

## 2023 South Dakota Legislature

**House Bill 1172****AMENDMENT 1172B  
FOR THE INTRODUCED BILL**

1 **An Act to require a practitioner's medical assessment of a patient to occur in**~~a~~  
2 **licensed health care facility certain facilities for purposes of medical cannabis**  
3 **use.**

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

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

6 **34-20G-1.** Terms used in this chapter mean:

- 7 (1) "Allowable amount of cannabis,":
- 8 (a) Three ounces of cannabis or less;
- 9 (b) The quantity of cannabis products as established by rules promulgated by  
10 the department under § 34-20G-72;
- 11 (c) If the cardholder has a registry identification card allowing cultivation, two  
12 flowering cannabis plants and two cannabis plants that are not flowering;  
13 and
- 14 (d) If the cardholder has a registry identification card allowing cultivation, the  
15 amount of cannabis and cannabis products that were produced from the  
16 cardholder's allowable plants, if the cannabis and cannabis products are  
17 possessed at the same property where the plants were cultivated;
- 18 (2) "Bona fide practitioner-patient relationship," a treatment or consulting relationship  
19 between a practitioner and patient, during which:
- 20 (a) The practitioner completes, at the initial visit, an assessment of the patient's  
21 medical history and current medical condition, including an appropriate in-  
22 person physical examination;
- 23 (b) The patient is under the practitioner's care for the debilitating medical  
24 condition that qualifies the patient for the medical use of cannabis or has  
25 been referred by the practitioner caring for the patient's debilitating medical

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

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

- 1 (19) "Medical use," includes the acquisition, administration, cultivation, manufacture,  
2 delivery, harvest, possession, preparation, transfer, transportation, or use of  
3 cannabis or paraphernalia relating to the administration of cannabis to treat or  
4 alleviate a registered qualifying patient's debilitating medical condition or symptom  
5 associated with the patient's debilitating medical condition. The term does not  
6 include:
- 7 (a) The cultivation of cannabis by a nonresident cardholder;
  - 8 (b) The cultivation of cannabis by a cardholder who is not designated as being  
9 allowed to cultivate on the cardholder's registry identification card; or
  - 10 (c) The extraction of resin from cannabis by solvent extraction unless the  
11 extraction is done by a cannabis product manufacturing facility;
- 12 (20) "Nonresident cardholder," a person who:
- 13 (a) Has been diagnosed with a debilitating medical condition, or is the parent,  
14 guardian, conservator, or other person with authority to consent to the  
15 medical treatment of a person who has been diagnosed with a debilitating  
16 medical condition;
  - 17 (b) Is not a resident of this state or who has been a resident of this state for  
18 fewer than forty-five days;
  - 19 (c) Was issued a currently valid registry identification card or its equivalent by  
20 another state, district, territory, commonwealth, insular possession of the  
21 United States, or country recognized by the United States that allows the  
22 person to use cannabis for medical purposes in the jurisdiction of issuance;  
23 and
  - 24 (d) Has submitted any documentation required by the department, and has  
25 received confirmation of registration;
- 26 (21) "Practitioner," a physician, physician assistant, or advanced practice registered  
27 nurse, who is licensed with authority to prescribe drugs to humans. In relation to  
28 a nonresident cardholder, the term means a person who is licensed with authority  
29 to prescribe drugs to humans in the state of the patient's residence;
- 30 (22) "Qualifying patient," a person who has been diagnosed by a practitioner as having  
31 a debilitating medical condition;
- 32 (23) "Registry identification card," a document issued by the department that identifies  
33 a person as a registered qualifying patient or registered designated caregiver, or  
34 documentation that is deemed a registry identification card pursuant to §§ 34-20G-  
35 29 to 34-20G-42, inclusive;

- 1 (24) "Safety-sensitive job," any position with tasks or duties that an employer  
 2 reasonably believes could:  
 3 (a) Cause the illness, injury, or death of an individual; or  
 4 (b) Result in serious property damage;
- 5 (25) "Under the influence of cannabis," any abnormal mental or physical condition that  
 6 tends to deprive a person of clearness of intellect and control that the person would  
 7 otherwise possess, as the result of consuming any degree of cannabis or cannabis  
 8 products; and
- 9 (26) "Written certification," a document dated and signed by a practitioner:  
 10 (a) Stating that the patient has a qualifying debilitating medical condition or  
 11 symptom associated with the debilitating medical condition;  
 12 (b) Affirming that the document is made in the course of a bona fide  
 13 practitioner-patient relationship;  
 14 (c) Specifying the qualifying patient's debilitating medical condition; ~~and~~  
 15 (d) Specifying the expiration date of the qualifying patient's written  
 16 certification, pursuant to § 34-20G-43; and  
 17 (e) Providing the ~~name and~~ address of the ~~health care~~ facility ~~licensed under~~  
 18 ~~chapter 34-12~~ where the patient's medical assessment, required to  
 19 establish a bona fide practitioner-patient relationship, occurred.

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

21 **34-20G-34.** The department may deny an application or renewal of a qualifying  
 22 patient's registry identification card only if the applicant:

- 23 (1) Does not provide the required information, fee, or materials;  
 24 (2) Does not meet the requirement to obtain a registry identification card as defined  
 25 in § 34-20G-1;  
 26 (3) Previously had a registry identification card revoked; ~~or~~  
 27 (4) Provided false information; or  
 28 (5) Does not meet the requirement of having had the applicant's medical assessment,  
 29 required to establish a bona fide practitioner-patient relationship, completed in a  
 30 ~~health care~~ facility ~~licensed under chapter 34-12~~ as required by section 3 of this  
 31 Act.

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

1           For purposes of participating in the medical cannabis program under this chapter,  
2 a patient's medical assessment, required to establish a bona fide practitioner-patient  
3 relationship, must occur in a ~~health care~~ facility used in the usual and regular course of  
4 business by ~~licensed under chapter 34-12:~~

5 (1) a physician licensed under chapter 36-4;

6 (2) a physician assistant licensed under chapter 36-4A;

7 (3) an advanced life support personnel licensed under chapter 36-4B;

8 (4) a respiratory care practitioner licensed under chapter 36-4C;

9 (5) a chiropractor licensed under chapter 36-5;

10 (6) a dentist, dental hygienist, or dental auxiliary licensed under chapter 36-6A;

11 (7) an optometrist licensed under chapter 36-7;

12 (8) a podiatrist licensed under chapter 36-8;

13 (9) a registered or practical nurse licensed under chapter 36-9;

14 (10) a certified nurse practitioner or certified nurse midwife licensed under chapter 36-  
15 9A;

16 (11) a certified professional midwife licensed under chapter 36-9C;

17 (12) a physical therapist licensed under chapter 36-10; or

18 (13) a dietician or nutritionist licensed under chapter 36-10B.