition,~~ the practitioner ~~shall~~ must, upon issuing the certification, provide electronic
29 notification of the issuance÷
30 (1) ~~To~~ to the patient's primary care provider; ~~or~~

(2) ~~To the referring practitioner, if that individual is caring for the patient's debilitating medical condition.~~

The patient's primary care provider ~~or the referring practitioner~~ shall include any notification received in accordance with this section in the patient's medical file.

Section 7. That § 34-20G-29 be AMENDED:

34-20G-29. The department shall issue a registry identification card to a qualifying patient who ~~submits the following~~, in accordance with rules promulgated by the department under chapter 1-26, submits:

(1) ~~A written certification issued~~ that meets the requirements of section 3 of this Act and is:

(a) Issued by a practitioner, who meets the qualifications established in section 2 of this Act; and

(b) Dated within ninety days the ninety-day period immediately preceding the date of ~~an the~~ 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 any~~ 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~~ is 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~~ may, under state law ~~to~~, possess and cultivate cannabis plants for the qualifying patient's medical use.

~~When If~~ a practitioner conducts a follow-up assessment ~~with a patient~~, within sixty days of issuing the patient a ~~written~~ certification, and ~~the purpose of the follow-up assessment is to assess the patient's response to the use of medical cannabis and to determine whether to issue~~ the practitioner issues the patient a second ~~written~~ certification, the fee required under subdivision (2) is waived, ~~if the patient reapplies for~~

1 ~~the second registry identification card.~~ A patient may ~~only~~ receive one fee waiver under
2 this section per calendar year.

3 **Section 8. That § 34-20G-43 be AMENDED:**

4 **34-20G-43.** The registry identification card of a qualifying patient and designated
5 caregiver, if any, expires on the date noted by the practitioner in the qualifying patient's
6 ~~written~~ certification, not to exceed one year after the date of issue.

7 **Section 9. That § 34-20G-51 be AMENDED:**

8 **34-20G-51.** Except as provided in § 34-20G-18 and this section, a person may
9 assert the medical purpose for using cannabis as a defense to any prosecution involving
10 cannabis, ~~and such.~~ The defense is presumed valid ~~where~~ if the evidence shows ~~that~~:

11 (1) A practitioner ~~has~~ stated that, in the practitioner's professional opinion, after
12 having completed a full assessment of the person's medical history and current
13 medical condition, made in the course of a bona fide practitioner-patient
14 relationship, as set forth in section 2 of this Act, the patient has a debilitating
15 medical condition and the potential benefits of using cannabis for medical purposes
16 would likely outweigh the health risks for the person;

17 (2) The person was in possession of no more than ~~three~~;

18 (a) Three ounces of cannabis, ~~the~~;

19 (b) The amount of cannabis products allowed in accordance with rules
20 promulgated by the department ~~rules, two~~;

21 (c) Two flowering cannabis plants, ~~two~~;

22 (d) Two cannabis plants that are not flowering, ~~and the~~

23 (e) The cannabis produced by ~~those~~ the plants referenced in subsections (c)
24 and (d) of this section;

25 (3) The person was engaged in the acquisition, possession, use, ~~manufacture~~
26 manufacturing, cultivation, or transportation of cannabis, paraphernalia, or both,
27 relating to the administration of cannabis to treat or alleviate the person's
28 debilitating medical condition or symptoms associated with the person's
29 debilitating medical condition; and

30 (4) Any cultivation of cannabis and storage of more than three ounces of cannabis
31 occurred in a secure location that only the person asserting the defense could
32 access.

Section 10. That § 34-20G-72 be AMENDED:

34-20G-72. The department shall promulgate rules pursuant to chapter 1-26:

- (1) Establishing the form and content of registration and renewal applications submitted under this chapter and include the notice requirements set forth in § 34-20G-28.1;
- (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~~ and which includes an 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~~ by 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~~ which in the case of a cultivation facility or dispensary ~~shall~~ must include the ability to maintain an adequate supply of cannabis, ~~plans a proposal~~ to ensure the safety and security of patrons and the community, procedures ~~to be used to~~ prevent diversion, and ~~any plan for making a proposal to make~~ cannabis available to low-income registered qualifying patients;
- (3) Governing the manner in which the department ~~shall consider~~ considers applications for and renewals of registry identification cards, ~~that may include creating a standardized written certification form;~~
- (4) Developing a standardized certification form that provides for all identifications, indications, and affirmations required in accordance with section 3 of this Act;
- (5) 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~~ requirements, including restrictions on the use of pesticides that are injurious to human health;

- 1 (e) Standards for the ~~manufacture~~ manufacturing of cannabis products and
2 ~~both for~~ the indoor and outdoor cultivation of cannabis by a cultivation
3 facility;
- 4 (f) Requirements for the transportation and storage of cannabis by a medical
5 cannabis establishment;
- 6 (g) Employment and training requirements, including ~~requiring~~ that each
7 medical cannabis establishment create an identification badge for each
8 agent;
- 9 (h) Standards for the safe ~~manufacture~~ manufacturing of cannabis products,
10 including extracts and concentrates;
- 11 (i) Restrictions on the advertising, signage, and display of medical cannabis,
12 provided that the restrictions may not prevent appropriate signs on the
13 property of a dispensary, listings in business directories including phone
14 books, listings in marijuana-related or medical publications, or the
15 sponsorship of health or not-for-profit charity or advocacy events;
- 16 (j) Requirements and procedures for the safe and accurate packaging, labeling,
17 distribution, and tracking of medical cannabis;
- 18 (k) Certification standards for testing facilities, including requirements for
19 equipment and qualifications for personnel; and
- 20 (l) Requirements for samples of cannabis and cannabis products submitted to
21 testing facilities, including batch sizes ~~to~~ which may not exceed fifty pounds
22 of cannabis intended for retail sale, batch sizes for homogenous cannabis
23 products intended for retail sale, and procedures to ensure representative
24 sampling;
- 25 ~~(5)~~(6) Establishing procedures for the suspension and termination of the registry
26 identification cards of cardholders who commit multiple or serious violations of this
27 chapter;
- 28 ~~(6)~~(7) Establishing procedures for:
- 29 (a) The imposition of fines, not to exceed ten thousand dollars per inspection,
30 on a medical cannabis establishment that is found to have committed
31 multiple or serious violations of this chapter; and
- 32 (b) The probation, suspension, and termination of the registration certificate of
33 a medical cannabis establishment that commits multiple or serious
34 violations of this chapter;

~~(7)~~(8) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis product 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)~~(9) Establishing procedures for the registration of nonresident cardholders and the cardholder's designation of no more than two dispensaries, which ~~shall~~ 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)~~(10) Establishing the amount of cannabis products, including the amount of concentrated cannabis, each cardholder and nonresident cardholder may possess; and

~~(10)~~(11) Establishing application and renewal fees for registration certificates, not to exceed twenty thousand dollars, with this upper limit adjusted annually for inflation, with the total fees collected sufficient to offset all costs related to program implementation and administration; and

~~(11)~~(12) Establishing application and renewal fees for registry identification cards and nonresident cardholder registration as follows:

- (a) Using a sliding scale of patient application and renewal fees based upon a qualifying patient's household income;
- (b) The fees charged to qualifying patients, nonresident cardholders, and caregivers may not be greater than the costs of processing the application and issuing a registry identification card or registration; and
- (c) The department may accept donations from private sources to reduce application and renewal fees.

A violation of a required or prohibited action under any rule authorized by this section is a Class 2 misdemeanor.

Section 11. That § 34-20G-78 be AMENDED:

- 1 **34-20G-78.** A practitioner is guilty of a Class 2 misdemeanor if the practitioner:
- 2 (1) Knowingly refers a patient to a medical cannabis establishment or to a designated
- 3 caregiver in exchange for financial consideration;
- 4 (2) Advertises in a medical cannabis establishment;
- 5 (3) Issues ~~written~~ certifications while holding a financial interest in a medical cannabis
- 6 establishment;
- 7 (4) Offers a discount, deal, or other financial incentive for making an appointment with
- 8 the practitioner for the purpose of receiving a written certification;
- 9 (5) Conducts ~~the~~ a medical assessment ~~required for a bona fide practitioner-patient~~
- 10 relationship of a patient to determine the patient's eligibility for an initial
- 11 certification, or for the renewal of a certification in a space licensed for the sale of
- 12 alcoholic beverages; or
- 13 (6) Charges a patient based on the term of a ~~written~~ certification issued to the patient.

14 **Section 12. That § 34-20G-78.1 be AMENDED:**

- 15 **34-20G-78.1.** An entity is guilty of a Class 2 misdemeanor if the entity:
- 16 (1) Offers a discount, deal, or other financial incentive for making an appointment with
- 17 a practitioner for the purpose of receiving a ~~written~~ certification; or
- 18 (2) Charges a practitioner's patient based on the duration of a ~~written~~ certification
- 19 issued to the patient.