

**South Dakota
2021 Interim
Committee
Final Reports
& Judicial Opinions**





2021 Interim Committee Reports

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The Agricultural Land Assessment Implementation and Oversight Advisory Task Force 2021 Final Report



Study Assignment

Established pursuant to [SDCL 10-6-134](#), the task force advises the Department of Revenue regarding the rules promulgated by the department to administer the assessment and taxation of agricultural lands and reviews the implementation of the assessment and taxation of agricultural land. The task force may present draft legislation and policy recommendations to the Legislative Research Council's Executive Board.

Summary of Interim

The interim Agricultural Land Assessment Implementation and Oversight Advisory Task Force held its sole meeting of the 2021 interim on October 14 in Pierre. The Secretary of the Department of Revenue provided an update on the development of new soil tables. The new soil tables project will not be ready for implementation in the 2022 assessment year. The soil tables project began in 2016 after the Legislature appropriated funds to the Department of Revenue to contract with South Dakota State University to update the data used in the soil tables.

A representative from the Department of Revenue provided an update on the productivity valuations for the 2022 assessment year. Items of note:

- The cropland average dollar per acre increased 3.37 percent on a statewide basis (compared to a decrease of 5.32 percent in the 2021 assessment year).
- The noncropland average dollar per acre increased 3.93 percent on a statewide basis (compared to 4.97 percent in the 2021 assessment year).

Listing of Legislation Adopted by the Committee

None.

Summary of Meeting Dates and Places

The committee met on October 14, 2021, in Pierre.

Listing of Committee Members

Members of the committee are Representative Kirk Chaffee, Chair; Michael Wiese, Vice-Chair; Senators Gary Cammack; Red Dawn Foster; Troy Heinert; and Erin Tobin; and Representatives Spencer Gosch; Jennifer Keintz; and Oren Lesmeister; and public members Greg Endres; David Fremark; Kenneth Gosch; David Owen; and Lee Qualm.

Listing of Staff Members

Staff members for the committee are Amanda Marsh, Principal Research Analyst, and Kaitlyn Baucom, Administrative Specialist.



Code Commission 2021 Final Report



Study Assignment

Established under [SDCL 2-16-3](#), the Code Commission supervises the publication of the South Dakota Codified Laws (Code), corrects errors to the Code, assists the code counsel, makes recommendations to the Legislature, and contracts for replacement volumes.

Summary of Interim

Replacement Volumes

Annually, West Publishing, a Thomson Reuters Company, provides to the Code Commission a "Pocketpart Growth Report." This report identifies the page count as a percentage of each pocketpart for each volume relative to the page count for the main volume. It is the practice of the Code Commission to consider volumes for reprinting when the pocketpart growth relative to a main volume equals or exceeds 25% of the main volume. The Code Commission considers one to three volumes for replacement each year.

After a discussion of the candidates for replacement, the Code Commission reached a consensus to do a split and reprint of volumes 2 and 3 into volumes 2, 2A, and 3.

Volume 2 consists of Title 1 (chapters 1-1 through 1-56); Volume 2A consists of Titles 2 and 3 (chapter 2-1 through 2-17 and chapters 3-1 through 3-24); and Volume 3 consists of Titles 4 and 5 (chapters 4-1 through 4-12 and chapters 5-1 through 5-29).

Publishing Contract

The contract for the publication of the Code is subject to Code Commission review and renewal. In June, the Code Commission renewed the contract with Thomson Reuters for another year, with a term continuing up to June 30, 2022.

Measures Impacting Contents of Code

Three measures, [Executive Reorganization Order 2021-03](#), [House Bill 1078](#), and [Senate Bill 70](#), implicated the Commission's authority to update the Code.

The Executive Reorganization Order consolidated the Departments of Agriculture, and Environment and Natural Resources into a single agency known as the Department of Agriculture and Natural Resources.

House Bill 1078 authorized the Code Commission to delete any reference to "State Historical Society" and substitute "South Dakota State Historical Society."

Senate Bill 70 directed the Code Commission and code counsel to reorganize chapter 10-6 and address any resulting cross-references.

All requirements of the three measures have been implemented.

Listing of Legislation Adopted by the Committee

The Commission adopted two pieces of draft legislation for introduction during the 2022 legislative session.

The first draft is the annual codification draft bill ([Draft 8](#)), which accomplishes three things. First, the draft updates [SDCL 2-16-13](#), which defines the contents of the official code of laws. Thus, Draft 8 amends SDCL 2-16-13 to include the 2021 revised volumes 2, 2A, and 3, and the 2021 cumulative annual pocket parts. Draft 8 also updates [SDCL 2-16-15](#), providing that codification does not operate to validate any defect in the original passage of a law with

respect to any action brought before July 1, 2022. Finally, Draft 8 updates [SDCL 2-16-16](#) to provide that any legislation enacted in 2022 is deemed to have been enacted after the enactment of the code and amends or repeals the updated version of the code.

The second draft is [Draft 9](#). This draft bill amends [SDCL 2-13-2](#), the statute laying out the LRC's obligation to publish the session laws. SDCL 2-13-12 does not specify that voter approved initiated measures and initiated constitutional amendments are to be included in the session law compilation. The official copy of these initiated items is maintained with the Secretary of State's Office. Incorporating these measures into the session laws, as proposed by Draft 9, would make the measures more accessible, and would validate the prior Code Counsel practice of including them in session laws.

Summary of Meeting Dates and Places

The Code Commission met on March 5, 2021, via electronic conference and in Room 412 at the State Capitol in Pierre and on June 16, 2021, via electronic conference and in Meeting Room 10 of the Sioux Falls Convention Center, Sioux Falls, South Dakota.

Listing of Committee Members

Members of the committee are Margaret Vandemore Gillespie, Chair; Thomas Lee, Vice-Chair; Senator Arthur Rusch; Representative Steven Haugaard; and Doug Decker.

Listing of Staff Members

Staff members for the Code Commission were Justin Goetz, former Code Counsel and current Chief Research and Legal Analyst; John McCullough, Code Counsel; Kelly Thompson, Supervisor of Text Editing Services; and Hilary Carruthers, IT Support Specialist.



Interim Rules Review Committee

2021 Final Report



Study Assignment

Created by [§ 1-26-1.1](#), the Interim Rules Review Committee oversees executive branch agencies in the exercise of their legislative authority to promulgate rules.

Summary of Interim

On the dates listed below, the Interim Rules Review Committee met. On all meeting dates, except March 10, 2021, the committee reviewed proposed rules from the agencies listed.

[March 10, 2021](#)

- The committee met to organize itself. The committee elected its chair and vice chair and set the interim meeting schedule.

[April 6, 2021](#)

- Water Management Board (Department of Environment and Natural Resources);
- South Dakota Board of Education Standards (Department of Education);
- Department of Game, Fish, and Parks;
- Department of Transportation; and
- South Dakota Commission of Gaming (Department of Revenue).

[May 10, 2021](#)

- Bureau of Human Resources;
- South Dakota Retirement System;
 - These rules were prompted, in part, by the passage of [House Bill 1030](#).
- Department of Agriculture and Natural Resources;
- Department of Social Services;
- Law Enforcement Officers Standards and Training Commission (Office of the Attorney General);
- South Dakota Lottery (Department of Revenue); and
- Public Utilities Commission.

[June 7, 2021](#)

- Department of Social Services;
- Department of Health;
- Department of Human Services;
- South Dakota Board of Education Standards (Department of Education);
- Civil Service Commission (Bureau of Human Resources);
- Department of Game, Fish, and Parks;
- Department of Transportation;
- South Dakota Division of Insurance (Department of Labor and Regulation); and
- South Dakota Commission on Gaming (Department of Revenue).

July 19, 2021

- South Dakota Board of Education Standards (Department of Education); and
- South Dakota Commission on Gaming (Department of Revenue).

August 2, 2021

- Department of Social Services;
 - These rules were prompted, in part, by the passage of [Senate Bill 96](#);
- South Dakota Electrical Commission (Department of Labor and Regulation);
- Department of Public Safety;
- Department of Game, Fish, and Parks;
- South Dakota Banking Commission (Department of Labor and Regulation); and
- South Dakota Commission on Gaming (Department of Revenue).

September 13, 2021

- South Dakota Animal Industry Board (Department of Agriculture and Natural Resources);
- Department of Social Services;
 - These rules were prompted by the passage of [Senate Bill 96](#);
- Bureau of Administration;
- Board of Elections (Office of the Secretary of State);
 - These rules relate to (1) the forms and processes for implementation of the secured active voter registration designation, following the passage of [Senate Bill 102](#); and (2) an update to the Certificate of Nomination to Fill Vacancy prompted by the passage of [Senate Bill 145](#);
- Department of Transportation;
- South Dakota Division of Insurance (Department of Labor and Regulation);
- Department of Revenue;
 - These rules, which eliminate the registration decal requirement for businesses with amusement devices, were prompted by the passage of [Senate Bill 39](#);
- South Dakota Board of Nursing (Department of Health); and
 - These rules resulted from the passage of [Senate Bill 4](#) and [House Bill 1014](#);
- Department of Health.
 - Rules to establish the South Dakota medical cannabis program as required by [SDCL chapter 34-20G](#).

October 26, 2021

- Department of Health – reconsideration of reverted medical cannabis rules;
- Office of the State Auditor; and
- Department of Transportation.

November 15, 2021

The following agencies have rules scheduled for the hearing on November 15, 2021.

- South Dakota State Board of Dentistry (Department of Health);
- South Dakota Board of Certified Professional Midwives (Department of Health);
- Department of Health;
- South Dakota Board of Education Standards (Department of Education);
- South Dakota Board of Technical Education (Department of Education);
- South Dakota Cosmetology Commission (Department of Labor and Regulation);
- Department of Game, Fish, and Parks;
- South Dakota Commission on Gaming (Department of Revenue); and
- South Dakota Real Estate Commission (Department of Labor and Regulation).

Rules Reverted to a Prior Step

In accordance with [SDCL 1-26-4.7](#), the committee reverted to a prior step in the rule promulgation process certain rules proposed by:

- South Dakota Board of Education Standards (Department of Education)
 - Proposed rules to establish the general and discretionary provisions for schools to allow students to have access to medical cannabis on school property and at school-sponsored activities. The proposed rules were reverted as more clarification is needed on the scope and intent of the rules presented.
- Department of Game, Fish, and Parks
 - Proposed rule amendments to ARSD 41:06:64:03 were reverted due to an issue with the agency's public notice.
- South Dakota Commission on Gaming (Department of Revenue)
 - Proposed rule amendments to ARSD 20:18:22:12 were reverted to analyze rule-making authority as the proposed changes related to the federal excise tax.
- Department of Health
 - The following proposed rules to establish the South Dakota medical cannabis program were reverted:
 - ARSD 44:90:02:03;
 - ARSD 44:90:02:18;
 - ARSD 40:90:10:01;
 - ARSD 40:90:10:14;
 - ARSD 40:90:10:17; and
 - ARSD 40:90:13:01.

Listing of Legislation Adopted by the Committee

Draft legislation ([Draft 20](#)) proposing amendments to [SDCL 1-26A-7](#) was considered by the committee. Currently SDCL 1-26A-7 provides that the Administrative Rules of South Dakota are to be cited as follows: "(year of publication) ARSD." Draft 20 changes the required citation form to remove "(year of publication)." The reason for the change is that the widespread practice throughout the legal community is to cite to the rules by using "ARSD" followed by the numbered section.

The committee adopted the draft legislation for introduction during the 2022 session.

Form 16—Housing Cost Impact Statement

Following passage of [Senate Bill 92](#) (codified as [SDCL 1-26-2.3](#)), which requires an agency to "prepare a housing cost impact statement" before promulgating a rule, when applicable, the committee developed and adopted Form 16 for agencies to use to assist in meeting this requirement.

Summary of Meeting Dates and Places

The committee met at the State Capitol in Pierre on March 10, April 6, May 10, June 7, July 19, August 2, September 13, October 26, and November 15.

Listing of Committee Members

Members of the committee are Representative Jon Hansen, Chair; Senator Jean Hunhoff, Vice-Chair; Senators Troy Heinert and Timothy Johns; and Representatives Ryan Cwach and Kevin Jensen.

Listing of Staff Members

Staff members for the committee meetings are the following:

John McCullough, Code Counsel;
Justin Goetz, former Code Counsel and Chief Research and Legal Analyst;
Kelly Thompson, Supervisor of Text Editing; and
Hilary Carruthers, IT Support Specialist.

Members of the research staff who performed the initial review for style, form, clarity, and legality were Principal Legislative Attorney Anita Thomas, Legislative Attorneys Matt Frame and Brigid Hoffman, Principal Research Analyst Amanda Marsh, and Research Analysts Anna Madsen and William Steward.

Members of the fiscal staff who reviewed fiscal documents were Chief Fiscal Analyst Jeff Mehlhaff; and Fiscal Analysts Carter Dykstra, Joey Knofczynski, and Joslyn Jessop.



Interim Joint Committee on Appropriations 2021 Final Report



Study Assignment

The Interim Joint Committee on Appropriations (Interim JCA) was established by the 1974 Legislature in SDCL 4-8A-2. Members appointed to the Joint Committee on Appropriations during regular legislative sessions are to also serve on the Interim JCA. The Joint Committee on Appropriations consists of eighteen members; nine appointed by the president pro tempore and Senate minority leader, and nine appointed by the speaker of the House of Representatives, with advice from the House minority leader.

Summary of Interim

JCA held five meetings so far during the 2021 Interim and attended both east and west river tours of facilities that receive state funding.

During the first meeting, held in Pierre on April 23, 2021, the Interim JCA:

- Heard an update from the Board of Regents on SB55 from the 2020 session.
- Approved Letters of Intent. A Letter of Intent (LOI) supplements an appropriation approved by the Legislature and enacted into law. It outlines policy guidelines for state agencies and expresses particular views held by the JCA when it approved the appropriation. These guidelines do not have the direct force of statutory law and agencies are not required to follow them; however, they are used by the JCA as a means to conduct fiscal oversight of state agencies. The following Letters of Intent were adopted by the Interim JCA:
 - **Board of Regents (BOR) – Administrative Operations.** The LOI requests each university submit a report to JCA by November 1, 2021, regarding administrative operations of the university including what operations and services are provided, a breakout of expenses, and a listing of administrative positions.
 - **Board of Regents (BOR) – Utility Alignment.** The LOI allows the universities to transfer moneys appropriated for utilities between the universities to address any surplus or shortfall in utility appropriations.
 - **Governor's Office of Economic Development (GOED) – Expansion of Broadband Services.** The LOI requests GOED to present an annual report by November 1 outlining details regarding grants for expanding broadband in South Dakota.
 - **South Dakota Arts Council – Funding for the Arts.** The LOI requests the Arts Council to present a report by November 1 outlining how the funds were used to support South Dakota's arts sector through emergency relief grants to nonprofit arts/cultural organizations, and individual artists.
 - **Department of Agriculture and Natural Resources (DANR) – Big Sioux Watershed and River Appropriation.** The LOI requests an annual report by November 1 outlining how grants reduced pollution, amounts for each project, and progress on a management plan.
 - **Bureau of Administration (BOA) – Phase 2 Long-Range Building Plan.** The LOI requests BOA to complete a report by November 1 regarding the long-range plan of state-owned buildings that began in 2020 and to pay for phase 2 of the project from the legislative priority pilot program or LRC's existing budget.
 - **Department of Transportation (DOT) – Rehabilitation of Rail Line.** The LOI requests a biennial report provided by November 1, 2022, on the status, progress, and development of upgrading the rail line from Fort Pierre to Rapid City to handle current day freight cars carrying capacity.

- **Department of Transportation (DOT) – State Aircraft Purchase.** The LOI requests a report be provided to the special committee or JCA on an annual basis regarding information pertaining to the purchase of state aircraft and flight records.
- **Department of Human Services (DHS) – Regional ICF/IID Centers.** The LOI requests an annual report on the progress of the regional ICF/IID centers no later than November 1st, beginning in 2022 and ending in 2027 on the number of individuals transitioned from SDDC to these facilities and the average daily rate of regional ICD/IDD center compared to the rate at SDDC.
- **Multiple – Developmental & Intellectual Disability Provider Funding.** The LOI requests providers report to JCA during the 2022 legislative session on the average starting wage of direct support professionals and the average wage prior to and following the funding increase.
- **Multiple – Provider Inflation.** The LOI identifies the community-based provider types set to receive a base funding increase to at least 100% of rate methodology.

During the second meeting, held in Pierre on May 11, 2021, the Interim JCA:

- Heard an update on the small business COVID grants, innovation grants, and Medicaid savings.
- Workgroups reported back to JCA on progress and status of the workgroups.
- Approved the following additional Letters of Intent:
 - **Board of Regents (BOR) – Needs-based Scholarships.** The LOI requests certain information relating to needs-based scholarships be provided in the Board of Regents' factbook.
 - **Governor's Office of Economic Development (GOED) – Marketing Initiative.** The LOI requests an annual report beginning November 1, 2022, detailing outcomes, consultants utilized, survey information, media utilization, industries targeted, and states where dollars are spent.
 - **Department of Education (DOE) – History and Civics Grants.** The LOI directs the department not to apply for federal grants in American history or civics education pertaining to certain subject areas.
- Reviewed old letters of intent previously passed by the committee to determine if the letters are still warranted.

During the third meeting, held in Pierre on June 23, 2021, the Interim JCA:

- Approved a budget transfer of \$550,000 in general funds from SDSD and \$280,000 in general from the SDBSVI to other South Dakota public postsecondary education institutions under control of the Board of Regents for utility expenses.
- Approved the following additional Letter of Intent:
 - **Governor's Office of Economic Development (GOED) - Airport Funding.** The LOI provides direction to GOED on split of funding for airports as well as the consideration to have additional reporting items as part of the grant contract to ensure proper administration as well as provide a report during the 2022 Legislative Session on outcomes, distribution, and recipients of the grant funding.
- Heard an update from the Legislative Research Council on total COVID-19 funding by agency and American Rescue Plan Act (ARPA) state and fiscal recovery funds guidelines.

During the fourth meeting, held in Pierre on July 21, 2021, the Interim JCA:

- Listened to a presentation from the Bureau of Finance and Management on final FY2020 revenues, expenditures, and reversions.
- Listened to an update from the Bureau of Finance and Management on the allocation and spending of Coronavirus Relief Fund (CRF) dollars.
- Heard from several agencies regarding follow-up from the JCA East River tour.
- Certified the proration of interest earnings for fiscal year 2020 in accordance with SDCL 4-5-30 as presented by the Bureau of Finance and Management.
- Heard reports from several agencies regarding old letters of intent.

- Listened to updates from the Bureau of Finance and Management and the Legislative Research Council on fiscal year 2022 general fund revenue projections as per SDCL 4-8A-16. The Bureau of Finance and Management predicted a 3.66% increase in ongoing FY2022 receipts as compared to the adopted amount and the Legislative Research Council predicted a 5.67% increase. Neither estimate exceeded the statutory threshold of 2.5% requiring proposals to eliminate the projected shortfall.

During the fifth meeting, held in Pierre on August 18, 2021, the Interim JCA:

- Heard an update from the Board of Regents on the status and progress of the SB55 taskforce as well as information on diversity offices (opportunity centers).
- Heard an update from the Department of Education regarding the Elementary and Secondary School Emergency Relief (ESSER) Plan as well as information on civics and history program funding.
- Listened to information from the National Guard and Department of Public Safety regarding utilization of the national guard emergency management assistance compact (EMAC).
- Heard a report from the Department of Corrections regarding short-term compensation incentives at the State Penitentiary as well as the costs associated with the State Penitentiary investigation.
- The departments of social services and human services presented information on compensation and staffing at the human services center and the South Dakota developmental center.
- Approved the following additional Letter of Intent:
 - **Board of Regents (BOR) and Board of Technical Education (BOTE) – Federal Grants in History & Civics.** The LOI directs the BOR and BOTE not to apply for federal grants in American history or civics education pertaining to certain subject areas.
 - **Multiple – Cleanup Letter of Intent.** The LOI cleans up old letters of intent and provides new direction from the committee on previously adopted letters of intent.

Summary of Meeting Dates and Places

During the 2021 Interim, the Interim JCA held five meetings. All of the meetings were held in Pierre.

The JCA intends to hold additional meetings in December and January to plan for session and hear additional reports from agencies. The next meeting is scheduled for Monday, December 6, 2021, in Pierre.

Listing of Committee Members

Senator Jean Hunhoff, Lead Co-Chair

Representative Chris Karr, Co-Chair

Representative Steven Haugaard

Representative Randy Gross

Representative Taffy Howard

Representative John Mills

Representative Liz May

Representative Mary Fitzgerald

Representative Tina Mulally

Representative Linda Duba

Senator Brock Greenfield

Senator Jack Kolbeck

Senator David Johnson

Senator Ryan Maher

Senator Reynold Nesiba

Senator Bryan Breitling

Senator Maggie Sutton

Senator John Wiik

Listing of Staff Members

Jeff Mehlhaff, Chief Fiscal Analyst

Carter Dykstra, Fiscal Analyst

Joslyn Jessop, Fiscal Analyst

Joey Knofczynski, Fiscal Analyst

Bill Douglas, Fiscal Analyst

Taylor Morris, Fiscal Analyst

Cindy Tryon, Administrative Specialist



Marijuana Interim Study Committee 2021 Final Report



Study Assignment

The Executive Board of the Legislative Research Council established the Marijuana Interim Study Committee and provided the following scope: "We in the [L]egislature will be seeing this product in all its forms and uses in the not distant future. Let's get unbiased (or both sides) sources of information to create the best system that works for our state. This study will address both recreational and medical marijuana."

Background

In November 2020, the voters approved [Initiated Measure \(IM\) 26](#) that established a medical marijuana program. IM 26 was subsequently codified at [SDCL chapter 34-20G](#). At the same election, the voters approved [Constitutional Amendment A](#) that legalized the adult-use of marijuana for any person twenty-one years or older. Amendment A was challenged in circuit court and on February 8, 2021, the court ruled in favor of the plaintiffs. Defendants appealed the decision to the South Dakota Supreme Court and, at the time of this report, a final decision is pending.

Summary of Interim

First Full Committee Meeting

At its first meeting on May 26 and 27 in Pierre, the Marijuana Interim Study Committee gathered a wide array of perspectives on the issue of legal marijuana in the state from the medical community, the drafters of IM 26, the Department of Health, the Department of Revenue, law enforcement, state's attorneys, the Flandreau Santee Sioux Tribe, the South Dakota Municipal League, and others. The National Conference of State Legislatures provided an overview of what other states are doing regarding the legalization of marijuana, and LRC staff provided an overview of relevant state criminal laws. At this first meeting, the committee took public testimony and the members of the Medical Marijuana Study Subcommittee and Adult-Use Marijuana Study Subcommittee were appointed.

Medical Marijuana Study Subcommittee Meetings

The first meeting of the Medical Marijuana Study Subcommittee was held on June 21 in Pierre. The subcommittee heard perspectives from the medical community, the tribes, the director of North Dakota's medical marijuana program, and the South Dakota Municipal League. The subcommittee took public testimony and discussed further areas of direction, including studying home grow and testing of medical cannabis.

The second meeting of the subcommittee was held on August 4 in Pierre. The subcommittee received an update from the Department of Health on the rules promulgation process for the medical marijuana program. The subcommittee was divided into three workgroups to review SDCL chapter 34-20G and report their recommendations for revisions to the chapter back to the subcommittee. Representatives Ernie Otten, Bartels, and Deutsch, and Senator Heinert reviewed medical cannabis establishments and home grow. Representatives Rehfeldt and Duba and Senators Breitling and V.J. Smith reviewed medical issues and registry identification cards. Representatives Finck, Perry, and Wiese, and Senator Stalzer reviewed public safety issues.

The third meeting of the subcommittee was held September 1 in Pierre. The subcommittee took public testimony and began its discussion of recommendations from the workgroups to revise SDCL chapter 34-20G.

The fourth meeting of the subcommittee was held September 29 in Pierre. The subcommittee concluded its discussion of recommendations from the workgroups and approved final recommendations for legislation to move ahead to the full Marijuana Interim Study Committee.

Adult-Use Marijuana Study Subcommittee Meetings

The first meeting of the Adult-Use Marijuana Study Subcommittee was held June 22 in Pierre. The subcommittee heard testimony from the South Dakota Municipal League, law enforcement, a defense attorney, a state's attorney, and a consultant on the interrelationship between legalized marijuana and employment. The subcommittee also considered public testimony. A workgroup of five members of the subcommittee drafted legislation for the legalization of adult-use marijuana. The workgroup included Representatives Bartels, Derby, and Chaffee, and Senators Rusch and Duhamel.

The second meeting of the subcommittee was held September 1 in Pierre. The subcommittee took public testimony and engaged in discussion on various issues for possible legislation, asking for input from subcommittee members.

The third meeting of the subcommittee was held September 10 in Pierre. The subcommittee was scheduled to travel to Colorado on that day but faced challenges in finding transportation, thus various officials from the marijuana industry and state government in Colorado met with the subcommittee remotely to provide information on legal marijuana in Colorado.

The fourth meeting of the subcommittee was held on October 19 in Pierre. The subcommittee received draft legislation for the legalization of marijuana for adult-use from the workgroup, which the subcommittee discussed and amended. The subcommittee voted to move the draft legislation to the full Marijuana Interim Study Committee for consideration.

Trips Taken by the Committee

In addition to the meetings held in Pierre, members of the committee met with the only licensed medical marijuana business in Des Moines, Iowa, on June 28. Members of the committee also toured the medical marijuana facilities owned and operated by the Flandreau Santee Sioux Tribe on July 6.

Second Full Committee Meeting

The full Marijuana Interim Study Committee met on October 27 in Pierre. The full committee received public testimony and voted on whether to adopt draft legislation approved by the subcommittees.

Listing of Legislation Adopted by the Committee

1. An Act to provide for the use and regulated sale of marijuana. (Draft 62)
2. An Act to provide for the taxation of marijuana. (Draft 240)
3. An Act to revise the definition of bona fide practitioner-patient relationship. (Draft 222)
4. An Act to revise the definition of a designated caregiver. (Draft 167)
5. An Act to revise provisions providing that certain professions are not subject to discipline for certain conduct relating to medical cannabis. (Draft 177)
6. An Act to repeal provisions related to the prosecution, search, seizure, penalty, or discipline of medical cannabis establishments for certain conduct. (Draft 178)
7. An Act to revise acceptable conduct related to the medical use of cannabis. (Draft 150)
8. An Act to revise provisions related to prohibited conduct by schools and landlords related to medical cannabis. (Draft 154)
9. An Act to revise provisions related to custody and visitation rights by medical cannabis cardholders. (Draft 155)
10. An Act to revise provisions regarding cost reimbursement associated with medical cannabis. (Draft 179)
11. An Act to revise the provisions regarding the denial or nonrenewal of a patient registry identification card. (Draft 172)
12. An Act to revise provisions related to the revocation of a medical cannabis registry identification card. (Draft 197)
13. An Act to repeal provisions permitting certain documents to serve as temporary registry identification cards for medical cannabis. (Draft 173)

14. An Act to revise provisions related to a written certification for the medical use of cannabis. (Draft 146)
15. An Act to revise provisions related to the confidential list of medical cannabis cardholders maintained by the Department of Health. (Draft 174)
16. An Act to revise the medical purpose defense related to the medical use of cannabis. (Draft 186)
17. An Act to require a cardholder or nonresident cardholder to present photographic identification to receive medical cannabis. (Draft 169)
18. An Act to revise rulemaking authority related to medical cannabis. (Draft 180)
19. An Act to revise provisions concerning civil penalties imposed for violations related to medical cannabis. (Draft 156)
20. An Act to revise a reference to the Division of Criminal Investigation. (Draft 220)
21. An Act to revise provisions regarding the medical marijuana oversight committee. (Draft 170)
22. An Act to revise the annual report on medical cannabis by the Department of Health to the Legislature. (Draft 171)
23. An Act to provide that health care facilities and accredited prevention and treatment facilities may establish reasonable restrictions related to the medical use of cannabis. (Draft 183)
24. An Act to establish a maximum number of cannabis plants that may be cultivated by a medical cannabis cardholder. (Draft 224)
25. An Act to revise the definition of practitioner for purposes of the medical cannabis program. (Draft 254)

Draft Legislation can be found in the Appendix

Summary of Meeting Dates and Places

The full committee met in Pierre on the following dates: May 26, May 27, and October 27, 2021.

The Adult-Use Marijuana Study Subcommittee met in Pierre on the following dates: June 22, September 1, September 10, and October 19, 2021.

The Medical Marijuana Study Subcommittee met in Pierre on the following dates: June 21, August 4, September 1, and September 29, 2021.

Listing of Committee Members

Members of the committee were Senator Bryan Breitling, Chair; Representative Hugh Bartels, Vice Chair; Representatives Shawn Bordeaux, Kirk Chaffee, Mike Derby, Fred Deutsch, Linda Duba, Caleb Finck, Mary Fitzgerald, Tim Goodwin, Rhonda Milstead, Tina Mulally, Ernie Otten, Taylor Rehfeldt, Marli Wiese, and Mark Willadsen; Senators Helene Duhamel, Troy Heinert, Michael Rohl, Arthur Rusch, V.J. Smith, Jim Stalzer, and David Wheeler.

Members of the Adult-Use Marijuana Study Subcommittee were Representative Hugh Bartels, Chair; Representatives Shawn Bordeaux, Kirk Chaffee, Mike Derby, Mary Fitzgerald, Tim Goodwin, Rhonda Milstead, Tina Mulally, and Mark Willadsen; Senators Helene Duhamel, Michael Rohl, Arthur Rusch, and David Wheeler.

Members of the Medical Marijuana Study Subcommittee were Senator Bryan Breitling, Chair; Representatives Fred Deutsch, Linda Duba, Caleb Finck, Ernie Otten, Carl Perry, Taylor Rehfeldt, and Marli Wiese; Senators Troy Heinert, V.J. Smith, and Jim Stalzer.

Listing of Staff Members

Staff members for the committee and both subcommittees were Amanda Marsh, Principal Research Analyst; Brigid Hoffman, Legislative Attorney; and Cindy Tryon, Administrative Specialist.



Mental Health of First Responders Task Force

2021 Final Report



Study Assignment

The legislative task force was established to address the mental health needs and challenges facing first responders. The task force was also directed to evaluate the trauma and suicide rates first responders face, the prevalence of post-traumatic stress disorder in first responders, challenges faced by rural communities in assisting first responders with mental health, and the impact these mental health challenges have on recruiting and retention.

Background

It is estimated that 15 to 22 percent of firefighters and 35 percent of police officers suffer from post-traumatic stress disorder (PTSD) compared to only about seven percent of the general population. This, among other mental health challenges, has had a significant impact on South Dakota's first responders. A bill was introduced in 2020, [HB 1142](#), that sparked conversation about how South Dakota could address this issue. After discussion during session, [HCR 6023](#) was passed to create a task force to discuss a variety of solutions. The task force was reauthorized by the Executive Board for 2021.

Summary of Interim

The task force monitored the progress of its work and the legislation resulting from its work that passed in the 2021 session, as well as using the knowledge gained to see what other areas of first responder mental health that could be positively affected.

The Heroes Wellness grant, which provides funds to organizations to provide critical incident stress management training and peer support group training, is scheduled to go live in 2022. This grant will be administered through the Attorney General's office with the assistance of members of Division of Criminal Investigation. It is anticipated that there will be more applications than dollars available, especially from our rural communities, as representatives from these communities testified to the growing need among their volunteers. The training funded by the grant is designed to heal the images from the mind that cannot be said and to sustain their ability to serve the people in their communities. Career and volunteer fire, law, and EMS departments across this state stand in appreciation to this legislature for taking the steps to support them unanimously and without argument.

The possibility of a mental health insurance plan for volunteer first responders was realized in October of 2021. The funds are coming from the fire insurance premium tax of which 10 percent goes to our firefighters for training. The insurance policy will be administered by the South Dakota Fire Fighters Association. Its availability has been well publicized by the provider, fire associations, conferences, electronically, and word of mouth.

There are works in progress that were and will continue to be discussed as more can be done to support first responder mental wellness.

The task force discussed utilizing the Department of Public Safety better as an area of support for these men and women. One example would be to have a central digital repository for resources relating to first responders' mental health, which would ensure that information is easily accessible to all. There are excellent resources available statewide and nationwide, so developing a tool for them to tap into could be an excellent and easy way to provide more support.

Fire safety is seen as a significant element of public safety, but is not represented in our current Department of Public Safety as is law enforcement. Several ways to achieve this were discussed, such as by having a State Fire Administrator oversee training, training facilities, mutual aid, equipment, retention, and recruitment.

Recruitment and retention are important factors affecting volunteerism across our state. Volunteers make up 92 percent of fire and EMS services in South Dakota, amounting to over 8,500 individuals. As a result of the discussion held during the task force meetings, there is a group of legislators and first responders who plan on meeting remotely to discuss ideas and possibly present legislation outside the umbrella of this task force but in the sincerest support of our volunteer first responders.

Finally, the task force evaluated the need for consolidating fire prevention statutes in the code with the additional possibility of making fire prevention and other emergency services established as essential services to ensure these services continue to exist in all parts of South Dakota.

The task force thanks both the past and present Executive Boards as well as the South Dakota Legislature for allowing us to serve on this interim committee. It has been both an educational and rewarding experience and has given all of us a greater awareness of what a hero does in real life terms.

Listing of Recommendations Adopted by the Committee

No recommendations were adopted by the committee at this time.

Summary of Meeting Dates and Places

The committee met in Pierre on the following dates: August 3 and October 19, 2021.

Listing of Committee Members

Members of the committee were Representative Rhonda Milstead, Chair; Representative Ryan Cwach, Vice Chair; Representatives Doug Barthel, Tina Mulally, Taylor Rehfeldt, Tamara St. John, and Larry Zikmund (non-voting); Senators Troy Heinert and V.J. Smith; and Public Members Dr. Roger Belisle, Nick Carlson, Connie Johnson, Dr. Anne Kelly, Maynard Konechne, Tom Ward, and Brad Wilson

Listing of Staff Members

Staff members for the committee were Matthew Frame, Legislative Attorney; Kaitlyn Baucom, Administrative Specialist, and Cindy Tryon, Administrative Specialist.



Mental Health Services Delivery Task Force 2021 Final Report



Study Assignment

In the 2021 Regular Session, HCR 6008, as enacted, directed the Executive Board of the Legislative Research Council to reappoint the members of the 2020 Interim Mental Health Services Delivery Task Force, for the purpose of monitoring the growth and development of recent initiatives in the delivery of services, to review and propose adjustment to the levels of funding for such initiatives, and to ensure that the statutory and regulatory framework within which such services are delivered complements the intended outcomes for the state and its residents.

Background

The delivery of mental health services in this state has been a prominent focus of interim studies since 2018. Identifying the nature and scope of existing services and needs, and determining how the current system could evolve to ensure efficiently and cost-effectively the best possible outcomes for those who require such services has been a monumental undertaking. The structured and incremental approach favored by three prior interim task forces enabled the 2021 interim task force to focus on the path forward.

Summary of Interim

The 2021 interim Mental Health Services Delivery Task Force was authorized to meet twice. During those meetings, the task force received updates regarding acute and long-term behavioral health services being provided at the Human Services Center (HSC) in Yankton, together with its staffing challenges, and the development of alternative or additional service initiatives that could potentially relieve some utilization pressures faced by the HSC.

Those initiatives included implementation of the new, national 988 telephone number for mental health crisis and suicide response. This dedicated calling line is intended to serve as an early intervention model and support the referral process. The 988 number is, however, linked to the area code of the user's telephone, rather than to a global positioning system. With individuals relocating from one state to another and retaining their former 10-digit telephone numbers, this will need to be addressed.

Because younger individuals are not as likely to utilize a telephone to seek assistance, the Text4Hope program was started for high school students. For approximately \$80,000, the program could be expanded to include middle school students. This program has not yet found widespread utilization.

The task force also heard about the growth of virtual crisis care. This is a pilot program that began in 2020. Through the use of tablet technology, law enforcement has around-the-clock access to behavioral health professionals who can assist in responding to people experiencing a mental health crisis. This program avoids the stigma of criminalizing behavioral health issues, reduces unnecessary admissions to mental health facilities, keeps individuals in their communities, and reduces the time and expense incurred by law enforcement in transporting individuals to facilities that may be many miles away. This program is used primarily in geographic areas where access to professional services is more limited. As such, the program appears to be addressing a significant need.

Because individuals with mental illness or substance use disorders frequently cycle through hospital emergency departments or jails, centers such as The Link in Sioux Falls and the Crisis Care Center in Rapid City are being created to provide a safe and secure environment for individuals as they seek assistance with detoxification and crisis stabilization, and ultimately encourage their participation in appropriate community-based services.

Prior interim studies focused on the provision of services closer to an individual's home. This resulted in the concept of appropriate regional facilities and the views that such facilities could play a critical role in crisis stabilization, and provide numerous social, emotional, and economic benefits. Approximately 34 percent of individuals admitted to the HSC are discharged within five days. Appropriate regional facilities are designed to provide care in such cases and ensure that the beds at the HSC remain available for patients who require long-term or acute care. The facilities are both an alternative to long wait times in emergency departments and an alternative to the use of jails for mental health holds. In addition, they free up law enforcement officers who otherwise have to expend significant hours waiting for bed availability and transporting individuals. To date, Lewis and Clark Behavioral Health Services in Yankton and the Human Service Agency in Watertown have been designated as appropriate regional facilities.

While these and other initiatives were enthusiastically touted as tremendous and necessary efforts to address the mental health needs of South Dakotans, testimony also revealed several areas of significant concern.

In the area of competency restoration, the task force received testimony indicating that individuals often spent as much as five to ten months in jail while awaiting a placement at the HSC. The task force was told that if someone is incompetent to stand trial, that person needs to receive appropriate mental health services in a timely fashion. A jail is not structured to meet that need for the non-criminal population. The task force was also told that competency restoration can be provided through a curriculum that does not necessarily require the involvement of the HSC.

The task force also received testimony indicating that while the focus has been on the mental health of adults, there is an equally critical need to address the availability of services for children. More importantly, that need exists not just for those in their teenage years, but also for those who are even younger. The task force was told that when children exhibit mental health or violence issues, they need immediate care. Rather than being taken to the emergency departments, they have, 30 times this past year, been taken to the Minnehaha County Regional Juvenile Detention Center. The task force was told that a juvenile detention center is not an appropriate placement for children in crisis, and if children in crisis are placed there, detention center staff are unable to properly conduct their normal operations.

Staffing continues to be an issue in multiple venues. The issue appears to result from the relatively small number of individuals who are admitted to and graduate from professional programs, the necessity for advanced academic credentials, the workforce available in a given geographic area, and the financial resources that are available for an employer to recruit and retain staff. Addressing staffing issues tends to pose two disparate alternatives, *i.e.*, reducing the currently required professional standards or instituting incentives to encourage greater participation in the areas of need.

Recommendations by Task Force

The task force acknowledged that much has been done during this and the previous three interims to implement a regionalized delivery system, incorporate technology in crisis situations, provide telehealth services, and otherwise address the mental health needs of South Dakotans. The task force also acknowledged that continued success would be dependent on strong public-private partnerships that share clear priorities and a focus on sustainability. In order to delineate the priorities and define funding levels necessary to sustain services, administrative oversight and fiscal data remain critically important. To that end, the task force recommended:

- (1) The Department of Social Services examine the manner in which mental health services are delivered to juveniles, identify gaps in the current system, and report their findings and recommendations to the Health and Human Services Committees of the House and the Senate, at the commencement of the 2023 Legislative Session;
- (2) The Department of Health and the Department of Social Services continue to explore ways in which social media can be used to draw attention to issues in mental health and provide service delivery options;

(3) The Department of Health provide information regarding the programmatic costs of Text4Hope to the Health and Human Services Committees of the House and the Senate, at the commencement of the 2022 legislative session;

(4) The Department of Social Services assemble a work group to examine the manner in which competency restoration is currently addressed, identify gaps, and report their findings and recommendations to the Health and Human Services Committees of the House and the Senate at the commencement of the 2023 legislative session;

(5) Telehealth be recognized as an integral part of delivering mental health services across this state and that the Legislature continue to support it directly and indirectly;

(6) The shortage of mental health providers, at all levels, be recognized as an ongoing issue, and that the Legislature continue to promote growth in the professions; and

(7) A resolution be introduced to recognize that the growth and sustainability of appropriate regional facilities in the delivery of mental health services is contingent upon an adequate level of funding being provided by the state, and that the Appropriations Committees of the House and the Senate be urged to consider such when establishing payment rates.

Summary of Meeting Dates and Places

The task force met in Pierre on September 14, 2021, and October 26, 2021.

Listing of Committee Members

Representatives Kevin Jensen, Chair, Linda Duba, Erin Healy, Paul Miskimins, Carl Perry, Tim Reed, and Taylor Rehfeldt; Senators Wayne Steinhauer, Vice Chair, Red Dawn Foster, Jean Hunhoff, and Jim Stalzer; and public members Steve Lindquist and Trisha Miller.

Listing of Staff Members

L. Anita Thomas, Principal Legislative Attorney; Randy Stockwell, Network Administrator; and Kaitlyn Baucom, Administrative Specialist.



State-Tribal Relations 2021 Final Report



Study Assignment

The State-Tribal Relations Committee is an ongoing, statutory committee created in 1993 by SDCL sections 2-6-20 to 2-6-23, inclusive, as a part of the state's reconciliation efforts. The statute directs the committee to make a continuing study of the relations between the state and its political subdivisions and the tribes and their tribal governments. The committee provides a forum within state government for discussion of issues affecting the Native American community and issues involving tribal governments and state government. The committee also serves as a way of familiarizing legislators with those issues.

Summary of Interim

As a result of the enactment of [Senate Bill 97](#) passed during the 2021 Legislative Session, Representative Tamara St. John and Senator Troy Heinert were appointed co-chairs of the State-Tribal Relations Committee by the Speaker of the House and the President Pro Tempore of the Senate, respectively. The co-chairs assumed their roles on July 1, and the presiding officers appointed the current committee members on July 1.

Listing of Legislation Adopted by the Committee

None.

Summary of Meeting Dates and Places

The committee has not met during the 2021 interim.

Listing of Committee Members

Members of the committee are Representative Tamara St. John, Co-Chair; Senator Troy Heinert, Co-Chair; Senators Jim Bolin, Red Dawn Foster, Michael Rohl, and V.J. Smith; and Representatives Steven Haugaard, Oren Lesmeister, Peri Pourier, and Tony Randolph.

Listing of Staff Members

Staff members for the committee are Anna Madsen, Research Analyst, and Rachael Person, Administrative Specialist.



Workforce Housing Needs in SD

Interim Study Committee

2021 Final Report



Study Assignment

On April 22, 2021, the Executive Board of the LRC directed a study of Workforce Housing to:

- Examine the need for development of affordable workforce housing for low to moderate-income individuals and families throughout the state;
- Identify the effectiveness and gaps of housing tax credits and other financial tools to help fund projects based on locally determined need and projections;
- Develop a long-term dedicated revenue source for strategic housing needs through a revolving loan fund to mitigate development costs; and
- Examine community match and partnerships that will leverage the positive impact of the resources provided through a revolving loan fund.

The study was to include the building trades and apprenticeships and determine what can be done to have more people in those fields.

Summary of Interim

At the first meeting, the committee heard from industry leaders and associations representing local governments, realtors, multi-family housing, and home builders. Representatives Chase and Smith presented a historical perspective regarding the work of the 2017 Workforce Housing Study committee. That committee was directed to work on housing issues within municipalities and give preference to second and third-class municipalities. None of the legislation proposed by the 2017 committee was enacted. Representative Chase highlighted the need to promote the South Dakota Housing Opportunity Fund, provide more funding to address issues of homelessness, provide more funding for rehabilitation, adopt a forgivable loan program, and utilize Tax Increment Financing (TIF).

At the second meeting, the committee heard from numerous organizations about the housing crisis in the state. The committee received statistics regarding the Rapid City housing market, heard about obstacles hindering development, such as infrastructure and material costs; learned about programs to help people obtain affordable housing; and heard suggestions for addressing the housing crisis in South Dakota that ranged from maximizing the use of the federal Low-Income Housing Tax Credit to raising the TIF total assessed value threshold.

At the third meeting, the committee heard from industry leaders, municipality directors, developers, supply chain managers, contractors, realtors, housing associations, county commissioners, and other community leaders. The committee received statistics on the Sioux Falls housing market, including the population growth over the past ten years and the inflation of the median house listing price relative to the rest of the state. There was discussion about housing developers' issues and obstacles, including supply chain bottlenecks, the gap between appraised collateral value and actual cost due to a lack of contractors, and the need for manufactured housing incentives.

At the fourth and final meeting, the committee reviewed draft legislation and discussed the merits of the drafts. One bill draft would provide a 10-year discretionary formula for single-family residential and multi-family housing projects. To hold the state aid to education formula harmless, school districts would be responsible for any waived property taxes. Another bill draft would allow communities to adopt the International Residential Code, with or without deviations, for projects listed as single-family homes or townhomes less than three stories, which are currently exempt under the International Building Code. The contractor's excise tax bill draft was designed for builders of spec homes. Under this bill draft, eligible homebuyers could apply for a certificate exempting them from the excise tax normally applied to the closing price of a home. It was suggested that the redevelopment of existing

homes and neighborhoods should be a locally led effort, while the creation of new housing opportunities and reinvesting those opportunities into the community should be the priority of this committee.

Listing of Legislation Discussed by the Committee

- An Act to revise certain provisions regarding local building codes ([Document 1](#)).
- An Act to provide an exemption from the contractors' excise tax for certain residential housing projects ([Document 2](#)).
- An Act to revise the discretionary formula for reduced taxation of new structures ([Document 3](#)).

Recommendations by the Committee

- Provide a 10-year discretionary formula for certain housing projects.
- Create an excise tax rebate program for new housing units.
- Amend the requirement to utilize the 2021 edition of the International Building Codes.
- Allow counties to take ownership of residential tax deeds in three years instead of five.
- Introduce multi-family rental property as a new classification for property tax purposes.
- Promote South Dakota Housing Development Authority programs, such as the Governor's House and DakotaPlex.
- Increase funding for the South Dakota Housing Opportunity Fund for uses of a guaranteed loan program.

Meeting Dates and Places

The committee met in Pierre on June 9, Rapid City on July 14, Sioux Falls on August 5, and Pierre on September 13, 2021.

Listing of Committee Members

Members of the committee are Representative Roger Chase, Chair; Senator Casey Crabtree, Vice-Chair; Senators Michael Diedrich, Red Dawn Foster, Jack Kolbeck, Herman Otten, David Wheeler, Larry Zikmund; and Representatives Hugh Bartels, Fred Deutsch, Mary Fitzgerald, Tim Goodwin, Jennifer Keintz, Lance Koth, John Mills, Scott Odenbach, Lynn Schneider, Jamie Smith, and Mike Weisgram.

Listing of Staff Members

Staff members for the committee are L. Anita Thomas, Principal Legislative Attorney; Carter Dykstra, Fiscal Analyst; Jennifer Geuther, Fiscal Analyst; Kaitlyn Baucom, Administrative Specialist; Rachael Person, Administrative Specialist; and Randy Stockwell, Network Administrator. Carter Dykstra replaced Jennifer Geuther, Fiscal Analyst, as a staff member in July.



Judicial Opinions 2021 Report



Study Assignment

Under [SDCL 2-9-1.1](#), the Legislative Research Council is required to prepare an annual report of the opinions of state and federal courts in cases that interpret South Dakota statutes and the intent of the Legislature. In these cases, courts interpret statute because of the courts' finding that the Legislature's intent behind the statutes is unclear. The report may include recommendations for corrective action if it is determined that the opinion of a court may be adverse to what was intended by the Legislature or if the court's opinion has identified an appropriate area for legislative action. Under [SDCL 2-9-4](#) (8) the Executive Board shall review these cases and make recommendations for further action based on those court opinions.

Summary of Cases

[S.D. v. Buffalo Chip, S.D., 2020 S.D. 63](#)

Summary: The prospective city of Buffalo Chip petitioned to become incorporated in February 2015. SDCL 9-3-1 at the time required that "[n]o municipality shall be incorporated which contains less than one hundred legal residents or less than thirty voters." Buffalo Chip had thirty voters at this time of the petition, but not one hundred legal residents. After litigation, the Circuit Court found that SDCL 9-3-1, at the time of the incorporation, required that a municipality have both at least one hundred legal residents AND thirty voters. Thus, the Court found Buffalo Chip did not have the statutory rights as a municipality.

Buffalo Chip appealed this interpretation of SDCL 9-3-1, amongst other issues. The Supreme Court affirmed the Circuit Court's construction of the statute. In short, the Court found that SDCL 9-3-1 was a list of two requirements that, if either was not met, made an entity *ineligible* to be incorporated--not two requirements that, if either was met, made an entity eligible to be incorporated. The Court also highlighted that the Legislature [changed SDCL 9-3-1 in 2016](#) to specifically [address this issue and clarify statute to mean as the Supreme Court was interpreting it in this case](#). This legislative change, the Court stated, was further evidence of legislative intent.

However, one justice dissented, arguing that the use of "or" suggested that as soon as one of the barriers precluding eligibility is overcome, then the entity becomes eligible. In other words, since Buffalo Chip did have thirty voters, it no longer needed to meet the requirement of having one hundred legal residents.

Recommendation: The 2016 amendment to SDCL 9-3-1 eliminates the ambiguity referenced above, and thus no change is likely needed.

[Sacred Heart Health Services v. Yankton County, 2020 S.D. 64](#)

Summary: Under [SDCL chapter 27A-10](#), a hospital may be required to hold persons who are involuntarily committed while they await their involuntary commitment hearing or admission into the South Dakota Human Services Center. In this case, twenty-three such patients were treated by the

plaintiff hospital for medical conditions the defendant county argued were unrelated to the reasons the patients were placed on an involuntary hold. The hospital had billed the county for the patients' medical care, but the county refused to pay, stating they were not required to cover these costs under chapter 27A-10 and that the hospital should have applied for reimbursement under [SDCL chapter 28-13](#), relating to county relief for indigent persons. The Circuit Court found in favor of the county.

On appeal the hospital argued that the medical care provided, despite the care not being related to the condition giving rise to the involuntary commitment, was part of the commitment process and therefore should be covered by the county as "costs associated with detainment pending the hearing." [SDCL 27A-10-7](#). Further, the hospital stated the law prevents them from shifting the cost to an indigent patient for the medical care they received under this process. The Supreme Court found that this was not the case, as chapter 27A-10 is very specific about what costs the county must cover and which costs may not be billed to a patient. The Court found that because statutes were explicit regarding the county's payment obligations for concerns as granular as transportation costs or the mental health examination, and the statutes were silent on the costs of pre-commitment medical care, the Court found the Legislature intended not to include the costs the hospital was claiming as being "costs associated with detainment."

Further, the Court found that the hospital could have sought reimbursement through chapter 28-13, which the Court identified as the proper means to have handled reimbursement for these twenty-three patients. Thus, the Court sustained the Circuit Court and denied reimbursement to the hospital.

Recommendation: The Legislature could leave SDCL chapter 28-13 as the means for reimbursement in circumstances like this. Alternatively, the Legislature could amend chapter 27A-10 to clarify or add to what costs associated with the involuntary hold process shall be the responsible of the county or the patient. Separately, the Legislature may want to evaluate if the current language apportions costs under chapter 27A-10 between the hospital, patients, and county as the Legislature intends.

Holborn v. Deuel County Bd. Of Adjustment, 2021 S.D. 6

Summary: The Deuel County Board of Adjustment (Board) voted five yeas to zero nays to approve special exception permits for a wind farm. Local residents in opposition to the wind farm contested the permits in Circuit Court, arguing the members had conflicts of interest under SDCL [6-1-17](#) and [6-1-21](#) that disqualified them from voting on the special permits. The Circuit Court invalidated two of the votes and ultimately found the permits were not then approved by the 2/3rds of the body required to approve special exception permits. On appeal, the Supreme Court noted that SDCL 6-1-17 requires, in relevant part, disqualification where the official "has a direct pecuniary interest in the matter before the governing body." The Court recalled that "direct pecuniary interest" is not defined in statute, but that case law requires a plaintiff to successfully establish that the officer "will receive direct financial gain from a decision on the matter before the board." The Court did not find that two members' prior contracts with the wind farm developer, which had terminated years prior, served a direct financial gain. The Court then moved on to SDCL 6-1-21's presumption of impartiality rebutted only by clear and convincing evidence of prejudice or unacceptable risk of bias. The Court found that the presumption is not rebutted by the "mere possibility" of the "indirect" business alleged by plaintiffs, or by the fact that certain members have been advocates for wind energy in the past.

Recommendation: In its initial evaluation of the case, the Court outlined the federal constitutional requirements for removal of quasi-judicial officers. SDCL 6-1-17 and 6-1-21 each partially describe the due process requirements necessitating recusal under the U.S. Constitution:

- SDCL 6-1-17 - Disqualification due to direct pecuniary interest; and
- SDCL 6-1-21 - Disqualification due to unacceptable risk of bias.

Although in combination they are sufficient, the Legislature may want to consider aligning these two statutes, such as, per the Court's suggestion (para. 35), by creating a more comprehensive framework requiring local officers to disclose potential conflicts of interest, or specifying particular conflicts of interest that are direct pecuniary interests (SDCL 6-1-17) or pose an unacceptable risk of bias (SDCL 6-1-21).

[S.D. v. Thoman, 2021 S.D. 10](#)

Summary: Mr. Thoman's wife was suffering from cancer. Eventually, she passed away from the cancer and Mr. Thoman blamed her doctor for her death. Mr. Thoman approached a friend and discussed hiring a hit man or purchasing a gun to kill the doctor. The friend reported his concerns to law enforcement. As a result, law enforcement arrested Mr. Thoman for solicitation of a crime under [SDCL 22-4A-1](#). The prosecution argued that Mr. Thoman solicited his friend's help to aid and abet a murder, and thereby solicited the underlying crime defined in [SDCL 22-3-3](#), the aiding and abetting statute. Mr. Thoman countered that since the underlying offense (murder) did not occur, the alleged solicited "specific conduct" (aiding and abetting murder) was not a crime. The Circuit Court denied Mr. Thoman's argument, finding that the "crime of solicitation is complete once the accused solicits another to commit the offense" and therefore "the solicited individual does not have to complete the underlying crime." The Supreme Court agreed with the Circuit Court, finding that if the person being solicited is "commanded, hired, requested, or solicited" to do something that would constitute a crime, that is the "specific action" referred to in the solicitation statute as being punishable.

Recommendation: No recommendation.

[Ibrahim v. S.D. Department of Public Safety, 2021 S.D. 17](#)

Summary: Mr. Ibrahim held a commercial driver's license (CDL) but was disqualified for one year under [SDCL 32-12A-36\(4\)](#) because he used a "motor vehicle in the commission of any felony." The felony was possession of a felony amount of marijuana while driving the vehicle. Mr. Ibrahim argued that this was not the type of felony that SDCL 32-12A-36 meant to cover. He contended that [SDCL 32-12-52.3](#) specifies "drug-related offenses" as warranting driver's license revocations, while SDCL 32-12A-36 does not, suggesting the Legislature only intends drug offenses to trigger violations of driver's licensing laws when expressly referenced. He also argued that SDCL 32-12A-36 is unconstitutionally vague because it is triggered by "any felony." Finally, he argued that SDCL 32-12A-36(4) was written in such a way that it required the use of the vehicle in the commission of the felony. The Circuit Court held that SDCL 32-12A-36 only applied to felonies where the vehicle was an instrument in the felony and where the crime penalizes the use of a vehicle. Since the disqualification was based on possession of marijuana, unrelated to the vehicle itself, the Circuit Court ruled in favor of Mr. Ibrahim and reversed the disqualification.

The Supreme Court reviewed the case and reimposed the disqualification of Mr. Ibrahim, stating that nothing in the statute suggests the vehicle had to be an instrument involved in the felony. Instead, the "any felony" language indicated the intent of the Legislature was to require that any felony committed when using a vehicle results in a CDL disqualification. Further, the Supreme Court pointed to [SDCL 32-12A-38](#), and its specific language regarding distribution drug felonies and permanent disqualification for CDL licenses. The Court indicated this statute showed that drug felonies were contemplated by the Legislature as disqualifying CDL licensure and therefore were included under "any felony" under SDCL 32-12A-36.

Recommendation: If the Supreme Court correctly interpreted these statutes, then no action is needed. If the Legislature intended a narrower focus to "any felony" or meant that the vehicle had to be an instrumental in the felony for it to disqualify a CDL, clarification is needed.

In Re Interest of C.R.W., 2021 S.D. 42

Summary: The biological mother and father of child, C.R.W., were the subjects of an abuse and neglect proceeding. The Oglala Sioux Tribe intervened in the case pursuant to the Indian Child Welfare Act. The Tribe moved to disqualify C.R.W.'s attorney alleging the attorney had a conflict of interest with C.R.W. because the attorney's assertion of the child's best interests, as required of the child's attorney under [SDCL 26-8A-18](#), conflicted with the child's expressed wishes. The Supreme Court held that where the child's attorney's determination of what constitutes the child's best interest conflicts with the child's expressed wishes, the attorney must also provide the child's expressed wishes to the Court and why these wishes do not serve the child's best interest, to meet the standard under SDCL 26-8A-18.

Recommendation: No change is likely needed, as the Supreme Court appears to have, by its interpretation, reconciled the attorney's duty to represent the best interest of the child, per statute, with the attorney's general ethical duty, under the Rules of Professional Conduct Rules 1.2 and 1.4 ([SDCL chapter 16-18, App'x](#)) to serve as the child's advocate.

Anderson v. Tri State Construction, 2021 S.D. 50

Summary: Ms. Anderson worked for Tri State Construction and was injured in the course of her work while working for the company in Wyoming. Although she was injured in Wyoming, she sought disability benefits through workers compensation under the South Dakota workers compensation system. The Department of Labor denied her claim, stating they did not have jurisdiction over her claim. Ms. Anderson cited [SDCL 62-3-3](#) as a basis for the Department to have jurisdiction over her claim. Specifically, Ms. Anderson asserted the use of the word "every" before the term "employer" in SDCL 62-3-3 meant that every South Dakota employer falls within the Department's authority by virtue of Tri State Construction being organized and headquartered in South Dakota.

The Supreme Court found that SDCL 62-3-3 does not provide sufficient grounds to determine jurisdiction, nor do other statutes for these cases. Instead, the Court analyzed its precedent to determine whether this employment relationship had a "substantial connection" with South Dakota over the relevant timeframe. The Court noted a "substantial connection" is established on a case-by-

case basis, based on the application of multiple factors.¹ Reviewing these factors, the Court found that a connection existed in this case as Ms. Anderson lived in South Dakota, the company was headquartered in South Dakota, the employment contract was entered in South Dakota, and the company provided training and HR support from South Dakota. The only factor that went against a South Dakota connection was that Ms. Anderson was injured in Wyoming. Thus, the Court found the Department had jurisdiction to evaluate Ms. Anderson's workers compensation claim.

Recommendation: The Legislature could allow court precedent to define when a substantial connection exists to South Dakota for the purposes of workers compensation. Alternatively, the Legislature could define the jurisdictional boundaries for those eligible to submit workers compensation claims under South Dakota law.

Jans v. Department of Public Safety, 2021 S.D. 51

Summary: Mr. Jans pled guilty to driving under the influence (DUI) and received a suspended imposition of sentence in 2016. The Department of Public Safety received a record of this criminal case the day after sentencing. However, due to staff oversight, the Department did not move to disqualify Jans' commercial driver's license (CDL) for one year until 2019, after the Department received notice that Jans' DUI conviction would be sealed. Jans asserted that his CDL could not be disqualified because [SDCL 23A-27-17](#) provides that discharge resulting from a fulfilled suspended imposition of sentence "is to restore such person, in the contemplation of the law, to the status he occupied before his arrest or indictment or information." In other words, on the date of the discharge and sealing of his DUI conviction, Jans asserted the Department was prohibited from thereafter disqualifying his CDL on the basis of that conviction. The Court nevertheless affirmed the Department's disqualification, relying upon the doctrine of statutory construction that the more specific provision governs. The Court cited three statutes as being more specific: [SDCL 32-12A-32](#), which empowers the Department to utilize the conviction as a basis for disqualification; [SDCL 32-12A-1\(7\)](#), which defines a conviction as including a suspended penalty; and, most salient, [SDCL 32-12A-64](#), which prohibits the state from masking or deferring imposition of sentence from appearing on a CDL driver's record.

Recommendation: The Legislature could take no action and allow court precedent to govern. This would maintain SDCL chapter 32-12A's clear prohibition against discharge resulting from deferred imposition of judgment impacting CDLs. In the alternative, the Legislature could clarify that a deferred imposition of sentence for traffic control violations does in fact apply to CDLs, but that would expressly conflict with federal regulation and is recommended against. [49 C.F.R. § 384.226](#). Should the Legislature choose to allow court precedent to govern, the Legislature may clarify in [SDCL 23A-27-12.2](#) that deferred imposition of sentence is not available for CDL holders charged with traffic control violations as they are defined in applicable federal and state law.

¹ The factors: (1) the person is injured in the state, (2) the employment is principally located in the state, (3) the employer supervised the employee's activities from that state, (4) the state is the most significant relationship to the contract of employment, (5) the parties agreed that their rights should be determined by that state's law, or (6) the state has some other reasonable relationship to the occurrence, parties, and employment.

SD Voice v. Noem, D. South Dakota, Northern Division

Summary: Plaintiffs challenged the one-year window (between 24 and 12 months before the general election) in which initiated measure petitions must be circulated and submitted per [SDCL 2-1-1.2](#), as well as the same one-year window in which initiated constitutional amendment petitions must be circulated and submitted per [S.D. Const., Art. XXIII](#), § 1 and [SDCL 2-1-1.1](#). The District Court found these time limitations implicated a core aspect of free speech--political expression--that needed to be balanced against the need for fair and orderly elections. The Court held that South Dakota's scheme did not properly balance the importance of political speech in the case of initiated measures because a one-year prior filing deadline would have the effect of causing political disinterest and stifling popular efforts to change statute. The Court drew a comparison to Colorado's deadline being three months prior to the election as a process that was more balanced with regard to initiated measures. The Court, however, found a different calculus to apply to initiated constitutional amendments that shifted the balance to stress fair and orderly elections. Specifically, the Court found that constitutional amendments can be critical because of the impact they have on the integrity of the constitution itself. Therefore, the Court upheld the initiated constitutional amendment petition window currently in law, but ruled that the one-year filing deadline for initiated measures was unconstitutional and unenforceable. The Court went on to state that a six-month filing deadline is the constitutional limit, thereby setting the new deadline for filing initiated measure petitions to be the first Tuesday in May during the year of the election, but otherwise retaining the beginning date of circulation in SDCL 2-1-1.2. The effect of this court decision, therefore, is to create an eighteen-month circulation period for initiated measure petitions.

Recommendation: An update to SDCL 2-1-1.2 to comply with the Court's ruling may be necessary. This matter is currently being appealed to the Eighth Circuit. [The District Court did not enter a stay of its decision, but one is being sought before the Eighth Circuit.](#)

United States v. Corbine, D. South Dakota Western Division

Summary: A trooper performed a traffic stop of the defendant for a perceived violation of [SDCL 32-5-98](#). The statute implements requirements for the display of license plates on motor vehicles. The District Court was tasked with analyzing whether the trooper's understanding of the statute gave him probable cause to pull over the defendant. Specifically, the trooper's rationale for the stop was that an after-market backup camera on the rear of the vehicle "covered up the state" name on the rear plate. The Court found the first sentence of the statute, reproduced below, was not entirely clear and unambiguous:

"Except as otherwise specifically provided, no person may operate or drive a motor vehicle on the public highways of this state unless the vehicle has a distinctive number assigned to it by the department, and two number plates, bearing the number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of the vehicle, each securely fastened."

The Court reasoned that the sentence could be interpreted to only require that the number on the license plate be conspicuously displayed, but not the remaining parts of the license plate, such as the issuing state. The Court found "no basis for the inference that the name of the issuing state must be conspicuously displayed" and cited the fact that the issuing state is not mentioned once in the statute.

Recommendation: If the Legislature intended for SDCL 32-5-98 to only require the license plate number be conspicuously visible, then no remedy is needed. If, however, the Legislature intended that all of a plate's markings be conspicuously visible, it can achieve this by striking "~~bearing the number~~" and inserting the phrase "that shall have all official markers, numbers, and stickers." The first sentence could also be rewritten to combine several clauses or separate the clauses into individual sentences to make the statute more readable.

Deiter v. XL Specialty Insurance Co., D. South Dakota Central Division

Summary: ReliaMax Holding Company (RHC) was under liquidation. Prior to liquidation, RHC purchased an insurance policy from XL Specialty to protect their directors and officers from liability. The claims-made policy (insurance that applies to claims first made during the policy period) expired after RHC did not renew coverage, and only days after the order of liquidation was entered. Four months after the expiration of the coverage, the South Dakota Department of Insurance, as the liquidator, filed a claim against the policy under [SDCL 58-29B-56](#). The statute's last sentence appears to allow for claims to be made by the liquidator, within one hundred eighty days of the petition of liquidation, so long as the petition for liquidation was filed before the claim expired. XL Specialty argued that the liquidator's claim came after the policy period and that the statute does not entitle RHC--and by extension, the liquidator--to what is effectively free coverage for the period beyond RHC and XL Specialty's contract. The Department, however, asserted that because the petition for liquidation was filed during the policy period, and the Department's claim was made within four months of the filing, that the Department is entitled to collect on the claim. The District Court found, with a dearth of applicable case law, that it was best to certify the question to the Supreme Court. The question was:

"Does SDCL § 58-29B-56, in giving the Liquidator 180 additional days from the order of liquidation to give notice of a potential claim, thereby enlarge the coverage period under a claims-made insurance policy past the end of the policy period?"

Recommendation: The Legislature could wait for the interpretation of the South Dakota Supreme Court. Alternatively, the Legislature could specify that claims-made policies are excluded or included under the last sentence of SDCL 58-29B-56, which allows the liquidator to take any action within one hundred eighty days of filing the liquidation petition, where the action was permissible at the time of filing the liquidation petition.

This report was written by Matthew Frame, Legislative Attorney, and Justin Goetz, Chief Research and Legal Analyst, on November 16, 2021, for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.



**REPORT OF THE
GOVERNMENT OPERATIONS AND AUDIT COMMITTEE
2021**

COMMITTEE MEMBERS

**Senator Kyle Schoenfish, Chair
Representative Randy Gross, Vice Chair**

**Representative Ernie Otten
Representative Sue Peterson
Representative Chris Karr
Representative Linda Duba**

**Senator David Wheeler
Senator Jean Hunhoff
Senator Wayne Steinhauer
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Committee Responsibilities

The Government Operations and Audit Committee was established by South Dakota Codified Law (SDCL) 2-6-2. The Committee is appointed at each regular session of the Legislature. The Committee consists of ten members, five members from the Senate appointed by the President Pro Tempore of the Senate, one of whom shall be a member of the Judiciary Committee and five members from the House appointed by the Speaker of the House, one of whom shall be a member of the Judiciary Committee.

The responsibilities of the Committee are:

- To inquire and review any phase of the operations and the fiscal affairs of any department, institution, board, or agency of the State.
- To examine records and vouchers, summon witnesses, examine expenditures and the general management of departments, as deemed necessary.
- Develop and implement a performance management review process to evaluate the efficiency and effectiveness of State agencies.
- Review limitations on use relating to the University Centers off-campus sites in Pierre, Rapid City, and Sioux Falls and make recommendations to the Legislature regarding these limitations.
- To make a detailed report to the Senate and House of Representatives and submit a copy of its report to the Appropriations Committee of each House of the Legislature at the next succeeding session of the Legislature or any special session of the Legislature upon request of the body.
- To review the following annual reports:
 - Single Audit Report of the State of South Dakota and separately issued agency audit reports
 - South Dakota 911 Coordination Board
 - South Dakota State Brand Board
 - South Dakota High School Activities Association
 - Obligation Recovery Center
 - Accountability report from the Technical Institutes
 - Annual reports from each Department administering funds received from the Building South Dakota program
 - Department of Corrections' semi-annual report on abuse and neglect in private placement facilities
 - Annual report from juvenile monitor

- Habitat Stamp Expenditure Report from Game, Fish and Parks
- Report of compiled authorizations to derive a direct benefit from a contract, as collected by the Bureau of Human Resources
- Report of compiled authorizations to derive a direct benefit from a State authority, board, or commission contract, as collected by the Auditor General
- Report and annual work plan of the State Board of Internal Control

Committee Activity

Performance Reports

Senate Bill 120, 2017 session, assigned the Government Operations and Audit Committee the responsibility to develop and implement a performance management review process. The process is a collaborative effort between the agencies and the Committee. When agencies appear every three years, it is an opportunity for the Committee to revise, add, delete, or accept as is existing agency performance measures. The agency has the mission or vision for the Department as well as the data to track progress and the Committee provides feedback for establishing key performance measures. House Bill 1110, 2020 session, instructed the Government Operations and Audit Committee to develop and provide to each State agency a standardized, uniform template that, beginning January 1, 2021, each agency is to use when presenting information to the Committee. The Committee completed the template and provided it to agencies for use during the 2021 interim period.

The Committee normally reviews performance measures for seven agencies each year. Due to the workloads during the 2020 interim period in dealing with COVID-19, review of performance measures for the Department of Health, Department of Labor and Regulation, Department of Revenue, and Department of Human Services were reviewed by the Committee during the 2021 interim period. Twelve agencies appeared before the Committee and with feedback from the Committee developed the following performance measures.

Bureau of Finance and Management

The Commissioner of the Bureau of Finance and Management explained their mission to ensure the efficient and responsible management of State government and advising the Governor on overall fiscal policy. The Commissioner described three goals:

1. Maintain the best public issuer credit ratings possible.
2. Implement internal controls statewide.
3. Seek additional ways to make government financial information more accessible to the public.

The Committee approved the Bureau's performance measures.

Department of Labor and Regulation

The Secretary of the Department of Labor and Regulation explained their mission is to promote economic opportunity and financial security for individuals and businesses through quality, responsive, and expert services; fair and equitable employment solutions; and safe and sound business practices. The Secretary described four goals:

1. Deliver quality, responsive, and excellent services.
2. Achieve a skilled workforce contributing to economic development by serving businesses, job seekers and community partners.
3. Ensure safe and sound business environments and practices.
4. Develop a sustainable, skilled Department of Labor and Regulation workforce.

The Committee approved the Department's performance measures.

Department of Military

The Adjutant General of the Department of Military explained the agency's mission is for the South Dakota National Guard to provide ready forces to support global and domestic requirements under the direction of civil authority. The Adjutant General described three goals:

1. Provide support for service members, families, and employers.
2. Achieve readiness and relevancy.
3. Human capital management.

The Committee approved the Department's performance measures.

Department of Health

The Secretary of the Department of Health described the Department's mission of working together to promote, protect, and improve health. She advised the Committee that their measures are tied to the Department's 2020-2025 strategic plan. To accomplish their mission the Department has five goals:

1. Enhance the accessibility, quality, and effective use of health resources.
2. Provide services to improve public health.
3. Plan, prepare, and respond to public health threats.
4. Maximize partnerships to address underlying factors that determine overall health.
5. Strengthen and support a qualified workforce.

The Committee approved the Department's performance measures.

Department of Revenue

The Secretary of the Department of Revenue explained their mission is serving South Dakota to provide fair, efficient, and reliable revenue administration with our partners to help fund public service statewide. The Department has the following three strategic goals:

1. Provide consistent service to every customer, every time. Be adaptable with our customer service methods.
2. Ensure that all Department of Revenue stakeholders understand the laws and regulations through education efforts.
3. Provide critical funding for state and local governments through compliance and efficiency.

The Committee approved the Department's performance measures.

Department of Corrections

The Deputy Secretary of the Department of Corrections explained their mission is to protect the citizens of South Dakota by providing safe and secure facilities for juvenile and adult offenders committed to our custody by the courts, to provide effective community supervision to offenders upon their release, and to utilize evidence-based practices to maximize opportunities for rehabilitation. The Department has the following three strategic goals:

1. Operate safe and secure facilities.
2. Provide effective community supervision.
3. Utilize evidenced-based practices to support rehabilitation.

The Committee approved the Department's performance measures subject to being revisited after the issuance of the comprehensive third-party review report of the Department of Corrections.

Department of Tribal Relations

The Secretary of the Department of Tribal Relations explained their mission to recognize the nine sovereign tribes who share geographical borders as distinct political entities. Support their self-governance efforts. Work with their chosen leaders in a cooperative government to government relationship in order to improve the quality of life for all South Dakota citizens. Identify, develop and/or coordinate federal, state, and local resources to increase partnerships between state and tribal agencies. Introduce and/or support any legislation that would improve the quality of life for the Native American population in the state. The Department has the following three strategic goals:

1. Enhance the Department of Tribal Relations communications.

2. Partner with tribes and other state agencies to enhance public safety to reduce substance abuse.
3. Promote South Dakota's unique American Indian culture to public school instructional staff and students.

The Committee and the agency agreed to update some of the information as presented by the agency. Contingent upon making the suggested updates, the Committee approved the Department's performance measures.

Board of Regents

The Executive Director of the South Dakota Board of Regents described their mission is to provide an excellent, efficient, accessible, equitable and affordable public university and special schools system that improves South Dakota's overall educational attainment and research productivity, while enriching the intellectual, economic, civic, social, and cultural life of the state, its residents, and its communities. The Board has the following three strategic goals:

1. Academic success, student outcomes, and educational attainment.
2. Workforce and economic development.
3. Financial health and competitiveness.

The Committee approved the Board's performance measures.

Department of Veterans Affairs

The Secretary of the Department of Veterans Affairs explained their mission is to provide comprehensive care and quality service to veterans and their families, regarding health care, education, disability benefits, long-term care, and burial honors by providing professional customer service and care. The Department has the following three strategic goals:

1. To provide veterans and their family members access to U.S. Department of Veterans Affairs and South Dakota Veterans Affairs benefits.
2. To provide high quality resident directed long term care by maintaining excellence in personal service and treatment in a setting that promotes dignity, independence, and a home-like environment.
3. The South Dakota Veterans' Cemetery lays to rest, with dignity and everlasting tribute, those who answered the call and served our nation with honor.

The Committee and the agency agreed to update some of the information as presented by the agency. Contingent upon making the suggested updates, the Committee approved the Department's performance measures.

Department of Public Safety

The Secretary of the Department of Public Safety advised their mission is to keep South Dakota a safe place in which to live, work, visit and raise a family. The Department's goal is by utilizing partnerships and innovation, our humble professionals will ensure that South Dakota is the safest State in the nation. To accomplish this goal the Department identified ten activities:

1. Homeland Security – coordinating with State and local governments to prevent acts of terrorism.
2. Highway Patrol – protecting our citizens and visitors by promoting public safety through education, enforcement, and example.
3. Highway Safety/Accident Records – providing grants and public information to increase highway safety, compiling accident records and crash data.
4. Office of Emergency Management – assist State, local and tribal governments prepare for, respond to, recover from, and mitigate natural and man-made disasters.
5. Fire Marshal – provide fire prevention services including fire reporting, training, investigation, public education, fire prevention, and code enforcement.
6. 9-1-1 Coordination – providing technical assistance, funding oversight and monitoring while partnering with local governments.
7. Driver's Licensing – issue identification cards; testing, licensing, and regulating commercial and non-commercial drivers.
8. Weights and Measures/Inspections – provide State inspections and weights and measures services for businesses and consumers.
9. Victim's Services – provide for shelter, advocacy, crisis counseling and other services as well as monetary assistance to victims of violent crimes.
10. Wildland Fire – provide protection for resources and the public from wildland fire.

Contingent on making changes to next year's report, the Committee approved the Department's performance measures.

Department of Human Services

The Secretary of the Department of Human Services (DHS) explained their mission is to enhance the quality of life of people with disabilities in partnership with its stakeholders. The Department has the following three goals:

1. DHS will enhance services and increase access.
2. DHS will communicate and fulfill our mission.
3. DHS will increase career satisfaction and employee engagement.

The Committee approved the Board's performance measures.

Bureau of Administration

The Deputy Commissioner of the Bureau of Administration (BOA) explained the mission of the BOA is to provide quality central services to their customers, necessary for the operation of State Government, at the most economical cost. The BOA has the following four goals:

1. Be a customer focused organization that delivers services in a timely and efficient manner meeting the needs of the agencies we support.
2. Ensure we have excellent facilities by providing oversight for new construction and maintenance of state-owned structures.
3. Provide efficient procurement procedures for the acquisition of quality goods and services in support of State government.
4. Provide safe, reliable fleet vehicle solutions that assist State agencies to effectively and efficiently meet their mission.

The Committee delayed action on the metrics and asked the BOA to return with metrics that incorporated Committee suggestions. Due to scheduling conflicts the BOA was unable to attend the October 2021 Committee meeting with their revised metrics.

The Committee passed a motion to authorize the Chair to create a performance measures subcommittee to work with staff to provide better guidance to Executive branch agencies in the development of acceptable performance measures.

Specific Matters Pertaining to Various State Agencies

Department of Education

The Secretary of the Department of Education updated the Committee on the education stabilization funds received to help deal with the impacts of COVID-19. She reported on three areas:

1. Total funding and timelines for spending
2. K-12 focused funds
3. American Rescue Plan priorities

The total COVID-19 federal awards to Department of Education programs have been approximately \$750 million. To put the amount in perspective, the Secretary stated the Departments annual total budget is \$820 million. She broke out the federal awards by the Congressional Acts, obligation dates, total awards and programs funded. She emphasized the COVID-19 stimulus funds were one-time money. The three Congressional Acts providing funds to the Department of Education were:

- American Rescue Plan
- Coronavirus Response and Relief Supplemental Appropriations Act

- Coronavirus Aid, Relief, and Economic Security Act

Each of these Congressional Acts has different obligation deadlines with the latest obligation deadline being the American Rescue Plan with an obligation deadline of September 2024.

The Secretary stated the programs receiving funds were library services, nutrition programs, and K-12 education services. Of the COVID-19 stimulus funds received, K-12 education services received 95% of the funds. She provided examples of how schools are considering spending the funds:

- Academic supports
- Short-term staff (ex. nurses, interventionists)
- Educational technology
- Program start-up (ex. JAG, CTE, robotics, coding)
- Buses
- Ventilation (HVAC, windows, purification)
- Remodeling and construction

She explained what they cannot spend the funds on:

- Debt service outside of the grant period
- Investments or endowments
- Payments to individuals (ex. scholarships)

She added that the State or local educational agencies must use the funds to prevent, prepare for, or respond to the COVID-19 pandemic, including its impact on the social, emotional, mental health, and academic needs of students.

She stated the federal government approved the State Plan for the use of the American Rescue Plan funds on July 7, 2021. Local educational agencies were also to submit their Local Plans by August 20, 2021, for Department of Education approval.

The Secretary also explained how the reimbursement process to school districts will work and how the Department will monitor the programs.

The Committee plans to continue to monitor the use of the COVID-19 stimulus funds through the availability period.

Auditor General

The Committee asked the Auditor General to address the compliance requirements related to COVID-19 stimulus dollars allocated to local governments. He explained that because of the significant increase in the expenditure of federal dollars, many more local governments will be

required to have Federal Single Audits. He anticipates 19 cities, 20 counties, and 18 school districts will be over the \$750,000 federal expenditure threshold and will need to have audits completed in accordance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). He complimented the work completed by the Bureau of Finance and Management in developing an effective process for administering these additional federal dollars.

The Committee plans to continue monitoring the expenditures of COVID-19 stimulus dollars.

Department of Corrections

The Committee invited the Interim Secretary for the Department of Corrections in to answer questions and address concerns with the operations of the State Penitentiary. Members of the Committee had numerous questions about safety, staffing, training, equipment, overtime hours, turnover, vacant positions, and recent terminations at the State Penitentiary. The Secretary explained that he has personally interviewed many of the employees at all three prison locations to understand the issues. He explained several initiatives that have taken place. The first is a three-part financial incentives plan which includes additional staff compensation for night shifts, double-time shift coverage rate for those volunteering for an extra shift, and a retention bonus. The total cost of this incentive program is estimated to be \$3.1 million.

The Secretary also discussed the contract the Department has entered into with CGL Companies to perform a complete study of the following areas:

- Review prison operations, organizational climate, and operations of policy content and compliance systems.
- Review organizational structure, staffing, equipment protocols, ancillary operations in education and industry, and training procedures.
- Provide reports every other week on the project status, findings, and issues, and a final report with recommended strategies.

The Secretary stated that the consultant has begun their work, with on-site work to be completed in December 2021 and a final report with recommendations to follow the on-site work.

In addition, the Commissioner from the Bureau of Human Resources (BHR) described the salary study being completed by BHR, which he hopes to have completed prior to the 2022 Legislative Session.

Committee members asked the Secretary to share the final report with the Committee, to the extent possible, knowing that the report may contain confidential personnel matters. The Secretary understood the role of the Committee and agreed to report back to the Committee at a future date.

South Dakota State Brand Board

The Director of the South Dakota State Brand Board was present to provide the Committee the State Brand Board Annual Report and answer Committee questions. She reported that the State Brand Board receives no General Fund appropriations and operates entirely on brand inspection fees, brand transfers, and renewal fees.

The annual report contained information on the number of livestock inspected during the calendar year, the fees collected, the number of holds, missing or stolen livestock, recovered strays, livestock investigations, and brand registration activity. The Director reported that 1,614,384 head of livestock were inspected in calendar year 2020, as compared to 1,585,035 inspected in calendar year 2019. The Director stated that brands are renewed every five years and the amount of brand renewal fees collected in 2020 was \$2,198,844. The Director reiterated that the Brand Board strives to keep expenses to a minimum and the inspection cost for 2020 was \$1.00 per head plus mileage. The Committee will continue to review the operations of the State Brand Board.

Article 8, Section 7 of the South Dakota Constitution

The Committee asked staff to research whether Article 8, Section 7 of the South Dakota Constitution applied to educational funding provided by the federal government. After consultation with Legislative Research Council's legal staff, the Chair reported back to the Committee that Article 8, Section 7 related to School and Public Lands, not federal spending by the Department of Education.

The Building South Dakota Programs (BSD)

The Director of Administration for the Governor's Office of Economic Development (GOED), provided an overview of the programs under the GOED. The Director explained the two primary purposes of the Economic Development Partnership Program (EDPP): 1) to help local economic development programs with training needs, and 2) to help local economic development programs recapitalize local revolving loan funds. The EDPP awarded four grants during the fiscal year totaling \$368,721.

The Director provided an overview of the Local Infrastructure Improvement Program (LIIP). The program provides grants to assist in funding the construction and reconstruction of infrastructure for the purpose of serving economic development projects. The LIIP awarded seven grants during the fiscal year totaling \$2,380,875. The projected number of jobs created or retained was 1,327.

The Director provided an overview of the Reinvestment Payment Program (RPP). The program is available to assist companies in offsetting the upfront costs associated with relocating or expanding operations and/or upgrading equipment in South Dakota. This program allows for project owners to receive a reinvestment payment, not to exceed the sales and use tax paid on

project costs, for new or expanded facilities with project costs in excess of \$20 million, or for equipment upgrades with project costs in excess of \$2 million. The RPP awarded eleven grants during the fiscal year totaling \$12 million. The projected number of jobs created or retained was 410.

The Director provided an overview of the South Dakota Jobs Grant Program (JGP). The program is available to assist companies in offsetting the upfront costs associated with relocating or expanding operations and/or upgrading equipment in South Dakota. There was one JGP grant awarded during the fiscal year totaling \$18,000. The projected number of jobs created or retained was 2.

The Executive Director of the South Dakota Housing Development Authority (SDHDA) was present to address the Committee regarding the South Dakota Housing Opportunity Fund (HOF). The SDHDA distributes HOF funds geographically throughout the State with 30% of the funds targeted for cities with a population of 50,000 or more and 70% of the funds targeted for the rest of the State. From the applications received in fiscal year 2021, 22 projects and programs were funded, which will assist 162 individuals and families. In fiscal year 2021, \$3 million was awarded by SDHDA.

The Director of the Division of Career and Technical Education with the Department of Education (DOE) reviewed the Workforce Education Fund (WEF) Annual Report and provided an overview of the WEF. The 2018 Legislature passed Senate Bill 81, which limited the fund to providing grants for new and existing secondary career and technical education programs. She discussed the secondary career and technical education grants or workforce education grants, their requirements and provided a list of grants awarded, with four being awarded in 2021. The Committee asked how these projects are monitored. The Director stated that there are six regional specialists that work with the schools to monitor the projects. In response to a Committee question, the Director stated the only disappointment has been the inability to award all the dollars that have been made available. She stated, to date, they have awarded approximately \$5.5 million in grants. The Committee will continue to monitor the outcomes of these programs in the future.

State Board of Internal Control

The Commissioner of the Bureau of Finance and Management (BFM) and the State Internal Control Officer presented the annual report of the State Board of Internal Control (SBIC) and provided the Committee an update on the activity of the SBIC. They presented highlights from the reporting period, which included:

- Three subrecipient audits reviewed
- Implemented the Internal Control Framework to four agencies
- Received GFOA's Awards for Excellence

The SBIC plans to start working with the Department of Corrections and the Department of Military in fiscal year 2022. The Committee had additional questions about federal compliance findings contained in subrecipient audit reports and what efforts have been made to ensure subrecipients understand their responsibilities for federal program compliance. The Auditor General explained how subrecipient audit reports, containing federal compliance audit findings, are communicated to the State pass-through entity. The Commissioner advised that the SBIC added an additional step to meet with the State agency, if a subrecipient audit finding was issued, to review corrective actions and ensure they are being implemented.

The Committee will monitor the State Board of Internal Control's activity on an annual basis.

Board of Regents

University Centers

In accordance with South Dakota Codified Law 13-51-1.4, the Committee reviewed the annual accountability reports of Black Hills State University – Rapid City and the Community College for Sioux Falls. The Vice President for Finance and Administration with Black Hills State University described how Black Hills State University – Rapid City was self-sustaining and discussed upcoming changes they are working on. The Executive Director of the Board of Regents stated they continue to grow as a system by improving relationships with the Board of Technical Education, as well as private partners. The Committee plans to continue monitoring the financial condition of the University Centers.

Compliance with SDCL 13-51-1.3

The Executive Director of the Board of Regents advised that they are complying with the nine tenets laid out in SDCL 13-51-1.3.

The Committee will continue to monitor the Board's activities.

Appraiser Certification Program

The Committee invited the Secretary of the Department of Labor and Regulation in to provide information about the Appraiser Certification Program. The Committee received information about the various categories or levels of appraisers and the qualifications required for each level in South Dakota. These levels are not unique to South Dakota but are required by federal regulations for all states. Concerns were raised by the Committee as to whether special treatment was provided to the Governor's daughter, during her appraiser application process. The Secretary assured the Committee that the Governor's daughter received no special treatment and went through the same application review process as any other applicant. The Committee took action to request additional information relating to the Governor's daughter's application.

The Committee invited the former Director of the Appraiser Certification Program in to answer Committee questions. The former Director, through her attorney, declined to come to the meeting. The Committee took action to request additional information from the former Director, in the form of written questions.

The Committee invited the President of the Professional Appraisers Association of South Dakota in to provide their perspective on the operation of the State program and on the applicable federal regulations for the program. The President testified that she was disappointed in the lack of communication of proposed administrative rule changes from the State program. She felt the industry was not approached for their input like they had been in the past.

The Committee plans to request additional information and continue to review the Appraiser Certification Program.

Public Entity Pool for Liability Fund

The Committee invited the Director of the Office of Risk Management in to provide information about the Public Entity Pool for Liability (PEPL) Fund. The Director explained there are two types of risks covered by the PEPL Fund: 1) automobile liability, and 2) general liability. The Director explained that all State agencies participate in the PEPL and are billed premiums based upon actuarially determined amounts. The Committee asked numerous questions about the settlement paid to the former Director of the Appraiser Certification Program. The Director explained that he was presented the claim by the Bureau of Human Resources and that it is ultimately his responsibility to determine when to take a case to court and when to settle the case outside of court. The Director explained that the claim was paid from the PEPL Fund. He explained there is \$1 million per occurrence coverage. The first \$500,000 of loss is covered by the PEPL and the next \$500,000 is covered by an outside insurance company. The Committee asked questions about the use of outside council, the settlement process, and requested and received a report of paid claims over the last three years. No further action was taken by the Committee on this topic.

Department of Social Services

The Committee invited the Secretary of the Department of Social Services in to provide an update on the hiring of a person to monitor the quality of care provided to youth. Three requests for proposals have gone out with the last one closing last week. The Secretary feels the one vendor that submitted will be a good fit and they hope to have them in place by session. She reviewed the monitor's service area and advised having the monitor in place should add additional oversight, transparency, improve outcomes and provide an outside check and balance system. The Committee plans to monitor the progress and review reports when available.

South Dakota 9-1-1 Coordination Board

The Director of the Division of Criminal Justice Services for the Department of Public Safety presented the 9-1-1 Coordination Board Report, which is submitted each year. The Board primarily focused on its Next Generation 9-1-1 (NextGen 9-1-1) project implementation with the deployment of statewide Text-to-9-1-1 service for all counties. The next phase of the project is the migration to geospatial call routing, expected to be implemented in early FY2022.

The Board completed 12 onsite reviews of Public Safety Answering Points (PSAPs) and all were in compliance. The Board also reviewed and approved 74 annual financial reports submitted by counties and PSAPs.

The Committee approved the 9-1-1 Annual Report and will monitor their activity on an annual basis.

South Dakota Board of Technical Education Accountability Report

The Executive Director of the Board of Technical Education and the four Presidents from the technical colleges presented to the Committee. The Director reported on the system's enrollment, retention rate, and graduate placement. According to the system's fall 2021 enrollment report, unduplicated enrollment (full-time, part-time and dual-credit) at the four technical colleges decreased by 43 students (7,177 students to 7,134).

The Director explained that the retention rate measures the number of students who enroll in an institution one fall and return to the institution the following fall. The retention rate for fall of 2020 was 78.2%. The Presidents described some of the challenges their campuses face with differing student populations.

The system's placement rate for 2020 was 99.2% (2,085). Among those graduates who identified themselves as "employed" (1,775), 86.9% (1,544) are employed in South Dakota. Among those employed in South Dakota, 90.5% (1,398) are employed in their field.

The Director thanked the Legislature for the additional instructor salary support funding and maintenance and repair funding. He advised that proposed revisions to the administrative rule regarding the distribution model will be considered in November. The Committee accepted the annual accountability report.

Game, Fish and Parks annual report of habitat stamp revenue and expenditures

During the 2020 session, the Legislature authorized a habitat stamp fee on resident and nonresident hunting and fishing licenses. Revenue generated by the fee is to be used to enhance terrestrial habitat on public lands, provide additional access to private lands, and enhance aquatic habitat on public waters. The legislation requires the Department of Game, Fish and Parks to deliver an annual itemized expenditure report to the Committee. The

Director of Administration presented the first annual report to the Committee. He provided information on the terrestrial habitat and access projects and the aquatic habitat and access projects completed during the reporting period totaling \$1,061,262. In addition, a map of the locations of these projects throughout the State was presented. The Committee asked the Department to provide a more detailed report to fulfill the statutory requirement of providing an annual itemized expenditure report. The Department appeared a second time with a revised report containing details acceptable to the Committee. The Committee approved the revised report.

Report on the State Veterans Cemetery

The Committee invited the Deputy Secretary of the Department of Veterans Affairs to provide an update on the South Dakota Veterans Cemetery in Sioux Falls. He provided Cemetery statistics as well as a pictorial tour of the Cemetery. Committee members voiced concerns brought forward by veterans about what was envisioned for the Cemetery and the results. The Committee may revisit this topic if the concerns have not been addressed.

Conflicts of Interest

Bureau of Human Resources

The Committee reviewed the annual compilation of conflict of interest authorizations called for in House Bill (HB) 1064, passed during the 2015 Legislative Session. Under HB 1064 a governing body may authorize an officer or employee of a State agency to benefit from a contract if the contract is fair, reasonable, and not contrary to the public interest; these authorizations are required to be filed with the Commissioner of the Bureau of Human Resources and presented to the Committee annually. The Committee reviewed seven approved authorizations (waivers) for the July 1, 2020 through June 30, 2021 reporting period. The Committee approved the report and plans to review approved waivers annually.

Auditor General

The Auditor General provided information on the changes implemented in 2017 with the passage of House Bill 1170. This legislation defined what constitutes a conflict, narrowing it down to an interest in a contract or direct benefit from a contract. The Auditor General reviewed the report on compiled authorizations to derive a direct benefit from a contract and advised that there were 19 State board members who had submitted waivers. He did not see any concerns when viewing from an auditor's perspective. The Committee approved the report and plans to review approved waivers annually.

Juvenile Corrections

The Committee is charged with the responsibility to review any findings of abuse or neglect of juveniles in a juvenile correctional facility.

Since the Star Academy was closed on April 8, 2016, there were no Juvenile Corrections Monitor reports to the Committee during the 2021 interim. Senate Bill 82, 2017 Session, required the Department of Corrections to compile a confidential report of all allegations of abuse and neglect of a juvenile under the jurisdiction of the Department of Corrections within private contracted facilities. The Director of Juvenile Services presented the report for the time period from July 1, 2020 through June 30, 2021. Nineteen cases were reported to the Committee during the period. The Committee will continue to review these types of findings.

Audit Reports

South Dakota Single Audit Report for FY20

The Committee reviewed the South Dakota Single Audit Report and other separately issued audit reports for the fiscal year ended June 30, 2020.

Financial and compliance audits involve testing financial transactions of the State to determine that money is properly accounted for and expended in accordance with state and federal laws and regulations. All audits conducted of State agencies were consolidated and reported in the Single Audit Report. The Single Audit Report includes the Comprehensive Annual Financial Report for the State of South Dakota prepared by the Bureau of Finance and Management, a schedule showing the federal awards administered by the State and related expenditures, and audit findings and recommendations issued by the Department of Legislative Audit.

The Single Audit Report was issued in accordance with auditing standards generally accepted in the United States of America, Government Auditing Standards issued by Comptroller General of the United States, U.S. Office of Management and Budget (OMB) Uniform Guidance, and South Dakota Codified Laws. A copy of this report may be obtained from the Department of Legislative Audit.

The Committee reviewed financial reporting, internal control and compliance deficiencies written on seven State organizations, containing ten recommendations for corrective action. Two recommendations related to compliance and/or internal control findings relating to federal laws and regulations; and eight recommendations related to inadequate internal control procedures over receipts, revenue collections, expenditures, and financial reporting. The following represents the State agencies with audit findings and recommendations from fiscal years 2020 and 2019 and the implementation of fiscal year 2019 audit recommendations:

<u>State Agency</u>	Recommendations		
	Fiscal Year <u>2020</u>	Fiscal Year <u>2019</u>	Fiscal Year 2019 <u>Implemented</u>
Department of Revenue	2	3	1
Soybean Research & Promotion Council	1	3	2
South Dakota Corn Utilization Council	1	2	1
Bureau of Finance and Management	2	0	N/A
Department of Human Services	0	1	1
Department of Labor and Regulation	2	0	N/A
Department of Transportation	1	0	N/A
Board of Economic Development	1	0	N/A

N/A This agency did not have any FY2019 audit recommendations.

The Committee had additional questions regarding the Statewide Financial Reporting audit findings relating to ineffective internal controls over financial reporting and the preparation of the Schedule of Expenditures of Federal Awards. The Director of Accounting Analysis and Financial Reporting for the Bureau of Finance and Management appeared before the Committee and explained the corrective action plans the Bureau is implementing. The Department of Legislative Audit will follow-up on the audit findings and report back to the Committee regarding the implementation of the corrective action.

South Dakota High School Activities Association

The Executive Director of the South Dakota High School Activities Association (SDHSAA) reviewed the FY20 audit report with the Committee. The Director advised the Committee that COVID-19 had a significant negative impact on revenues toward the end of fiscal year 2020. Due to COVID-19, SDHSAA cancelled spring 2020 state events resulting in a loss of net revenue in the amount of approximately \$322,000. He reported that there were no audit findings, and a clean opinion was issued by the auditors.







Senator Kyle Schoenfish, Chair
Government Operations and Audit Committee

Bureau of Finance and Management

Agency's Mission Statement: Ensuring the efficient and responsible management of State government, and advising the Governor on overall fiscal policy.

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Maintain the best public issuer credit ratings possible (AAA/Aaa).

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. Maintain a structurally balanced budget.									
i. Governor recommends a budget with ongoing receipts equal to or greater than ongoing expenses.			Yes	Yes	Yes	Yes	Yes	Yes	Yes
ii. Legislature adopts a budget with ongoing receipts equal to or greater than ongoing expenses.			Yes	Yes	Yes	Yes	Yes	Yes	Yes

Activity B. Maintain budget reserve at ten percent of general fund spending.



i. Combined balance of the budget reserve fund and the general revenue replacement fund as a percentage of general fund spending.			12.4%	10.0%	11.1%	10.6%	10.8%	11.1%	12.4%
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Activity C. Issue the Comprehensive Annual Financial Report within six months.

i. Number of months to issuance after the close of the fiscal year.			5.99	6.00	5.97	5.93	5.90	5.64	5.99
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Agency comments regarding the accomplishment of Goal 1: South Dakota has had the best possible ratings from Standard & Poor's, Moody's, and Fitch since 2016. Higher ratings typically allow issued bonds to carry a lower interest rate, providing interest savings to issuers that translate through to the State of South Dakota.

Goal 2. Implement internal controls statewide.

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. Implement internal controls for two state agencies annually.									
i. Number of state agencies implemented.			0	2	N/A	N/A	N/A	2	0




Agency comments regarding the accomplishment of Goal 2: The State Board of Internal Control adopted the Statewide Internal Control Framework in January of 2019. A software solution to help manage the administrative work of the framework was selected and implemented in Spring 2020. The framework has been implemented at the Bureau of Finance and Management, the Department of Revenue, the Department of Agriculture, the Department of Game, Fish and Parks, the Department of Tourism, and the Department of Tribal Relations.

Goal 3. Seek additional ways to make government financial information more accessible to the public.

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. Complete two new transparency initiatives annually.									
i. Number of transparency initiatives completed.			4	2	2	1	2	3	4

Agency comments regarding the accomplishment of Goal 3: In FY2020, Open Budget functionality was added to OpenSD, as well as functionality showing coronavirus stimulus spending. In addition, historical budget webpages were reorganized in an easier-to-use format, and budget narrative and performance indicator data was made directly available to the Legislative Research Council.

Status Indicator:

-  = Green - the historical trend line indicates improved performance and the target has been met.
-  = Yellow - the historical trend line indicates improved performance, but the target has not been met.
-  = Red - the historical trend line does not indicate improved performance and the target has not been met.

Department of Labor and Regulation

MISSION

To promote economic opportunity and financial security for individuals and businesses through quality, responsive, and expert services; fair and equitable employment solutions; and safe and sound business practices.

GOALS

1. Deliver quality, responsive, and excellent services.
2. Achieve a skilled workforce contributing to economic development by serving businesses, job seekers, and community partners.
3. Ensure safe and sound business environments and practices.
4. Develop a sustainable, skilled Department of Labor and Regulation workforce.

ACTIVITIES AND PERFORMANCE MEASURES

Goal 1: Deliver quality, responsive, and excellent services.

Activity A: Delivery services efficiently.

- i. Percentage of reemployment assistance first benefit payments made in 28 days

Activity B: Delivery services satisfactorily.

- i. Overall Workforce Innovation and Opportunity Act (WIOA) participant satisfaction rate
- ii. Overall Workforce Innovation and Opportunity Act (WIOA) business satisfaction rate

Goal 2: Achieve a skilled workforce contributing to economic development by serving businesses, job seekers, and community partners.

Activity A: Partner with the Department of Education to implement a regional model of career advising and work-based learning opportunities for students.

- i. Number of school districts served
- ii. Number of schools served
- iii. Number of students served
- iv. Number of work-based learning experiences
- v. Number of students engaged in soft skills development training

Activity B: Build the skillset of South Dakota residents to meet business' workforce needs.

- i. Registered Apprenticeship programs in South Dakota
- ii. Program participants receiving workforce training opportunities
- iii. Individuals served by Job Service offices

Activity C: Connect businesses to untapped labor pools.

- i. Recruitment of out-of-state workforce
- ii. Job placement of individuals with significant barriers to employment
- iii. Job openings advertised to assist businesses
- iv. Employment of Wagner-Peyser participants 2nd quarter after exit

Goal 3: Ensure safe and sound business environments and practices.

Activity A: Provide regulatory and supervision oversight.

- i. Examinations of banks, trust companies, insurance companies, broker/dealers, investment advisors and licensed entities
- ii. Consumer complaints received and processed

Activity B: Ensure compliance with federal and state regulations and laws.

- i. One-Stop certifications completed
- ii. Human Rights charges received/resolved
- iii. Wage and Hour complaints received/resolved
- iv. Division of Banking accreditation for safety and soundness required every five years
- v. Division of Banking accreditation for mortgage lenders in the next five years
- vi. Division of Insurance accreditation every five years

Goal 4: Develop a sustainable, skilled Department of Labor and Regulation workforce.

Activity A: Recruit and retain qualified candidates.

- i. Average time to fill staff vacancies (days)
- ii. Percent of annual employee turnover
- iii. Longevity comparing statewide average to DLR

Activity B: Maintain employee competency.

- i. Monthly percent of staff using learning management system (to be implemented Fall 2021)
- ii. Average employee competency level (to be measured by learning management system)
- iii. Continuous Performance Review Process average ratings

Department of the Military

Agency's Mission Statement: The South Dakota National Guard provides ready forces to support global and domestic requirements under the direction of civil authority.

Vision: The most professional, competent and reliable state National Guard organization in the United States of America.

Adjutant General's Priorities: Taking excellent care of our Soldiers, Airmen and families and Readiness!

Goal 1: Provide Support for Service Members, Families, and Employers

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. Individual Soldier Readiness (Medically ready MRC 1/2, trained strength) South Dakota Army Guard (SDARNG)			87%	90%	90%	89%	93%	93%	87%
Activity A. Individual Airman Readiness – (Individual Medical Readiness –IMR) South Dakota Air National Guard (SDANG)			80%	80%	85%	77%	76%	75%	80%
Activity B. Develop and Maintain Family Readiness (% units with appointed and trained FRG Lead Vol) SDARNG			95%	92%	90%	93%	82%	88%	95%
Activity B. Develop and Maintain Family Readiness (% units with Appointed and trained FRG Active Key Volunteers) SDANG			78%	80%	67%	67%	78%	78%	78%
Activity C. (1)Develop and Maintain Employer Relationships ESGR Concerns - USERRA Inquiries			59	NA	NA	NA	NA	13	59
Activity C. (1 a)Develop and Maintain Employer Relationships ESGR Concerns - USERRA Cases			4	NA	NA	NA	NA	4	4
Activity C. (2)Develop and Maintain Employer Relationships Employer Engagement			1309	NA	NA	318	1483	794	1309
Agency comments regarding the accomplishment of Goal 1: The South Dakota National Guard considers this goal as very important that is why it is my number one priority. We are trending in the right direction for all of these measures. We know if we have ready Airmen and Soldiers, a strong family readiness group, and well informed employers we are going to be well prepared to serve the Citizens of South Dakota and our Country.									

Goal 2. Achieve Readiness and Relevancy

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. Achieve Personnel Readiness (DMOSQ Trained Strength) SDARNG			92%	95%	94%	94%	93%	94%	92%
Activity A. Achieve Personnel Readiness (Task Qualified Training (TQT)) SDANG			98%	95%	92%	94%	90%	99%	98%
Activity B. Achieve Training Readiness SDARNG			22	23	NA	NA	NA	NA	22
Activity C. Achieve Sustainment Readiness (Equipment Readiness) SDARNG			98%	95%	98%	96%	96%	99%	98%
Agency comments regarding the accomplishment of Goal 2: This goal show that we are well prepared to conduct our state and federal mission when called upon.									

Goal 3. Human Capital Management

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. Acquire and Recruit (End Strength %) SDANG			100%	100%	100%	102%	100%	100%	100%
Activity A. Acquire and Recruit (End Strength %) SDARNG			105%	100%	101%	102%	105%	106%	105%
Activity B. Retention (Total Reenlistment Success Rate) SDARNG			81%	85%	82%	83%	80%	81%	81%
Activity B. Retention (Total Reenlistment Success Rate) SDANG			94%	92%	95%	95%	100%	89%	94%
Agency comments regarding the accomplishment of Goal 3: The South Dakota National Guard continues to maintain their required strength.									

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= Red - the historical trend line does not indicate improved performance and the target has not been met.

Department of Health

Agency's Mission Statement: Working together to promote, protect, and improve health









Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Enhance the accessibility, quality, and effective use of health resources

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	CY16	CY17	CY18	CY19	CY20
<u>Activity A. Depression Screening of New Mothers</u> i. Increase the percentage of mothers on the South Dakota WIC program who are screened for depression using a validated tool within 3 months of child's birth from 98% to 100% by 2025.			98%	100%	0%	0%	0%	0%	98%
<u>Activity B. Testing for Blood Sugar or Diabetes</u> i. Increase the percentage of those without diabetes who have had a test for blood sugar or diabetes within the past 3 years			55.3%	59%	56.4	52.8	55.8	51.4	55.3
<u>Activity C. Telehealth</u> i. Increase access to telehealth or mobile health options in five additional community health offices by 2025.			7	12	0	0	0	0	7

Agency comments regarding the accomplishment of Goal 1: Activity A: New tool implemented; no prior year data.

Goal 2. Provide services to improve public health

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	CY16	CY17	CY18	CY19	CY20
<u>Activity A. High School Tobacco Use</u> i. Reduce high school tobacco use (cigarettes, cigars, smokeless, and electronic) from 30.3% in 2015 to 20% by 2025			29.7%	20.0%	30.3%	30.3%	30.3%	29.7%	29.7%
<u>Activity B. Obesity in Children</u> i. Reduce the percentage of WIC participants aged 2 through 4 with obesity from 15.6% in 2019 to 14% by 2025			16.9%	14.0%	14.9%	15.1%	15.7%	15.6%	16.9%
<u>Activity C. Overweight/Obesity in School-aged Children</u> i. Reduce the percentage of school-aged children who are overweight or obese from 32.7% during the 2017-2018 school year to 30.5% by the 2023-2024 school year.			32.7%	30.5%	32.1%	31.7%	32.7%	32.7%	
<u>Activity D. Influenza Vaccination</u> i. Increase influenza vaccination among individuals aged 6 months and older from 47.7% during the 2017-2018 flu season to 60% by the 2022-2023 flu season.			58.7%	60.0%	56.6%	53.9%	47.7%	54.4%	58.7%

Department of Health

Activity E. Infant Mortality

i. Reduce infant mortality from 6.3 infant deaths per 1,000 live birth (2014-2018) to 5.8 per 1,000 live births (2020-2024).



6.5

5.8

6.6

6.5

6.3

6.5

6.5

Agency comments regarding the accomplishment of Goal 2: Activity C - Survey conducted every two year; due to COVID, data not collected in CY20. **Activity E** - Data is 5-year rate (CY16 - 2012-16; CY17 - 2013-17; CY18 - 2014-18; CY19 - 2015-19; CY20-2016-20); 2020 data is provisional.

Goal 3. Plan, prepare, and respond to public health threats

Activity A. Emergency Operations Plan Exercises

i. Conduct or participate in three Department of Health Emergency Operation Plan exercises to prepare for all potential public health threats by 2025.



1

3

0

0

0

0

1

Activity B. Statewide Emergency Capability Plans

i. In collaboration with the SD Health Care Coalition, develop statewide emergency capability plans addressing pediatric, burns, infectious disease, chemical, and radiological public health emergencies by 2025.



2

5

0

0

0

0

2

Activity C. Training of Department of Health Staff

i. Train 100% of identified Department of Health Staff on emergency response plans by 2025.



2%

100.0%

0%

0%

0%

0%

2%

Agency comments regarding the accomplishment of Goal 3:

Goal 4. Maximize partnerships to address underlying factors that determine overall health

Activity A. Suicide

i. Reduce suicide attempts with severe injury resulting in hospitalization from 100.1 per 100,000 in 2014-2018 to 90.1 per 100,000 by 2025.



91.5

90.1

110.8

107.4

100.1

91.5

Activity B. Opioid Deaths

i. Reduce the drug-related death rate due to opioids for South Dakota from 3.6 per 100,000 in 2014-2018 to 3.1 per 100,000 by 2025.



4.1

3.1

3.5

3.8

3.6

3.7

4.1

Activity C. Motor Vehicle Deaths in Children and Adolescents

i. Decrease the mortality rate from motor vehicles collisions in children and adolescents under the age of 18 from 7.3 per 100,000 in 2014-2018 to 6.9 per 100,000 by 2025.



7.7

6.9

6.2

6.7

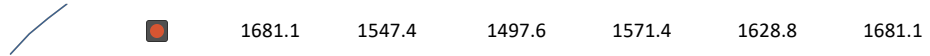
7.3

7.7

Department of Health

Activity D. Hospitalizations Due to Falls

i. Reduce the rate of hospitalizations due to falls in individuals age 65 and older from 1628.8 per 100,000 in 2014-2018 to 1547.4 per 100,000 by 2025.



Agency comments regarding the accomplishment of Goal 4: Activity A, C and D: Data is 5-year rate (CY16 - 2012-16; CY17 - 2013-17; CY18 - 2014-18; CY19 - 2015-19); CY20 is not yet available **Activity B:** Data is 5-year rate (CY16 - 2012-16; CY17 - 2013-17; CY18 - 2014-18; CY19 - 2015-19; CY20-2016-20); CY20 is provisional.

Goal 5. Strengthen and support a qualified workforce

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	CY16	CY17	CY18	CY19	CY20
Activity A. Competency Training									
i. Increase the percent of Department of Health employees completing training on at least three department competencies to 80% by 2025.			0	80.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Activity B. Centralized Training Platform									
i. Increase the number of DOH staff that utilize a centralized training platform to 100% by 2025.			65.9%	100.0%	0.0%	0.0%	0.0%	0.0%	65.9%
Activity C. Community Health Worker Core Competency Training									
i. Increase the number of academic and/or other institutions offering Community Health Worker Core Competency Training from 1 to 4 by 2025.			2	4	0	0	0	1	2

Agency comments regarding the accomplishment of Goal 5: Activity A: New measure; no prior year data. Activity B: 2020 was the first year of implementation; progress was slowed by COVID-19 response.























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Department of Revenue











Agency's Mission Statement: Serving South Dakota to provide fair, efficient, and reliable revenue administration with our partners to help fund public service statewide.

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor’s Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Provide consistent service to every customer, every time. Be adaptable with our customer service methods.									
	Performance Measures				Historical Data Section				
	Trend	Status	Actual FY21	FY22 Target	FY16	FY17	FY18	FY19	FY20
Activity A. Provide Timely Service and Response to Customer									
i. Motor Vehicle Title Turnaround in calendar days			18.3	<= 15	12.2	14.1	13.2	16.5	16.7
ii. Business Tax and Motor Vehicles Abandoned Call Rate									
iia. Business Tax Abandoned Call Rate			2.8%	< 3%	9.7%	5.6%	4.0%	2.8%	4.2%
iib. Motor Vehicles Abandoned Call Rate			3.5%	< 3%	11.0%	4.3%	7.2%	3.8%	4.5%
iii. Business Tax and Motor Vehicles Abandoned Chat Rate									
iia. Business Tax Abandoned Chat Rate			0.9%	< 3%					2.4%
iib. Motor Vehicles Abandoned Chat Rate			1.6%	< 3%					0.7%
Activity B. Employ, train, and retain qualified staff									
i. BHR Bi-Annual Employee Survey Response Rate			79%*	80%		87%		79%	
ii. % of Engaged DOR Employees from BHR Bi-Annual Survey			72%*	80%		84%		72%	
iii. Courses Completed by Employees in the Learning Management System (3% Annual Increase)			1384	1426				514	2044
iv. Employee Turnover Percentage			8%	< 10%	11.4%	10.9%	15.9%	14.6%	12.7%
Activity C. Provide Service Channel Options to Meet Customer Needs									
i. Business Tax Returns filed electronically			80%	>= 82%	59%	66%	69%	73%	77%
ii. Business Tax Revenue collected electronically			95%	>= 96%	88%	91%	92%	93%	95%
iii. Motor Vehicle Registrations Renewed via SST or SD Cars			16%	>= 20%	8%	8%	10%	11%	16%
iv. Property Tax Forms Submitted Electronically to DOR and Counties			4,770	4,913				1	2,678
Agency comments regarding the accomplishment of Goal 1: A-ii. Previous goal was 5%. Goal was reset to 3% after attaining previous benchmark. A-iii. DOR implemented Chat system for call centers in FY20. B-i and B-ii. Results are from the BHR facilitated survey. Since BHR did not do the FY21 employee engagement survey, the FY21 numbers are the FY19 numbers. B-iii. DOR implemented new LMS system in FY19 to increase employee engagement. Many Department projects will result in new course offerings for employees. C-i. DOR met FY21 goal of 80% electronic filing and has decided to set a push goal of 82% for FY22. C-ii. 80% of the returns filed electronically make up 95% of the Business Tax revenue collected. C-iii. Implementing Self-Service Terminals has helped to increase electronic registration renewals. With the upcoming release of the new SD Cars system, the Department will look to significantly increase electronic renewals. C-iv. DOR uses electronic submission for forms submitted centrally and offers the technology to the counties and taxpayers to utilize at their own discretion and preference.									

Department of Revenue

Goal 2. Ensure that all DOR stakeholders understand the laws and regulations through education efforts.

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	FY22 Target	FY16	FY17	FY18	FY19	FY20
Activity A. Business Partner Outreach and Education									
i. Number of DOR Provided Seminars and Classes (Increase 5% Annually)			41	>= 90	64	101	104	73	33
ii. Attendees of DOR Provided Seminars and Classes (Increase 5% Annually)			1045	>= 1,547	1206	1960	2104	1005	954
iii. Routine License Reviews									
iiia. Business Tax License Reviews			155	>= 250	262	217	336	251	217
iiib. Motor Fuel License Reviews				100					
iiic. Tobacco Inspections/License Reviews			190	600	749	980	776	710	472
v. Property Tax Division Hours Spent on Education (Increase 5% Annually)			136	143				56	86

Agency comments regarding the accomplishment of Goal 2:

A-i. Due to COVID-19 and fewer requests for education from businesses and organizations, the number of course offerings was smaller in FY20 and FY21. DOR offered more online educational opportunities than we have in the past and the class sizes for these online events was higher than average in-person events. DOR will move forward with a variety of in-person and online.

A-iii-a. Reviews decreased in FY21 due to COVID-19.









A-iii-b. DOR identified Motor Fuel license reviews as a metric to track going forward. Initial target of 100 will be re-evaluated after the first year of tracking.

A-iii-c. Tobacco Inspections are completed in accordance with the Master Settlement Agreement. Decreased inspections in FY20 due to not visiting business as frequently during COVID-19.

A-v. New metric identified to track going forward. Goal will be re-evaluated at the end of FY22. FY20 was higher than previous years due to extra education hours for agriculture adjustment protocols.

Department of Revenue

Goal 3. Provide critical funding for state and local governments through compliance and efficiency.

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	FY22 Target	FY16	FY17	FY18	FY19	FY20
Activity A. Compliance Efforts.									
i. Percentage of Audit Hours Spent on Zero Audits			14%	<= 10%	9.07	9.75	12.98	11.78	12.67
ii. Percentage of Quality Distinct Audits			72%	>= 75%	56%	57%	63%	69%	71%
iii. Business Tax Return Delinquency Rate			9.2%	<= 10%		9.4%	9.8%	10.1%	10.2%
iv. Motor Fuel Tax Return Delinquency Rate				TBD					
v. Tax Discovery Leads Closed			29,843	30,000	25,358	26,103	35,133	25,818	22,688
vi. Property Tax Division - Form Turnaround Time (County Levy) in Calendar Days (Target: Decrease 3% Annually)			35	34					43

Activity B. Funding Improvement or Measurement

i. Increased General Fund Revenues through Lottery Sales									
ia. Instant Ticket Net Proceeds (Target: Increase 5% Annually)			\$6,561,288	\$6,889,352	\$5,517,739	\$5,240,567	\$6,399,685	\$6,896,813	\$5,053,476
ib. On-line Net Proceeds (Target: Increase 5% Annually)			\$7,416,974	\$7,787,823	\$9,137,710	\$7,044,532	\$8,395,339	\$8,256,004	\$6,894,061

Agency comments regarding the accomplishment of Goal 3:

A-i. DOR Audit Division acquired software and created an audit selection position to decrease the zero audit percentage.

A-iv. Motor Fuel delinquency is a new metric identified. DOR will begin tracking in FY22 and set the target once a baseline is established.

A-vi. County Levy Form turnaround time is a new metric for DOR. The Department will work to decreased until the new system is launched. After launch in FY24, the target will approach 15 days.

B-i. The decrease from FY19 to FY20 in Instant Tickets net proceeds was due to system upgrades.

B-ib. On-line Net Proceeds are driven by jackpots. This revenue can be unpredictable.

Department of Corrections

Agency's Mission Statement: To protect the citizens of South Dakota by providing safe and secure facilities for juvenile and adult offenders committed to our custody by the courts, to provide effective community supervision to offenders upon their release, and to utilize evidence-based practices to maximize opportunities for rehabilitation

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1: Operate safe and secure facilities

	Performance Measures				FY17	FY18	FY19	FY20	FY21
	Trend	Status	Actual	Target					
Activity A. Protect inmates and staff from injury and assault									
i. Inmate on inmate assaults with serious injuries/100,000 inmate days			1.7	1.1	1.5	1.2	1.9	1.4	1.7
ii. Inmate fights/100,000 inmate days			14.9	11.9	11.7	10.9	12.7	14.7	14.9
iii. Staff assaults/100,000 inmate days			2.3	1.9	3.0	1.9	2.9	2.9	2.3

Activity B. Minimize the use of restrictive housing

i. Percentage of inmates held in restrictive housing			2.5%	2.3%	2.5%	1.5%	1.9%	1.8%	2.5%
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Agency comments regarding the accomplishment of Goal 1: Rate increases may be due to decreased inmate population.

Goal 2: Provide effective community supervision

	Performance Measures				FY17	FY18	FY19	FY20	FY21
	Trend	Status	Actual	Target					
Activity A. Provide community supervision consistent with									
i. Parole Agent caseloads are within 5% of budgeted.			68	60	61	65	67	68	68
ii. Percentage of cases where Parole Agents meet contact standards			95%	100%	98%	99%	98%	97%	95%
iii. Percentage of cases where Juvenile Corrections Agents meet contact standards			100%	100%	100%	100%	100%	100%	100%

Activity B. Community supervision minimizes use of revocations

i. Percent of parole cases with revocation reports			20%	15%	18%	20%	21%	22%	20%
ii. Percentage of juvenile cases with revocations			4%	5%	5%	3%	6%	7%	4%

Agency comments regarding the accomplishment of Goal 2: Contact standards within 3% of target are considered compliant.

Goal 3: Utilize evidenced-based practices to support rehabilitation

	Performance Measures				2013	2014	2015	2016	2017
	Trend	Status	Actual	Target					
Activity A. Measure recidivism to monitor system impacts									
i. Adult three-year recidivism rate			44.7%	37.8%	40.6%	39.6%	43.1%	44.0%	44.7%
ii. Juvenile three-year recidivism rate			24.5%	37.7%	41.8%	38.9%	28.2%	33.3%	24.5%
					FY17	FY18	FY19	FY20	FY21
Activity B. Minimize out-of-home placement lengths of stay									
i. In-state Group Care average length of stay			4	5	4	4	4	4	4
ii. In-state Residential/Intensive Residential Treatment average length of stay			10	13	15	17	15	12	10
iii. Out-of-State Placement average length of stay			6	7	7	8	7	5	6

Agency comments regarding the accomplishment of Goal 3: Three-year recidivism rate. 2017 is the most recent year where all releases have been out for three years.

Status Indicator:

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Department of Tribal Relations

Agency's Mission Statement: Recognize the nine sovereign tribes who share our geographical borders as distinct political entities. Support their self-governance efforts. Work with their chosen leaders in a cooperative government to government relationship in order to improve the quality of life for all South Dakota citizens. Identify, develop and/or coordinate federal state and local resources to increase partnerships between state and tribal agencies. Introduce and/or support any legislation that would improve the quality of life for the Native American population in the state.



Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

		No Data Available								
Goal 1: Enhance the Department of Tribal Relations communications.										
		Performance Measures				Historical Data Section				
		Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. •Consistently send information to tribes										
i. Number of emails sent containing important information from state and federal agencies to Tribal Chairmen from Department Secretary		/		76	52				30	76
ii. Number of emails sent via SD Tribal Leader ListServ				45	52					45
iii. Increase social media utilization to acquire more followers										
	Facebook followers	/		18%	10%			2597	3348	3940
	Twitter followers	/		10%	10%	900	1095	1236	1367	1503
	Instagram followers	/		32%	10%				145	192
iv. Send Department newsletter to tribal leaders		/		4	4	12	12	12	8	4
Activity B. •Employ and train pro-active Tribal Constituent Service Representative to provide excellent customer service										
i. Number of staff training hours				344	300					344
ii. Percentage of resolved incoming calls				100%	100%					100%
iii. Categories of incoming constituent calls to frontline staff										
		See chart below for visual representation of data.								
	Contact/Information Request			14%	-					14%
	DOT/Tourism			14%	-					14%
	Education/History			7%	-					7%
	Event Inquiry/Media Request			15%	-					15%
	Call for Executive Management			14%	-					14%
	Law Enforcement/Corrections			5%	-					5%
	Policy/Legislative Question			4%	-					4%
	Revenue/Labor			4%	-					4%
	Social Services/Child Welfare/Health			6%	-					6%
	Tribal Enrollment/ID			14%	-					14%
	Veteran Affairs			1%	-					1%
Activity C. •Participate in inter-department workgroups to provide information, consultation, and communication to tribes and urban Indian populations										
i. Number of workgroups participated in										
	Ongoing			35	25					35
	One-Time			20	10					20
ii. Strategic Communication Facilitation				14	12					14

Department of Tribal Relations











Communication, staffing changes, and improvements have resulted in better government to government engagement, agency interaction, and overall mission success. In previous years, communications data had not been collected; in FY20 control activities have been put in place to gauge mission progress and implement continual improvement policies. Activity A, iv., Changed monthly newsletter to quarterly newsletter with higher quality information. Activity B, ii., It is the expectation of all staff receiving constituent phone calls that calls are followed through until the constituent is satisfied with the solution to their question or concern. Following up with constituents to ensure this is also an expectation. Activity B, iii., Data from a sampling of calls logged March 11, 2021 to July 1, 2021. These are constituent calls to frontline staff and not a complete reflection of all incoming calls to the department.

Goal 2. Partner with Tribes and other state agencies to Enhance Public Safety to Reduce Substance Abuse

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. Continue to create partnerships to combat illegal drugs and support treatment opportunities									
i. Registration/attendance of state-tribal meth summits			64	100			92	84	64
ii. Collaborate with law enforcement agencies to create targeted training opportunities			2	1				1	2




The Department continues to encourage tribes to consider partnerships to combat illegal drugs and support treatment opportunities. Activity A, i.- Low attendance numbers for Meth Summit III could be attributed to pandemic related interruptions in both planning and execution. Activity A, ii., In 2020, the department created a Cultural Awareness Video in collaboration with the SD Highway Patrol and assisted with an informational video offering tribal officers training that the LET. DTR continues to have conversations with tribes and promotes and solicits agreements such as MOU's and JPA's to partner with tribes.

Goal 3: Promote South Dakota's unique American Indian culture to public school instructional staff and students.

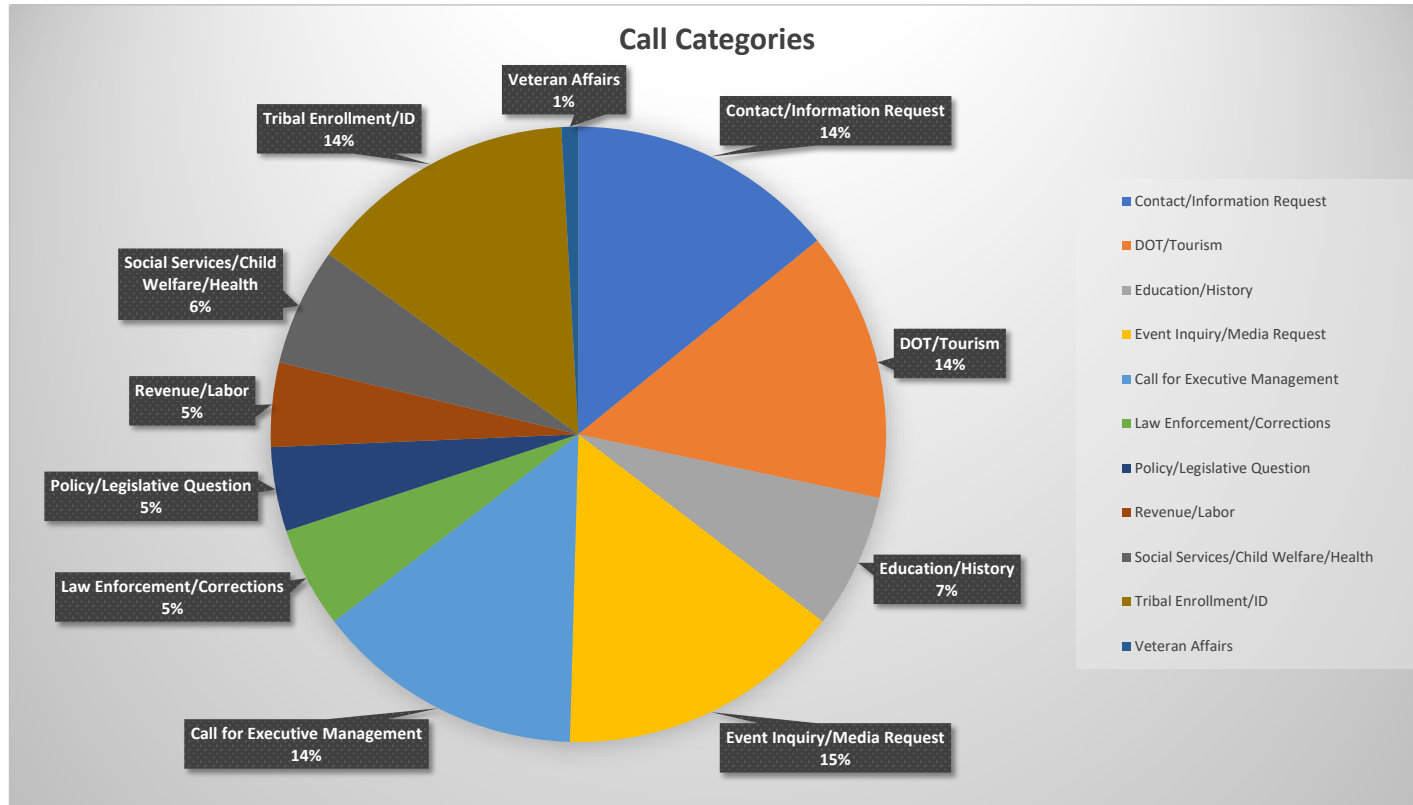
	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY16	FY17	FY18	FY19	FY20
Activity A. •Number of Interactions with schools to provide information or educational materials									
i. Number of schools engaged by Office of Indian Education (includes distributing OSEU materials, Elder videos, and online resources)			51	65					51
Activity B. •Continuing administration of Wóokiye Project									
i. Add schools to project			2	1				3	2
ii. Add teachers to project			10	5				20	10
iii. Teachers that have participated in local tribal activities			71%	80%				0%	71%
iv. Teachers that have explained OSEUs to colleagues			100%	80%				0%	100%
v. Teachers that have created own lessons based on OSEU			100%	80%				0%	100%
vi. Teacher that have used Oceti Sakowin historical documentation and materials			43%	80%				0%	43%
vii. Teachers that have collaborated with Local Elder/Culture Bearer			43%	80%				0%	43%
viii. Teachers that are confident teaching OSEU			86%	80%				0%	86%
ix. Teachers that provide opportunities for students to express cultural identity			86%	80%				0%	86%

The Department continues to promote South Dakota's unique American Indian culture to public school instructional staff and students. Activity A, New OIE director/staff started in February 2021; target and goal is recently created. Such materials are distributed on a rolling basis as requests are made. Activity B, Achieved goals in FY19 in terms of pilot schools and total teachers. FY20 exceeded growth goals. Activity C & D, sampling of teachers surveyed are Wóokiye teachers. OSEU's were adopted as standards in 2018.

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Department of Tribal Relations



SOUTH DAKOTA BOARD OF REGENTS

Agency's Mission Statement: The Board of Regents' mission is to provide an excellent, efficient, accessible, equitable and affordable public university and special schools system that improves South Dakota's overall educational attainment and research productivity, while enriching the intellectual, economic, civic, social, and cultural life of the state, its residents, and its communities.

The performance measures will be separate and distinct from the strategic plan but will directly reflect success for public post-secondary education.

Goal: Academic Success, Student Outcomes, and Educational Attainment

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY21	FY22	FY23	FY24	FY25
Activity A: The Board of Regents is committed to offering the highest quality academic programs that provide students with the skills and knowledge to thrive as members of South Dakota's future workforce. BOR will have student outcomes, academic curriculum, and assessments aligned to nationally recognized standards that facilitate successful student outcomes.									
Academic Completion at Cohort Institution									
i. Undergraduate 4-Year Completion Rate			35.6%	40.6%					
i. Undergraduate 6-Year Completion Rate			55.4%	60.4%					
Academic Completion in BOR System									
i. Undergraduate 4-Year Completion Rate (Measures Transferability)			37.0%	42.0%					
ii. Undergraduate 6-Year Completion Rate (Measures Transferability)			59.0%	64.0%					
Second Year Retention									
i. Retained at Cohort Institution			75.5%	85.5%					
ii. Retained in BOR System (Measures Transferability)			78.2%	83.5%					
Academic Programing									
i. Percent of new programs with High Impacts Practices			0.0%	70.0%					
ii. Nursing UG Licensure (NCLEX-RN) Passage Rate			96.6%	> 96.6%					

Comments

Goal: Workforce & Economic Development

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY21	FY22	FY23	FY24	FY25
Activity A: South Dakota public universities shall align program growth to the educational and workforce skills needed to meet the demands through 2030; ensure engagement designed to enhance the state's long-term economy.									
i. STEM Graduates (% of total grads)			17.9%	20.9%					
ii. Teacher Education Graduates (% of total grads)			9.7%	11.2%					
iii. Nursing Graduates (% of total grads)			9.8%	11%					
iv. Healthcare (Excluding Nursing) Graduates (% of total grads)			7.1%	8.6%					

Comments




Financial Health & Competitiveness

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY21	FY22	FY23	FY24	FY25
Activity A. Financial Health									
i. Regional Rank of Average Net Price (Weighted by 12 month Enrollment FTE)			7	5					
ii. All 6 campuses have an Auxiliary Systems Coverage Ratio > 1.2			Yes	Yes					
iii. Default Rate on Federal Loans (Employability)			5.2%	< 5.2%					

Comments

SOUTH DAKOTA BOARD OF REGENTS

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South Dakota Department of Veterans Affairs												
Agency's Mission Statement: To provide comprehensive care and quality service to veterans and their families, regarding health care, education, disability benefits, long-term care, and burial honors by providing professional customer service and care.												
Veterans in South Dakota					FY17	FY18	FY19	FY20	FY21			
					65,335	64,733	64,119	65,014	72,030			
Goal 1: To provide veterans and their family members access to U.S. Department of Veterans Affairs and South Dakota Veterans Affairs Benefits.												
	Performance Measures				Historical Data Section							
	Trend	Status	Actual	Target	FY17	FY18	FY19	FY20	FY21			
Activity A. State Benefits												
Bonus Claims Paid out					\$ 149,940	\$ 115,970	\$ 100,780	\$ 72,410	\$ 71,660			
Headstone Setting Fees					\$ 42,800	\$ 36,700	\$ 40,100	\$ 25,900	\$ 27,600			
Funeral Honor Reimbursements Processed Quarterly					\$ 45,800	\$ 45,000	\$ 42,200	\$ 33,550	\$ 41,650	Claims to Auditor 1-7 days	Claims to Auditor 8-14 days	Claims to Auditor 15 days +
										9	17	1
Activity B. Processing of State Claims for Benefits										19	3	2
Headstone Setting Fees												
Bonus Claims												
Activity C. Federal Benefits (based on Federal FY which runs from October - September)												
Education					\$ 29,311,000	\$ 25,109,000	\$ 28,275,000	\$ 27,602,000	No Data Available			
Compensation and Pension					\$ 253,310,000	\$ 242,117,000	\$ 291,448,000	\$ 314,178,000	No Data Available			
Healthcare					\$ 370,960,000	\$ 378,855,000	\$ 404,807,000	\$ 474,762,000	No Data Available			
One time Retroactive Awards					\$ 7,792,329.08	\$ 8,755,388.00	\$ 10,752,826.00	\$ 11,842,977.00	\$ 11,131,751.00			
Running Awards					\$ 179,432,079.05	\$ 197,245,638.00	\$ 227,704,994.00	\$ 253,971,986.00	\$ 272,834,534.00	1 to 2 work days	3 to 4 work days	5 plus work days
Activity D. Processing of Federal Claims for Benefits										1,333	6	2
Activity E. VA Joint Peer Review Group Education Review					Satisfactory	Satisfactory	Satisfactory	Satisfactory				
Agency comments regarding the accomplishment of Goal 1: Our goal is to ensure that every veteran that applies for the bonus or military funeral honors, and meets the respective criteria, is provided that benefit in a timely manner. The measureable is the processing time. Our goals is to have state benefits claims processed internally within a week and our goal to have federal benefits filed within one-two working days.												
Goal 2: To provide high quality resident directed long term care by maintaining excellence in personal services and treatment in a setting that promotes dignity, independence, and a home-like environment.												
	Performance Measures				Historical Data Section							
	Trend	Status	Actual	Target	FY17	FY18	FY19	FY20	FY21			
Activity A. Census												
Average Daily Census			95	102	94	94	96	98	95			
Average number of Veteran Residents			75	75%	70	72	78	80	75			
Average number of Non-Veteran Residents			19	25%	24	22	18	16	19			
Admissions					42	38	38	29	32			
Deaths					17	27	29	20	29			
Discharges					24	10	7	11	10			
Activity B. Licensing, Surveys and Inspections				Deficiencies								
VA Annual Survey (three-day reiev of property)			1	0					1			
Department of Health (three-day reiev of property)			4	0					4			
Activity C. Resident Forums												
Resident forums are held monthly to determine needs and concerns of residents.												
Agency comments regarding the accomplishment of Goal 2: The Veterans Home resident population must be at least 75% Veterans. Surveys conducted by DOH and VA reviews over 270 items. Expectation is to have all deficiencies corrected prior to the exit interview. Those that require review and development of training and standard are handled as quickly as possible and notification is sent to DOH and/or VA to achieve compliance.												
Goal 3: The South Dakota Veterans' Cemetery lays to rest, with dignity and everlasting tribute, those who answered the call and served our nation with honor.												
	Performance Measures				Historical Data Section							
	Trend	Status	Actual	Target	FY17	FY18	FY19	FY20	FY21			
Number of Burials - Total			62	90	0	0	0	0	62			
Number of Veteran Burials					0	0	0	0	46			
Number of Non-veteran Burials					0	0	0	0	16			
Military Funeral Honors Provided												
Agency comments regarding the accomplishment of Goal 3: The South Dakota Veterans Cemetery began normal operations and interments on June 4, 2021.												
Status Indicator:												
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= Red - the historical trend line does not indicate improved performance and the target has not been met.												

DEPARTMENT OF PUBLIC SAFETY



















Agency's Mission Statement: To keep South Dakota a safe place in which to live, work, visit and raise a family.

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).











Goal: By utilizing partnerships and innovation, our humble professionals will ensure that South Dakota is the safest state in the nation.

	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	FY17	FY18	FY19	FY20	FY21
Activity A. Homeland Security - coordinating with state and local governments to prevent acts of terrorism									
i. Number of local government agencies served			90	95	89	101	96	82	90
ii. Number of state government agencies served			7	8	7	8	5	7	7
iii. Number of local government projects funded			110	120	101	108	125	115	110
iv. Number of state government projects funded			10	10	14	11	6	8	10
Agency comments regarding the accomplishments: 1) developing a School Safety Center Program to improve security within the schools, 2) attending regional meetings to coordinate with state, local and tribal governments									

Activity B. Highway Patrol - protecting our citizens and visitors by promoting public safety through education, enforcement and example

















i. Enforcement of DWI			1,804	2,000	2,314	2,389	2,242	1,776	1,804
ii. Warning Issued			82,003	85,000	87,663	100,553	86,638	67,296	82,003
iii. Citations Issued			55,820	55,000	57,131	64,399	56,067	45,679	55,820
iv. Provided Safety Education - Hours			1,007	3,400	3,731	3,567	4,744	2,201	1,007
v. Drug Related Arrests - Felony			2,094	2,200	997	1,367	1,842	2,078	2,094
vi. Drug Related Arrests - Misdemeanor			3,641	3,700	2,780	3,738	3,710	3,634	3,641
vii. Investigated Fatal Accidents			118	75	72	95	70	72	118
viii. Investigated Injury Accident			683	800	912	860	647	769	683
ix. Investigated Non-injury Accidents			2,122	2,800	2,876	2,965	2,248	2,659	2,122
Agency comments regarding the accomplishments: HP strives to spend 65% of time on proactive law enforcement activities including stationary patrol, saturation patrols, DUI checkpoints and other traffic related operations. HP promotes public safety through education at schools, civic events, and large gatherings such as county and state fairs. HP has 8 troopers trained to work with local LE to eradicate illegal drugs along with 13 police service dogs working interdiction on both interstate and state highways.									

Activity C. Highway Safety/Accident Records - providing grants and public information to increase highway safety; compiling accident records and crash data

i. Funded Highway Safety Projects			94	87	107	108	95	95	94
ii. Offered Motorcycle Safety Courses			351	340	345	340	341	256	351
iii. Trained Motorcycle Riders			1,520	1,750	1,741	1,706	1,723	1,196	1,520
iv. Crashes Processed			15,174	17,000	17,465	17,663	16,991	18,072	15,174
v. Fatal Crashes Processed			131	100	92	127	115	99	131
Agency comments regarding the accomplishments: regional training workshops provided to stakeholders interested in reducing motor vehicle injuries and fatalities; motorcycle safety courses offered every year from April - October; training offered by qualified instructors to assist motorcycleists prepare for their license tests. Utilize fatal crash data to inform public information.									











DEPARTMENT OF PUBLIC SAFETY

Activity D. Office of Emergency Management - assist state, local and tribal governments prepare, respond, recover and mitigate natural and man-made disasters

i. Number of Disaster - Large Projects			360	250	255	63	32	111	360
ii. Total FEMA Disaster Dollars (millions)			103	150	176	163	163	198	103
iii. Number of Mitigation Projects			203	152	140	45	91	200	203
iv. Total FEMA Mitigation Dollars (millions)			27	17	20	2	12	21	27
v. Coordinated Trainings			43	55	58	43	55	30	43
vi. Number of People Trained			767	1,500	1,539	1,309	1,531	523	767
viii. Coordinated Exercises			53	30	46	26	22	47	53
ix. Number of Exercise Participants			1,452	1,235	1,252	1,372	1,125	1,403	1,452







Agency comments regarding the accomplishments: OEM Public Assistance team works with applicants to complete disaster related projects, validates and verifies expenses and processes reimbursements. The OEM Mitigation staff manages all of the mitigation projects to prevent similar damage from occurring again. OEM coordinates training and exercises with county emergency managers to enhance emergency management preparedness and response efforts to comply with FEMA requirements.

Activity E. Fire Marshal - provide fire prevention services including fire reporting, training, investigation, public education, fire prevention, and code enforcement

i. Investigated Fires			63	60	71	69	61	53	63
ii. Inspected Schools			189	200	234	212	181	101	189
iii. Boiler Inspections/Insurance			2,229	2,400	2,566	2,294	2,227	1,684	2,229
iv. Boiler Inspections/State			2,991	2,400	2,099	2,477	2,522	2,053	2,991
v. Certified Firefighters			191	200	258	206	219	94	191







Agency comments regarding the accomplishments: IAAI training and certification, partnerships with BATF and SD DCI. Fire Marshal's office works closely with the state inspection program to monitor and coordinate inspections. Boiler inspections by insurance companies and SFMO vary based on one and two year inspection intervals, insurance pickups and drops, new boilers, boilers taken off line. New firefighters are those completing the SD Certified Firefighter Course.

Activity F. 9-1-1 Coordination providing technical assistance, funding oversight and monitoring while partnering with local governments

i. Average number of lines per month			808,642	815,883	806,727	813,917	819,242	817,645	808,642
ii. % of PSAP's compliant with ARSD			100%	100%	100%	100%	100%	100%	100%
iii. Total # of PSAPs cut over to ESInet			28	28	0	4	0	28	28









Agency comments regarding the accomplishments: Complete implementation of transition to NextGen 9-1-1 and enhanced system with Text to 9-1-1; completed compliance reviews as scheduled; completed annual review of financial reports; and provided ongoing technical assistance to all 28 PSAPs.

Activity G. Driver's Licensing - issue identification cards; testing, licensing and regulating commercial and non-commercial drivers

i. Issued Identification Cards			16,176	17,000	17,474	18,017	18,204	15,056	16,176
ii. Issued Licenses			214,420	203,000	196,780	196,733	163,658	169,997	214,420
iii. Online Renewals			62,500	35,000	15,402	25,147	18,753	34,191	62,500

Agency comments regarding the accomplishments: COVID significantly impacted Driver's Licensing operations. DL implemented a public campaign promoting online renewals - "Renew2020". Driver's licenses were allowed to expire during COVID, by Executive Order, thus driving a significant backlog. Exam stations are open and are serving citizens with online renewals, scheduled appointments and walk-ins.




Activity H. Weights & Measures/Inspections - provide state inspections and weights and measures services for businesses and consumers

i. Inspected Heavy Scales			852	2,105	1,172	2,136	1,387	2,128	852
ii. Inspected Retail Scales, Pumps, Meters			5,783	7,400	8,133	6,012	4,781	12,208	5,783
iii. Completed Callibrations - Metrology Lab			3,479	4,000	3,615	3,998	3,594	4,103	3,479
iv. Inspected facilities/equipment for other State Agencies			27,740	22,718	29,181	21,953	23,950	21,094	27,740

Agency comments regarding the accomplishments: Maintained heavy scales inspections to the extent possible with COVID and two vacancies; focused on continual education for inspectors; and assisted in new endeavors for WMI including metrology lab and DOH inspections.







DEPARTMENT OF PUBLIC SAFETY

Activity I. Victims' Services - provide for shelter, advocacy, crisis counseling and toher services as well as monetary assistance to victims of violent crimes

i. Number of Victims Served		14,916	15,583	12,662	11,956	14,430	15,279	14,916
ii. Number of Victims Sheltered		2,734	2,664	3,307	3,149	2,799	2,664	2,734
iii. Victims Compensation Claims Approved		151	200	255	158	106	54	151




Agency comments regarding the accomplishments: COVID contributed to an initial drop in shelter services but the VS program providing COVID funding to support shelter services and promoted awareness and availability of services. VS also implemented a new online application system which facilitated claims submission and processing for more timely payment.

Activity J. Wildland Fire - provide protection for resources and the public from wildland fire

i. Number of Wildland Fires		963	0	0	0	259	324	963
ii. Acres of Wildland Fires		27,088	0	0	0	4,413	3,404	27,088
iii. Issued Burn Permits		3,164	2,000	0	0	2,535	2,358	3,164
iv. Conducted Hazard Fuel Mitigation - Projects		74	70	0	0	35	58	74
vi. Conducted Hazard Fuel Mitigation - Acres		1,068	700	0	0	682	1,000	1,068
vii. Trained Fire Personnel		740	1,800	0	0	884	351	740

Agency comments regarding the accomplishments: SD WLF boosted training numbers (class sessions and personnel) after COVID by enahncing interagency relationships which provide instructors and enhanced the diversity of course offerings. Successes were achieved in hazardous fuel mitigation by providing education regarding the risks related to fire within the Wildland Urban Interface and the benefits to landowners and the entire community.

Status Indicator:

-  = Green - the historical trend line indicates improved performance and the target has been met.
-  = Yellow - the historical trend line indicates improved performance, but the target has not been met.
-  = Red - the historical trend line does not indicate improved performance and the target has not been met.

Department of Human Services

Agency's Mission Statement: Enhance the quality of life of people with disabilities in partnership with its stakeholders.

Below are the goals, activities, and measures for the agency. Goals, activities, and measures need to be developed by the agency, in consultation with the Governor's Office, and agreed to by the Legislature (Government Operations and Audit Committee).

Goal 1. DHS will enhance services and increase access.									
	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	Baseline	FY22	FY23	FY24	FY25
Activity A. Supporting People Through Technology									
i. Number of waiver participants utilizing technology that promotes independence and reduces reliance on paid supports.				864	839				
Activity B. Vocational Rehabilitation									
i. Increase the employment rate of individuals with disabilities in SD.				54.1%	52.10%				
Activity C. Rebalance Medicaid									
i. Increase the percentage of Medicaid expenditures going to Home & Community Based Services for individuals with disabilities.				53%	52.0%				
Agency comments regarding the accomplishment of Goal 1:									
Goal 2. DHS will communicate and fulfill our mission.									
	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	Baseline	FY22	FY23	FY24	FY25
Activity A. Develop and implement a strategic media plan.									
i. Increase the number of social media interactions (posts, follows, likes, shares, comments)				TBD	TBD				
Activity B. Aging and Disability Resource Center Contacts									
i. Increase the number of options counseling sessions through Dakota At Home (ADRC).				14,972	14,679				
Agency comments regarding the accomplishment of Goal 2:									
Goal 3. DHS will increase career satisfaction and employee engagement.									
	Performance Measures				Historical Data Section				
	Trend	Status	Actual	Target	Baseline	FY22	FY23	FY24	FY25
Activity A. Professional Development									
i. Increase professional development training hours.				TBD	TBD				
Activity B. On-boarding and re-boarding									
i. New employees will complete DHS 101 on-boarding training.				100%	0				

Department of Human Services

ii. Existing DHS employees will complete the DHS 101 on-boarding training.				100%	0				
Activity D. Retention									
i. Decrease turnover rate.				14.00%	14.50%				
Agency comments regarding the accomplishment of Goal 3:									

Status Indicator:



= Green - the historical trend line indicates improved performance and the target has been met.



= Yellow - the historical trend line indicates improved performance, but the target has not been met.



= Red - the historical trend line does not indicate improved performance and the target has not been met.



SOUTH DAKOTA BUREAU OF ADMINISTRATION

MISSION

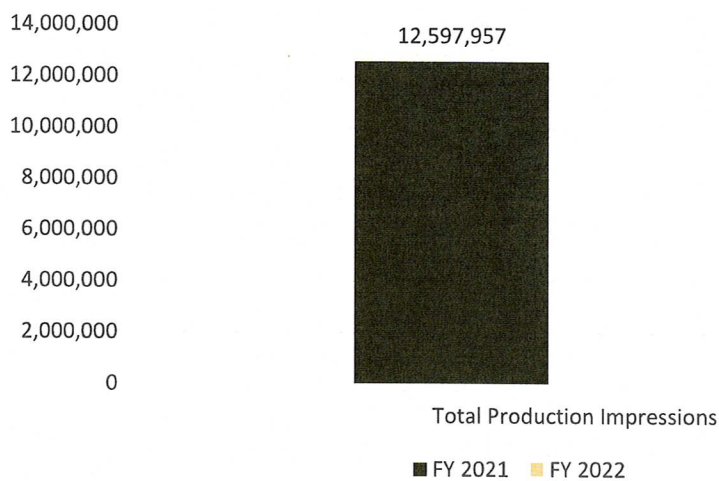
The mission of the South Dakota Bureau of Administration is to provide quality central services to our customers, necessary for the operation of State Government, at the most economical cost.

1)

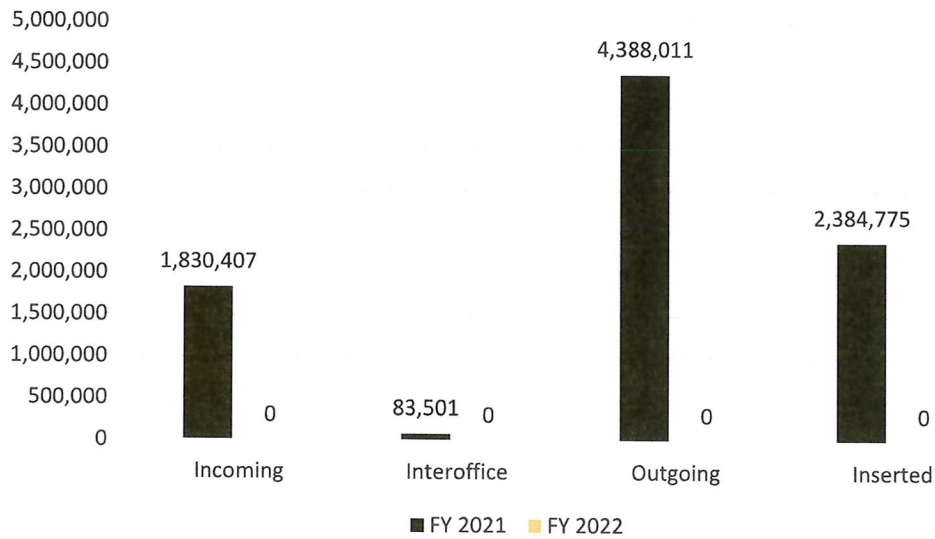
Be a **Customer Focused** organization that delivers services in a timely and efficient manner meeting the needs of the agencies we support.

Complete work orders and requests in a timely and accurate manner.

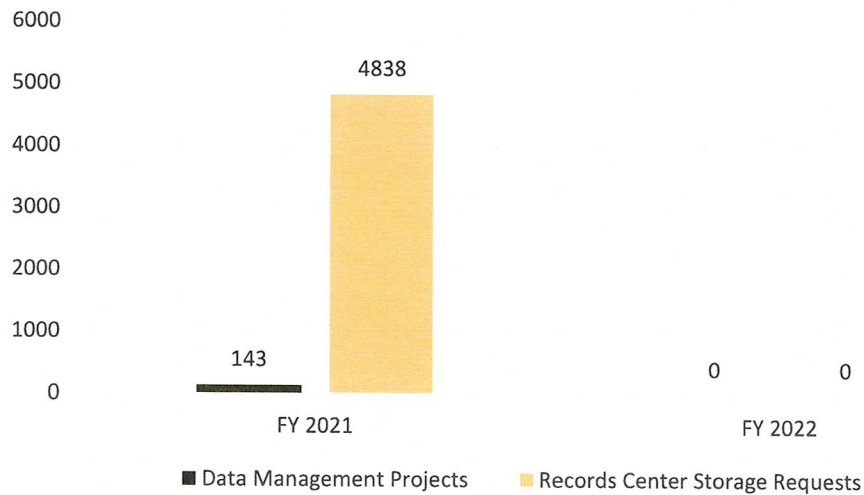
Central Duplicating Total Production Impressions

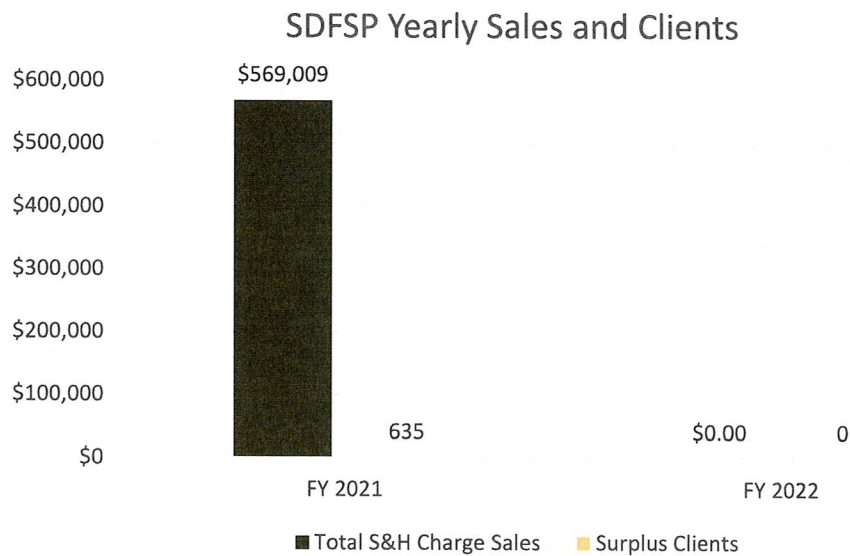
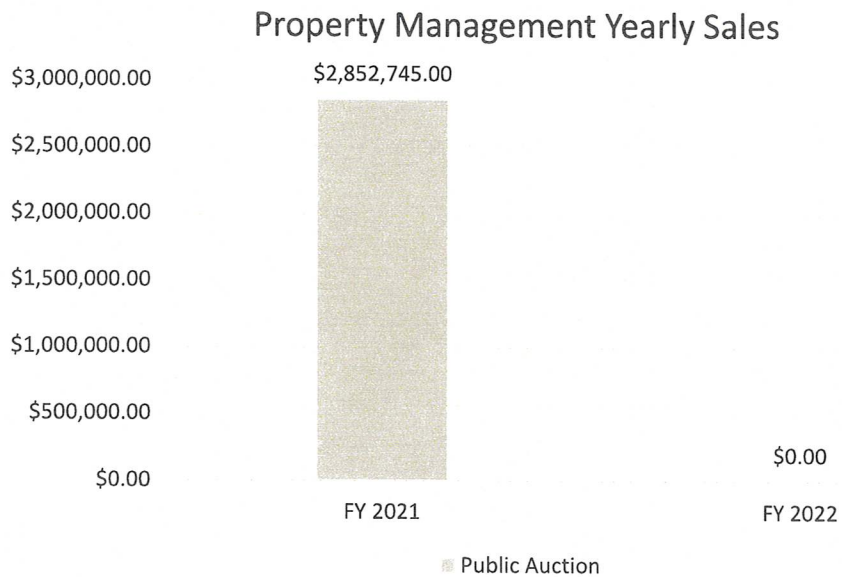


Central Mail Yearly Volume



Records Management Yearly Requests & Projects





2)

Ensure we have excellent facilities by providing oversight for **New Construction and Maintenance** of state-owned structures.

Certify buildings are constructed and maintained efficiently.

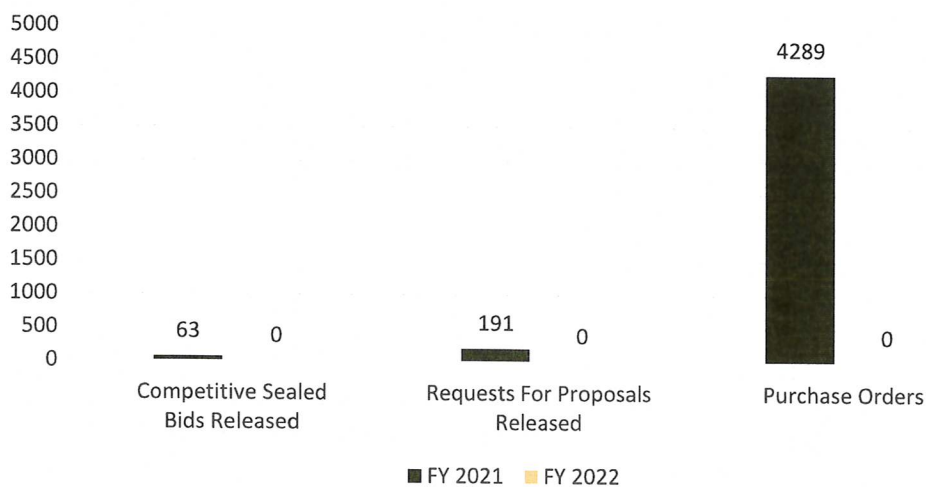
B&G Total Work Orders & Completed Work Orders by Fiscal Year



3)

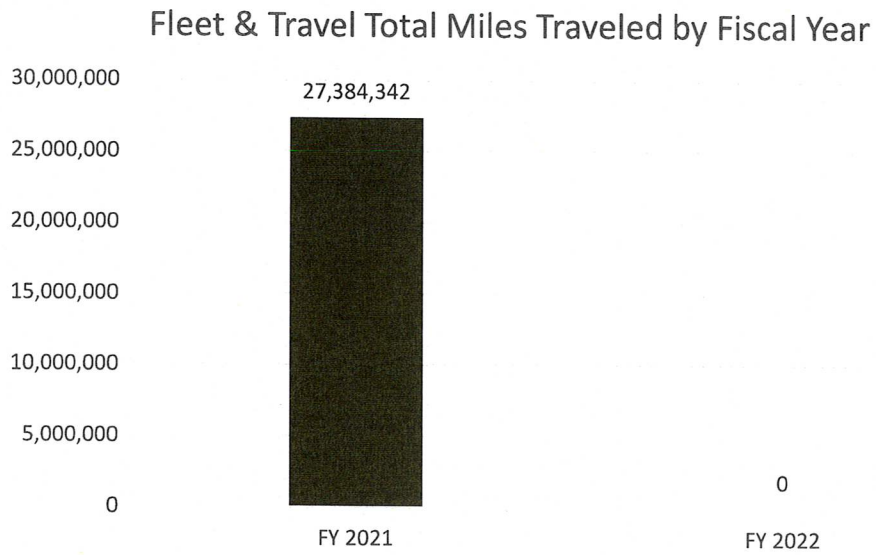
Provide **Efficient Procurement Procedures** for the acquisition of quality goods and services in support of State Government agencies.

Procurement Management Yearly Volume



4)

Provide safe, reliable **Fleet Vehicle Solutions** that assist state agencies to effectively and efficiently meet their mission.



Appendix:
Marijuana Interim
Study Committee
Proposed Legislation

2022 South Dakota Legislature

Draft 62

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to provide for the use and regulated sale of marijuana.**

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

3 **Section 1. That § 22-42-1 be AMENDED:**

4 **22-42-1.** Terms used in this chapter mean:

- 5 (1) "Controlled drug or substance," a drug or substance, or an immediate precursor of
6 a drug or substance, listed in Schedules I through IV. The term includes an altered
7 state of a drug or substance listed in Schedules I through IV absorbed into the
8 human body;
- 9 (2) "Counterfeit substance," a controlled drug or substance which, or the container of
10 labeling of which, without authorization, bears the trade-mark, trade name, or
11 other identifying mark, imprint, number, or device, or any likeness thereof, of a
12 manufacturer, distributor, or dispenser other than the person or persons who
13 manufactured, distributed, or dispensed such substance and which thereby falsely
14 purports or is represented to be the product of, or to have been distributed by,
15 such other manufacturer, distributor, or dispenser;
- 16 (3) ~~"Deliver" or "delivery,"~~ the actual or constructive transfer of a controlled drug,
17 substance, or marijuana whether or not there exists an agency relationship;
- 18 (4) "Dispense," to deliver a controlled drug or substance to the ultimate user or human
19 research subject by or pursuant to the lawful order of a practitioner, including the
20 prescribing, administering, packaging, labeling, or compounding necessary to
21 prepare the substance for such delivery, and a dispenser is one who dispenses;
- 22 (5) "Distribute," to deliver a controlled drug, substance, or marijuana. Distribution
23 means the delivery of a controlled drug, substance, or marijuana;
- 24 (6) "Equivalent weight" the weight that a given quantity of marijuana products counts
25 against a quantity of marijuana;
- 26 (7) "Manufacture," the production, preparation, propagation, compounding, or
27 processing of a controlled drug or substance, either directly or indirectly by
28 extraction from substances of natural origin, or independently by means of

1 chemical synthesis or by a combination of extraction and chemical synthesis. A
2 manufacturer includes any person who packages, repackages, or labels any
3 container of any controlled drug or substance, except practitioners who dispense
4 or compound prescription orders ~~for delivery~~ to deliver to the ultimate user;

5 ~~(7)(8)~~ "Marijuana," all parts of any plant of the genus cannabis, whether growing or not,
6 in its natural and unaltered state, except for drying or curing and crushing or
7 crumbling. ~~The term includes an altered state of marijuana absorbed into the~~
8 ~~human body.~~ The term does not include fiber produced from the mature stalks of
9 such plant, or oil or cake made from the seeds of such plant. The term does not
10 include the plant Cannabis sativa L. and any part of that plant, including the seeds
11 thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts
12 of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol
13 concentration of not more than three-tenths of one percent on a dry weight basis;

14 ~~(8)(9)~~ "Marijuana concentrate," the resin extracted from any part of a marijuana plant
15 and every compound, manufacture, salt, derivative, mixture, or preparation from
16 such resin;

17 (10) "Marijuana products," products infused with marijuana concentrate and intended
18 for use or consumption by humans;

19 (11) "Practitioner," a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or
20 veterinary medicine licensed to practice his profession, or pharmacists licensed to
21 practice their profession; physician's assistants certified to practice their
22 profession; government employees acting within the scope of their employment;
23 and persons permitted by certificates issued by the Department of Health to
24 distribute, dispense, conduct research with respect to, or administer a substance
25 controlled by chapter 34-20B;

26 ~~(9)(12)~~ "Precursor" or "immediate precursor," a substance which the Department of
27 Health has found to be and by rule designates as being a principal compound
28 commonly used or produced primarily for use, and which is an immediate chemical
29 intermediary used or likely to be used, in the manufacture of a controlled drug or
30 substance, the control of which is necessary to prevent, curtail, or limit such
31 manufacture;

32 ~~(10)(13)~~ "Schedule I," "Schedule II," "Schedule III," and "Schedule IV," those
33 schedules of drugs, substances, and immediate precursors listed in chapter 34-
34 20B;

1 ~~(11)~~(14) "Ultimate user," a person who lawfully possesses a controlled drug or
2 substance for that person's own use or for the use of a member of that person's
3 household or for administration to an animal owned by that person or by a member
4 of that person's household.

5 **Section 2. That § 22-42-6 be AMENDED:**

6 **22-42-6.** ~~No person may knowingly possess marijuana. It is a Class 1 Class 2~~
7 ~~misdemeanor for any person under the age of twenty-one to possess two ounces of~~
8 ~~marijuana or less than four ounces of marijuana, including an equivalent weight of~~
9 ~~marijuana products. It is a Class 6 felony for any person under the age of twenty-one to~~
10 ~~possess four or more ounces of marijuana, including an equivalent weight of marijuana~~
11 ~~products. It is a Class 2 misdemeanor for any person twenty-one or older to possess more~~
12 ~~than one ounce but less than four ounces of marijuana, including an equivalent weight of~~
13 ~~marijuana products. It is a Class 6 felony Class 1 misdemeanor for any person twenty-~~
14 ~~one or older to possess more than two ounces of marijuana but less than one half pound~~
15 ~~four to sixteen ounces of marijuana, including an equivalent weight of marijuana products.~~
16 ~~It is a Class 5 Class 6 felony for any person twenty-one or older to possess one half pound~~
17 ~~but less than one pound more than sixteen ounces of marijuana, including an equivalent~~
18 ~~weight of marijuana products. It is a Class 4 felony to possess one to ten pounds of~~
19 ~~marijuana. It is a Class 3 felony to possess more than ten pounds of marijuana. A civil~~
20 ~~penalty may be imposed, in addition to any criminal penalty, upon a conviction of a~~
21 ~~violation of this section not to exceed ten thousand dollars. This section does not apply to~~
22 ~~any person licensed or registered with the state to undertake an activity involving the~~
23 ~~possession of marijuana or marijuana products who acts in compliance with the~~
24 ~~authorizing law.~~

25 **Section 3. That § 22-42-7 be AMENDED:**

26 **22-42-7.** ~~The distribution, or possession with intent to distribute, of less than one-~~
27 ~~half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the~~
28 ~~distribution, or possession with intent to distribute, for consideration, of one ounce or less~~
29 ~~than four ounces of marijuana, including an equivalent weight of marijuana products, to~~
30 ~~any person twenty-one or older is a Class 6 felony Class 1 misdemeanor. The distribution,~~
31 ~~or possession with intent to distribute, of more than one ounce four ounces but less than~~
32 ~~one half one pound of marijuana, including an equivalent weight of marijuana products,~~
33 ~~to a person twenty-one or older is a Class 5 felony Class 6 felony. The distribution, or~~

possession with intent to distribute, of ~~one-half pound but less than one pound or more~~
of marijuana, including an equivalent weight of marijuana products, to a person twenty-
one or older is a ~~Class 4~~ Class 5 felony. ~~The distribution, or possession with intent to~~
~~distribute, of one pound or more of marijuana is a Class 3 felony.~~ The distribution, or
possession with intent to distribute, of less than one-half ounce of marijuana, including
an equivalent weight of marijuana products, to a minor any person under the age of
twenty-one without consideration is a ~~Class 6~~ Class 1 misdemeanor; otherwise, the
distribution, or possession with intent to distribute, of ~~one ounce~~ four ounces or less of
marijuana, including an equivalent weight of marijuana products, to a minor any person
under the age of twenty-one is a ~~Class 5~~ Class 6 felony. The distribution, or possession
with intent to distribute, of more than ~~one ounce~~ four ounces but less than ~~one-half one~~
pound of marijuana, including an equivalent weight of marijuana products, to a minor any
person under the age of twenty-one is a ~~Class 4~~ Class 5 felony. ~~The distribution, or~~
~~possession with intent to distribute, of one-half pound but less than one pound of~~
~~marijuana to a minor is a Class 3 felony.~~ The distribution, or possession with intent to
distribute, of one pound or more of marijuana, including an equivalent weight of marijuana
products, to a minor any person under the age of twenty-one is a ~~Class 2~~ Class 4 felony.
A first conviction of a felony under this section shall be punished by a mandatory sentence
in the state penitentiary or county jail of at least thirty days, which sentence may not be
suspended. A second or subsequent conviction of a felony under this section shall be
punished by a mandatory sentence of at least one year. Conviction of a ~~Class 1~~
misdemeanor under this section shall be punished by a mandatory sentence in county jail
of not less than fifteen days, which sentence may not be suspended. A civil penalty, not
to exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon
a conviction of a felony violation of this section. This section does not apply to any person
licensed or registered with the state to undertake an activity involving the distribution, or
possession with intent to distribute, of marijuana or marijuana products who acts in
compliance with the authorizing law.

Section 4. That chapter 22-42 be amended with a NEW SECTION:

The equivalent weight of the following marijuana products to one ounce of
marijuana is:

- (1) Eight grams net weight of marijuana concentrate in smokable form;
- (2) Eight grams net weight of vaporizer pens or cartridges;
- (3) Eight hundred milligrams delta-9 tetrahydrocannabinol in edibles, excluding oils;

- (4) Five grams net weight of oils in oral dosage syringe or capsule form;
(5) Twelve fluid ounces of liquid topical application, including ointment, cream, or lotion;
(6) One ounce of dried topical application, included dried plant material or powder; or
(7) Eight hundred milligrams delta-9 tetrahydrocannabinol in transdermal patches.

Section 5. That § 22-42-15 be AMENDED:

22-42-15. Any person who intentionally ingests, inhales, or otherwise takes into the body any substance, except marijuana, marijuana concentrate, marijuana products or alcoholic beverages as defined in § 35-1-1, for purposes of becoming intoxicated, unless such substance is prescribed by a practitioner of the medical arts lawfully practicing within the scope of the practitioner's practice, is guilty of a Class 1 misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction in which the substance was detected in the body of the accused.

Section 6. That § 22-42-24 be AMENDED:

22-42-24. While a motor vehicle is located upon a public highway or the right-of-way of a public highway, it is a Class 2 misdemeanor if any person operating or in actual physical control of a motor vehicle smokes or consumes marijuana~~or, marijuana concentrate, or marijuana products~~ while the vehicle is being operated. ~~For purposes of this section and § 22-42-25, marijuana concentrate is the resin extracted from any part of a marijuana plant and every compound, manufacture, salt, derivative, mixture, or preparation from such resin.~~

Section 7. That chapter 22-42 be amended with a NEW SECTION:

No person may smoke, eat, consume, or vape marijuana, marijuana concentrate, or marijuana products in any public place or place of employment. A violation of this section is a Class 2 misdemeanor. A second or subsequent violation is a Class 1 misdemeanor.

Section 8. That § 22-42A-3 be AMENDED:

22-42A-3. No person, knowing the drug-related nature of the object, may use or ~~to~~ possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow,

harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body any controlled substance ~~or marijuana~~ in violation of this chapter. Any person who violates any provision of this section is guilty of a Class 2 misdemeanor.

Section 9. That § 22-42A-4 be AMENDED:

22-42A-4. No person, knowing the drug related nature of the object, may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance ~~or marijuana~~ in violation of this chapter. Any person who violates any provision of this section is guilty of a Class 6 felony.

Section 10. That chapter 22-42A be amended with a NEW SECTION:

For the purposes of this chapter, marijuana, marijuana concentrate, and marijuana products, as defined in § 22-42-1, are not controlled substances.

Section 11. That § 34-20B-1 be AMENDED:

34-20B-1. Terms as used in this chapter mean:

- (1) "Administer," to deliver a controlled drug or substance to the ultimate user or human research subject by injection, inhalation, or ingestion, or by any other means;
- (2) "Agent," an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser and includes a common or contract carrier, public warehouseman, or employee thereof;
- (3) "Control," to add, remove, or change the placement of a drug, substance, or immediate precursor under §§ 34-20B-27 and 34-20B-28;
- (4) "Counterfeit substance," a controlled drug or substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed such substance and which thereby falsely

- purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;
- (5) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a controlled drug, or substance, ~~or marijuana~~ whether or not there exists an agency relationship;
- (6) "Department," the Department of Health created by chapter 1-43;
- (7) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;
- (8) "Distribute," to deliver a controlled drug, or substance, ~~or marijuana~~. A distributor is a person who delivers a controlled drug, or substance, ~~or marijuana~~;
- (9) ~~"Hashish," the resin extracted from any part of any plant of the genus cannabis that contains a delta-9 tetrahydrocannabinol concentration of more than three tenths of one percent on a dry weight basis;~~
- ~~(10)~~ "Imprisonment," imprisonment in the state penitentiary unless the penalty specifically provides for imprisonment in the county jail;
- ~~(11)~~(10) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;
- ~~(12)~~ "Marijuana," ~~all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. The term does not include fiber produced from the mature stalks of the plant, or oil or cake made from the seeds of the plant, or the resin when extracted from any part of the plant or cannabidiol in a drug product approved by the United States Food and Drug Administration. The term does not include the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three tenths of one percent on a dry weight basis;~~

~~(13)~~(11) "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium, coca leaves, and opiates;

(b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b) of this subdivision;

except that the term, narcotic drug, as used in this chapter does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

~~(14)~~(12) "Opiate" or "Opioid," any controlled drug or substance having an addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability;

~~(15)~~(13) "Opium poppy," the plant of the species *papaver somniferum* L., except the seeds thereof;

~~(16)~~(14) "Person," any corporation, association, limited liability company, partnership or one or more individuals;

~~(17)~~(15) "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing;

~~(18)~~(16) "Practitioner," a doctor of medicine, osteopathy, podiatry, optometry, dentistry, or veterinary medicine licensed to practice their profession, or pharmacists licensed to practice their profession; physician assistants certified to practice their profession; certified nurse practitioners, certified nurse midwives, and certified registered nurse anesthetists to practice their profession; government employees acting within the scope of their employment; and persons permitted by certificates issued by the department to distribute, dispense, conduct research with respect to, or administer a substance controlled by this chapter;

~~(19)~~(17) "Prescribe," an order of a practitioner for a controlled drug or substance.

~~(20)~~(18) "Production," the manufacture, planting, cultivation, growing, or harvesting of a controlled drug or substance;

~~(21)~~(19) "State," the State of South Dakota;

~~(22)~~(20) "Ultimate user," a person who lawfully possesses a controlled drug or substance for personal use or for the use of a member of the person's household

1 or for administration to an animal owned by the person or by a member of the
2 person's household;

3 ~~(23)~~(21) "Controlled substance analogue," any of the following:

4 (a) A substance that differs in its chemical structure to a controlled substance
5 listed in or added to the schedule designated in schedule I or II only by
6 substituting one or more hydrogens with halogens or by substituting one
7 halogen with a different halogen; or

8 (b) A substance that is an alkyl homolog of a controlled substance listed in or
9 added to schedule I or II; or

10 (c) A substance intended for human consumption; and

11 (i) The chemical structure of which is substantially similar to the chemical
12 structure of a controlled substance in schedule I or II;

13 (ii) Which has a stimulant, depressant, or hallucinogenic effect on the
14 central nervous system that is substantially similar to or greater than
15 the stimulant, depressant, or hallucinogenic effect on the central
16 nervous system of a controlled substance in schedule I or II; or

17 (iii) With respect to a particular person, which such person represents or
18 intends to have a stimulant, depressant, or hallucinogenic effect on
19 the central nervous system that is substantially similar to or greater
20 than the stimulant, depressant, or hallucinogenic effect on the
21 central nervous system of a controlled substance in schedule I or II;

22 However, the term, controlled substance analogue, does not include a controlled
23 substance or any substance for which there is an approved new drug application.

24 **Section 12. That § 34-20B-14 be AMENDED:**

25 **34-20B-14.** Any material, compound, mixture, or preparation which contains any
26 quantity of the following hallucinogenic substances, their salts, isomers, and salts of
27 isomers, is included in Schedule I, unless specifically excepted, whenever the existence of
28 such salts, isomers, and salts of isomers is possible within the specific chemical
29 designation:

30 (1) Bufotenine;

31 (2) Diethyltryptamine (DET);

32 (3) Dimethyltryptamine (DMT);

33 (4) 5-methoxy-N, N-Dimethyltryptamine (5-MeO-DMT);

34 (5) 5-methoxy-3, 4-methylenedioxy amphetamine;

- 1 (6) 4-bromo-2, 5-dimethoxyamphetamine;
- 2 (7) 4-methoxyamphetamine;
- 3 (8) 4-methoxymethamphetamine;
- 4 (9) 4-methyl-2, 5-dimethoxyamphetamine;
- 5 (10) Hashish and hash oil;
- 6 (11) Ibogaine;
- 7 (12) Lysergic acid diethylamide;
- 8 (13) Mescaline;
- 9 (14) N-ethyl-3-piperidyl benzilate;
- 10 (15) N-methyl-3-piperidyl benzilate;
- 11 (16) 1-(-(2-thienyl)cyclohexyl) piperidine (TCP);
- 12 (17) Peyote, except that when used as a sacramental in services of the Native American
- 13 church in a natural state which is unaltered except for drying or curing and cutting
- 14 or slicing, it is hereby excepted;
- 15 (18) Psilocybin;
- 16 (19) Psilocyn;
- 17 (20) ~~Tetrahydrocannabinol, other than that which occurs in industrial hemp as defined~~
- 18 ~~in § 38-35-1 or marijuana in its natural and unaltered state, including any~~
- 19 ~~compound, except nabilone or compounds listed under a different schedule,~~
- 20 ~~structurally derived from 6,6'-dimethyl benzo[c]chromene by substitution at the~~
- 21 ~~3-position with either alkyl (C3 to C8), methyl cycloalkyl, or adamantyl groups,~~
- 22 ~~whether or not the compound is further modified in any of the following ways:~~
- 23 ~~(a) By partial to complete saturation of the C-ring; or~~
- 24 ~~(b) By substitution at the 1-position with a hydroxyl or methoxy group; or~~
- 25 ~~(c) By substitution at the 9-position with a hydroxyl, methyl, or methylhydroxyl group;~~
- 26 ~~or~~
- 27 ~~(d) By modification of the possible 3-alkyl group with a 1,1'-dimethyl moiety, a 1,1'-~~
- 28 ~~cyclic moiety, an internal methylene group, an internal acetylene group, or a~~
- 29 ~~terminal halide, cyano, azido, or dimethylcarboxamido group.~~
- 30 ~~—Some trade and other names: JWH-051; JWH-057; JWH-133; JWH-359; HHC; AM-~~
- 31 ~~087; AM-411; AM-855; AM-905; AM-906; AM-2389; HU-210; HU-211; HU-243;~~
- 32 ~~HU-336;~~
- 33 ~~(21)~~ 3, 4, 5-trimethoxy amphetamine;
- 34 ~~(22)~~(21) 3, 4-methylenedioxy amphetamine;
- 35 ~~(23)~~(22) 3-methoxyamphetamine;

- 1 ~~(24)~~(23) 2, 5-dimethoxyamphetamine;
- 2 ~~(25)~~(24) 2-methoxyamphetamine;
- 3 ~~(26)~~(25) 2-methoxymethamphetamine;
- 4 ~~(27)~~(26) 3-methoxymethamphetamine;
- 5 ~~(28)~~(27) Phencyclidine;
- 6 ~~(29)~~(28) 3, 4-methylenedioxymethamphetamine (MDMA);
- 7 ~~(30)~~(29) 3, 4-methylenedioxy-N-ethylamphetamine;
- 8 ~~(31)~~(30) N-hydroxy-3, 4-methylenedioxyamphetamine;
- 9 ~~(32)~~(31) 4-methylaminorex (also known as 2-Amino-4-methyl/x-5-phenyl-2-oxazoline);
- 10 oxazoline);
- 11 ~~(33)~~(32) 2,5 Dimethoxy-4-ethylamphetamine;
- 12 ~~(34)~~(33) N,N-Dimethylamphetamine;
- 13 ~~(35)~~(34) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine;
- 14 ~~(36)~~(35) Aminorex;
- 15 ~~(37)~~(36) Cathinone and other variations, defined as any compound, material, mixture, preparation or other product unless listed in another schedule or an approved FDA drug (e.g. bupropion, pyrovalerone), structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
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- 21 (a) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
- 22
- 23
- 24 (b) By substitution at the 3-position with an acyclic alkyl substituent;
- 25
- 26 (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups or by inclusion of the 2-amino nitrogen atom in a cyclic structure.
- 27
- 28 Some trade or other names: methcathinone, 4-methyl-N-methylcathinone (mephedrone); 3,4-methylenedioxy-N-methylcathinone (methydone); 3,4-methylenedioxypropylvalerone (MDPV); Naphthylpyrovalerone (naphyrone); 4-fluoromethcathinone (flephephone); 4-methoxymethcathinone (methedrone; Bk-PMMA); Ethcathinone (N-Ethylcathinone); 3,4-methylenedioxyethcathinone (ethylone); Beta-keto-N-methyl-3,4-benzodioxypolybutanamine (butylone); N,N-dimethylcathinone (metamfetramone); Alpha-pyrrolidinopropiophenone (alpha-PPP); 4-methoxy-alpha-pyrrolidinopropiophenone (MOPPP); 3,4-
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- 1 methylenedioxyalphapyrrolidinopropiophenone (MDPPP); Alpha-
 2 pyrrolidinovalerophenone (alpha-PVP); 3-fluoromethcathinone; 4'-Methyl-alpha-
 3 pyrrolidinobutiophenone (MPBP); Methyl-~~and~~-pyrrolidinopropiophenone
 4 (MPPP); Methyl-~~and~~-pyrrolidino-hexanophenone (MPHP); Buphedrone; Methyl-
 5 N-ethylcathinone; Pentadron; Dimethylmethcathinone (DMMC);
 6 Dimethylethcathinone (DMEC); Methylenedioxymethcathinone (MDMC);
 7 Pentylone; Ethylethcathinone; Ethylmethcathinone; Fluoroethcathinone; methyl-
 8 alpha-pyrrolidinobutiophenone (MPBP); Methylecathinone (MEC); Methylenedioxy-
 9 alpha-pyrrolidinobutiophenone (MDPBP); Methoxymethcathinone (MOMC);
 10 Methylbuphedrone (MBP); Benzedrone (4-MBC); Dibutylone (DMBDB);
 11 Dimethylone (MDDMA); Diethylcathinone; Eutylone (EBDB); N-ethyl-N-
 12 Methylcathinone; N-ethylbuphedrone, 1-(1,3-benzodioxol-5-yl)-2-
 13 (ethylamino)pentan-1-one (N-Ethylpentylone); 4'-Methyl-alpha-
 14 pyrrolidinopropiophenone (4-MEPPP, MPPP or MaPPP); alpha-
 15 Pyrrolidinobutiophenone (α;PBP); 1-(1,3-benzodioxol-5-yl)-2-(tert-
 16 butylamino)propan-1-one (Tertylone); 1-(1,3-benzodioxol-5-yl)-2-
 17 (ethylamino)hexan-1-one (N-ethyl Hexylone); 1-(1,3-benzodioxol-5-yl)-2-
 18 (methylamino)pentan-1-one (Pentylone);
 19 ~~(38)~~(37) 2,5-Dimethoxy-4-ethylamphetamine (DOET);
 20 ~~(39)~~(38) Alpha-ethyltryptamine;
 21 ~~(40)~~(39) 4-Bromo-2,5-dimethoxy phenethylamine;
 22 ~~(41)~~(40) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7);
 23 ~~(42)~~(41) 1-(3-trifluoromethylphenyl) piperazine (TFMPP);
 24 ~~(43)~~(42) Alpha-methyltryptamine (AMT);
 25 ~~(44)~~(43) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);
 26 ~~(45)~~(44) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);
 27 ~~(46)~~(45) Synthetic cannabinoids. Any material, compound, mixture, or preparation
 28 that is not listed as a controlled substance in another schedule, is not an FDA-
 29 approved drug, and contains any quantity of the following substances, their salts,
 30 isomers (whether optical, positional, or geometric), homologues, modifications of
 31 the indole ring by nitrogen heterocyclic analog substitution or nitrogen heterocyclic
 32 analog substitution of the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, cumyl,
 33 or propionaldehyde structure, and salts of isomers, homologues, and modifications,
 34 unless specifically excepted, whenever the existence of these salts, isomers,

homologues, modifications, and salts of isomers, homologues, and modifications is possible within the specific chemical designation:

(a) Naphthoylindoles. Any compound containing a 2-(1-naphthoyl)indole or 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, cyanoalkyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group, whether or not further substituted on the indole ring to any extent and whether or not substituted on the naphthyl ring to any extent.

Some trade or other names: JWH-015; 1-pentyl-3-(1-naphthoyl)indole (JWH-018); 1-hexyl-3-(1-naphthoyl)indole (JWH-019); 1-butyl-3-(1-naphthoyl)indole (JWH-073); 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081); 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122); 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200); JWH-210; JWH-398; 1-pentyl-3-(1-naphthoyl)indole (AM-678); 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM-2201); WIN 55-212; JWH-004; JWH-007; JWH-009; JWH-011; JWH-016; JWH-020; JWH-022; JWH-046; JWH-047; JWH-048; JWH-049; JWH-050; JWH-070; JWH-071; JWH-072; JWH-076; JWH-079; JWH-080; JWH-082; JWH-094; JWH-096; JWH-098; JWH-116; JWH-120; JWH-148; JWH-149; JWH-164; JWH-166; JWH-180; JWH-181; JWH-182; JWH-189; JWH-193; JWH-198; JWH-211; JWH-212; JWH-213; JWH-234; JWH-235; JWH-236; JWH-239; JWH-240; JWH-241; JWH-258; JWH-262; JWH-386; JWH-387; JWH-394; JWH-395; JWH-397; JWH-399; JWH-400; JWH-412; JWH-413; JWH-414; JWH-415; JWH-424; AM-678; AM-1220; AM-1221; AM-1235; AM-2232, THJ-2201;

(b) Naphthylmethylinindoles. Any compound containing a 1H-indol-2-yl-(1-naphthyl)methane or 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, cyanoalkyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group, whether or not further substituted on the indole ring to any extent and whether or not substituted on the naphthyl ring to any extent.

- 1 Some trade or other names: JWH-175; JWH-184; JWH-185; JWH-192;
2 JWH-194; JWH-195; JWH-196; JWH-197; JWH-199;
- 3 (c) Phenylacetylindoles. Any compound containing a 2-phenylacetylindole or 3-
4 phenylacetylindole structure with substitution at the nitrogen atom of the
5 indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
6 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl, cyanoalkyl, 1-
7 (N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl,
8 (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group, whether or not
9 further substituted on the indole ring to any extent and whether or not
10 substituted on the phenyl ring to any extent.
- 11 Some trade or other names: 1-cyclohexylethyl-3-(2-
12 methoxyphenylacetyl)indole (SR-18); 1-cyclohexylethyl-3-(2-
13 methoxyphenylacetyl)indole (RCS-8); 1-pentyl-3-(2-
14 methoxyphenylacetyl)indole (JWH-250); 1-pentyl-3-(2-
15 chlorophenylacetyl)indole (JWH-203); JWH-167; JWH-201; JWH-202; JWH-
16 204; JWH-205; JWH-206; JWH-207; JWH-208; JWH-209; JWH-237; JWH-
17 248; JWH-249; JWH-251; JWH-253; JWH-302; JWH-303; JWH-304; JWH-
18 305; JWH-306; JWH-311; JWH-312; JWH-313; JWH-314; JWH-315; JWH-
19 316; Cannabipiperidiethanone;
- 20 (d) Benzoylindoles. Any compound containing a 2-(benzoyl)indole or 3-
21 (benzoyl)indole structure with substitution at the nitrogen atom of the
22 indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
23 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, cyanoalkyl, 1-
24 (N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl,
25 (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group, whether or not
26 further substituted on the indole ring to any extent and whether or not
27 substituted on the phenyl ring to any extent.
- 28 Some trade or other names: 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole
29 (AM-694); 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19); Pravadolone
30 (WIN 48,098); 1-pentyl-3-[(4-methoxy)-benzoyl]indole (RCS-4); AM-630;
31 AM-661; AM-2233; AM-1241;
- 32 (e) Naphthoylpyrroles. Any compound containing a 2-(1-naphthoyl)pyrrole or 3-
33 (1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the
34 pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl,
35 cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl,

cyanoalkyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group, whether or not further substituted on the pyrrole ring to any extent and whether or not substituted on the naphthyl ring to any extent.

Some trade or other names: JWH-307; JWH-030; JWH-031; JWH-145; JWH-146; JWH-147; JWH-150; JWH-156; JWH-242; JWH-243; JWH-244; JWH-245; JWH-246; JWH-292; JWH-293; JWH-308; JWH-309; JWH-346; JWH-348; JWH-363; JWH-364; JWH-365; JWH-367; JWH-368; JWH-369; JWH-370; JWH-371; JWH-373; JWH-392;

(f) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, cyanoalkyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group, whether or not further substituted on the indene ring to any extent and whether or not substituted on the naphthyl ring to any extent.

Some trade or other names: JWH-171; JWH-176; JWH-220;

(g) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group, whether or not substituted on the cyclohexyl ring to any extent.

Some trade or other names: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP 47, 497 and homologues, which includes C8); cannabicyclohexanol; CP-55,490; CP-55,940; CP-56,667

(h) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol. Some trade or other names: HU-210;

(i) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenyl. Some trade or other names: WIN 55, 212-2;

- (j) Substituted Acetylintoles. Any compound containing a 2-acetyl indole or 3-acetyl indole structure substituted at the acetyl by replacement of the methyl group with a tetramethylcyclopropyl, adamantyl, benzyl, cumyl, or propionaldehyde substituent whether or not further substituted on the tetramethylcyclopropyl, adamantyl, benzyl, cumyl, or propionaldehyde substituent to any extent and whether or not further substituted at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group whether or not further substituted on the indole ring to any extent. Some trade and or names: (1-Pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144); (1-(5-fluoropentyl)indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11); (1-(2-morpholin-4-ylethyl)-1H-indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone (A-796,260); 1-[(N-methylpiperidin-2-yl)methyl]-3-(adamant-1-yl)indole (AM-1248); 1-Pentyl-3-(1-adamantoyl)indole (AB-001 and JWH-018 adamantyl analog); AM-679;
- (k) Substituted Carboxamide Indole. Any compound containing a 2-carboxamide indole or 3-carboxamide indole structure substituted at the nitrogen of the carboxamide with a tetramethylcyclopropyl, naphthyl, adamantyl, cumyl, phenyl, or propionaldehyde substituent, whether or not further substituted on the tetramethylcyclopropyl, adamantyl, cumyl, naphthyl, phenyl, or propionaldehyde substituent to any extent and whether or not further substituted at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, benzyl, or halobenzyl group whether or not further substituted on the indole ring to any extent. Some trade and other names: JWH-018 adamantyl carboxamide; STS-135; MN-18; 5-Fluoro-MN-18, 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide (5F-CUMYL-P7AICA) ; N-(Adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (5F-APINACA); methyl (2R)-2-[[1-(5-fluoropentyl)indazole-3-carbonyl]amino]-

3,3-dimethylbutanoate (5F-ADB); N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (AB-CHMINACA); 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (4-CN-CUMYL-BUTINACA); N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (ADB-CHMINACA or MAB-CHMINACA); methyl (2S)-2-[[1-[4-fluorophenyl)methyl]indazole-3-carbonyl]amino]-3,3-dimethylbutanoate (MDMB-FUBINACA); methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate (MMB-CHMICA); methyl (2S)-2-[[1-[4-fluorophenyl)methyl]indazole-3-carbonyl]amino]-3-methylbutanoate (AMB-FUBINACA); Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (5F-AMB); methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (5F-MDMB-PICA); methyl (S)-3,3-dimethyl-2-[(1-(pent-4-enylindazole-3-carbonyl)amino)]butanoate (MDMB-4en-PINACA); methyl 2-(1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (4F-MDMB-BUTINACA);

- (I) Substituted Carboxylic Acid Indole. Any compound containing a 1H-indole-2-carboxylic acid or 1H-indole-3-carboxylic acid substituted at the hydroxyl group of the carboxylic acid with a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, quinolinyl, isquinolinyl, cumyl, or propionaldehyde substituent whether or not further substituted on the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, cumyl, quinolinyl, isquinolinyl, or propionaldehyde substituent to any extent and whether or not further substituted at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, tetrahydropyranylmethyl, benzyl, or halo benzyl group whether or not further substituted on the indole ring to any extent.

Some trade and other names: Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (NM2201);

- ~~(47)~~(46) 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (MDAI);
~~(48)~~(47) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);
~~(49)~~(48) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);
~~(50)~~(49) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);
~~(51)~~(50) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);

- 1 ~~(52)~~(51) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);
- 2 ~~(53)~~(52) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);
- 3 ~~(54)~~(53) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);
- 4 ~~(55)~~(54) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);
- 5 ~~(56)~~(55) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);
- 6 ~~(57)~~(56) Substituted phenethylamine. Any compound, unless specifically exempt,
- 7 listed as a controlled substance in another schedule or an approved FDA drug,
- 8 structurally derived from phenylethan-2-amine by substitution on the phenyl ring
- 9 in any of the following ways, that is to say--by substitution with a fused
- 10 methylenedioxy, fused furan, or fused tetrahydrofuran ring system; by substitution
- 11 with two alkoxy groups; by substitution with one alkoxy and either one fused furan,
- 12 tetrahydrofuran, or tetrahydropyran ring system; by substitution with two fused
- 13 ring systems from any combination of the furan, tetrahydrofuran, or
- 14 tetrahydropyran ring systems; whether or not the compound is further modified in
- 15 any of the following ways:
- 16 (a) By substitution on the phenyl ring by any halo, hydroxyl, alkyl,
- 17 trifluoromethyl, alkoxy, or alkylthio groups;
- 18 (b) By substitution on the 2-position by any alkyl groups; or
- 19 (c) By substitution on the 2-amino nitrogen atom with acetyl, alkyl, dialkyl,
- 20 benzyl, methoxybenzyl, or hydroxybenzyl groups.
- 21 Some trade and other names: 2-(2,5-dimethoxy-4-
- 22 (methylthio)phenyl)ethanamine (2C-T or 4-methylthio-2,5-
- 23 dimethoxyphenethylamine); 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine
- 24 (DOI or 2, 5-Dimethoxy-4-iodoamphetamine); 1-(4-Bromo-2,5-
- 25 dimethoxyphenyl)-2-aminopropane (DOB or 2,5-Dimethoxy-4-
- 26 bromoamphetamine); 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine (DOC
- 27 or 2,5-Dimethoxy-4-chloroamphetamine); 2-(4-bromo-2,5-dimethoxyphenyl)-N-
- 28 [(2-methoxyphenyl)methyl]ethanamine (2C-B-NBOMe; 25B-NBOMe or 2,5-
- 29 Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine); 2-4-iodo-2,5-
- 30 dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (2C-I-NBOMe; 25I-
- 31 NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine); N-(2-
- 32 Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl) (Mescaline-NBOMe or 3,4,5-
- 33 trimethoxy-(2-methoxybenzyl)phenethylamine); 2-(4-chloro-2,5-
- 34 dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (2C-C-NBOMe; 25C-
- 35 NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine); 2-(7-

- 1 Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine (2CB-5-hemiFLY);
 2 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine (2C-B-
 3 FLY); 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-
 4 yl)ethanamine (2C-B-butterFLY); -(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-
 5 tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane (2C-B-FLY-NBOMe);
 6 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine (bromo-
 7 benzodifuranyl-isopropylamine or bromo-dragonFLY); -(2-Hydroxybenzyl)-4-iodo-
 8 2,5-dimethoxyphenethylamine (2C-I-NBOH or 25I-NBOH); 5-(2-
 9 Aminoprpyl)benzofuran (5-APB); 6(2-Aminopropyl)benzofuran (6-APB); 5-(2-
 10 Aminopropyl)-2,3-dihydrobenzofuran (5-APDB); 6-(2-Aminopropyl)-2,3-
 11 dihydrobenzofuran (6-APDB);
 12 ~~(58)~~(57) Substituted tryptamines. Any compound, unless specifically exempt, listed as
 13 a controlled substance in another schedule or an approved FDA drug, structurally
 14 derived from 2-(1H-indol-3-yl)ethanamine (i.e, tryptamine) by mono- or di-
 15 substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of
 16 the amino nitrogen atom in a cyclic structure whether or not the compound is
 17 further substituted at the alpha-position with an alkyl group or whether or not
 18 further substituted on the indole ring to any extent with any alkyl, alkoxy, halo,
 19 hydroxyl, or acetoxy groups.
 20 Some trade and other names: 5-methoxy-N,N-diallyltryptamine (5-MeO-DALT); 4-
 21 acetoxy-N,N-dimethyltryptamine (4-AcO-DMT or O-Acetylpsilocin); 4-hydroxy-N-
 22 methyl-N-ethyltryptamine (4-HO-MET); 4-hydroxy-N,N-diisopropyltryptamine (4-
 23 HO-DIPT); 5-methoxy-N-methyl-N-isopropyltryptamine (5-MeO-MiPT);
 24 ~~(59)~~(58) Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone (CB-13);
 25 ~~(60)~~(59) N-Adamantyl-1-pentyl-1H-Indazole-3-carboxamide (AKB 48);
 26 ~~(61)~~(60) 1-(4-Fluorophenyl)piperazine (pFPP);
 27 ~~(62)~~(61) 1-(3-Chlorophenyl)piperazine (mCPP);
 28 ~~(63)~~(62) 1-(4-Methoxyphenyl)piperazine (pMeOPP);
 29 ~~(64)~~(63) 1,4-Dibenzylpiperazine (DBP);
 30 ~~(65)~~(64) Isopentedrone;
 31 ~~(66)~~(65) Fluoromethamphetamine;
 32 ~~(67)~~(66) Fluoroamphetamine;
 33 ~~(68)~~(67) Fluorococaine;
 34 ~~(69)~~(68) 1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid (PB-22);

- ~~(70)~~(69) 1-(5-fluoropentyl)-8-quinoliny ester-1H-indole-3-carboxylic acid (5 Fluoro-PB-22);
- ~~(71)~~(70) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA);
- ~~(72)~~(71) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (5 Fluoro-AB-PINACA);
- ~~(73)~~(72) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA);
- ~~(74)~~(73) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide (ADB-PINACA (ADBICA));
- ~~(75)~~(74) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide (5 Fluoro-ADB-PINACA (5 Fluoro-ADBICA)); and
- ~~(76)~~(75) N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (ADB-FUBINACA).

Section 13. That a NEW SECTION be added to title 34:

Terms used in sections 13 to 48, inclusive, of this Act mean:

- (1) "Cultivator," an entity licensed pursuant to this chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells marijuana and related supplies to a marijuana facility;
- (2) "Dispensary," an entity licensed pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses marijuana, marijuana products, and related supplies to a consumer;
- (3) "Manufacturer," an entity licensed pursuant to this chapter that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells marijuana products to a marijuana facility;
- (4) "Marijuana," as defined in § 22-42-1;
- (5) "Marijuana facility," an entity licensed pursuant to this chapter to cultivate, test, manufacture, or dispense marijuana or marijuana products;
- (6) "Marijuana product," any product infused with marijuana concentrate, as defined in § 22-42-1, and intended for use or consumption by humans;
- (7) "Testing facility," an independent entity registered with the Department of Revenue pursuant to this chapter to analyze the safety and potency of marijuana and marijuana products.

1 **Section 14. That a NEW SECTION be added to title 34:**

2 Neither the secretary of revenue nor any employee of the Department of Revenue
3 whose duties include the licensing of marijuana facilities or regulation of marijuana facility
4 licensees may have any interest, financial or otherwise, in the production, transportation,
5 storage, or sale of marijuana or marijuana products.

6 **Section 15. That a NEW SECTION be added to title 34:**

7 The secretary of revenue shall prescribe the forms for any application for a license
8 provided in this chapter. The application must contain information required by the
9 secretary and necessary to determine the eligibility of the applicant.

10 **Section 16. That a NEW SECTION be added to title 34:**

11 An applicant for a manufacturer, cultivator, or dispensary license under this chapter
12 must initially submit the application to the secretary of revenue.

13 **Section 17. That a NEW SECTION be added to title 34:**

14 After submitting an application under section 16 of this Act, the applicant for a
15 manufacturer, cultivator, or dispensary license shall submit the application to the
16 governing body of the municipality in which the applicant intends to operate, or if outside
17 the corporate limits of a municipality, to the governing body of the county in which the
18 applicant intends to operate. The governing body may charge a reasonable fee that must
19 accompany the application. The license fee shall be retained by the local governing body
20 in which the license shall be issued. If the application is rejected, the fee shall be promptly
21 returned to the applicant.

22 The governing body may approve the application for a manufacturer, cultivator, or
23 dispensary if the governing body deemed the applicant and the proposed location suitable.
24

25 **Section 18. That a NEW SECTION be added to title 34:**

26 Any applicant for a manufacturer, cultivator, or dispensary license under this
27 chapter shall include the applicant's signed affirmation that the premises to be licensed,
28 for the purposes of search and seizure laws of the state and any ordinances of the county

1 or municipality where the license is issued, are considered public premises. In addition,
2 the affirmation must state:

3 (1) The premises and all buildings, safes, cabinets, lockers, and storerooms on the
4 premises are at all times, on demand of the secretary of revenue, the attorney
5 general, or officers charged with law enforcement in the county or municipality,
6 open to inspection;

7 (2) All of the applicant's records and books dealing with the sale and ownership of
8 marijuana are open to the persons specified in subdivision (1) for inspection; and

9 (3) The application and license issued on the application is a contract between the
10 applicant and the state and the county or municipality having jurisdiction, entitling
11 the state and the county or municipality, for the purpose of enforcing the law,
12 rules, and ordinances, to inspect the applicant's premises and books at any time.

13 **Section 19. That a NEW SECTION be added to title 34:**

14 No license for a marijuana manufacturer, cultivator, or dispensary license may be
15 issued to an applicant until a public hearing is conducted pursuant to this chapter.

16 **Section 20. That a NEW SECTION be added to title 34:**

17 The governing body of any incorporated municipality or county presented with an
18 application for a manufacturer, cultivator, or dispensary license shall fix the time and place
19 for the governing body's hearing on the application. The finance officer or county auditor
20 shall publish one notice, at least one week before the hearing, in the official newspaper of
21 the municipality or county:

22 (1) With the heading "Notice of Hearing Upon Applications for Marijuana Facility;"

23 (2) That states the time and place when and where the applications will be considered;
24 and

25 (3) That states that any person interested in the approval or rejection of any
26 application may appear and be heard.

27 At the hearing, the body shall consider the application and any objection to the
28 application before making a final decision on the application.

29 **Section 21. That a NEW SECTION be added to title 34:**

30 If the governing body of the municipality or county does not approve the
31 application, the governing body shall endorse on the application the reasons for the denial

and return the application and fee to the applicant. No further application may be received from the applicant until after the expiration of one year from the date of a denied application. However, if the body denied the application based on the suitability of the location for the license, no further application may be received from the applicant until after three months from the date of the denied application, if the subsequent application is for a different location.

Section 22. That a NEW SECTION be added to title 34:

If the governing body of the municipality or county approves the application, the governing body shall endorse the approval on the application. The licensee is entitled to operate under the license for the succeeding licensing year. The license fee must be deposited in the general fund of the municipality or county.

Section 23. That a NEW SECTION be added to title 34:

Any manufacturer, cultivator, or dispensary licensee under this chapter shall be a person of good moral character and never convicted of a felony. If the licensee is a corporation, the managing officers of the corporation must meet the same qualifications.

Section 24. That a NEW SECTION be added to title 34:

Any manufacturer, cultivator, or dispensary licensee under this chapter shall be the owner or actual lessee of the premises where the business is conducted, and the sole owner of the business operated under the license.

Section 25. That a NEW SECTION be added to title 34:

The secretary of revenue, in compliance with chapter 1-26, may revoke or suspend any manufacturer, cultivator, or dispensary license issued under this chapter upon proof of violation by the licensee, by the licensee's agents or employees, or by the manager or contractual operators of the cultivator, manufacturer, or dispensary facility or their agents or employees operating under a county or municipal license, of:

(1) Any provision of this chapter;

(2) Any rule promulgated pursuant to this chapter; or

(3) Any ordinance or regulation relevant to marijuana control adopted by the political subdivision issuing the license.

1 For any licensee with multiple marijuana facility licenses for the same premises,
2 upon suspension or revocation of any license pursuant to this chapter for that premises,
3 the licensee shall cease operation under all marijuana facility licenses held by the licensee
4 for that same premises for the same period as the suspension or revocation.

5 **Section 26. That a NEW SECTION be added to title 34:**

6 No dispensary license may be revoked or suspended by the secretary of revenue
7 because of a violation of any statute, ordinance, rule, or regulation prohibiting the sale or
8 service of marijuana to a person under the age of twenty-one years if the violation was
9 committed by an employee or agent of the dispensary licensee and the licensee has not
10 had more than one violation of any statute, ordinance, rule, or regulation prohibiting the
11 sale or service of marijuana to a person under the age of twenty-one years on the premises
12 where the violation occurred in the previous twenty-four months.

13 If the licensee meets the requirements of the conditions of this section, the
14 secretary shall impose a civil penalty of one thousand dollars for a first violation and two
15 thousand dollars for a second violation. However, if the employee or agent has not been
16 certified by a nationally recognized training program approved by the Department of
17 Revenue that provides instruction on techniques to prevent persons under the age of
18 twenty-one years from purchasing or consuming marijuana, the secretary shall impose a
19 civil penalty of two thousand dollars for a first violation and four thousand dollars for a
20 second violation.

21 A licensee may request an administrative hearing pursuant to chapter 1-26 to
22 contest the imposition of a civil penalty.

23 An agent of a dispensary convicted under § 22-42-7 may not continue to be
24 affiliated with a dispensary and is disqualified from any future affiliation with any
25 marijuana facility under this chapter.

26 **Section 27. That a NEW SECTION be added to title 34:**

27 The governing body of a municipality or county may recommend to the secretary
28 of revenue following a hearing that any manufacturer, cultivator, or dispensary license
29 issued under this chapter be suspended or revoked for violation of any of the provisions
30 of this chapter or for violations of any ordinance or regulation of the governing body
31 relevant to marijuana control that occurs on the premises of the licensee. Upon receipt of
32 the recommendation, the secretary shall proceed as provided in this chapter.

Section 28. That a NEW SECTION be added to title 34:

Any action taken by the governing body of a municipality or county pursuant to this chapter that requires a public hearing shall be noticed to the licensee, at the address given on the license, at least thirty days in advance of the date set for public hearing. The finance officer or the county auditor shall publish the notice of hearing in the official newspaper of the municipality or county at least one week before the hearing, in a form approved by the governing body.

Section 29. That a NEW SECTION be added to title 34:

If the secretary of revenue receives information of a violation by any manufacturer, cultivator, or dispensary licensee of any provision of this chapter, the secretary must investigate the alleged violation. If there is substantial evidence to support a violation of any provision of this chapter, the secretary must proceed in accordance with this chapter.

Section 30. That a NEW SECTION be added to title 34:

A manufacturer, cultivator, or dispensary applicant or licensee under this chapter or any interested person or governing body has a right to a hearing in relation to any action taken upon the application or license. The hearing must occur, under the provisions of chapter 1-26, in the municipality or county with jurisdiction over the license.

Section 31. That a NEW SECTION be added to title 34:

No manufacturer, cultivator, or dispensary licensee under this chapter, whose license is revoked, may be granted any license under this chapter for one year after the revocation. If any relative of any such former licensee or any of the former licensee's employees or former employees, applies for any such license before the one-year period has elapsed, the license may be granted only upon affirmative and satisfactory proof that the former licensee has no interest in the business.

Section 32. That a NEW SECTION be added to title 34:

Upon service of the secretary of revenue's order for revocation of the cultivator, manufacturer, or dispensary license on the licensee, all of the licensee's rights under the license terminate, except in the event of a stay on appeal.

Section 33. That a NEW SECTION be added to title 34:

No manufacturer, cultivator, or dispensary license granted pursuant to this chapter may be issued unless the applicant has first obtained a sales tax license pursuant to chapter 10-45, if applicable, or a use tax license pursuant to chapter 10-46, if applicable.

Section 34. That a NEW SECTION be added to title 34:

The governing body of a municipality or county may, by ordinance, prohibit the locating of marijuana facilities within its jurisdiction.

Section 35. That a NEW SECTION be added to title 34:

Any cultivator, manufacturer, or dispensary licensee or employee of a licensee who is charged with a felony offense involving a minor, a crime of violence pursuant to subdivision 22-1-2(9), or a felony drug-related offense, on the licensed premises may, as a condition of bond, be prohibited from entering onto the licensed premises.

Section 36. That a NEW SECTION be added to title 34:

No marijuana facility may employ any person under the age of twenty-one, or any person with a conviction for a violation of §§ 22-42-2, 22-42-3, 22-42-4, 22-42-4.3, or 22-42-7 within the last ten years.

Section 37. That a NEW SECTION be added to title 34:

All cultivation, manufacturing, and packaging of marijuana or marijuana products must take place at the licensed premises. The licensed premises may only be accessed by agents of the marijuana facility, emergency personnel, and adults who are twenty-one years of age and older who are accompanied by a marijuana facility agent.

Section 38. That a NEW SECTION be added to title 34:

A marijuana facility shall implement appropriate security measures designed to deter and prevent theft of marijuana or marijuana products and unauthorized entrance into any area containing marijuana or marijuana products.

Section 39. That a NEW SECTION be added to title 34:

No person under the age of twenty-one may enter a dispensary. A dispensary shall verify the age of every person who enters through a valid government-issued identification

1 card. Each dispensary shall record the name of each person purchasing marijuana or
2 marijuana products from the dispensary. The records kept by a dispensary pursuant to
3 this section are subject to search only through a valid search warrant issued by a judicial
4 officer. A dispensary may not sell or otherwise transfer the records kept pursuant to this
5 section to any person for promotional purposes.

6 **Section 40. That a NEW SECTION be added to title 34:**

7 A marijuana facility may not manufacture or dispense marijuana products made in
8 the shape of a person, animal, insect, fruit, or any other likeness designed to be appealing
9 to a person under the age of twenty-one.

10 **Section 41. That a NEW SECTION be added to title 34:**

11 A cultivator shall cultivate marijuana within a secure, indoor facility out of view of
12 the public.

13 **Section 42. That a NEW SECTION be added to title 34:**

14 A marijuana facility may not engage in advertising that:
15 (1) Is false or misleading;
16 (2) Promotes overconsumption of marijuana or marijuana products;
17 (3) Depicts the actual consumption of marijuana or marijuana products;
18 (4) Depicts a person under the age of twenty-one consuming marijuana or marijuana
19 products;
20 (5) Makes any health, therapeutic, or medicinal claims about marijuana or marijuana
21 products; or
22 (6) Is designed in a way that is likely to appeal to a person under the age of twenty-
23 one or includes cartoons, animals, children, or any other likeness to images,
24 characters, or phrases that are designed in any manner to be appealing or to
25 encourage consumption of marijuana or marijuana products by a person under the
26 age of twenty-one.

27 **Section 43. That a NEW SECTION be added to title 34:**

28 Any person who, in any application, report, or statement, knowingly makes a false
29 statement as to any matter required by any provision of this chapter or any administrative
30 rule promulgated pursuant to this chapter is guilty of a Class 6 felony.

Section 44. That a NEW SECTION be added to title 34:

It is a Class 1 misdemeanor for any person to purchase or otherwise acquire marijuana or marijuana products from a dispensary and to give or resell the marijuana or marijuana products to any person under the age of twenty-one years. A second or subsequent conviction under this section is a Class 6 felony. This section does not apply to any person registered with the state to undertake an activity involving the distribution, or possession with intent to distribute, of marijuana or marijuana products who acts in compliance with the authorizing law.

Section 45. That a NEW SECTION be added to title 34:

This chapter does not limit or affect laws that prohibit or otherwise regulate:

- (1) Possession or consumption of marijuana or marijuana products or possession of marijuana or marijuana product paraphernalia on the grounds of any preschool, school, in a school bus;
- (2) Possession or consumption of marijuana or marijuana products on the grounds of any correctional facility;
- (3) Consumption of marijuana or marijuana products as part of a criminal penalty diversion program;
- (4) Conduct that endangers others; or
- (5) Undertaking any task under the influence of marijuana or marijuana products, if doing so would constitute negligence or professional malpractice.

Section 46. That a NEW SECTION be added to title 34:

This chapter does not:

- (1) Require that an employer permit or accommodate conduct allowed by this chapter;
- (2) Affect an employer's ability to restrict the use of marijuana or marijuana products by employees;
- (3) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this chapter on or in that property; or
- (4) Limit the ability of the state or local government to prohibit or restrict any conduct otherwise permitted under this chapter within a building owned, leased, or occupied by the state or local government.

Section 47. That a NEW SECTION be added to title 34:

The rights provided by this chapter do not apply to the extent that they conflict with an employer's obligations under federal law or regulation or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulation.

Section 48. That a NEW SECTION be added to title 34:

The Department of Revenue may promulgate rules pursuant to chapter 1-26:

- (1) Governing the transportation of marijuana and marijuana products to ensure health, safety, and accurate documentation;
- (2) Governing how the department shall evaluate, register, and revoke the registration of testing facilities to ensure the health and safety of consumers of marijuana and marijuana products;
- (3) Governing marijuana facilities to ensure the health and safety of consumers and prevent diversion and theft, including:
 - (a) Oversight requirements;
 - (b) Record-keeping requirements;
 - (c) Security requirements, including lighting, physical security, and alarm requirements;
 - (d) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health;
 - (e) Standards for the manufacture of marijuana products and indoor cultivation of marijuana by a cultivator;
 - (f) Requirements for the storage of marijuana and marijuana products;
 - (g) Employment and training requirements, including requiring that each marijuana facility create an identification badge for each agent;
 - (h) Standards for the safe manufacture of marijuana products;
 - (i) Procedures for the safe packaging and labeling of marijuana and marijuana products; and
 - (j) Testing requirements for marijuana and marijuana products, certification standards for testing facilities, including requirements for equipment and qualifications for personnel;
- (4) Establishing labeling requirements for marijuana and marijuana products, including requiring labels to include the following:

- 1 (a) The tetrahydrocannabinol concentration level and length of time it typically
2 takes for marijuana or a marijuana product to take effect;
3 (b) Disclosing ingredients and possible allergens;
4 (c) A nutritional fact panel; and
5 (d) Requiring that edible marijuana products be clearly identifiable, when
6 practicable, with a standard symbol indicating that it contains marijuana;
7 (5) Establishing packaging requirements for marijuana and marijuana products,
8 including that packaging be childproof and resealable;
9 (6) Establishing a seed to sale tracking system to ensure that marijuana plants are
10 tracked from seeds through cultivation, manufacturing, testing, and packaging
11 before sale in a dispensary; and
12 (7) Establishing a requirement that dispensaries conspicuously post warnings to
13 consumers regarding the legal possession limits for marijuana and marijuana
14 products under chapter 22-42 and establishing:
15 (a) Required language;
16 (b) Sign dimensions, font size, and font type; and
17 (c) Acceptable locations for such signage.
18 A violation of a required or prohibited action under any rule authorized by this
19 section is a Class 2 misdemeanor.

2022 South Dakota Legislature

Draft 240

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to provide for the taxation of marijuana.**

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

3 **Section 1. That a NEW SECTION be added to title 10:**

4 Terms used in sections 1 to 6, inclusive, of this Act mean:

- 5 (1) "Dispensary," a licensed entity that acquires, possesses, stores, delivers, transfers,
6 transports, sells, supplies, or dispenses marijuana, marijuana products, and
7 related supplies to a consumer;
- 8 (2) "Manufacturer," a licensed entity that acquires, possesses, manufactures, delivers,
9 transfers, transports, supplies, or sells marijuana products to a marijuana facility;
- 10 (3) "Marijuana facility," an entity licensed to cultivate, test, manufacture, or dispense
11 marijuana or marijuana products;
- 12 (4) "Marijuana," as defined in § 22-42-1;
- 13 (5) "Marijuana concentrate," the resin extracted from any part of a marijuana plant
14 and every compound, manufacture, salt, derivative, mixture, or preparation from
15 such resin;
- 16 (6) "Marijuana product," any product infused with marijuana concentrate and intended
17 for use or consumption by humans.
- 18

19 **Section 2. That a NEW SECTION be added to title 10:**

20 There is hereby levied on all marijuana an excise tax of fifteen percent that must
21 be calculated based on the average market rate. A manufacturer shall pay the marijuana
22 excise tax on all marijuana manufactured and sold directly to a dispensary. In order to
23 calculate the tax using the average market rate, the weight or unit of marijuana sold must
24 be multiplied by the average market rate and the result must be multiplied by fifteen
25 percent. For purposes of this section, the term, average market rate, means the average
26 prices as determined by the department on all marijuana sold or transferred from
27 manufacturer to dispensary.

Section 3. That a NEW SECTION be added to title 10:

Each manufacturer liable for the payment of taxes levied under this chapter shall file with the secretary of revenue a return, on a form prescribed by the secretary, showing the kind and quantity of marijuana manufactured, received, and in the manufacturer's possession, together with the names of the persons from whom received, the amount of tax due, and any other information prescribed by the secretary. The return, covering the period of one calendar month, together with payment of the tax due, must be transmitted to the Department of Revenue on or before the twenty-fifth day of the second month following the close of the reporting period. A violation of this section is a Class 1 misdemeanor.

Section 4. That a NEW SECTION be added to title 10:

Any manufacturer required to file returns or reports under this chapter, who fails to file a return or report or pay the tax when due, is subject to interest and penalty at the rates set forth in § 10-59-6. For reasonable cause shown, the secretary of revenue may reduce or eliminate the penalty. If any manufacturer files a false or fraudulent return, an amount equal to the tax evaded, or attempted to be evaded, shall be added to the tax. Penalty and interest are considered the same as tax for the purposes of collection and enforcement, including liens, distress warrants, and criminal violations. Any payment received for taxes, penalty, or interest is applied first to tax, beginning with the oldest delinquency, then to interest, and then to penalty. No court may enjoin the collection of the tax or civil penalty.

Section 5. That a NEW SECTION be added to title 10:

Any manufacturer liable for the payment of the taxes shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand, and any other information the secretary of revenue may prescribe by rule promulgated pursuant to chapter 1-26. The secretary of revenue may require from a manufacturer any report necessary to administer the requirements of this chapter. The secretary may require the production of any book, record, document, invoice, and voucher kept, maintained, received, or issued by the manufacturer in connection with the manufacturer's business that, in the judgment of the secretary, may be necessary to administer and discharge the secretary's duties, to secure the maximum of revenue to be

1 paid, and to carry out the requirements of this chapter. A violation of this section is a
2 Class 1 misdemeanor.

3 If default is made, or if any manufacturer fails or refuses to furnish any other
4 relevant reports or information upon request, the secretary may enter the manufacturer's
5 premises where the records are kept and examine the records as necessary to compile
6 the required report. The cost of the examination must be paid by the manufacturer whose
7 reports are in default.

8 **Section 6. That a NEW SECTION be added to title 10:**

9 There is hereby created within the state treasury the marijuana fund into which all
10 funds collected under this chapter shall be deposited. Expenditures from the fund must be
11 appropriated through the normal budget process.

12 **Section 7. That chapter 10-45 be amended with a NEW SECTION:**

13 The tax imposed by this chapter applies to the gross receipts of all marijuana and
14 marijuana products sold to any person by a dispensary.

15 **Section 8. That chapter 10-46 be amended with a NEW SECTION:**

16 The tax imposed by this chapter applies to the gross receipts of all marijuana and
17 marijuana products sold to any person by a dispensary.

2022 South Dakota Legislature

Draft 222

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise the definition of bona fide practitioner-patient relationship.**

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;

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 between a~~
17 ~~practitioner and patient, during the course of which the practitioner has completed~~
18 ~~completes, at every visit, an assessment of the patient's medical history and~~
19 ~~current medical condition, including an appropriate in-person physical~~
20 ~~examination;~~

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

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

25 , and during which the following circumstances are present:

26 (a) The patient is under the practitioner's continued care for the debilitating
27 medical condition that qualifies the patient for the medical use of cannabis;

- 1 **(b) The patient has a reasonable expectation that the practitioner will continue**
2 **to provide in-person follow-up care to the patient to monitor the medical**
3 **use of cannabis; and**
4 **(c) The relationship is not for the sole purpose of providing a written**
5 **certification for the medical use of cannabis;**
6 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
7 that are infused with cannabis or an extract thereof, and are intended for use or
8 consumption by humans. The term includes edible cannabis products, beverages,
9 topical products, ointments, oils, and tinctures;
10 (4) "Cannabis product manufacturing facility," an entity registered with the
11 department pursuant to this chapter that acquires, possesses, manufactures,
12 delivers, transfers, transports, supplies, or sells cannabis products to a medical
13 cannabis dispensary;
14 (5) "Cannabis testing facility" or "testing facility," an independent entity registered
15 with the department pursuant to this chapter to analyze the safety and potency of
16 cannabis;
17 (6) "Cardholder," a qualifying patient or a designated caregiver who has been issued
18 and possesses a valid registry identification card;
19 (7) "Cultivation facility," an entity registered with the department pursuant to this
20 chapter that acquires, possesses, cultivates, delivers, transfers, transports,
21 supplies, or sells cannabis and related supplies to a medical cannabis
22 establishment;
23 (8) "Debilitating medical condition,"
24 (a) A chronic or debilitating disease or medical condition or its treatment that
25 produces one or more of the following: cachexia or wasting syndrome;
26 severe, debilitating pain; severe nausea; seizures; or severe and persistent
27 muscle spasms, including those characteristic of multiple sclerosis; or
28 (b) Any other medical condition or its treatment added by the department, as
29 provided for in § 34-20G-26;
30 (9) "Department," ~~means~~ the Department of Health;
31 (10) "Designated caregiver," a person who:
32 (a) Is at least twenty-one years of age;
33 (b) Has agreed to assist with a qualifying patient's medical use of cannabis;
34 (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

- 1 (c) The extraction of resin from cannabis by solvent extraction unless the
2 extraction is done by a cannabis product manufacturing facility;
- 3 (19) "Nonresident cardholder," a person who:
- 4 (a) Has been diagnosed with a debilitating medical condition, or is the parent,
5 guardian, conservator, or other person with authority to consent to the
6 medical treatment of a person who has been diagnosed with a debilitating
7 medical condition;
- 8 (b) Is not a resident of this state or who has been a resident of this state for
9 fewer than forty-five days;
- 10 (c) Was issued a currently valid registry identification card or its equivalent by
11 another state, district, territory, commonwealth, insular possession of the
12 United States, or country recognized by the United States that allows the
13 person to use cannabis for medical purposes in the jurisdiction of issuance;
14 and
- 15 (d) Has submitted any documentation required by the department, and has
16 received confirmation of registration;
- 17 (20) "Practitioner," a physician who is licensed with authority to prescribe drugs to
18 humans. In relation to a nonresident cardholder, the term means a person who is
19 licensed with authority to prescribe drugs to humans in the state of the patient's
20 residence;
- 21 (21) "Qualifying patient," a person who has been diagnosed by a practitioner as having
22 a debilitating medical condition;
- 23 (22) "Registry identification card," a document issued by the department that identifies
24 a person as a registered qualifying patient or registered designated caregiver, or
25 documentation that is deemed a registry identification card pursuant to §§ 34-20G-
26 29 to 34-20G-42, inclusive; and
- 27 (23) "Written certification," a document dated and signed by a practitioner, stating that
28 in the practitioner's professional opinion the patient is likely to receive therapeutic
29 or palliative benefit from the medical use of cannabis to treat or alleviate the
30 patient's debilitating medical condition or symptom associated with the debilitating
31 medical condition. This document shall affirm that it is made in the course of a
32 bona fide practitioner-patient relationship and shall specify the qualifying patient's
33 debilitating medical condition.

2022 South Dakota Legislature

Draft 167

Requested by: at the request of the Medical Marijuana Study Subcommittee

1 **An Act to revise the definition of a designated caregiver.**

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;

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
26 consumption by humans. The term includes edible cannabis products, beverages,
27 topical products, ointments, oils, and tinctures;

28 (4) "Cannabis product manufacturing facility," an entity registered with the
29 department pursuant to this chapter that acquires, possesses, manufactures,

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

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

2022 South Dakota Legislature

Draft 177

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to revise provisions providing that certain professions are not subject to**
2 **discipline for certain conduct relating to medical cannabis.**

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

4 **Section 1. That § 34-20G-6 be AMENDED:**

5 **34-20G-6.** No-attorney person licensed by the state or any other governmental
6 entity to engage in any profession, occupation, or other activity is subject to disciplinary
7 action by the State Bar of South Dakota or other professional licensing association for
8 providing legal assistance to a prospective or registered medical cannabis establishment
9 or other related to, denial of the rights and privileges of such license, or otherwise
10 penalized by the licensing authority for lawfully engaging in any activity authorized under
11 this chapter or providing any service to a person engaged in activity that is not subject to
12 criminal penalties under law of this state authorized by this chapter merely because that
13 activity is prohibited by federal law.

2022 South Dakota Legislature

Draft 178

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to repeal provisions related to the prosecution, search, seizure, penalty, or**
2 **discipline of medical cannabis establishments for certain conduct.**

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

4 **Section 1. That § 34-20G-8 be REPEALED:**

5 ~~No dispensary or a dispensary agent is subject to prosecution, search, or~~
6 ~~inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty in any~~
7 ~~manner; or may be denied any right or privilege, including civil penalty or disciplinary~~
8 ~~action by a court or business licensing board or entity, for acting in accordance with this~~
9 ~~chapter to:~~

10 ~~(1) Possess, transport, or store cannabis or cannabis products;~~

11 ~~(2) Deliver, transfer, or transport cannabis to a testing facility and compensate a~~
12 ~~testing facility for services provided;~~

13 ~~(3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of~~
14 ~~value is exchanged in return;~~

15 ~~(4) Purchase or otherwise acquire cannabis from a cultivation facility or dispensary,~~
16 ~~and cannabis products from cannabis product manufacturing facility or dispensary;~~
17 ~~and~~

18 ~~(5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis~~
19 ~~paraphernalia, or related supplies or educational materials to a cardholder,~~
20 ~~nonresident cardholder, or dispensary.~~

21 **Section 2. That § 34-20G-9 be REPEALED:**

22 ~~No cultivation facility or a cultivation facility agent is subject to prosecution, search,~~
23 ~~or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty of~~
24 ~~any kind, or may be denied any right or privilege, including civil penalty or disciplinary~~
25 ~~action by a court or business licensing board or entity, for acting in accordance with this~~
26 ~~chapter to:~~

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

Section 3. That § 34-20G-10 be REPEALED:

~~No cannabis product manufacturing facility or a cannabis product manufacturing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:~~

- ~~(1) Purchase or otherwise acquire cannabis from cultivation facility, and cannabis products or cannabis from a cannabis product manufacturing facility;~~
- ~~(2) Possess, produce, process, manufacture, compound, convert, prepare, pack, repack, and store cannabis or cannabis products;~~
- ~~(3) Deliver, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a dispensary or cannabis product manufacturing facility;~~
- ~~(4) Deliver, transfer, or transport cannabis to testing facility and compensate testing facility for services provided; or~~
- ~~(5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cannabis product manufacturing facility or dispensary.~~

Section 4. That § 34-20G-11 be REPEALED:

~~No testing facility or testing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty in any~~

- 1 manner, or may be denied any right or privilege, including civil penalty or disciplinary
2 action by a court or business licensing board or entity, for acting in accordance with this
3 chapter to:
- 4 (1) ~~Acquire, possess, transport, and store cannabis or cannabis products obtained from~~
5 ~~a cardholder, nonresident cardholder or medical cannabis establishment;~~
 - 6 (2) ~~Return the cannabis or cannabis products to a cardholder, nonresident cardholder,~~
7 ~~or medical cannabis establishment from whom it was obtained;~~
 - 8 (3) ~~Test cannabis, including for potency, pesticides, mold, or contaminants; or~~
 - 9 (4) ~~Receive compensation for services under this section.~~

2022 South Dakota Legislature

Draft 150

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise acceptable conduct related to the medical use of 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;

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
26 consumption by humans. The term includes edible cannabis products, beverages,
27 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," ~~means~~ 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

- 1 (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures,
2 or other similar products;
- 3 (13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other
4 enclosed area that is equipped with locks or other security devices that permit
5 access only by a cardholder or a person allowed to cultivate the plants. Two or
6 more cardholders who reside in the same dwelling may share one enclosed, locked
7 facility for cultivation;
- 8 (14) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- 9 (15) "Medical cannabis dispensary" or "dispensary," an entity registered with the
10 department pursuant to this chapter that acquires, possesses, stores, delivers,
11 transfers, transports, sells, supplies, or dispenses cannabis, cannabis products,
12 paraphernalia, or related supplies and educational materials to cardholders;
- 13 (16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility,
14 a cannabis product manufacturing facility, or a dispensary;
- 15 (17) "Medical cannabis establishment agent," an owner, officer, board member,
16 employee, or volunteer at a medical cannabis establishment;
- 17 (18) "Medical use," includes the acquisition, administration, cultivation, manufacture,
18 delivery, harvest, possession, preparation, transfer, transportation, or use of
19 cannabis or paraphernalia relating to the administration of cannabis to treat or
20 alleviate a registered qualifying patient's debilitating medical condition or symptom
21 associated with the patient's debilitating medical condition. The term does not
22 include:
- 23 (a) The cultivation of cannabis by a nonresident cardholder;
- 24 (b) The cultivation of cannabis by a cardholder who is not designated as being
25 allowed to cultivate on the cardholder's registry identification card; or
- 26 (c) The extraction of resin from cannabis by solvent extraction unless the
27 extraction is done by a cannabis product manufacturing facility;
- 28 (19) "Nonresident cardholder," a person who:
- 29 (a) Has been diagnosed with a debilitating medical condition, or is the parent,
30 guardian, conservator, or other person with authority to consent to the
31 medical treatment of a person who has been diagnosed with a debilitating
32 medical condition;
- 33 (b) Is not a resident of this state or who has been a resident of this state for
34 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) "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) "Qualifying patient," a person who has been diagnosed by a practitioner as having
13 a debilitating medical condition;
- 14 (22) "Registry identification card," a document issued by the department that identifies
15 a person as a registered qualifying patient or registered designated caregiver, or
16 documentation that is deemed a registry identification card pursuant to §§ 34-20G-
17 29 to 34-20G-42, inclusive; and
- 18 (23) "Safety-sensitive job," any position with tasks or duties that an employer
19 reasonably believes could:
20 (a) Cause the illness, injury, or death of an individual; or
21 (b) Result in serious property damage;
- 22 (24) "Under the influence of cannabis," any abnormal mental or physical condition that
23 tends to deprive a person of clearness of intellect and control that the person would
24 otherwise possess, as the result of consuming any degree of cannabis or cannabis
25 products;
- 26 (25) "Written certification," a document dated and signed by a practitioner, stating that
27 in the practitioner's professional opinion the patient is likely to receive therapeutic
28 or palliative benefit from the medical use of cannabis to treat or alleviate the
29 patient's debilitating medical condition or symptom associated with the debilitating
30 medical condition. This document shall affirm that it is made in the course of a
31 bona fide practitioner-patient relationship and shall specify the qualifying patient's
32 debilitating medical condition.

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

1 **34-20G-18.** This chapter does not authorize any person to engage in, and does
2 not prevent the imposition of any civil, criminal, or other penalty for engaging in, the
3 following conduct:

- 4 (1) Undertaking any task under the influence of cannabis, when doing so would
5 constitute negligence or professional malpractice;
6 (2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any
7 correctional facility;
8 (3) Smoking or vaping cannabis:
9 (a) On any form of public transportation; ~~or~~
10 (b) In any public place or any place that is open to the public; or
11 (c) If under the age of twenty-one;
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; or~~
18 (5) Performing any safety-sensitive job under the influence of cannabis.

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

20 **34-20G-24.** No employer is required to allow the ingestion, possession, transfer,
21 display, or transportation of cannabis in any workplace or to allow any employee to work
22 while under the influence of cannabis. ~~A registered qualifying patient may not be~~
23 ~~considered to be under the influence of cannabis solely because of the presence of~~
24 ~~metabolites or components of cannabis that appear in insufficient concentration to cause~~
25 ~~impairment.~~ No employer is prohibited from establishing and enforcing a drug free
26 workplace policy that may include a drug testing program that complies with state and
27 federal law and acting with respect to an applicant or employee under the policy.

2022 South Dakota Legislature

Draft 154

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to revise provisions related to prohibited conduct by schools and landlords**
2 **related to medical cannabis.**

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

4 **Section 1. That § 34-20G-19 be AMENDED:**

5 **34-20G-19.** ~~No school or landlord may refuse to enroll or lease to and may not~~
6 ~~otherwise penalize a person~~ A cardholder may not be refused enrollment by a school or a
7 lease by a landlord, or otherwise be penalized by a school or landlord solely for the
8 person's status as a cardholder, unless failing to do so would violate federal law or
9 regulations or cause the school or landlord to lose a monetary or licensing-related benefit
10 under federal law or regulation. This section does not prevent a landlord from imposing
11 reasonable restrictions on the medical use of cannabis by a cardholder who resides at the
12 landlord's property.
13

2022 South Dakota Legislature

Draft 155

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise provisions related to custody and visitation rights by medical**
2 **cannabis cardholders.**

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

4 **Section 1. That § 34-20G-21 be AMENDED:**

5 **34-20G-21.** No person may be denied custody of, ~~or~~ visitation rights with, or
6 parenting time with a minor solely ~~for because the person's status as person is~~ a
7 cardholder, ~~and there~~. There is no presumption of neglect or child endangerment for
8 conduct allowed under this chapter, unless the person's behavior creates an unreasonable
9 danger to the safety of the minor ~~as established by clear and convincing evidence~~. Nothing
10 in this chapter supersedes or otherwise affects custody decisions, visitation rights, or
11 parenting time based upon the best interests of the child.

2022 South Dakota Legislature

Draft 179

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to revise provisions regarding cost reimbursement associated with medical**
2 **cannabis.**

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

4 **Section 1. That § 34-20G-27 be AMENDED:**

5 **34-20G-27.** Nothing in this chapter requires:

- 6 (1) A government medical assistance program or private health insurer, workers'
7 compensation insurance carrier, or self-insured employer providing workers'
8 compensation benefits, to reimburse a person for costs associated with the medical
9 use of cannabis;
10 (2) Any person or establishment in lawful possession of property to allow a guest,
11 client, customer, or other visitor to smoke cannabis on or in that property; or
12 (3) A landlord to allow the cultivation of cannabis on the rental property.

2022 South Dakota Legislature

Draft 172

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to revise the provisions regarding the denial or nonrenewal of a patient**
2 **registry identification card.**

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

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

5 **34-20G-34.** The department may deny an application or renewal of a qualifying
6 patient's registry identification card only if the applicant:

- 7 (1) Does not provide the required information, fee, or materials;
8 (2) Does not meet the requirement to obtain a registry identification card as defined
9 in § 34-20G-1;
10 (3) Previously had a registry identification card revoked; or
11 ~~(3)~~(4) Provided false information.

2022 South Dakota Legislature

Draft 197

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to revise provisions related to the revocation of a medical cannabis registry**
2 **identification card.**

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

4 **Section 1. That § 34-20G-36 be AMENDED:**

5 **34-20G-36.** The department shall give written notice to the qualifying patient of
6 the reason for denying or revoking a registry identification card to the qualifying patient
7 or to the qualifying patient's designated caregiver.

8 **Section 2. That § 34-20G-85 be AMENDED:**

9 **34-20G-85.** Revocation under § 34-20G-80, 34-20G-83, or 34-20G-84 is a final
10 decision of the department subject to judicial review.

2022 South Dakota Legislature

Draft 173

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to repeal provisions permitting certain documents to serve as temporary**
2 **registry identification cards for medical cannabis.**

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

4 **Section 1. That § 34-20G-38 be REPEALED:**

5 ~~Until a qualifying patient who has submitted an application and the required fee to~~
6 ~~the department receives a registry identification card or a denial, a copy of the patient's~~
7 ~~application, written certification, and proof that the application was submitted to the~~
8 ~~department is deemed a registry identification card.~~

9 **Section 2. That § 34-20G-39 be REPEALED:**

10 ~~Until a designated caregiver whose qualifying patient has submitted an application~~
11 ~~and the required fee receives a registry identification card or a denial, a copy of the~~
12 ~~qualifying patient's application, written certification, and proof that the application was~~
13 ~~submitted to the department is deemed a registry identification card.~~

14 **Section 3. That § 34-20G-40 be REPEALED:**

15 ~~Until twenty five days after the department makes applications available, a valid,~~
16 ~~written certification issued within the previous year shall be deemed a registry~~
17 ~~identification card for a qualifying patient.~~

18 **Section 4. That § 34-20G-41 be REPEALED:**

19 ~~Until twenty five days after the department makes applications available, the~~
20 ~~following is considered a designated caregiver registry identification card:~~

- 21 ~~(1) A copy of a qualifying patient's valid written certification issued within the previous~~
22 ~~year; and~~
23 ~~(2) A signed affidavit attesting that the person has significant responsibility for~~
24 ~~managing the well being of the patient and that the person has been chosen to~~
25 ~~assist the qualifying patient.~~

2022 South Dakota Legislature

Draft 146

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise provisions related to a written certification for the medical use of**
2 **cannabis.**

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

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

5 **34-20G-1.** ————Terms used in this chapter mean:

6 (1) "Allowable amount of cannabis," ~~means:~~

7 (a) Three ounces of cannabis or less;

8 (b) The quantity of cannabis products as established by rules promulgated by
9 the department under § 34-20G-72;

10 (c) If the cardholder has a registry identification card allowing cultivation, three
11 cannabis plants minimum or as prescribed by physician; and

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

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

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

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

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

25 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
26 that are infused with cannabis or an extract thereof, and are intended for use or
27 consumption by humans. The term includes edible cannabis products, beverages,
28 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," ~~means 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

- 1 (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures,
2 or other similar products;
- 3 (13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other
4 enclosed area that is equipped with locks or other security devices that permit
5 access only by a cardholder or a person allowed to cultivate the plants. Two or
6 more cardholders who reside in the same dwelling may share one enclosed, locked
7 facility for cultivation;
- 8 (14) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- 9 (15) "Medical cannabis dispensary" or "dispensary," an entity registered with the
10 department pursuant to this chapter that acquires, possesses, stores, delivers,
11 transfers, transports, sells, supplies, or dispenses cannabis, cannabis products,
12 paraphernalia, or related supplies and educational materials to cardholders;
- 13 (16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility,
14 a cannabis product manufacturing facility, or a dispensary;
- 15 (17) "Medical cannabis establishment agent," an owner, officer, board member,
16 employee, or volunteer at a medical cannabis establishment;
- 17 (18) "Medical use," includes the acquisition, administration, cultivation, manufacture,
18 delivery, harvest, possession, preparation, transfer, transportation, or use of
19 cannabis or paraphernalia relating to the administration of cannabis to treat or
20 alleviate a registered qualifying patient's debilitating medical condition or symptom
21 associated with the patient's debilitating medical condition. The term does not
22 include:
- 23 (a) The cultivation of cannabis by a nonresident cardholder;
- 24 (b) The cultivation of cannabis by a cardholder who is not designated as being
25 allowed to cultivate on the cardholder's registry identification card; or
- 26 (c) The extraction of resin from cannabis by solvent extraction unless the
27 extraction is done by a cannabis product manufacturing facility;
- 28 (19) "Nonresident cardholder," a person who:
- 29 (a) Has been diagnosed with a debilitating medical condition, or is the parent,
30 guardian, conservator, or other person with authority to consent to the
31 medical treatment of a person who has been diagnosed with a debilitating
32 medical condition;
- 33 (b) Is not a resident of this state or who has been a resident of this state for
34 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) "Written certification," a document dated and signed by a practitioner, ~~stating that in the practitioner's professional opinion the:~~
- ~~(a) Stating that the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's~~ has a qualifying debilitating medical condition or symptom associated with the debilitating medical condition. This document shall affirm that it;
 - ~~(b) Affirming that the document is made in the course of a bona fide practitioner-patient relationship and shall specify;~~
 - ~~(c) Specifying that the qualifying patient's debilitating medical condition; and~~
 - ~~(d) Specifying that the expiration date of the qualifying patient's written certification, pursuant to § 34-20G-43.~~

Section 2. That § 34-20G-43 be AMENDED:

34-20G-43. ~~A—The~~ A—The registry identification card of a qualifying patient and designated caregiver, if any, expires on the date noted by the practitioner in the qualifying patient's written certification, not to exceed one year after the date of issue. Unless the ~~practitioner states in the written certification that the qualifying patient would benefit from~~

- 1 ~~cannabis until a specified earlier date, then the registry identification card expires on that~~
- 2 ~~date.~~

DRAFT

2022 South Dakota Legislature

Draft 174

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to revise provisions related to the confidential list of medical cannabis**
2 **cardholders maintained by the Department of Health.**

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

4 **Section 1. That § 34-20G-44 be AMENDED:**

5 **34-20G-44.** The department shall maintain a confidential list of ~~any person to~~
6 ~~whom the department has issued a registry identification card and the addresses, phone~~
7 ~~number, and registry identification number of each person.:~~

8 (a) The name, address, phone number, and registry identification card number of each
9 person to whom the department has issued a registry identification card;

10 (b) The name, address, and phone number of the practice of a registered qualifying
11 patient's practitioner; and

12 (c) The name, address, and phone number of a registered qualifying patient's parent
13 or legal guardian if the patient is under age eighteen.

14 The list may not be combined or linked in any manner with any other list or
15 database, nor may it be used for any purpose not provided for in this chapter.

2022 South Dakota Legislature

Draft 186

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise the medical purpose defense related to the medical use of cannabis.**

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, six cannabis plants~~
15 ~~minimum or as prescribed by a physician, and the cannabis produced by those~~
16 ~~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 qualifying patient, the person was registered with the department
26 as a cardholder or nonresident cardholder at the time of the alleged offense;

27 (2) If the person is a designated caregiver, the person was registered with the
28 department and in physical possession of the registry identification card at the time
29 of the alleged offense; and

1 (3) The conduct underlying the alleged offense complied with this chapter.

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

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

DRAFT

2022 South Dakota Legislature

Draft 169

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to require a cardholder or nonresident cardholder to present photographic**
2 **identification to receive medical cannabis.**

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

4 **Section 1. That § 34-20G-70 be AMENDED:**

5 **34-20G-70.** Before cannabis may be dispensed to a cardholder or nonresident
6 cardholder, a dispensary agent:

- 7 (1) Shall make a diligent effort to verify that the registry identification card or
8 registration presented to the dispensary is valid;
- 9 (2) Shall make a diligent effort to verify ~~that the person presenting the documentation~~
10 ~~is the person identified on the document presented to the dispensary agent~~ identity
11 of the person by requiring the person to present a valid photographic identification
12 document issued by this state, another state, tribe, or the federal government;
- 13 (3) May not dispense an amount of cannabis to a person that would cause the person
14 to possess more than the allowable amount of cannabis; and
- 15 (4) Shall make a diligent effort to verify that the dispensary is the current dispensary
16 that was designated by the cardholder or nonresident cardholder.

2022 South Dakota Legislature

Draft 180

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise rulemaking authority related to medical cannabis.**

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

3 **Section 1. That § 34-20G-72 be AMENDED:**

4 **34-20G-72.** ~~Not later than October 29, 2021,~~ the The department shall
5 promulgate rules pursuant to chapter 1-26:

- 6 (1) Governing the manner in which the department shall consider petitions from the
7 public to add a debilitating medical condition or treatment to the list of debilitating
8 medical conditions as defined by this chapter, including public notice of and an
9 opportunity to comment in public hearings on the petitions;
- 10 (2) Establishing the form and content of registration and renewal applications
11 submitted under this chapter;
- 12 (3) Establishing a system to numerically score competing medical cannabis
13 establishment applicants, in cases where more applicants apply than are allowed
14 by the local government, that includes analysis of:
- 15 (a) The preference of the local government;
- 16 (b) In the case of dispensaries, the suitability of the proposed location and its
17 accessibility for patients;
- 18 (c) The character, veracity, background, qualifications, and relevant experience
19 of principal officers and board members; and
- 20 (d) The business plan proposed by the applicant, that in the case of a cultivation
21 facility or dispensary shall include the ability to maintain an adequate supply
22 of cannabis, plans to ensure safety and security of patrons and the
23 community, procedures to be used to prevent diversion, and any plan for
24 making cannabis available to low-income registered qualifying patients;
- 25 (4) Governing the manner in which the department shall consider applications for and
26 renewals of registry identification cards, that may include creating a standardized
27 written certification form;

- (5) Governing medical cannabis establishments to ensure the health and safety of qualifying patients and prevent diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including:
- (a) Oversight requirements;
 - (b) Record-keeping requirements;
 - (c) Security requirements, including lighting, physical security, and alarm requirements;
 - (d) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health;
 - (e) Standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by a cultivation facility;
 - (f) Requirements for the transportation and storage of cannabis by a medical cannabis establishment;
 - (g) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent;
 - (h) Standards for the safe manufacture of cannabis products, including extracts and concentrates;
 - (i) Restrictions on the advertising, signage, and display of medical cannabis, provided that the restrictions may not prevent appropriate signs on the property of a dispensary, listings in business directories including phone books, listings in marijuana-related or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events;
 - (j) Requirements and procedures for the safe and accurate packaging, ~~and~~ labeling, distribution, and tracking of medical cannabis; and
 - (k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel;
- (6) Establishing procedures for suspending or terminating the registration certificates or registry identification cards of cardholders and medical cannabis establishments that commit multiple or serious violations of this chapter;
- (7) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis product labels to include the following:
- (a) The length of time it typically takes for a product to take effect;
 - (b) Disclosing ingredients and possible allergens;
 - (c) A nutritional fact panel; and

- 1 (d) Requiring that edible cannabis products be clearly identifiable, when
2 practicable, with a standard symbol indicating that it contains cannabis;
- 3 (8) Establishing procedures for the registration of nonresident cardholders and the
4 cardholder's designation of no more than two dispensaries, which shall require the
5 submission of:
- 6 (a) A practitioner's statement confirming that the patient has a debilitating
7 medical condition; and
- 8 (b) Documentation demonstrating that the nonresident cardholder is allowed to
9 possess cannabis or cannabis preparations in the jurisdiction where the
10 nonresident cardholder resides;
- 11 (9) Establishing the amount of cannabis products, including the amount of
12 concentrated cannabis, each cardholder and nonresident cardholder may possess;
13 and
- 14 (10) Establishing reasonable application and renewal fees for registry identification
15 cards and registration certificates, according to the following:
- 16 (a) Application fees for medical cannabis establishments may not exceed five
17 thousand dollars, with this upper limit adjusted annually for inflation;
- 18 (b) The total fees collected shall generate revenues sufficient to offset all
19 expenses of implementing and administering this chapter;
- 20 (c) A sliding scale of patient application and renewal fees based upon a
21 qualifying patient's household income;
- 22 (d) The fees charged to qualifying patients, nonresident cardholders, and
23 caregivers shall be no greater than the costs of processing the application
24 and issuing a registry identification card or registration; and
- 25 (e) The department may accept donations from private sources to reduce
26 application and renewal fees.

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

2022 South Dakota Legislature

Draft 156

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to revise provisions concerning civil penalties imposed for violations related**
2 **to medical cannabis.**

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

4 **Section 1. That § 34-20G-73 be REPEALED:**

5 ~~A cardholder or medical cannabis establishment who fails to provide a notice~~
6 ~~required by this chapter is subject to a civil penalty of no more than one hundred fifty~~
7 ~~dollars. Any civil penalty collected shall be deposited in the state general fund.~~

8 **Section 2. That chapter 34-20G be amended with a NEW SECTION:**

9 The department may impose a civil penalty against a medical cannabis
10 establishment, not to exceed one thousand dollars, for each violation of this chapter or
11 administrative rule promulgated pursuant to this chapter and chapter 1-26, where no
12 penalty has been otherwise specified in this chapter. This penalty is in addition to any
13 other penalties authorized. Any civil penalty collected pursuant to this section shall be
14 deposited into the state general fund.

2022 South Dakota Legislature

Draft 220

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise a reference to the Division of Criminal Investigation.**

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

3 **Section 1. That § 34-20G-92 be AMENDED:**

4 **34-20G-92.** The Executive Board of the Legislative Research Council shall appoint
5 an oversight committee comprised of: one member of the House of Representatives, one
6 member of the Senate, one ~~Department~~ Division of Criminal Investigation agent, one staff
7 member from the Office of the Attorney General, two representatives of law enforcement,
8 one representative from the department, one practitioner with experience in medical
9 cannabis issues, one nurse, one board member or principal officer of a cannabis testing
10 facility, one person with experience in policy development or implementation in the field
11 of medical cannabis, and three qualifying patients.

2022 South Dakota Legislature

Draft 170

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise provisions regarding the medical marijuana oversight committee.**

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

3 **Section 1. That § 34-20G-93 be AMENDED:**

4 **34-20G-93.** The oversight committee shall meet at least two times per year for
5 the purpose of evaluating and making recommendations to the Legislature and the
6 department regarding:

- 7 (1) The ability of qualifying patients in all areas of the state to obtain timely access to
8 high-quality medical cannabis;
- 9 (2) The effectiveness of the dispensaries and cultivation facilities, individually and
10 together, in serving the needs of qualifying patients, including the provision of
11 educational and support services by dispensaries, the reasonableness of their
12 prices, whether they are generating any complaints or security problems, and the
13 sufficiency of the number operating to serve the state's registered qualifying
14 patients;
- 15 (3) The effectiveness of the cannabis testing facilities, including whether a sufficient
16 number are operating;
- 17 (4) The sufficiency of the regulatory and security safeguards contained in this chapter
18 and adopted by the department to ensure that access to and use of cannabis
19 cultivated is provided only to cardholders;
- 20 (5) Any recommended additions or revisions to the department regulations or this
21 chapter, including relating to security, safe handling, labeling, ~~and nomenclature,~~
22 employment, law enforcement, medical providers, review of medical complications
23 and side effects, and other recommendations; and
- 24 (6) Any research studies regarding health effects of medical cannabis for patients.

2022 South Dakota Legislature

Draft 171

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise the annual report on medical cannabis by the Department of Health**
2 **to the Legislature.**

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

4 **Section 1. That § 34-20G-94 be AMENDED:**

5 **34-20G-94.** The department shall report annually to the Legislature on the
6 number of applications for registry identification cards received~~7~~1; the number of qualifying
7 patients and designated caregivers approved~~7~~1; the number of registry identification cards
8 revoked~~7~~1; the number of each type of medical cannabis establishment registered~~7~~1; and
9 the expenses incurred and revenues generated from the medical cannabis program; the
10 number of patient cardholders by medical condition; qualifying patient demographics by
11 age and sex; the number and specialty of the practitioners providing written certifications;
12 the number of medical cannabis establishments by type; the number of licensing violations
13 determined by the department; the impact of medical cannabis on public safety, public
14 health, and behavioral health services; any other information regarding the effects of
15 medical cannabis on the public; and any recommendations. The department may not
16 include identifying information on a qualifying patient, designated caregiver, or
17 practitioner in the report.

2022 South Dakota Legislature

Draft 183

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to provide that health care facilities and accredited prevention and treatment**
2 **facilities may establish reasonable restrictions related to the medical use of**
3 **cannabis.**

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

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

6 **34-20G-1.** ———Terms used in this chapter mean:

- 7 (1) "Allowable amount of cannabis," ~~means:~~
8 (a) Three ounces of cannabis or less;
9 (b) The quantity of cannabis products as established by rules promulgated by
10 the department under § 34-20G-72;
11 (c) If the cardholder has a registry identification card allowing cultivation, three
12 cannabis plants minimum or as prescribed by physician; and
13 (d) If the cardholder has a registry identification card allowing cultivation, the
14 amount of cannabis and cannabis products that were produced from the
15 cardholder's allowable plants, if the cannabis and cannabis products are
16 possessed at the same property where the plants were cultivated;
17 (2) "Bona fide practitioner-patient relationship,"
18 (a) A practitioner and patient have a treatment or consulting relationship,
19 during the course of which the practitioner has completed an assessment
20 of the patient's medical history and current medical condition, including an
21 appropriate in-person physical examination;
22 (b) The practitioner has consulted with the patient with respect to the patient's
23 debilitating medical condition; and
24 (c) The practitioner is available to or offers to provide follow-up care and
25 treatment to the patient, including patient examinations;
26 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
27 that are infused with cannabis or an extract thereof, and are intended for use or
28 consumption by humans. The term includes edible cannabis products, beverages,
29 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," ~~means~~ 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~~ accredited prevention or treatment 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

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

25 **Section 2. That chapter 34-20G be amended with a NEW SECTION:**

26 A healthcare facility, as defined in § 34-12-1.1, or an accredited prevention or
27 treatment facility, as defined in § 34-20A-2, may adopt restrictions on the use of medical
28 cannabis by a cardholder who resides at, is actively receiving treatment or care from, or
29 is visiting the facility. The restrictions may include a provision that the facility will not store
30 or maintain the cardholder's supply of medical cannabis, that the facility is not responsible
31 for providing the medical cannabis for cardholders, and that the medical cannabis be used
32 only in a place specified by the facility. Nothing in this section requires a facility to adopt
33 such restrictions or requires a facility to allow the consumption of medical cannabis on the
34 grounds of the facility.

1 No employee or agent of a facility may be subject to arrest, prosecution, or penalty
2 of any kind, or may be denied any right or privilege, including any civil penalty or
3 disciplinary action by a court or occupational or professional licensing board for possession
4 of medical cannabis while carrying out employment duties, including providing or
5 supervising care to a cardholder, or distribution of medical cannabis to a cardholder who
6 resides at or is actively receiving treatment or care at the facility with which the employee
7 or agent is affiliated.

DRAFT

2022 South Dakota Legislature

Draft 224

Requested by: at the request of the Marijuana Interim Study Committee

- 1 **An Act to establish a maximum number of cannabis plants that may be cultivated**
2 **by a medical cannabis cardholder.**

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

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

5 **34-20G-1.** ————Terms used in this chapter mean:

- 6 (1) "Allowable amount of cannabis," ~~means:~~
7 (a) Three ounces of cannabis or less;
8 (b) The quantity of cannabis products as established by rules promulgated by
9 the department under § 34-20G-72;
10 (c) If the cardholder has a registry identification card allowing cultivation, three
11 cannabis plants ~~minimum or as prescribed by physician~~ maximum; and
12 (d) If the cardholder has a registry identification card allowing cultivation, the
13 amount of cannabis and cannabis products that were produced from the
14 cardholder's allowable plants, if the cannabis and cannabis products are
15 possessed at the same property where the plants were cultivated;
16 (2) "Bona fide practitioner-patient relationship,":
17 (a) A practitioner and patient have a treatment or consulting relationship,
18 during the course of which the practitioner has completed an assessment
19 of the patient's medical history and current medical condition, including an
20 appropriate in-person physical examination;
21 (b) The practitioner has consulted with the patient with respect to the patient's
22 debilitating medical condition; and
23 (c) The practitioner is available to or offers to provide follow-up care and
24 treatment to the patient, including patient examinations;
25 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
26 that are infused with cannabis or an extract thereof, and are intended for use or
27 consumption by humans. The term includes edible cannabis products, beverages,
28 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," ~~means~~ 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;

- 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) "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) "Qualifying patient," a person who has been diagnosed by a practitioner as having
13 a debilitating medical condition;
14 (22) "Registry identification card," a document issued by the department that identifies
15 a person as a registered qualifying patient or registered designated caregiver, or
16 documentation that is deemed a registry identification card pursuant to §§ 34-20G-
17 29 to 34-20G-42, inclusive; and
18 (23) "Written certification," a document dated and signed by a practitioner, stating that
19 in the practitioner's professional opinion the patient is likely to receive therapeutic
20 or palliative benefit from the medical use of cannabis to treat or alleviate the
21 patient's debilitating medical condition or symptom associated with the debilitating
22 medical condition. This document shall affirm that it is made in the course of a
23 bona fide practitioner-patient relationship and shall specify the qualifying patient's
24 debilitating medical condition.

25 **Section 2. That § 34-20G-51 be AMENDED:**

26 **34-20G-51.** Except as provided in § 34-20G-18 and this section, a person may
27 assert the medical purpose for using cannabis as a defense to any prosecution involving
28 cannabis, and such defense is presumed valid where the evidence shows that:

- 29 (1) A practitioner has stated that, in the practitioner's professional opinion, after
30 having completed a full assessment of the person's medical history and current
31 medical condition made in the course of a bona fide practitioner-patient
32 relationship, the patient has a debilitating medical condition and the potential
33 benefits of using cannabis for medical purposes would likely outweigh the health
34 risks for the person;

- 1 (2) The person was in possession of no more than three ounces of cannabis, the
2 amount of cannabis products allowed by department rules, ~~six~~ three cannabis
3 plants ~~minimum or as prescribed by a physician~~, and the cannabis produced by
4 those plants;
- 5 (3) The person was engaged in the acquisition, possession, use, manufacture,
6 cultivation, or transportation of cannabis, paraphernalia, or both, relating to the
7 administration of cannabis to treat or alleviate the person's debilitating medical
8 condition or symptoms associated with the person's debilitating medical condition;
9 and
- 10 (4) Any cultivation of cannabis and storage of more than three ounces of cannabis
11 occurred in a secure location that only the person asserting the defense could
12 access.

2022 South Dakota Legislature

Draft 254

Requested by: at the request of the Marijuana Interim Study Committee

1 **An Act to revise the definition of practitioner for purposes of the medical cannabis**
2 **program.**

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

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

5 **34-20G-1.** Terms used in this chapter mean:

- 6 (1) "Allowable amount of cannabis," ~~means:~~
- 7 (a) Three ounces of cannabis or less;
- 8 (b) The quantity of cannabis products as established by rules promulgated by
- 9 the department under § 34-20G-72;
- 10 (c) If the cardholder has a registry identification card allowing cultivation, three
- 11 cannabis plants minimum or as prescribed by physician; and
- 12 (d) If the cardholder has a registry identification card allowing cultivation, the
- 13 amount of cannabis and cannabis products that were produced from the
- 14 cardholder's allowable plants, if the cannabis and cannabis products are
- 15 possessed at the same property where the plants were cultivated;
- 16 (2) "Bona fide practitioner-patient relationship,":
- 17 (a) A practitioner and patient have a treatment or consulting relationship,
- 18 during the course of which the practitioner has completed an assessment
- 19 of the patient's medical history and current medical condition, including an
- 20 appropriate in-person physical examination;
- 21 (b) The practitioner has consulted with the patient with respect to the patient's
- 22 debilitating medical condition; and
- 23 (c) The practitioner is available to or offers to provide follow-up care and
- 24 treatment to the patient, including patient examinations;
- 25 (3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products
- 26 that are infused with cannabis or an extract thereof, and are intended for use or
- 27 consumption by humans. The term includes edible cannabis products, beverages,
- 28 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," ~~means~~ 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

- 1 (c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures,
2 or other similar products;
- 3 (13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other
4 enclosed area that is equipped with locks or other security devices that permit
5 access only by a cardholder or a person allowed to cultivate the plants. Two or
6 more cardholders who reside in the same dwelling may share one enclosed, locked
7 facility for cultivation;
- 8 (14) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;
- 9 (15) "Medical cannabis dispensary" or "dispensary," an entity registered with the
10 department pursuant to this chapter that acquires, possesses, stores, delivers,
11 transfers, transports, sells, supplies, or dispenses cannabis, cannabis products,
12 paraphernalia, or related supplies and educational materials to cardholders;
- 13 (16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility,
14 a cannabis product manufacturing facility, or a dispensary;
- 15 (17) "Medical cannabis establishment agent," an owner, officer, board member,
16 employee, or volunteer at a medical cannabis establishment;
- 17 (18) "Medical use," includes the acquisition, administration, cultivation, manufacture,
18 delivery, harvest, possession, preparation, transfer, transportation, or use of
19 cannabis or paraphernalia relating to the administration of cannabis to treat or
20 alleviate a registered qualifying patient's debilitating medical condition or symptom
21 associated with the patient's debilitating medical condition. The term does not
22 include:
- 23 (a) The cultivation of cannabis by a nonresident cardholder;
- 24 (b) The cultivation of cannabis by a cardholder who is not designated as being
25 allowed to cultivate on the cardholder's registry identification card; or
- 26 (c) The extraction of resin from cannabis by solvent extraction unless the
27 extraction is done by a cannabis product manufacturing facility;
- 28 (19) "Nonresident cardholder," a person who:
- 29 (a) Has been diagnosed with a debilitating medical condition, or is the parent,
30 guardian, conservator, or other person with authority to consent to the
31 medical treatment of a person who has been diagnosed with a debilitating
32 medical condition;
- 33 (b) Is not a resident of this state or who has been a resident of this state for
34 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) "Practitioner," a physician, physician assistant, or nurse practitioner, who is
9 licensed with authority to prescribe drugs to humans. In relation to a nonresident
10 cardholder, the term means a person who is licensed with authority to prescribe
11 drugs to humans in the state of the patient's residence;
- 12 (21) "Qualifying patient," a person who has been diagnosed by a practitioner as having
13 a debilitating medical condition;
- 14 (22) "Registry identification card," a document issued by the department that identifies
15 a person as a registered qualifying patient or registered designated caregiver, or
16 documentation that is deemed a registry identification card pursuant to §§ 34-20G-
17 29 to 34-20G-42, inclusive; and
- 18 (23) "Written certification," a document dated and signed by a practitioner, stating that
19 in the practitioner's professional opinion the patient is likely to receive therapeutic
20 or palliative benefit from the medical use of cannabis to treat or alleviate the
21 patient's debilitating medical condition or symptom associated with the debilitating
22 medical condition. This document shall affirm that it is made in the course of a
23 bona fide practitioner-patient relationship and shall specify the qualifying patient's
24 debilitating medical condition.