

# 2023 South Dakota Legislature

## Draft 156

*Requested by: The Interim Committee on Medical Marijuana Oversight Committee*

1 **An Act to modify provisions related to debilitating medical conditions for purposes**  
2 **of medical 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,":
- 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, two
- 11 flowering cannabis plants and two cannabis plants that are not flowering;
- 12 and
- 13 (d) If the cardholder has a registry identification card allowing cultivation, the
- 14 amount of cannabis and cannabis products that were produced from the
- 15 cardholder's allowable plants, if the cannabis and cannabis products are
- 16 possessed at the same property where the plants were cultivated;
- 17 (2) "Bona fide practitioner-patient relationship," a treatment or consulting relationship
- 18 between a practitioner and patient, during which:
- 19 (a) The practitioner completes, at the initial visit, an assessment of the patient's
- 20 medical history and current medical condition, including an appropriate in-
- 21 person physical examination;
- 22 (b) The patient is under the practitioner's care for the debilitating medical
- 23 condition that qualifies the patient for the medical use of cannabis or has
- 24 been referred by the practitioner caring for the patient's debilitating medical
- 25 condition that qualifies the patient for the medical use of cannabis to
- 26 another practitioner;
- 27 (c) The patient has a reasonable expectation that the practitioner providing the
- 28 written certification will continue to provide follow-up care to the patient to
- 29 monitor the medical use of cannabis; and

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

- 1           (h) Glaucoma; or
- 2           (i) Post-traumatic stress disorder;
- 3       (9) "Department," the Department of Health;
- 4       (10) "Designated caregiver," an individual who:
- 5           (a) Is at least twenty-one years of age;
- 6           (b) Has agreed to assist with a qualifying patient's medical use of cannabis;
- 7           (c) Has not been convicted of a disqualifying felony offense; and
- 8           (d) Assists no more than five qualifying patients with the medical use of
- 9               cannabis, unless the designated caregiver's qualifying patients each reside
- 10              in or are admitted to a health care facility, as defined in § 34-12-1.1, an
- 11              accredited prevention or treatment facility, as defined in § 34-20A-2, a
- 12              mental health center, as defined in § 27A-1-1, a child welfare agency, as
- 13              defined in § 26-6-1, or a community support provider or community
- 14              services provider, as defined in § 27B-1-17, where the designated caregiver
- 15              is employed;
- 16       (11) "Disqualifying felony offense," a violent crime that was classified as a felony in the
- 17              jurisdiction where the person was convicted;
- 18       (12) "Edible cannabis products," any product that:
- 19           (a) Contains or is infused with cannabis or an extract thereof;
- 20           (b) Is intended for human consumption by oral ingestion; and
- 21           (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures,
- 22              or other similar products;
- 23       (13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other
- 24              enclosed area that is equipped with locks or other security devices that permit
- 25              access only by a cardholder or a person allowed to cultivate the plants. Two or
- 26              more cardholders who reside in the same dwelling may share one enclosed, locked
- 27              facility for cultivation;
- 28       (14) "Flowering cannabis plant," the reproductive state of the cannabis plant in which
- 29              the plant shows physical signs of flower budding out of the nodes of the stem;
- 30       (15) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- 31       (16) "Medical cannabis dispensary" or "dispensary," an entity registered with the
- 32              department pursuant to this chapter that acquires, possesses, stores, delivers,
- 33              transfers, transports, sells, supplies, or dispenses cannabis, cannabis products,
- 34              paraphernalia, or related supplies and educational materials to cardholders;

- 1 (17) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility,  
2 a cannabis product manufacturing facility, or a dispensary;
- 3 (18) "Medical cannabis establishment agent," an owner, officer, board member,  
4 employee, or volunteer at a medical cannabis establishment;
- 5 (19) "Medical use," includes the acquisition, administration, cultivation, manufacture,  
6 delivery, harvest, possession, preparation, transfer, transportation, or use of  
7 cannabis or paraphernalia relating to the administration of cannabis to treat or  
8 alleviate a registered qualifying patient's debilitating medical condition or symptom  
9 associated with the patient's debilitating medical condition. The term does not  
10 include:
- 11 (a) The cultivation of cannabis by a nonresident cardholder;
- 12 (b) The cultivation of cannabis by a cardholder who is not designated as being  
13 allowed to cultivate on the cardholder's registry identification card; or
- 14 (c) The extraction of resin from cannabis by solvent extraction unless the  
15 extraction is done by a cannabis product manufacturing facility;
- 16 (20) "Nonresident cardholder," a person who:
- 17 (a) Has been diagnosed with a debilitating medical condition, or is the parent,  
18 guardian, conservator, or other person with authority to consent to the  
19 medical treatment of a person who has been diagnosed with a debilitating  
20 medical condition;
- 21 (b) Is not a resident of this state or who has been a resident of this state for  
22 fewer than forty-five days;
- 23 (c) Was issued a currently valid registry identification card or its equivalent by  
24 another state, district, territory, commonwealth, insular possession of the  
25 United States, or country recognized by the United States that allows the  
26 person to use cannabis for medical purposes in the jurisdiction of issuance;  
27 and
- 28 (d) Has submitted any documentation required by the department, and has  
29 received confirmation of registration;
- 30 (21) "Practitioner," a physician, physician assistant, or advanced practice registered  
31 nurse, who is licensed with authority to prescribe drugs to humans. In relation to  
32 a nonresident cardholder, the term means a person who is licensed with authority  
33 to prescribe drugs to humans in the state of the patient's residence;
- 34 (22) "Qualifying patient," a person who has been diagnosed by a practitioner as having  
35 a debilitating medical condition;

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

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

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