



2022 South Dakota Legislature

Senate Bill 19

HOUSE HEALTH AND HUMAN SERVICES ENGROSSED

Introduced by: **Senators** Breitling, Duhamel, Rohl, V. J. Smith, and Stalzer and **Representatives** Finck, Bartels, Chaffee, Derby, Deutsch, Duba, Fitzgerald, Goodwin, Milstead, Ernie Otten, Perry, Rehfeldt, Wiese, and Willadsen at the request of the Marijuana Interim Study Committee

1 **An Act to permit certain facilities to establish reasonable restrictions related to the**
 2 **medical use of cannabis.**

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

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

5 **34-20G-1.** ————Terms used in this chapter mean:

6 (1) "Allowable amount of cannabis," ~~means~~:

7 (a) Three ounces of cannabis or less;

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

10 (c) If the cardholder has a registry identification card allowing cultivation, three
 11 cannabis plants minimum or as prescribed by physician; 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,":

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

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

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

- 1 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
2 that are infused with cannabis or an extract thereof, and are intended for use or
3 consumption by humans. The term includes edible cannabis products, beverages,
4 topical products, ointments, oils, and tinctures;
- 5 (4) "Cannabis product manufacturing facility," an entity registered with the
6 department pursuant to this chapter that acquires, possesses, manufactures,
7 delivers, transfers, transports, supplies, or sells cannabis products to a medical
8 cannabis dispensary;
- 9 (5) "Cannabis testing facility" or "testing facility," an independent entity registered
10 with the department pursuant to this chapter to analyze the safety and potency of
11 cannabis;
- 12 (6) "Cardholder," a qualifying patient or a designated caregiver who has been issued
13 and possesses a valid registry identification card;
- 14 (7) "Cultivation facility," an entity registered with the department pursuant to this
15 chapter that acquires, possesses, cultivates, delivers, transfers, transports,
16 supplies, or sells cannabis and related supplies to a medical cannabis
17 establishment;
- 18 (8) "Debilitating medical condition,":
- 19 (a) A chronic or debilitating disease or medical condition or its treatment that
20 produces one or more of the following: cachexia or wasting syndrome;
21 severe, debilitating pain; severe nausea; seizures; or severe and persistent
22 muscle spasms, including those characteristic of multiple sclerosis; or
- 23 (b) Any other medical condition or its treatment added by the department, as
24 provided for in § 34-20G-26;
- 25 (9) "Department," ~~means~~ the Department of Health;
- 26 (10) "Designated caregiver," a person who:
- 27 (a) Is at least twenty-one years of age;
- 28 (b) Has agreed to assist with a qualifying patient's medical use of cannabis;
- 29 (c) Has not been convicted of a disqualifying felony offense; and
- 30 (d) Assists no more than five qualifying patients with the medical use of
31 cannabis, unless the designated caregiver's qualifying patients each reside
32 in or are admitted to a health care facility ~~or residential care facility,~~ as
33 defined in § 34-12-1.1, an accredited prevention or treatment facility, as
34 defined in § 34-20A-2, a mental health center, as defined in § 27A-1-1, a
35 child welfare agency, as defined in § 26-6-1, or a community support

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

- 1 (a) Has been diagnosed with a debilitating medical condition, or is the parent,
2 guardian, conservator, or other person with authority to consent to the
3 medical treatment of a person who has been diagnosed with a debilitating
4 medical condition;
- 5 (b) Is not a resident of this state or who has been a resident of this state for
6 fewer than forty-five days;
- 7 (c) Was issued a currently valid registry identification card or its equivalent by
8 another state, district, territory, commonwealth, insular possession of the
9 United States, or country recognized by the United States that allows the
10 person to use cannabis for medical purposes in the jurisdiction of issuance;
11 and
- 12 (d) Has submitted any documentation required by the department, and has
13 received confirmation of registration;
- 14 (20) "Practitioner," a physician who is licensed with authority to prescribe drugs to
15 humans. In relation to a nonresident cardholder, the term means a person who is
16 licensed with authority to prescribe drugs to humans in the state of the patient's
17 residence;
- 18 (21) "Qualifying patient," a person who has been diagnosed by a practitioner as having
19 a debilitating medical condition;
- 20 (22) "Registry identification card," a document issued by the department that identifies
21 a person as a registered qualifying patient or registered designated caregiver, or
22 documentation that is deemed a registry identification card pursuant to §§ 34-20G-
23 29 to 34-20G-42, inclusive; and
- 24 (23) "Written certification," a document dated and signed by a practitioner, stating that
25 in the practitioner's professional opinion the patient is likely to receive therapeutic
26 or palliative benefit from the medical use of cannabis to treat or alleviate the
27 patient's debilitating medical condition or symptom associated with the debilitating
28 medical condition. This document shall affirm that it is made in the course of a
29 bona fide practitioner-patient relationship and shall specify the qualifying patient's
30 debilitating medical condition.

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

32 A health care facility, as defined in § 34-12-1.1, an accredited prevention or
33 treatment facility, as defined in § 34-20A-2, a mental health center, as defined in § 27A-
34 1-1, a child welfare agency, as defined in § 26-6-1, or a community support provider or

1 community services provider, as defined in § 27B-1-17, may adopt restrictions on the use
2 of medical cannabis by a cardholder who resides at, is actively receiving treatment or care
3 from, or is visiting the facility. The restrictions may include a provision that the facility will
4 not store or maintain the cardholder's supply of medical cannabis, that the facility is not
5 responsible for providing the medical cannabis for cardholders, and that the medical
6 cannabis be used only in a place specified by the facility. Nothing in this section requires
7 a facility to adopt such restrictions or requires a facility to allow the consumption of
8 medical cannabis on the grounds of the facility.

9 No employee or agent of a facility may be subject to arrest, prosecution, or penalty
10 of any kind, or may be denied any right or privilege, including any civil penalty or
11 disciplinary action by a court or occupational or professional licensing board for possession
12 of medical cannabis while carrying out employment duties, including providing or
13 supervising care to a cardholder, or distribution of medical cannabis to a cardholder who
14 resides at or is actively receiving treatment or care at the facility with which the employee
15 or agent is affiliated.