



2022 South Dakota Legislature

Senate Bill 177

Introduced by: **Senator Heinert**

1 **An Act to revise provisions regarding medical 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 a 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, tribe, district, territory, commonwealth, insular possession
 3 of the United States, or country recognized by the United States that allows
 4 the person to use cannabis for medical purposes in the jurisdiction of
 5 issuance; 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) "Tribe," any Indian tribe, band, nation, or other organized group or community,
 19 that is recognized as eligible for the special programs and services provided by the
 20 United States to Indians because of their status as Indians; and
- 21 ~~(23)~~(24) "Written certification," a document dated and signed by a practitioner, stating
 22 that in the practitioner's professional opinion the patient is likely to receive
 23 therapeutic or palliative benefit from the medical use of cannabis to treat or
 24 alleviate the patient's debilitating medical condition or symptom associated with
 25 the debilitating medical condition. This document shall affirm that it is made in the
 26 course of a bona fide practitioner-patient relationship and shall specify the
 27 qualifying patient's debilitating medical condition.

28 **Section 2. That § 34-20G-16 be AMENDED:**

29 **34-20G-16.** No law enforcement officer employed by an agency that receives state
 30 or local government funds may expend any state or local resources, including the officer's
 31 time, to effect any arrest or seizure of cannabis, or conduct any investigation, on the sole
 32 basis of activity the officer believes to constitute a violation of the federal Controlled
 33 Substances Act, 21 U.S.C. § 801 et seq., if the officer has reason to believe that the
 34 activity is in compliance with this chapter. No officer may expend any state or local

1 resources, including the officer's time, to provide any information or logistical support
2 related to any activity to any federal law enforcement authority or prosecuting entity. No
3 officer may confiscate any card issued by another jurisdiction pursuant to subdivision 34-
4 20G-1(19).

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

6 For the purposes of this Act, the term, territory of the tribe, includes:

- 7 (1) All land within the limits of any Indian reservation under the jurisdiction of the
8 United States;
9 (2) All dependent Indian communities within the borders of the United States whether
10 within the original or subsequently acquired territory thereof, and whether within
11 or without the limits of a state;
12 (3) All Indian allotments, the Indian titles that have not been extinguished, including
13 rights-of-way running through the same; and
14 (4) Any title to real estate that is either held in trust by the United States for the benefit
15 of any Indian tribe or individual or held by any Indian tribe or individual subject to
16 restriction by the United States against alienation and over which an Indian Tribe
17 exercises jurisdiction.

18 **Section 4. That chapter 34-20G be amended with a NEW SECTION:**

19 A tribe has a right to develop the tribe's cannabis programs under tribal law. The
20 state does not have jurisdiction over cannabis cultivation, distribution, sale, or use within
21 the territory of a tribe. A tribe regulates all cannabis activities within the territory of the
22 tribe. A tribe is not required to be licensed in this state for the tribe's activities within the
23 territory of the tribe.

24 **Section 5. That chapter 34-20G be amended with a NEW SECTION:**

25 A tribe may participate in the medical cannabis program outside of the territory of
26 the tribe if a tribal government or its registered entities provide the following:

- 27 (1) Testing sample records from a registered cannabis testing facility;
28 (2) Records of the cannabis products that are transported out of the territory of the
29 tribe from the inventory tracking system chosen by the tribe; and
30 (3) Proof that that cannabis products conform to the packaging and labeling rules
31 pursuant to this chapter.

1 The state may request, access, or audit the records of the tribes beyond what is
2 required pursuant to this section.

3 **Section 6. That chapter 34-20G be amended with a NEW SECTION:**

4 A tribe may purchase cannabis products from a medical cannabis establishment for
5 use within the tribe's cannabis program.

6 **Section 7. That chapter 34-20G be amended with a NEW SECTION:**

7 A cultivation facility may utilize tribally licensed cannabis product manufacturing
8 facilities to further develop cannabis products to be distributed and sold at a state or tribal
9 dispensary facility.

10 **Section 8. That chapter 34-20G be amended with a NEW SECTION:**

11 In accordance with 25 U.S.C. §§ 263, 263, & 264 and the accompanying
12 regulations found in 25 C.F.R. § 140, the state is preempted from regulating or interfering
13 with the lawful and regulated transportation of cannabis to or from the territory of the
14 tribes by tribes or tribal registered entities, so long as the carrier of the cannabis has a
15 transport manifest, or its equivalent conducted in accordance with tribal law.