

## 2021 South Dakota Legislature

**House Bill 1100****AMENDMENT 1100L FOR THE HOUSE BILL**

1 **An Act to modify the medical marijuana program and to create an interim committee**  
2 **to recommend implementation of the medical marijuana program.**

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

4 **Section 1.** The Legislature finds the following facts to be true:

5 (1) 2020 Initiated Measure 26 passed by a vote of the people on November 3, 2020,  
6 receiving nearly seventy percent of the vote, and will become law on July 1, 2021;

7 (2) The Measure legalizes marijuana for medical use by qualifying patients, including  
8 minors. The Measure requires patients to obtain a registration card from the  
9 Department of Health, and the Measure allows the acceptance of nonresident  
10 cards. The Measure authorizes individuals to become designated caregivers and  
11 grow marijuana in their homes. The Measure authorizes cultivation, manufacture,  
12 and retail facilities if registered by the Department of Health;

13 (3) The Measure, however, does not include provisions for:

14 (a) Tracking marijuana or marijuana products;

15 (b) Taxing medical marijuana;

16 (c) Regulating the form of products, maximum potency, or appropriate dosage  
17 of products for safe human consumption;

18 (d) Identifying the debilitating medical conditions that qualify for lawful use and  
19 possession of medical marijuana; and

20 (e) Permitting, mandating, or prohibiting ownership within different tiers of the  
21 marijuana supply chain;

22 (4) The Measure requires the Department of Health to regulate marijuana, which  
23 conflicts with 2020 Constitutional Amendment A that gives the exclusive power to  
24 regulate marijuana to the Department of Revenue. Amendment A is presently the  
25 subject of two constitutional challenges in the state courts;

- 1       (5) The Measure does not provide a source of funding for the creation of a new state  
2       program before the work to implement the Measure may occur;
- 3       (6) Included in the Measure are policies outside the subject of a medical marijuana  
4       program in the following areas;
- 5           (a) Employment law;  
6           (b) Landlord and tenant rights;  
7           (c) School policy;  
8           (d) Correctional health;  
9           (e) Family law; and  
10          (f) Contract law;
- 11       (7) 2020 Constitutional Amendment A passed by a vote of the people on November 3,  
12       2020, receiving fifty-four percent of the vote. South Dakota became the first state  
13       to adopt recreational and medicinal marijuana in the same election;
- 14       (8) The constitutionality of Constitutional Amendment A is currently being challenged  
15       in two lawsuits: In the matter of election contest as to Amendment A, Sixth Circuit  
16       Case No. 32CIV20-186, and Sheriff Kevin Thom, in his official capacity as  
17       Pennington County Sheriff and Colonel Rick Miller, in his official capacity as  
18       Superintendent of the South Dakota Highway Patrol v. Steve Barnett, in his official  
19       capacity as South Dakota Secretary of State, Sixth Circuit Case No. 32CIV20-187.  
20       On February 8, 2021, the circuit court issued its decisions in these cases, and in  
21       the latter case, held that Amendment A was unconstitutional. These decisions,  
22       however, are subject to appeal and final, nonappealable decisions are not expected  
23       during the 96th Legislative Session;
- 24       (9) The implementation, administration, and regulation of a medical marijuana  
25       program would be significantly impacted by the final outcome of the Amendment  
26       A litigation, and establishing a medical marijuana program without certainty as to  
27       the legality of adult use marijuana would waste limited taxpayers' resources;
- 28       (10) A state of emergency was declared on March 13, 2020, and continues to exist in  
29       every county of this state. The Department of Health, which the Measure charges  
30       with regulating medical marijuana, has been preparing, planning, researching,  
31       managing, communicating, and using every available resource at its disposal to  
32       fight the unprecedented, global pandemic of the novel coronavirus, which causes  
33       the severe respiratory disease, COVID-19, since January 2020, and has been  
34       developing, launching, tracking, and administering the state's vaccine distribution  
35       plan continuously since the Measure passed;

- 1       (11) The Measure requires the Department of Health to implement, administer, and  
2       regulate a new program and industry less than eight months from when the  
3       Measure passed. The time frame is insufficient to successfully launch a reliable,  
4       stable, and prudent medical marijuana program;  
5       (12) The Measure conflicts with federal law by legalizing a substance that remains illegal  
6       under federal law, which adds further complexity to implementation;  
7       (13) The Measure fails to adequately consider the complexities and detail needed to  
8       successfully create and operate a medical marijuana program;  
9       (14) Due to the pending litigation, the Department of Health's continued efforts against  
10       COVID-19, and the complexity of marijuana's status under federal law, the State  
11       needs more time to establish a medical marijuana program with integrity and  
12       prudence than its current effective date of July 1, 2021; and  
13       (15) Therefore, a delay of the implementation of the Measure is appropriate and  
14       necessary.

15       **Section 2.** Notwithstanding the provisions of § 2-1-12, §§ 34-20G-1 to ~~34-20G-95~~ 34-20G-  
16       17, inclusive, §§ 34-20G-19 to 34-20G-50, inclusive, and §§ 34-20G-52 to 34-20G-95,  
17       inclusive, are effective January 1, 2022.

18       **Section 3.** That § 34-20G-29 be AMENDED.

19               **34-20G-29. [Effective January 1, 2022] Information required for issuance of**  
20       **registry identification cards--Fee.**

21               No later than ~~November 18, 2021~~ May 15, 2022, the department shall issue  
22       registry identification cards to qualifying patients who submit the following, in accordance  
23       with rules promulgated by the department:

- 24       (1) A written certification issued by a practitioner within ninety days immediately  
25       preceding the date of an application;  
26       (2) The application or renewal fee;  
27       (3) The name, address, and date of birth of the qualifying patient, except that if the  
28       applicant is homeless, no address is required;  
29       (4) The name, address, and telephone number of the qualifying patient's practitioner;  
30       (5) The name, address, and date of birth of the designated caregiver, or designated  
31       caregivers, chosen by the qualifying patient;

- 1 (6) If more than one designated caregiver is designated at any given time,  
2 documentation demonstrating that a greater number of designated caregivers are  
3 needed due to the patient's age or medical condition;
- 4 (7) The name of no more than two dispensaries that the qualifying patient designates,  
5 if any; and
- 6 (8) If the qualifying patient designates a designated caregiver, a designation as to  
7 whether the qualifying patient or designated caregiver will be allowed under state  
8 law to possess and cultivate cannabis plants for the qualifying patient's medical  
9 use.

10 **Section 4.** That § 34-20G-45 be AMENDED.

11 **34-20G-45. [Effective January 1, 2022] Secure phone or web-based**  
12 **verification system.**

13 ~~Within one hundred twenty days of July 1, 2021.~~ No later than May 15, 2022, the  
14 department shall establish a secure phone or web-based verification system. The  
15 verification system shall allow law enforcement personnel and medical cannabis  
16 establishments to enter a registry identification number and determine whether the  
17 number corresponds with a current, valid registry identification card. The system may  
18 disclose only:

- 19 (1) Whether the identification card is valid;  
20 (2) The name of the cardholder;  
21 (3) Whether the cardholder is a qualifying patient or a designated caregiver;  
22 (4) Whether the cardholder is permitted to cultivate cannabis plants;  
23 (5) The registry identification number of any affiliated registered qualifying patient;  
24 and  
25 (6) The registry identification of the qualifying patient's dispensary or dispensaries, if  
26 any.

27 **Section 5.** That § 34-20G-51 be AMENDED.

28 **34-20G-51. [Effective July 1, 2021] Medical purpose defense to prosecution**  
29 **involving cannabis.**

30 ~~Except as provided in § 34-20G-18 and this section, a person may assert the~~  
31 ~~medical purpose for using cannabis as a defense to any prosecution involving cannabis,~~  
32 ~~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 medical  
3 condition made in the course of a bona fide practitioner-patient relationship, the patient  
4 has a debilitating medical condition and the potential benefits of using cannabis for medical  
5 purposes would likely outweigh the health risks for the person;

6 (2) The person was in possession of no more than ~~three ounces of cannabis, the~~  
7 ~~amount of cannabis products allowed by department rules, six cannabis plants minimum~~  
8 ~~or as prescribed by a physician, and the cannabis produced by those plants;~~

9 (a) Three ounces of cannabis;

10 (b) A quantity of cannabis products containing no more than twenty-four grams  
11 of cannabis concentrate or a greater amount if allowed by department rules;

12 (c) Six cannabis plants kept in or on the grounds of a single residence at one  
13 time and any cannabis produced by those six plants provided that the  
14 cannabis is located at the same property where the plants were cultivated;

15 or

16 (d) Any combination of subsections (a), (b), or (c);

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 condition  
20 or symptoms associated with the person's debilitating medical condition; and

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

23 **Section 6.** That § 34-20G-72 be AMENDED.

24 **34-20G-72. [Effective January 1, 2022] Promulgation of rules--Violation of**  
25 **required or prohibited action as misdemeanor.**

26 Not later than ~~October 29, 2021~~ April 30, 2022, the department shall promulgate  
27 rules pursuant to chapter 1-26:

28 (1) Governing the manner in which the department shall consider petitions from the  
29 public to add a debilitating medical condition or treatment to the list of debilitating  
30 medical conditions as defined by this chapter, including public notice of and an  
31 opportunity to comment in public hearings on the petitions;

32 (2) Establishing the form and content of registration and renewal applications  
33 submitted under this chapter;

- 1 (3) Establishing a system to numerically score competing medical cannabis  
2 establishment applicants, in cases where more applicants apply than are allowed  
3 by the local government, that includes analysis of:
- 4 (a) The preference of the local government;
  - 5 (b) In the case of dispensaries, the suitability of the proposed location and its  
6 accessibility for patients;
  - 7 (c) The character, veracity, background, qualifications, and relevant experience  
8 of principal officers and board members; and
  - 9 (d) The business plan proposed by the applicant, that in the case of a cultivation  
10 facility or dispensary shall include the ability to maintain an adequate supply  
11 of cannabis, plans to ensure safety and security of patrons and the  
12 community, procedures to be used to prevent diversion, and any plan for  
13 making cannabis available to low-income registered qualifying patients;
- 14 (4) Governing the manner in which the department shall consider applications for and  
15 renewals of registry identification cards, that may include creating a standardized  
16 written certification form;
- 17 (5) Governing medical cannabis establishments to ensure the health and safety of  
18 qualifying patients and prevent diversion and theft without imposing an undue  
19 burden or compromising the confidentiality of a cardholder, including:
- 20 (a) Oversight requirements;
  - 21 (b) Record-keeping requirements;
  - 22 (c) Security requirements, including lighting, physical security, and alarm  
23 requirements;
  - 24 (d) Health and safety regulations, including restrictions on the use of pesticides  
25 that are injurious to human health;
  - 26 (e) Standards for the manufacture of cannabis products and both the indoor  
27 and outdoor cultivation of cannabis by a cultivation facility;
  - 28 (f) Requirements for the transportation and storage of cannabis by a medical  
29 cannabis establishment;
  - 30 (g) Employment and training requirements, including requiring that each  
31 medical cannabis establishment create an identification badge for each  
32 agent;
  - 33 (h) Standards for the safe manufacture of cannabis products, including extracts  
34 and concentrates;

- 1 (i) Restrictions on the advertising, signage, and display of medical cannabis,  
2 provided that the restrictions may not prevent appropriate signs on the  
3 property of a dispensary, listings in business directories including phone  
4 books, listings in marijuana-related or medical publications, or the  
5 sponsorship of health or not-for-profit charity or advocacy events;
- 6 (j) Requirements and procedures for the safe and accurate packaging and  
7 labeling of medical cannabis; and
- 8 (k) Certification standards for testing facilities, including requirements for  
9 equipment and qualifications for personnel;
- 10 (6) Establishing procedures for suspending or terminating the registration certificates  
11 or registry identification cards of cardholders and medical cannabis establishments  
12 that commit multiple or serious violations of this chapter;
- 13 (7) Establishing labeling requirements for cannabis and cannabis products, including  
14 requiring cannabis product labels to include the following:
- 15 (a) The length of time it typically takes for a product to take effect;  
16 (b) Disclosing ingredients and possible allergens;  
17 (c) A nutritional fact panel; and  
18 (d) Requiring that edible cannabis products be clearly identifiable, when  
19 practicable, with a standard symbol indicating that it contains cannabis;
- 20 (8) Establishing procedures for the registration of nonresident cardholders and the  
21 cardholder's designation of no more than two dispensaries, which shall require the  
22 submission of:
- 23 (a) A practitioner's statement confirming that the patient has a debilitating  
24 medical condition; and  
25 (b) Documentation demonstrating that the nonresident cardholder is allowed to  
26 possess cannabis or cannabis preparations in the jurisdiction where the  
27 nonresident cardholder resides;
- 28 (9) Establishing the amount of cannabis products, including the amount of  
29 concentrated cannabis, each cardholder and nonresident cardholder may possess;  
30 and
- 31 (10) Establishing reasonable application and renewal fees for registry identification  
32 cards and registration certificates, according to the following:
- 33 (a) Application fees for medical cannabis establishments may not exceed five  
34 thousand dollars, with this upper limit adjusted annually for inflation;

- 1 (b) The total fees collected shall generate revenues sufficient to offset all  
2 expenses of implementing and administering this chapter;
- 3 (c) A sliding scale of patient application and renewal fees based upon a  
4 qualifying patient's household income;
- 5 (d) The fees charged to qualifying patients, nonresident cardholders, and  
6 caregivers shall be no greater than the costs of processing the application  
7 and issuing a registry identification card or registration; and
- 8 (e) The department may accept donations from private sources to reduce  
9 application and renewal fees.

10 A violation of a required or prohibited action under any rule authorized by this  
11 section is a Class 2 misdemeanor.

12 **Section 7.** That § 34-20G-95 be AMENDED.

13 **34-20G-95. [Effective January 1, 2022] Administration of medical cannabis**  
14 **to students.**

15 The Department of Education and the department shall establish policy to allow  
16 students who are medical cannabis cardholders to have their medicine administered in  
17 school in accordance with their physician's recommendation. This policy shall be  
18 implemented ~~the first day of the new school year following passage of this chapter~~ no later  
19 than the first day of the 2022-2023 school year. The departments shall implement  
20 ~~substantively-identical~~ similar provisions to Colorado Revised Statute 22-1-119.3 as of  
21 January 1, 2019.

22 **Section 8.** That a NEW SECTION be added:

23 **34-20G-96. Interim marijuana committee membership.**

24 An interim marijuana committee shall be appointed. The speaker shall appoint five  
25 members of the House of Representatives. The president pro tempore shall appoint five  
26 members of the Senate. The attorney general shall appoint one state's attorney and one  
27 attorney from the Office of the Attorney General. The Governor shall appoint one  
28 representative from each of the Departments of Health, Revenue, and Public Safety. The  
29 Governor shall also appoint one representative of law enforcement, one health care  
30 practitioner and one nurse with knowledge of medical marijuana issues, two  
31 representatives from the medical marijuana cultivators or manufacturers or retail industry,  
32 one patient or advocate of a patient with a debilitating condition who intends to use  
33 medical marijuana, or one representative of local governments. Any consultant hired by

1 the state shall serve in an advisory, nonvoting capacity. If there is a vacancy on the  
2 committee, the vacancy shall be filled in the same manner as the original appointment  
3 under this Act. The committee shall be under the supervision of the Executive Board of  
4 the Legislative Research Council and staffed and funded as an interim legislative  
5 committee.

6 **Section 9.** That a NEW SECTION be added:

7 **34-20G-97. Interim marijuana committee guidance.**

8 The interim marijuana committee created pursuant to § 34-20G-96 may:

- 9 (1) Research best practices from other medical marijuana programs;  
10 (2) Determine details of a licensing system that specifies privileges and authorized  
11 activities, and the implementation thereof;  
12 (3) Evaluate policies that reduce unlawful access, availability, and use by youths and  
13 prevent diversion to illicit markets;  
14 (4) Explore policy measures that balance adequate regulation that ensure safe  
15 products and support the development of a fair market;  
16 (5) Study legal consequences and litigation of policy decisions challenged in other  
17 states;  
18 (6) Investigate criminal justice and public safety concerns of establishing a marijuana  
19 market while guarding against drugged driving or performing tasks under  
20 impairment;  
21 (7) Advise on regulations for cultivation of marijuana without contaminants, pesticides,  
22 or heavy metals, for manufacturing of marijuana products without hazardous  
23 substances, and for sales of marijuana and marijuana products only to verified  
24 patients in appropriate amounts;  
25 (8) Seek input on appropriate local controls that allow sufficient access;  
26 (9) Examine appropriate rules or restrictions on the structure, ownership,  
27 management, fiscal stability, and practices of marijuana business entities;  
28 (10) Determine market demand, production management, product tracking, and  
29 necessary fees to support the medical marijuana program;  
30 (11) Review testing advisability and capability, forms of product, and how each product  
31 should be approved for human consumption;  
32 (12) Determine appropriate taxing scheme; and  
33 (13) Provide an opportunity for public input of policy decisions.

1 **Section 10.** This Act is effective June 30, 2021.

AMENDED