



2022 South Dakota Legislature  
**Senate Bill 5**  
**ENROLLED**

AN ACT

**ENTITLED An Act to revise acceptable conduct related to the medical use of cannabis.**

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

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

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

- (1) "Allowable amount of cannabis,":
  - (a) Three ounces of cannabis or less;
  - (b) The quantity of cannabis products as established by rules promulgated by the department under § 34-20G-72;
  - (c) If the cardholder has a registry identification card allowing cultivation, three cannabis plants minimum or as prescribed by physician; and
  - (d) If the cardholder has a registry identification card allowing cultivation, the amount of cannabis and cannabis products that were produced from the cardholder's allowable plants, if the cannabis and cannabis products are possessed at the same property where the plants were cultivated;
- (2) "Bona fide practitioner-patient relationship,":
  - (a) A practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner has completed an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;
  - (b) The practitioner has consulted with the patient with respect to the patient's debilitating medical condition; and
  - (c) The practitioner is available to or offers to provide follow-up care and treatment to the patient, including patient examinations;
- (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or

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

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

- (c) Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and
  - (d) Has submitted any documentation required by the department, and has received confirmation of registration;
- (20) "Practitioner," a physician who is licensed with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence;
- (21) "Qualifying patient," a person who has been diagnosed by a practitioner as having a debilitating medical condition;
- (22) "Registry identification card," a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to §§ 34-20G-29 to 34-20G-42, inclusive; and
- (23) "Safety-sensitive job," any position with tasks or duties that an employer reasonably believes could:
- (a) Cause the illness, injury, or death of an individual; or
  - (b) Result in serious property damage;
- (24) "Under the influence of cannabis," any abnormal mental or physical condition that tends to deprive a person of clearness of intellect and control that the person would otherwise possess, as the result of consuming any degree of cannabis or cannabis products;
- (25) "Written certification," a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition. This document shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient's debilitating medical condition.

**Section 2. That § 34-20G-18 be AMENDED:**

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

- (1) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;
- (2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any correctional facility;
- (3) Smoking or vaping cannabis:
  - (a) On any form of public transportation;
  - (b) In any public place or any place that is open to the public; or
  - (c) If under the age of twenty-one;
- (4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis; or
- (5) Performing any safety-sensitive job under the influence of cannabis.

**Section 3. That § 34-20G-24 be AMENDED:**

**34-20G-24.** No employer is required to allow the ingestion, possession, transfer, display, or transportation of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. No employer is prohibited from establishing and enforcing a drug free workplace policy that may include a drug testing program that complies with state and federal law and acting with respect to an applicant or employee under the policy.

An Act to revise acceptable conduct related to the medical use of cannabis.

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I certify that the attached Act originated in the:

Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_,

Senate as Bill No. 5

2022 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2022

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2022  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Secretary of State

Senate Bill No. 5  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State