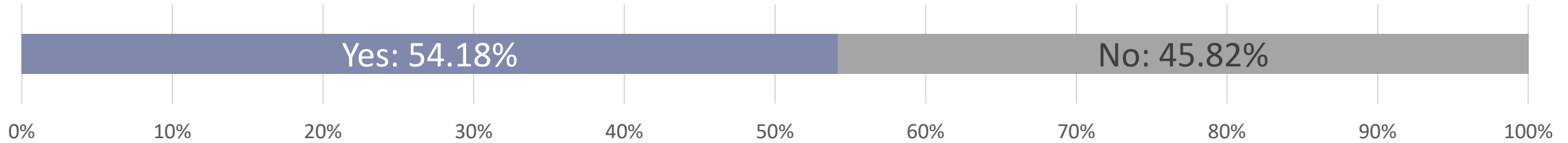


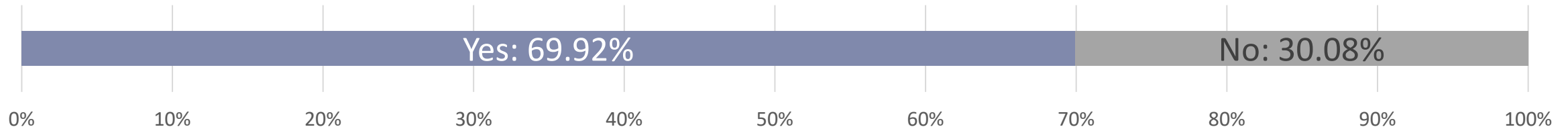
# Constitutional Amendment A and Initiated Measure 26 Overview

# Constitutional Amendment A Major Provisions



- Legalizes the use of marijuana for individuals age 21 and older.
- Individuals may possess, use, and distribute up to one ounce of marijuana.
- Individuals who live in a local government jurisdiction with no licensed retail stores may grow up to three marijuana plants.
- Implements tax rate of 15% on marijuana sales.
- Implements civil penalties (fines) for certain violations.
- Authorizes the South Dakota Department of Revenue to create licenses for commercial cultivators, testing facilities, wholesalers, and retail stores.
- Authorizes local governments to establish regulations and limits for licensees operating in their district.

# Initiated Measure 26 Major Provisions



- Legalizes the use of marijuana for individuals with a debilitating medical condition certified by a physician. Individuals under 18 must have parental consent.
- Requires the South Dakota Department of Health to register individuals and designated caregivers and implement rules related to medical cannabis establishments including testing, manufacturing, cultivation, and dispensing.
- Individuals may possess up to three ounces of marijuana and additional amounts of marijuana products.
- Individuals may grow a minimum of 3 plants.
- Includes workplace and housing protections for use of medical marijuana.
- Allows local governments to establish regulations and limits for licensees operating in their district.

# Major Provisions

	Recreational Marijuana	Medical Marijuana
<b>Eligible Individuals</b>	Individuals Over 21	Individuals with a debilitating medical condition certified by a physician or practitioner. Individuals under age 18 must have written parental consent.
<b>Registration</b>	No	Yes, individuals must register as a cardholder
<b>Allowable Amounts</b>	1 ounce or 8 grams in a concentrated form	3 ounces and additional amounts of marijuana products
<b>Plant Cultivation</b>	3 plants maximum if no dispensary is located within the local jurisdiction.	3 plants minimum
<b>Workplace Protections</b>	No	Protects medical cannabis use related to interactions and drug testing with employers. Allows employers to discipline employees for ingesting cannabis in the workplace or working under the influence of cannabis.
<b>Housing Protections</b>	No	Landlords may not refuse to lease or penalize individuals based on their status as a cardholder. Landlords do not have to allow cultivation.

# Major Provisions

	Recreational Marijuana	Medical Marijuana
<b>Civil Penalties for Violating Act</b>	<p>Yes</p> <ul style="list-style-type: none"> <li>• \$250 if a person grows marijuana plants that are visible from a public place;</li> <li>• \$250 if cultivated marijuana plants are not kept in a locked space;</li> <li>• \$250 if a person grows marijuana in a local government jurisdiction that has marijuana retail stores (unless the jurisdiction has authorized home-grow for individuals);</li> <li>• \$100 for smoking marijuana in a public place unless the place is licensed for such activity;</li> <li>• \$100 <i>or</i> attending up to four hours of a drug education/counseling program for smoking marijuana if a person is under the age of 21.</li> </ul>	None Mentioned in IM26
<b>Tax Rate</b>	15%	None Mentioned in IM26
<b>Licensing/Certification Agency</b>	Department of Revenue	Department of Health
<b>Local Government Regulations</b>	Allows local governments to pass ordinances related to licensees operating with its jurisdiction, including banning a particular category of licensee.	Allows local governments to pass ordinances related to licensees operating with its jurisdiction. Does not allow local government to prohibit a dispensary.

# Marijuana Definition

## Recreational Marijuana

- Article 1 defines marijuana as: the plant of the genus cannabis, and any part of that plant, including, the seeds, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including hash and marijuana concentrate. The term includes an altered state of marijuana absorbed into the human body. The term does not include hemp, or fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;

## Medical Marijuana

- Section 1 defines medical cannabis or cannabis as: “marijuana as defined in SDCL 22-42-1.”
- SDCL 22-42-1 defines marijuana as: all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. 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;

# Unprotected Actions

- Article 2 lists actions that are not protected under the Constitutional Amendment.
- § 2. Notwithstanding the provisions of this article, this article does not limit or affect laws that prohibit or otherwise regulate:
  1. Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;
  2. Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;
  3. Consumption of marijuana by a person younger than twenty-one years of age;
  4. Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence Of marijuana;
  5. Consumption of marijuana While operating Or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;
  6. Smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;
  7. Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional facility;
  8. Smoking marijuana in a location where smoking tobacco is prohibited;
  9. Consumption of marijuana in a public place, other than in an arc licensed by the department for consumption;
  10. Consumption of marijuana as part of a criminal penalty diversion program;
  11. Conduct that endangers others;
  12. Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; or
  13. Performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol, unless licensed for this activity by the department.

# Unprotected Actions

- Section 18 lists actions that are not protected under the Initiated Measure related to medical marijuana.
- This Act does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalty for engaging in, the following conduct:
  - Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;
  - Possessing cannabis or otherwise engaging in the medical use of cannabis in any correctional facility;
  - Smoking cannabis:
    - On any form of public transportation; or
    - In any public place or any place that is open to the public.
  - Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis, except that a registered qualifying patient or nonresident cardholder is not considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.



# Medical Marijuana Written Certification

## Section 1 defines terms related to the written certification:

- **Written certification:** a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition. This document shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient's debilitating medical condition.
- **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;
- **Bona fide practitioner-patient relationship:**
  - a) A practitioner and patient have a treatment or consulting relationship, during the course of which the practitioner has completed an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;
  - b) The practitioner has consulted with the patient with respect to the patient's debilitating medical condition; and
  - c) The practitioner is available to or offers to provide follow-up care and treatment to the patient, including, patient examinations;

# Medical Marijuana Written Certification

Section 5 defines physician protections under the act:

No practitioner is subject to arrest, prosecution, or penalty of any kind, or denied any right or privilege, including civil penalty or disciplinary action by the South Dakota Board of Medical and Osteopathic Examiners or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, Nothing in this Act prevents a practitioner from being sanctioned for:

1. Issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship; or
2. Failing to properly evaluate a patient's medical condition.

# Medical Marijuana Workplace Protections

Section 22 grants workplace protections:

- Except as provided in this Act, a registered qualifying patient who uses cannabis for a medical purpose shall be afforded all the same rights under state and local law, as the person would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to:
  1. Any interaction with a person's employer;
  2. Drug testing by a person's employer; or
  3. Drug testing required by any state or local law, agency, or government official.

# Medical Marijuana Workplace Protections

- Section 23 and Section 24 further define workplace interactions and the rights of employers:
  - Section 23. The rights provided by sections 19 to 25, inclusive of this Act 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 24. No employer is required to allow the ingestion of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. A registered qualifying patient may not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

# Upcoming SDAHO Education

CBD and Medical Marijuana Use in Healthcare | December 16, 10am CST

Cannabis: Where are We Now? | January 13, 1pm CST

Human Resource Implications | February 25, 11am CST

Healthcare Implementation & Experiences from Other States | March 2021

Medical Marijuana in Long-Term Care Settings | April 2021

End of Life & Medical Marijuana | May 2021

Risk Management & Employment Law | June 2021