

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

547L0541

HOUSE BILL NO. 1109

Introduced by: Representative Lange

1 FOR AN ACT ENTITLED, An Act to provide for certain medical uses of marijuana.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Adequate supply," an amount of marijuana jointly possessed between the qualifying
5 patient and the primary caregiver that is not more than is reasonably necessary to
6 assure the uninterrupted availability of marijuana for the purpose of alleviating the
7 symptoms or effects of a qualifying patient's debilitating medical condition.

8 However, an adequate supply may not be construed to mean more than five ounces
9 of usable marijuana;

10 (2) "Debilitating medical condition," any of the following:

11 (a) Cancer, glaucoma, positive status for human immunodeficiency virus,
12 acquired immune deficiency syndrome, or the treatment of these conditions;

13 (b) A chronic or debilitating disease or medical condition or its treatment that
14 produces one or more of the following:

15 (i) Cachexia or wasting syndrome;

16 (ii) Severe pain;



- 1 (iii) Severe nausea;
- 2 (iv) Seizures, including those characteristic of epilepsy; or
- 3 (v) Severe and persistent muscle spasms, including those characteristic of
- 4 multiple sclerosis or Crohn's disease; or
- 5 (c) Any other medical condition approved by the Department of Health pursuant
- 6 to administrative rules in response to a request from a physician or potentially
- 7 qualifying patient;
- 8 (3) "Marijuana," as defined in subdivision 22-42-1(7);
- 9 (4) "Medical use," the acquisition, possession, cultivation, use, distribution, or
- 10 transportation of marijuana or paraphernalia relating to the administration of
- 11 marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating
- 12 medical condition. For the purposes of this subdivision, the term, distribution, is
- 13 limited to the transfer of marijuana and paraphernalia from the primary caregiver to
- 14 the qualifying patient;
- 15 (5) "Physician," any person who is licensed pursuant to chapter 36-4;
- 16 (6) "Primary caregiver," any person, other than the qualifying patient and the qualifying
- 17 patient's physician, who is eighteen years of age or older who has agreed to undertake
- 18 responsibility for managing the well-being of the qualifying patient with respect to
- 19 the medical use of marijuana. In the case of a minor or an adult lacking legal
- 20 capacity, the primary caregiver shall be a parent, guardian, or person having legal
- 21 custody;
- 22 (7) "Qualifying patient," any person who has been diagnosed by a physician as having
- 23 a debilitating medical condition;
- 24 (8) "Usable marijuana," the dried leaves and flowers of the plant Cannabis family

1 Moraceae, and any mixture or preparation thereof, appropriate for the medical use of
2 marijuana. The term does not include the seeds, stalks, and roots of the plant;

3 (9) "Written certification," the qualifying patient's medical records or a statement signed
4 by a qualifying patient's physician, stating that in the physician's professional opinion,
5 the qualifying patient has a debilitating medical condition and the potential benefits
6 of the medical use of marijuana would likely outweigh the health risks for the
7 qualifying patient.

8 Section 2. Notwithstanding any law to the contrary, the medical use of marijuana by a
9 qualifying patient is permitted, but only if:

10 (1) The qualifying patient has been diagnosed by a physician as having a debilitating
11 medical condition;

12 (2) The qualifying patient's physician has certified in writing that, in the physician's
13 professional opinion, the potential benefits of the medical use of marijuana would
14 likely outweigh the health risks for the particular qualifying patient; and

15 (3) The amount of marijuana retained for alleviation of the qualifying patient does not
16 exceed an adequate supply.

17 Section 3. The provisions of section 2 of this Act do not apply to a qualifying patient under
18 the age of eighteen years, unless:

19 (1) The qualifying patient's physician has explained the potential risks and benefits of the
20 medical use of marijuana to the qualifying patient and to a parent, guardian, or person
21 having legal custody of the qualifying patient; and

22 (2) The parent, guardian, or person who received the explanation consents in writing to:

23 (a) Allow the qualifying patient's medical use of marijuana;

24 (b) Serve as the qualifying patient's primary caregiver; and

1 (c) Control the acquisition of the marijuana, the dosage, and the frequency of the
2 medical use of marijuana by the qualifying patient.

3 Section 4. The authorization for the medical use of marijuana in this Act does not apply to:

4 (1) Any medical use of marijuana that endangers the health or well-being of another
5 person;

6 (2) Any medical use of marijuana:

7 (a) In a school bus, public bus, or any moving vehicle;

8 (b) In the workplace of the qualifying patient's employment;

9 (c) In any school or on any school grounds;

10 (d) At any public park, public beach, public recreation center, recreation, or youth
11 center; or

12 (e) Any other place open to and frequented by the public; and

13 (3) Any use of marijuana by a qualifying patient or primary caregiver for any purposes
14 other than medical use pursuant to this Act.

15 Section 5. Any physician who issues any written certification shall register the name,
16 address, patient identification number, and other pertinent identifying information of the patient
17 issued a written certification with the Department of Health.

18 Section 6. Any qualifying patient shall register with the Department of Health. Such
19 registration is effective until the expiration of the certificate issued by the physician. Every
20 qualifying patient shall provide sufficient identifying information to establish the personal
21 identity of the qualifying patient and the primary caregiver. Every qualifying patient shall report
22 any change in information within five working days. No qualifying patient may have more than
23 one primary caregiver at any given time. The department shall issue to the qualifying patient a
24 registration certificate and shall charge a fee of twenty dollars to be deposited in the state

1 general fund.

2 Section 7. Any primary caregiver shall register with the Department of Health. No primary
3 caregiver may be responsible for the care of more than one qualifying patient at any given time.

4 Section 8. Upon an inquiry by a law enforcement agency, the Department of Health shall
5 verify whether the subject of the inquiry has registered with the department pursuant to this Act
6 and may provide reasonable access to the registry information for official law enforcement
7 purposes.

8 Section 9. The Department of Health may require, by rules promulgated pursuant to chapter
9 1-26, that all written certifications comply with a designated form.

10 Section 10. Written certifications are valid for only one year from the date of signing.

11 Section 11. Nothing in this Act may be construed to require insurance coverage for the
12 medical use of marijuana.

13 Section 12. If the qualifying patient and the primary caregiver strictly complied with the
14 requirements of this Act, either or both may assert the medical use of marijuana as an
15 affirmative defense to any prosecution involving marijuana under South Dakota law.

16 Section 13. No qualifying patient or primary caregiver not complying with the permitted
17 scope of the medical use of marijuana may be afforded protection against searches and seizures
18 pertaining to the misapplication of the medical use of marijuana.

19 Section 14. No person is subject to arrest or prosecution for simply being in the presence or
20 vicinity of the medical use of marijuana as permitted under this Act.

21 Section 15. No physician is subject to arrest or prosecution, to be penalized in any manner,
22 or to be denied any right or privilege for providing written certification for the medical use of
23 marijuana for a qualifying patient, if:

24 (1) The physician has diagnosed the patient as having a debilitating medical condition,

1 as defined in this Act;

2 (2) The physician has explained the potential risks and benefits of the medical use of
3 marijuana, as required pursuant to this Act;

4 (3) The written certification is based upon the physician's professional opinion after
5 having completed a full assessment of the patient's medical history and current
6 medical condition made in the course of a bona fide physician-patient relationship;
7 and

8 (4) The physician has complied with the registration requirements of section 5 of this
9 Act.

10 Section 16. Any marijuana, paraphernalia, or other property seized from a qualifying patient
11 or primary caregiver in connection with a claimed medical use of marijuana under this Act shall
12 be returned immediately upon the determination by a court that the qualifying patient or primary
13 caregiver is entitled to the protections of this Act, as evidenced by a decision not to prosecute,
14 a dismissal of charges, or an acquittal. However, no law enforcement agency seizing live plants
15 as evidence is responsible for the care and maintenance of such plants.

16 Section 17. Any person who makes a fraudulent misrepresentation to a law enforcement
17 official of any material fact or circumstance relating to the medical use of marijuana to avoid
18 arrest or prosecution is guilty of a Class 2 misdemeanor.

19 Section 18. Any physician who makes a fraudulent misrepresentation to a law enforcement
20 official of any material fact or circumstance relating to the issuance of a written certificate is
21 guilty of a Class 1 misdemeanor.