



## 2023 South Dakota Legislature

# Senate Bill 1

Introduced by: **Senator** Tobin and **Representatives** Ernie Otten and Rehfeldt at the request of the Medical Marijuana Oversight Committee

1 **An Act to modify debilitating medical conditions for medical cannabis use.**

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;

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

- 1           (e) Cancer or its treatment, if associated with severe or chronic pain, nausea  
 2           or severe vomiting, or cachexia or severe wasting;  
 3           (f) Crohn's disease;  
 4           (g) Epilepsy and seizures;  
 5           (h) Glaucoma; or  
 6           (i) 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, extracts, oils, tinctures,  
 26              or other 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;

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

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

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

33 **Section 3. That § 34-20G-72 be AMENDED:**

- 1           **34-20G-72.** The department shall promulgate rules pursuant to chapter 1-26:
- 2           (1) ~~Governing the manner in which the department shall consider petitions from the~~  
3           ~~public to add a debilitating medical condition or treatment to the list of debilitating~~  
4           ~~medical conditions as defined by this chapter, including public notice of and an~~  
5           ~~opportunity to comment in public hearings on the petitions;~~
- 6           (2) Establishing the form and content of registration and renewal applications  
7           submitted under this chapter;
- 8           (3)(2) Establishing a system to numerically score competing medical cannabis  
9           establishment applicants, in cases where more applicants apply than are allowed  
10           by the local government, that includes analysis of:
- 11           (a) The preference of the local government;
- 12           (b) In the case of dispensaries, the suitability of the proposed location and its  
13           accessibility for patients;
- 14           (c) The character, veracity, background, qualifications, and relevant experience  
15           of principal officers and board members; and
- 16           (d) The business plan proposed by the applicant, that in the case of a cultivation  
17           facility or dispensary shall include the ability to maintain an adequate supply  
18           of cannabis, plans to ensure safety and security of patrons and the  
19           community, procedures to be used to prevent diversion, and any plan for  
20           making cannabis available to low-income registered qualifying patients;
- 21           (4)(3) Governing the manner in which the department shall consider applications for and  
22           renewals of registry identification cards, that may include creating a standardized  
23           written certification form;
- 24           (5)(4) Governing medical cannabis establishments to ensure the health and safety of  
25           qualifying patients and prevent diversion and theft without imposing an undue  
26           burden or compromising the confidentiality of a cardholder, including:
- 27           (a) Oversight requirements;
- 28           (b) Record-keeping requirements;
- 29           (c) Security requirements, including lighting, physical security, and alarm  
30           requirements;
- 31           (d) Health and safety regulations, including restrictions on the use of pesticides  
32           that are injurious to human health;
- 33           (e) Standards for the manufacture of cannabis products and both the indoor  
34           and outdoor cultivation of cannabis by a cultivation facility;

- 1 (f) Requirements for the transportation and storage of cannabis by a medical  
2 cannabis establishment;
- 3 (g) Employment and training requirements, including requiring that each  
4 medical cannabis establishment create an identification badge for each  
5 agent;
- 6 (h) Standards for the safe manufacture of cannabis products, including extracts  
7 and concentrates;
- 8 (i) Restrictions on the advertising, signage, and display of medical cannabis,  
9 provided that the restrictions may not prevent appropriate signs on the  
10 property of a dispensary, listings in business directories including phone  
11 books, listings in marijuana-related or medical publications, or the  
12 sponsorship of health or not-for-profit charity or advocacy events;
- 13 (j) Requirements and procedures for the safe and accurate packaging, labeling,  
14 distribution, and tracking of medical cannabis;
- 15 (k) Certification standards for testing facilities, including requirements for  
16 equipment and qualifications for personnel; and
- 17 (l) Requirements for samples of cannabis and cannabis products submitted to  
18 testing facilities, including batch sizes to not exceed fifty pounds of cannabis  
19 intended for retail sale, batch sizes for homogenous cannabis products  
20 intended for retail sale, and procedures to ensure representative sampling;
- 21 ~~(6)~~(5) Establishing procedures for suspending or terminating the registration certificates  
22 or registry identification cards of cardholders and medical cannabis establishments  
23 that commit multiple or serious violations of this chapter;
- 24 ~~(7)~~(6) Establishing labeling requirements for cannabis and cannabis products, including  
25 requiring cannabis product labels to include the following:
- 26 (a) The length of time it typically takes for a product to take effect;
- 27 (b) Disclosing ingredients and possible allergens;
- 28 (c) A nutritional fact panel; and
- 29 (d) Requiring that edible cannabis products be clearly identifiable, when  
30 practicable, with a standard symbol indicating that it contains cannabis;
- 31 ~~(8)~~(7) Establishing procedures for the registration of nonresident cardholders and the  
32 cardholder's designation of no more than two dispensaries, which shall require the  
33 submission of:
- 34 (a) A practitioner's statement confirming that the patient has a debilitating  
35 medical condition; and

- 1 (b) Documentation demonstrating that the nonresident cardholder is allowed to  
2 possess cannabis or cannabis preparations in the jurisdiction where the  
3 nonresident cardholder resides;
- 4 ~~(9)~~(8) Establishing the amount of cannabis products, including the amount of  
5 concentrated cannabis, each cardholder and nonresident cardholder may possess;  
6 and
- 7 ~~(10)~~(9) Establishing reasonable application and renewal fees for registry identification  
8 cards and registration certificates, according to the following:
- 9 (a) Application fees for medical cannabis establishments may not exceed five  
10 thousand dollars, with this upper limit adjusted annually for inflation;
- 11 (b) The total fees collected shall generate revenues sufficient to offset all  
12 expenses of implementing and administering this chapter;
- 13 (c) A sliding scale of patient application and renewal fees based upon a  
14 qualifying patient's household income;
- 15 (d) The fees charged to qualifying patients, nonresident cardholders, and  
16 caregivers shall be no greater than the costs of processing the application  
17 and issuing a registry identification card or registration; and
- 18 (e) The department may accept donations from private sources to reduce  
19 application and renewal fees.
- 20 A violation of a required or prohibited action under any rule authorized by this  
21 section is a Class 2 misdemeanor.