



2022 South Dakota Legislature

Senate Bill 5

Introduced by: **Senators** Wheeler, Breitling, Duhamel, and Stalzer and **Representatives** Finck, Bartels, Chaffee, Derby, Deutsch, Fitzgerald, Milstead, Perry, and Wiese at the request of the Marijuana Interim Study Committee

1 **An Act to revise acceptable conduct related to the medical use of cannabis.**

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," ~~means~~:

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, three
10 cannabis plants minimum or as prescribed by physician; and

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

15 (2) "Bona fide practitioner-patient relationship,":

16 (a) A practitioner and patient have a treatment or consulting relationship,
17 during the course of which the practitioner has completed an assessment
18 of the patient's medical history and current medical condition, including an
19 appropriate in-person physical examination;

20 (b) The practitioner has consulted with the patient with respect to the patient's
21 debilitating medical condition; and

22 (c) The practitioner is available to or offers to provide follow-up care and
23 treatment to the patient, including patient examinations;

24 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
25 that are infused with cannabis or an extract thereof, and are intended for use or

- 1 consumption by humans. The term includes edible cannabis products, beverages,
2 topical products, ointments, oils, and tinctures;
- 3 (4) "Cannabis product manufacturing facility," an entity registered with the
4 department pursuant to this chapter that acquires, possesses, manufactures,
5 delivers, transfers, transports, supplies, or sells cannabis products to a medical
6 cannabis dispensary;
- 7 (5) "Cannabis testing facility" or "testing facility," an independent entity registered
8 with the department pursuant to this chapter to analyze the safety and potency of
9 cannabis;
- 10 (6) "Cardholder," a qualifying patient or a designated caregiver who has been issued
11 and possesses a valid registry identification card;
- 12 (7) "Cultivation facility," an entity registered with the department pursuant to this
13 chapter that acquires, possesses, cultivates, delivers, transfers, transports,
14 supplies, or sells cannabis and related supplies to a medical cannabis
15 establishment;
- 16 (8) "Debilitating medical condition,":
17 (a) A chronic or debilitating disease or medical condition or its treatment that
18 produces one or more of the following: cachexia or wasting syndrome;
19 severe, debilitating pain; severe nausea; seizures; or severe and persistent
20 muscle spasms, including those characteristic of multiple sclerosis; or
21 (b) Any other medical condition or its treatment added by the department, as
22 provided for in § 34-20G-26;
- 23 (9) "Department," ~~means~~ the Department of Health;
- 24 (10) "Designated caregiver," a person who:
25 (a) Is at least twenty-one years of age;
26 (b) Has agreed to assist with a qualifying patient's medical use of cannabis;
27 (c) Has not been convicted of a disqualifying felony offense; and
28 (d) Assists no more than five qualifying patients with the medical use of
29 cannabis, unless the designated caregiver's qualifying patients each reside
30 in or are admitted to a health care facility or residential care facility where
31 the designated caregiver is employed;
- 32 (11) "Disqualifying felony offense," a violent crime that was classified as a felony in the
33 jurisdiction where the person was convicted;
- 34 (12) "Edible cannabis products," any product that:
35 (a) Contains or is infused with cannabis or an extract thereof;

- 1 (b) Is intended for human consumption by oral ingestion; and
- 2 (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures,
- 3 or other similar products;
- 4 (13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other
- 5 enclosed area that is equipped with locks or other security devices that permit
- 6 access only by a cardholder or a person allowed to cultivate the plants. Two or
- 7 more cardholders who reside in the same dwelling may share one enclosed, locked
- 8 facility for cultivation;
- 9 (14) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- 10 (15) "Medical cannabis dispensary" or "dispensary," an entity registered with the
- 11 department pursuant to this chapter that acquires, possesses, stores, delivers,
- 12 transfers, transports, sells, supplies, or dispenses cannabis, cannabis products,
- 13 paraphernalia, or related supplies and educational materials to cardholders;
- 14 (16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility,
- 15 a cannabis product manufacturing facility, or a dispensary;
- 16 (17) "Medical cannabis establishment agent," an owner, officer, board member,
- 17 employee, or volunteer at a medical cannabis establishment;
- 18 (18) "Medical use," includes the acquisition, administration, cultivation, manufacture,
- 19 delivery, harvest, possession, preparation, transfer, transportation, or use of
- 20 cannabis or paraphernalia relating to the administration of cannabis to treat or
- 21 alleviate a registered qualifying patient's debilitating medical condition or symptom
- 22 associated with the patient's debilitating medical condition. The term does not
- 23 include:
- 24 (a) The cultivation of cannabis by a nonresident cardholder;
- 25 (b) The cultivation of cannabis by a cardholder who is not designated as being
- 26 allowed to cultivate on the cardholder's registry identification card; or
- 27 (c) The extraction of resin from cannabis by solvent extraction unless the
- 28 extraction is done by a cannabis product manufacturing facility;
- 29 (19) "Nonresident cardholder," a person who:
- 30 (a) Has been diagnosed with a debilitating medical condition, or is the parent,
- 31 guardian, conservator, or other person with authority to consent to the
- 32 medical treatment of a person who has been diagnosed with a debilitating
- 33 medical condition;
- 34 (b) Is not a resident of this state or who has been a resident of this state for
- 35 fewer than forty-five days;

- 1 (c) Was issued a currently valid registry identification card or its equivalent by
2 another state, district, territory, commonwealth, insular possession of the
3 United States, or country recognized by the United States that allows the
4 person to use cannabis for medical purposes in the jurisdiction of issuance;
5 and
- 6 (d) Has submitted any documentation required by the department, and has
7 received confirmation of registration;
- 8 (20) "Practitioner," a physician who is licensed with authority to prescribe drugs to
9 humans. In relation to a nonresident cardholder, the term means a person who is
10 licensed with authority to prescribe drugs to humans in the state of the patient's
11 residence;
- 12 (21) "Qualifying patient," a person who has been diagnosed by a practitioner as having
13 a debilitating medical condition;
- 14 (22) "Registry identification card," a document issued by the department that identifies
15 a person as a registered qualifying patient or registered designated caregiver, or
16 documentation that is deemed a registry identification card pursuant to §§ 34-20G-
17 29 to 34-20G-42, inclusive; and
- 18 (23) "Safety-sensitive job," any position with tasks or duties that an employer
19 reasonably believes could:
20 (a) Cause the illness, injury, or death of an individual; or
21 (b) Result in serious property damage;
- 22 (24) "Under the influence of cannabis," any abnormal mental or physical condition that
23 tends to deprive a person of clearness of intellect and control that the person would
24 otherwise possess, as the result of consuming any degree of cannabis or cannabis
25 products;
- 26 (25) "Written certification," a document dated and signed by a practitioner, stating that
27 in the practitioner's professional opinion the patient is likely to receive therapeutic
28 or palliative benefit from the medical use of cannabis to treat or alleviate the
29 patient's debilitating medical condition or symptom associated with the debilitating
30 medical condition. This document shall affirm that it is made in the course of a
31 bona fide practitioner-patient relationship and shall specify the qualifying patient's
32 debilitating medical condition.

33 **Section 2. That § 34-20G-18 be AMENDED:**

1 **34-20G-18.** This chapter does not authorize any person to engage in, and does
2 not prevent the imposition of any civil, criminal, or other penalty for engaging in, the
3 following conduct:

- 4 (1) Undertaking any task under the influence of cannabis, when doing so would
5 constitute negligence or professional malpractice;
- 6 (2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any
7 correctional facility;
- 8 (3) Smoking or vaping cannabis:
9 (a) On any form of public transportation; ~~or~~
10 (b) In any public place or any place that is open to the public; or
11 (c) If under the age of twenty-one;
- 12 (4) Operating, navigating, or being in actual physical control of any motor vehicle,
13 aircraft, train, or motorboat while under the influence of cannabis, ~~except that a~~
14 ~~registered qualifying patient or nonresident cardholder is not considered to be~~
15 ~~under the influence of cannabis solely because of the presence of metabolites or~~
16 ~~components of cannabis that appear in insufficient concentration to cause~~
17 ~~impairment; or~~
- 18 (5) Performing any safety-sensitive job under the influence of cannabis.

19 **Section 3. That § 34-20G-24 be AMENDED:**

20 **34-20G-24.** No employer is required to allow the ingestion, possession, transfer,
21 display, or transportation of cannabis in any workplace or to allow any employee to work
22 while under the influence of cannabis. ~~A registered qualifying patient may not be~~
23 ~~considered to be under the influence of cannabis solely because of the presence of~~
24 ~~metabolites or components of cannabis that appear in insufficient concentration to cause~~
25 ~~impairment.~~ No employer is prohibited from establishing and enforcing a drug free
26 workplace policy that may include a drug testing program that complies with state and
27 federal law and acting with respect to an applicant or employee under the policy.