



## 2026 South Dakota Legislature

**House Bill 1065**

HOUSE ENGROSSED

Introduced by: **Representative Ismay**

1 **An Act to revise the medical purpose affirmative defense in cannabis prosecution.**

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

3 **Section 1. That § 34-20G-51 be AMENDED:**

4 **34-20G-51.** Except as provided in § 34-20G-18 and this section, a person may  
5 assert the medical purpose for using cannabis as a defense to any prosecution involving  
6 cannabis, and such defense is presumed valid where the evidence shows that:

7 ~~(1) A practitioner has stated that, in the practitioner's professional opinion, after~~  
8 ~~having completed a full assessment of the person's medical history and current~~  
9 ~~medical condition made in the course of a bona fide practitioner patient~~  
10 ~~relationship, the patient has a debilitating medical condition and the potential~~  
11 ~~benefits of using cannabis for medical purposes would likely outweigh the health~~  
12 ~~risks for the person;~~

13 ~~(2) The person was in possession of no more than three ounces of cannabis, the~~  
14 ~~amount of cannabis products allowed by department rules, two flowering cannabis~~  
15 ~~plants, two cannabis plants that are not flowering, and the cannabis produced by~~  
16 ~~those plants;~~

17 ~~(3) The person was engaged in the acquisition, possession, use, manufacture,~~  
18 ~~cultivation, or transportation of cannabis, paraphernalia, or both, relating to the~~  
19 ~~administration of cannabis to treat or alleviate the person's debilitating medical~~  
20 ~~condition or symptoms associated with the person's debilitating medical condition;~~  
21 ~~and~~

22 ~~(4) Any cultivation of cannabis and storage of more than three ounces of cannabis~~  
23 ~~occurred in a secure location that only the person asserting the defense could~~  
24 ~~access~~

25 (1) If the person is a:

- 1            (a) Qualifying patient, the person was registered with the department as a  
2            cardholder or nonresident cardholder at the time of the alleged offense; or  
3            (b) Designated caregiver, the person was registered with the department as a  
4            designated caregiver at the time of the alleged offense; and  
5            (2) The conduct underlying the alleged offense complied with this chapter.

6            **Section 2. That § 34-20G-53 be REPEALED.**

7            ~~A person is not required to possess a registry identification card to raise the~~  
8            ~~affirmative defense set forth in § 34-20G-51.~~