



2022 South Dakota Legislature

House Bill 1004

Introduced by: **Representative** Deutsch

1 **An Act to prohibit cardholder cultivation of medical cannabis.**

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," ~~means:~~

6 (a) Three ounces of cannabis or less; and

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, three
10 cannabis plants minimum or as prescribed by physician; and~~

11 ~~(d) If the cardholder has a registry identification card allowing cultivation, the
12 amount of cannabis and cannabis products that were produced from the
13 cardholder's allowable plants, if the cannabis and cannabis products are
14 possessed at the same property where the plants were cultivated;~~

15 (2) "Bona fide practitioner-patient relationship,":

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

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

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

24 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
25 that are infused with cannabis or an extract thereof, and are intended for use or

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

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

- 1 (c) Was issued a currently valid registry identification card or its equivalent by
2 another state, district, territory, commonwealth, insular possession of the
3 United States, or country recognized by the United States that allows the
4 person to use cannabis for medical purposes in the jurisdiction of issuance;
5 and
- 6 (d) Has submitted any documentation required by the department, and has
7 received confirmation of registration;
- 8 ~~(20)~~(19) "Practitioner," a physician who is licensed with authority to prescribe drugs to
9 humans. In relation to a nonresident cardholder, the term means a person who is
10 licensed with authority to prescribe drugs to humans in the state of the patient's
11 residence;
- 12 ~~(21)~~(20) "Qualifying patient," a person who has been diagnosed by a practitioner as
13 having a debilitating medical condition;
- 14 ~~(22)~~(21) "Registry identification card," a document issued by the department that
15 identifies a person as a registered qualifying patient or registered designated
16 caregiver, or documentation that is deemed a registry identification card pursuant
17 to §§ 34-20G-29 to 34-20G-42, inclusive; and
- 18 ~~(23)~~(22) "Written certification," a document dated and signed by a practitioner, stating
19 that in the practitioner's professional opinion the patient is likely to receive
20 therapeutic or palliative benefit from the medical use of cannabis to treat or
21 alleviate the patient's debilitating medical condition or symptom associated with
22 the debilitating medical condition. This document shall affirm that it is made in the
23 course of a bona fide practitioner-patient relationship and shall specify the
24 qualifying patient's debilitating medical condition.

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

26 **34-20G-2.** A cardholder is not subject to arrest, prosecution, or penalty of any
27 kind, or denial of any right or privilege, including any civil penalty or disciplinary action by
28 a court or occupational or professional licensing board or bureau, for:

- 29 (1) The medical use of cannabis in accordance with this chapter, if the cardholder does
30 not possess more than the allowable amount of cannabis, ~~and if any cannabis plant~~
31 ~~is either cultivated in an enclosed, locked facility or is being transported;~~
- 32 (2) Reimbursement by a registered qualifying patient to the patient's registered
33 designated caregiver for direct costs incurred by the registered designated

- 1 caregiver for assisting with the registered qualifying patient's medical use of
2 cannabis;
- 3 (3) Transferring the cannabis to a testing facility;
- 4 (4) Compensating a dispensary or a testing facility for goods or services provided; or
- 5 (5) ~~Selling, transferring, or delivering cannabis seeds produced by the cardholder to a~~
6 ~~cultivation facility or dispensary; or~~
- 7 (6) Offering or providing cannabis to a cardholder for a registered qualifying patient's
8 medical use, to a nonresident cardholder, or to a dispensary if nothing of value is
9 transferred in return and the person giving the cannabis does not knowingly cause
10 the recipient to possess more than the allowable amount of cannabis.

11 **Section 3. That § 34-20G-9 be AMENDED:**

12 **34-20G-9.** No cultivation facility or a cultivation facility agent is subject to
13 prosecution, search, or inspection, except by the department pursuant to § 34-20G-69,
14 seizure, or penalty of any kind, or may be denied any right or privilege, including civil
15 penalty or disciplinary action by a court or business licensing board or entity, for acting in
16 accordance with this chapter to:

- 17 (1) Possess, plant, propagate, cultivate, grow, harvest, produce, process,
18 manufacture, compound, convert, prepare, pack, repack, or store cannabis;
- 19 (2) Deliver, transfer, or transport cannabis to a testing facility and compensate a
20 testing facility for services provided;
- 21 (3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of
22 value is exchanged in return;
- 23 (4) Purchase or otherwise acquire cannabis from a cultivation facility;
- 24 (5) Purchase cannabis seeds from ~~a cardholder, nonresident cardholder, or the~~
25 ~~equivalent of a medical cannabis establishment that is registered in another~~
26 ~~jurisdiction; or~~
- 27 (6) Deliver, sell, supply, transfer, or transport cannabis, cannabis paraphernalia, or
28 related supplies or educational materials to a cultivation facility and dispensary.

29 **Section 4. That § 34-20G-12 be AMENDED:**

30 **34-20G-12.** ~~A cardholder, nonresident cardholder, or the~~ The equivalent of a
31 medical cannabis establishment that is registered in another jurisdiction may sell or donate
32 cannabis seeds to a cultivation facility in this state.

1 **Section 5. That § 34-20G-18 be AMENDED:**

2 **34-20G-18.** This chapter does not authorize any person to engage in, and does
3 not prevent the imposition of any civil, criminal, or other penalty for engaging in, the
4 following conduct:

- 5 (1) Undertaking any task under the influence of cannabis, when doing so would
6 constitute negligence or professional malpractice;
- 7 (2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any
8 correctional facility;
- 9 (3) Smoking cannabis:
- 10 (a) On any form of public transportation; or
- 11 (b) In any public place or any place that is open to the public;
- 12 (4) Operating, navigating, or being in actual physical control of any motor vehicle,
13 aircraft, train, or motorboat while under the influence of cannabis, except that a
14 registered qualifying patient or nonresident cardholder is not considered to be
15 under the influence of cannabis solely because of the presence of metabolites or
16 components of cannabis that appear in insufficient concentration to cause
17 impairment-;
- 18 (5) Cultivating cannabis by any person not licensed or registered with the state to
19 cultivate cannabis; or
- 20 (6) Cultivating cannabis in a manner not authorized by this chapter or by
21 administrative rules promulgated under this chapter.

22 **Section 6. That § 34-20G-27 be AMENDED:**

23 **34-20G-27.** Nothing in this chapter requires:

- 24 (1) A government medical assistance program or private insurer to reimburse a person
25 for costs associated with the medical use of cannabis; or
- 26 (2) Any person or establishment in lawful possession of property to allow a guest,
27 client, customer, or other visitor to smoke cannabis on or in that property; ~~or~~
- 28 ~~(3) A landlord to allow the cultivation of cannabis on the rental property.~~

29 **Section 7. That § 34-20G-29 be AMENDED:**

30 **34-20G-29.** ~~No later than November 18, 2021, the~~ The department shall issue
31 registry identification cards to qualifying patients who submit the following, in accordance
32 with rules promulgated by the department:

- 1 (1) A written certification issued by a practitioner within ninety days immediately
 2 preceding the date of an application;
- 3 (2) The application or renewal fee;
- 4 (3) The name, address, and date of birth of the qualifying patient, except that if the
 5 applicant is homeless, no address is required;
- 6 (4) The name, address, and telephone number of the qualifying patient's practitioner;
- 7 (5) The name, address, and date of birth of the designated caregiver, or designated
 8 caregivers, chosen by the qualifying patient;
- 9 (6) If more than one designated caregiver is designated at any given time,
 10 documentation demonstrating that a greater number of designated caregivers are
 11 needed due to the patient's age or medical condition; and
- 12 (7) The name of no more than two dispensaries that the qualifying patient designates,
 13 if any; ~~and~~
- 14 ~~(8) If the qualifying patient designates a designated caregiver, a designation as to~~
 15 ~~whether the qualifying patient or designated caregiver will be allowed under state~~
 16 ~~law to possess and cultivate cannabis plants for the qualifying patient's medical~~
 17 ~~use.~~

18 **Section 8. That § 34-20G-42 be AMENDED:**

- 19 **34-20G-42.** A registry identification card shall contain all of the following:
- 20 (1) The name of the cardholder;
- 21 (2) A designation of whether the cardholder is a qualifying patient or a designated
 22 caregiver;
- 23 (3) The date of issuance and expiration date of the registry identification card;
- 24 (4) A random ten-digit alphanumeric identification number, containing at least four
 25 numbers and at least four letters, that is unique to the cardholder;
- 26 (5) If the cardholder is a designated caregiver, the random identification number of
 27 the qualifying patient the designated caregiver will assist;
- 28 ~~(6) A clear indication of whether the cardholder has been designated to cultivate~~
 29 ~~cannabis plants for the qualifying patient's medical use;~~
- 30 ~~(7)~~ (7) A photograph of the cardholder; and
- 31 ~~(8)~~(7) The phone number or website address where the card can be verified.

32 **Section 9. That § 34-20G-45 be AMENDED:**

1 **34-20G-45.** ~~Within one hundred twenty days of July 1, 2021, the~~ The department
2 shall establish a secure phone or web-based verification system. The verification system
3 shall allow law enforcement personnel and medical cannabis establishments to enter a
4 registry identification number and determine whether the number corresponds with a
5 current, valid registry identification card. The system may disclose only:

- 6 (1) Whether the identification card is valid;
7 (2) The name of the cardholder;
8 (3) Whether the cardholder is a qualifying patient or a designated caregiver;
9 (4) ~~Whether the cardholder is permitted to cultivate cannabis plants;~~
10 (5) The registry identification number of any affiliated registered qualifying patient;
11 and
12 (6)(5) The registry identification of the qualifying patient's dispensary or dispensaries, if
13 any.

14 **Section 10. That § 34-20G-46 be AMENDED:**

15 **34-20G-46.** The following notifications are required:

- 16 (1) A registered qualifying patient shall notify the department of any change in the
17 applicant's name or address, or if the patient ceases to have a debilitating medical
18 condition, within ten days of the change;
19 (2) A registered designated caregiver shall notify the department of any change in the
20 caregiver's name or address, or if the caregiver becomes aware the qualifying
21 patient passed away, within ten days of the change;
22 (3) Before a registered qualifying patient changes a designated caregiver, the patient
23 shall notify the department;
24 (4) ~~If a registered qualifying patient changes a preference as to who may cultivate~~
25 ~~cannabis for the patient, the patient shall notify the department;~~
26 (5) If a cardholder loses a registry identification card, the cardholder shall notify the
27 department within ten days of becoming aware the card has been lost; and
28 (6)(5) Before a registered qualifying patient changes a designated dispensary, the patient
29 shall notify the department.

30 **Section 11. That § 34-20G-51 be AMENDED:**

31 **34-20G-51.** Except as provided in § 34-20G-18 and this section, a person may
32 assert the medical purpose for using cannabis as a defense to any prosecution involving
33 cannabis, and such defense is presumed valid where the evidence shows that:

- 1 (1) A practitioner has stated that, in the practitioner's professional opinion, after
2 having completed a full assessment of the person's medical history and current
3 medical condition made in the course of a bona fide practitioner-patient
4 relationship, the patient has a debilitating medical condition and the potential
5 benefits of using cannabis for medical purposes would likely outweigh the health
6 risks for the person;
- 7 (2) The person was in possession of no more than three ounces of cannabis, and the
8 amount of cannabis products allowed by department rules, ~~six cannabis plants~~
9 ~~minimum or as prescribed by a physician, and the cannabis produced by those~~
10 ~~plants; and~~
- 11 (3) The person was engaged in the acquisition, possession, use, ~~manufacture,~~
12 ~~cultivation,~~ or transportation of cannabis, paraphernalia, or both, relating to the
13 administration of cannabis to treat or alleviate the person's debilitating medical
14 condition or symptoms associated with the person's debilitating medical condition;
15 ~~and~~
- 16 ~~(4) Any cultivation of cannabis and storage of more than three ounces of cannabis~~
17 ~~occurred in a secure location that only the person asserting the defense could~~
18 ~~access.~~

19 **Section 12. That § 34-20G-52 be AMENDED:**

20 **34-20G-52.** An affirmative defense and motion to dismiss shall fail if the
21 prosecution proves that:

- 22 (1) The person had a registry identification card revoked for misconduct; or
23 (2) The purpose for the possession ~~or cultivation~~ of cannabis was not solely for
24 palliative or therapeutic use by the person with a debilitating medical condition who
25 raised the defense.