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**MARTY J. JACKLEY**  
ATTORNEY GENERAL

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CHIEF DEPUTY ATTORNEY GENERAL

September 25, 2015

HAND DELIVERED

Hon. Shantel Krebs  
Secretary of State  
500 E. Capitol  
Pierre, SD 57501

Re: **Attorney General's Statement and revised initiated measure—  
revisions to campaign finance and lobbying laws**

Dear Secretary Krebs,

After we filed our Attorney General's Statement on September 21, 2015, regarding the above initiated measure, the sponsors submitted a revised measure to our Office. The revision makes some corrections to the measure to accurately reflect the current version of the law in SDCL ch. 12-27. The sponsors have submitted this to us as the final form of the initiated measure for purposes of SDCL 12-13-25.1. I am forwarding you a copy of the sponsors' revised final initiated measure, as well as an Attorney General's Statement issued pursuant to SDCL 12-13-25.1. Please be advised that no changes to the title or explanation have been made from the one previously filed.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsors pursuant to SDCL 12-13-25.1.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Marty J. Jackley".

Marty J. Jackley  
ATTORNEY GENERAL

MJJ/PA/lde  
Enc.

cc w/enc.: Rick Weiland  
Don Frankenfeld  
John Fiksdal  
Jason Hancock, Director of LRC

## INITIATED MEASURE

### ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to revise State campaign finance and lobbying laws, create a publicly funded campaign finance program, create an ethics commission, and appropriate funds

Explanation:

This measure extensively revises State campaign finance laws. It requires additional disclosures and increased reporting. It lowers contribution amounts to political action committees; political parties; and candidates for statewide, legislative, or county office. It also imposes limits on contributions from candidate campaign committees, political action committees, and political parties.

The measure creates a publicly funded campaign finance program for statewide and legislative candidates who choose to participate and agree to limits on campaign contributions and expenditures. Under the program, two \$50 "credits" are issued to each registered voter, who assigns them to participating candidates. The credits are redeemed from the program, which is funded by an annual State general-fund appropriation of \$9 per registered voter. The program fund may not exceed \$12 million at any time.

The measure creates an appointed ethics commission to administer the credit program and to enforce campaign finance and lobbying laws.

The measure prohibits certain State officials and high-level employees from lobbying until two years after leaving State government. It also places limitations on lobbyists' gifts to certain state officials and staff members.

If approved, the measure may be challenged in court on constitutional grounds.

FOR AN ACT ENTITLED, an Act to increase accountability to the people of South Dakota in electoral politics by revising certain provisions concerning campaign finance and lobbying, establishing an ethics commission, creating a democracy credit program, and making an appropriation therefor.

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

**Section 1.** This Act may be referred to as the "South Dakota Government Accountability and Anti-Corruption Act."

**Section 2.** The people find and declare that accountability to the people is of the utmost importance in South Dakota's political system. Today, that system does not properly prevent corruption or its appearance and is weakened by: insufficient participation by citizens, who believe that current campaign financing incentives have rendered their role insignificant; rapidly rising costs of elections that force candidates to prioritize special interest donors, often from outside of South Dakota, who have the potential to make large contributions; insufficient and delayed disclosure to the public of relevant information on campaign contributions, political advertising, and paid lobbying; and inadequate enforcement of the laws intended to address these problems. Therefore, the purpose of this Act is to increase accountability to the people of South Dakota in electoral politics and to combat government corruption and its appearance.

**Section 3.** Terms used in this Act mean:

- (1) "Commission," the ethics commission established by sections 32 to 41, inclusive, of this Act;
- (2) "Democracy credit," a credit valued at fifty dollars, issued by the commission to a South Dakota resident voter under the Program established by sections 43 to 62, inclusive, of this Act, that can be, through proper assignment, used to make a contribution to a participating candidate;
- (3) "Participating candidate," a candidate for statewide or legislative office who is certified by the ethics commission as qualified to be assigned and redeem democracy credits, pursuant to sections 51 to 54, inclusive, of this Act;
- (4) "Program," the South Dakota democracy credit Program established by sections 43 to 62, inclusive, of this Act;
- (5) "Qualified contribution," a contribution made by a natural person resident of the state that is not, in the aggregate, in excess of two hundred and fifty dollars to a candidate for legislative office or in excess of five hundred dollars to a candidate for statewide office; and
- (6) "Registered representative," a volunteer who is permitted to solicit and collect democracy credits on behalf of a specific participating candidate because the volunteer has, pursuant to section 56 of this Act, properly filed with the commission to affirm understanding of the regulations and penalties associated with the Program.

Other terms used in this Act have the meanings defined by § 12-27-1.

**Section 4.** That § 12-27-1 be amended to read as follows:

12-27-1. Terms used in this chapter mean:

- (1) "Ballot question," any referendum, initiative, proposed constitutional amendment, or other measure submitted to voters at any election;
- (2) "Ballot question committee," a person or organization that raises, collects, or disburses contributions for the placement of a ballot question on the ballot or the adoption or defeat of any ballot question. A ballot question committee is not a person, political committee, or political party that makes a contribution to a ballot question committee. A ballot question committee is not an organization that makes a contribution to a ballot question committee from treasury funds;
- (3) "Candidate campaign committee," any entity organized by a candidate to receive contributions and make expenditures for the candidate. Only one candidate campaign committee may be organized for each candidate;
- (4) "Candidate," any person who seeks nomination for or election to public office, and for the purpose of this chapter a person is deemed a candidate if the person raises, collects, or disburses contributions in excess of five hundred dollars; has authorized the solicitation of contributions or the making of expenditures; or has created a candidate campaign committee for the purpose of obtaining public office. The person is also deemed a candidate if the person has taken all actions required by state law to qualify for nomination for or election to public office;
- (5) "Clearly identified," the appearance of the name, nickname, a photograph or a drawing of a candidate or public office holder, or the unambiguous reference to the identity of a candidate or public office holder;
- (6) "Contribution," any gift, advance, distribution, deposit, or payment of money or any other valuable consideration, or any contract, promise or agreement to do so; any discount or rebate not available to the general public; any forgiveness of indebtedness or payment of indebtedness by another person; or the use of services or property without full payment made or provided by any person, political committee, or political party whose primary business is to provide such services or property for the purpose of influencing:
  - (a) The nomination, election, or re-election of any person to public office; or
  - (b) The placement of a ballot question on the ballot or the adoption or defeat of any ballot question submitted.

The term does not include services provided by a person as a volunteer for or on behalf of any candidate, political committee, or political party, including the free or discounted use of a person's residence. ~~Nor does the term include the purchase of any item of value or service from any political committee or political party. The purchase price of the item may not exceed the fair market value and may not include an intent to contribute beyond the item's value or office.~~ A contribution does not include administration and solicitation of a contribution for a political action committee established by an organization and associated expenses, nor the use of an

organization's real or personal property located on its business premises for such purposes. A contribution does not include nominal use of a candidate's real or personal property or nominal use of resources available at a candidate's primary place of business;

(7) "County office," any elected office at a county in this state;

(8) "Election," any election for public office; any general, special, primary, or runoff election; and any election on a ballot question;

(9) "Expenditure," includes: any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election, office or ballot initiative, measure, or question; and The term includes a written contract, promise, or agreement to make an expenditure. However, the term "expenditure" does not include;

(a) A communication appearing in a news story, commentary, or editorial or letter to the editor distributed through the facility of any broadcasting station, newspaper, magazine, or other periodical publication, unless the facility is owned or controlled by any political party, political committee, or candidate;

(b) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families; or

(c) Any communication that refers to any candidate only as part of the popular name of a bill or statute;

~~(9)~~ (10) "Expressly advocate," any communication which:

(a) In context has no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question by use of explicit words of advocacy of election or defeat. The following are examples of words that convey a message of express advocacy: vote, re-elect, support, cast your ballot for, reject, and defeat; or

(b) If taken as a whole and with limited reference to external events, such as the proximity to the election, may only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question because:

(i) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(ii) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question or encourages some other kind of action;

~~(10) "Immediate family," a spouse of a candidate or public office holder, or a person under the age of eighteen years who is claimed by that candidate or public office holder or that candidate's or public office holder's spouse as a dependent for federal income tax purposes or any relative within the third degree of kinship of the candidate or the candidate's spouse, and the spouses of such relatives;~~

~~(11) "Independent expenditure," an expenditure, including the payment of money or exchange of other valuable consideration or promise, made by a person, organization, political committee, or political party to expressly advocate the election or defeat of a clearly identified candidate or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question, but which is not made to, controlled by, coordinated with, requested by, or made upon consultation with a candidate, political committee, or agent of a candidate or political committee. The term does not include administration and solicitation of any contribution for a political action committee established by an organization and associated expenses, nor the use of an organization's real or personal property located on its business premises for such purposes. The term does not include any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to any member of the organization and the member's family; for a communication by a person, organization, political committee, or political party which is not a contribution and which:~~

~~(a) Refers to a clearly identified candidate for state or local elective office or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question; and~~

~~(b) Is made without arrangement, cooperation, or consultation between any candidate or any authorized committee or agent of a candidate and the person making the expenditure or any authorized agent of that person, and is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate; and~~

~~(c) Satisfies at least one of the following standards: Contains express advocacy, or its functional equivalent, of the election or defeat of a clearly identified candidate for office; or is disseminated, broadcast or otherwise published within sixty days of the election sought by a candidate, mentions a candidate and targets the candidate's relevant electorate;~~

The term "independent expenditure" does not include: a communication appearing in a news story, commentary, or editorial or letter to the editor distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; a communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of

the organization and the members' families; or any communication that refers to any candidate only as part of the popular name of a bill or statute;

(12) "In-kind contribution," the value of a good or service provided at no charge or for less than its fair market value. The term does not include the value of services provided by a person as a volunteer for or on behalf of any candidate, political committee, or political party, including the free or discounted use of any person's residence or office;

(13) "Legislative office," the Senate and the House of Representatives of the South Dakota Legislature;

(14) "Loan," a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or part. The outstanding amount of a loan not made in the ordinary course of business and at a usual and normal interest rate is a contribution until repaid;

(15) "National political party," the organization which is responsible for the day-to-day operation of a political party at the national level, as determined by the Federal Election Commission;

(16) "Organization," any business corporation, limited liability company, nonprofit corporation, limited liability partnership, limited partnership, partnership, cooperative, trust except a trust account representing or containing only a contributor's personal funds, business trust, association, club, labor union, collective bargaining organization, local, state, or national organization to which a labor organization pays membership or per capita fees, based upon its affiliation and membership, trade or professional association that receives its funds from membership dues or service fees, whether organized inside or outside the state, any entity organized in a corporate form under federal law or the laws of this state, or any group of persons acting in concert which is not defined as a political committee or political party in this chapter;

(17) "Person," a natural person;

(18) "Political action committee," a person or organization that raises, collects or disburses contributions ~~to influence the outcome of an election~~ and who is not a candidate, candidate campaign committee, ballot question committee, or a political party. A political action committee is not any:

(a) Person that makes a contribution to a political committee or political party from that person's own funds; or

(b) Organization that makes a contribution to a ballot question committee from treasury funds;

(19) "Political committee," any candidate campaign committee, political action committee, or ballot question committee;

(20) "Political party," any state or county political party qualified to participate in a primary or general election, including any auxiliary organization of such political party. An auxiliary organization is any organization designated as an auxiliary organization in the political party's bylaws or constitution except any auxiliary organization that only accepts contributions to support volunteer activities of the organization and does not make monetary or in-kind contributions or any independent expenditures to any political committee;

(21) "Public office," any statewide office, legislative office, or county office;

(21A) "Qualified contribution," a contribution made by a natural person resident of the state that is not, in the aggregate, in excess of two hundred and fifty dollars to a candidate for legislative office or in excess of five hundred dollars to a candidate for statewide office;

(22) "Recognized business entity," any:

(a) Domestic corporation, limited liability company, nonprofit corporation, limited liability partnership, or cooperative duly registered with the secretary of state as of the first day of January of the current calendar year, and which is currently in good standing;

(b) Foreign corporation, limited liability company, nonprofit corporation, limited liability partnership, or cooperative duly registered with the secretary of state as of the first day of January of the current calendar year, and which is currently in good standing; or

(c) Entity organized in a corporate form under federal law;

~~A The term "recognized business entity" does not include a political committee or political party is not a recognized business entity. An or an organization which was established by or is controlled, in whole or in part, by a candidate, political committee, or agent of a candidate or political committee is not a recognized business entity;~~

(23) "Statewide office," the offices of Governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, commissioner of school and public lands, and public utilities commissioner;

(23A) "Treasury funds," funds of an organization that were not raised or collected from any other source for the purpose of influencing a ballot question;

(24) "Volunteer," a person who provides person's own personal services free of charge.

**Section 5.** That § 12-27-7 be amended to read as follows:

~~12-27-7. If the contributor is a person, no candidate for statewide office or the candidate's campaign committee may accept any contribution which in the aggregate exceeds four thousand dollars during any calendar year. A candidate campaign committee may accept contributions from any candidate campaign committee, political action committee, or political party. No candidate for governor, or the candidate's campaign committee, may accept contributions from a~~



person or political committee which in the aggregate from one source exceeds four thousand dollars during any calendar year, or contributions from a political party which in the aggregate from one source exceeds forty thousand dollars during any calendar year.

No candidate for attorney general or lieutenant governor, or the candidate's campaign committee, may accept contributions from a person or political committee which in the aggregate from one source exceeds two thousand dollars during any calendar year, or contributions from a political party which in the aggregate from one source exceeds twenty thousand dollars during any calendar year.

No candidate for secretary of state, state auditor, state treasurer, commissioner of school and public lands, or public utilities commissioner, or the candidate's campaign committee, may accept contributions from a person or political committee which in the aggregate from one source exceeds one thousand dollars during any calendar year, or contributions from a political party which in the aggregate from one source exceeds ten thousand dollars during any calendar year.

No candidate for statewide office may accept a contribution from a ballot question committee.

Funds received by a candidate or candidate's campaign committee by way of redemption of a democracy credit are considered a contribution from the person who assigned the democracy credit to the candidate.

The limitation on any contribution ~~from a person~~ in this section does not apply to any contribution by the candidate ~~or the candidate's immediate family~~ to the candidate's campaign committee. A violation of this section is a Class 1 misdemeanor.

**Section 6.** That § 12-27-8 be amended to read as follows:

~~12-27-8. If the contributor is a person, no~~ No candidate for legislative or county office or the candidate's campaign committee may accept any contribution which in the aggregate exceeds one thousand dollars during any calendar year. A candidate campaign committee may accept contributions from any candidate campaign committee, political action committee, or political party. contributions from a person or political committee which in the aggregate from one source exceeds seven hundred and fifty dollars during any calendar year, or contributions from a political party which in the aggregate from one source exceeds five thousand dollars during any calendar year.

No candidate for legislative or county office may accept a contribution from a ballot question committee.

Funds received by a candidate or candidate's campaign committee by way of redemption of a democracy credit are considered a contribution from the person who assigned the democracy credit to the candidate.

The limitation on any contribution ~~from a person~~ in this section does not apply to any contribution by the candidate ~~or the candidate's immediate family~~ to the candidate's campaign committee. A violation of this section is a Class 1 misdemeanor.

**Section 7.** That § 12-27-9 be amended to read as follows:

12-27-9. ~~If the contributor is a person or an organization, no~~ No political action committee may accept any contribution from a person, organization, political committee or political party which in the aggregate from a single source exceeds ~~ten~~ two thousand dollars during any calendar year. A political action committee may not accept contributions from a ballot question committee ~~any candidate campaign committee, political action committee, or political party~~. A violation of this section is a Class 1 misdemeanor.

**Section 8.** That § 12-27-10 be amended to read as follows:

12-27-10. ~~If the contributor is a person, no~~ No political party may accept any contribution from a person or political committee which in the aggregate from a single source exceeds ~~ten~~ five thousand dollars during any calendar year. A political party may not accept contributions from a ballot question committee ~~any candidate campaign committee, political action committee, or political party~~. A violation of this section is a Class 1 misdemeanor.

**Section 9.** That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

A candidate, person holding statewide or legislative office, agent of a candidate or an person holding statewide or legislative office, or an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more candidates or persons holding statewide or legislative office, may not solicit, receive, direct, transfer, or spend funds in connection with an election unless the funds are subject to the limitations, prohibitions, and reporting requirements of this chapter.

**Section 10.** That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of the contribution limits established by §§ 12-27-7, 12-27-8, 12-27-9, and 12-27-10, all committees established, financed, maintained or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated and share a single contribution limit both with respect to contributions made and contributions received.

**Section 11.** That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

Any expenditure made by any person, group of persons, political committee, or other entity in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, the

candidate's authorized political committees, or the candidate's committee's agents, is considered to be a contribution to the candidate.

For the purposes of this section, candidate solicitation or direction of funds for or to a person, group of persons, political committee or other entity constitutes cooperation sufficient to render any subsequent expenditure by the person, group of persons, political committee, or other entity in support of that candidate or in opposition to that candidate's opponent to be considered a contribution to the candidate.

The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of either of the foregoing is considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person group of persons, political committee or other entity making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials was done in concert or cooperation with or at the request or suggestion of the candidate. However, the following uses of campaign materials do not constitute a contribution to the candidate who originally prepared the materials:

- (1) The campaign material is disseminated, distributed, or republished by the candidate or the candidate's authorized committee who prepared that material;
- (2) The campaign material is incorporated into a communication that advocates the defeat of the candidate or party that prepared the material; or
- (3) The campaign material is disseminated, distributed, or republished in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.

**Section 12.** That § 12-27-11 be amended to read as follows:

12-27-11. No person, organization, candidate, political committee, or political party may give or accept a contribution unless the name and residence address of the contributor is made known to the ~~person receiving~~ recipient of the contribution. Any contribution, money, or other thing of value received by a candidate, political committee, or political party from an unknown source shall be donated to a nonprofit charitable organization. No person, organization, candidate, political committee, or political party may accept from a person a contribution of more than five hundred dollars in the aggregate in a calendar year unless the occupation and current employer of that person disclosed to the recipient at the time the contribution is made. A violation of this section is a Class 2 misdemeanor.

**Section 13.** That § 12-27-12 be amended to read as follows:

12-27-12. No person or organization may make a contribution in the name of another person or organization, make a contribution disguised as a gift, make a contribution in a fictitious name, make a contribution on behalf of another person or organization, or knowingly permit another to use that person's or organization's name to make a contribution. No candidate may accept a contribution disguised as a gift. This section does not prohibit a person from assigning a democracy credit to a participating candidate, pursuant to sections 45, 46, and 48 of this Act and commission regulation, or prohibit a participating candidate from redeeming a democracy credit, pursuant to section 58 of this Act and commission regulation. A violation of this section is a Class 1 misdemeanor.

**Section 14.** That § 12-27-13 be amended to read as follows:

12-27-13. A contribution or receipt is considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign, person's duties as a holder of elective office, or political committee's political activities, including but not limited to a home mortgage, rent, or utility payment; a clothing purchase; a noncampaign-related automobile expense; a country club membership; a vacation or other noncampaign-related trip; a household food item; a tuition payment; admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and dues, fees, and other payments to a health club or recreational facility.

Equipment, supplies, and materials purchased with contributions are property of the political committee or political party, and are not property of the candidate or any other person.

**Section 15.** That § 12-27-15 be amended to read as follows:

12-27-15. Any printed material or communication made, purchased, paid for, or authorized by a candidate, political committee, or political party ~~which expressly advocates for or against a candidate, public office holder, ballot question, or political party~~ shall prominently display or clearly speak the following statement: "Paid for by (Name of candidate, political committee, or political party)." If the communication is made, purchased, paid for, or authorized by a political committee or political party, the communication shall also state whether or not the communication was authorized by or coordinated with any candidate and the name of any candidate who authorized the communication or with whom the communication was coordinated. This section does not apply to buttons, balloons, pins, pens, matchbooks, clothing, or similar small items upon which the inclusion of the statement would be impracticable. A violation of this section is a Class 1 misdemeanor.

**Section 16:** That § 12-27-16 be amended to read as follows:

12-27-16. The following apply to independent expenditures by ~~individuals persons~~ and organizations ~~related to communications advocating for or against candidates, public office holders, ballot questions, or political parties:~~

(1) Any person or organization that makes a payment or promise of payment totaling one hundred dollars or more, including an in-kind contribution, for a ~~communication which expressly advocates for or against a candidate, public office holder, ballot question, or political party~~ an independent expenditure shall ~~append to or~~ include in each communication a disclaimer that clearly and ~~forthrightly~~ conspicuously:

(a) ~~Identifies the name and address or website of the person or organization making the independent expenditure for that communication;~~

(b) ~~States the address or website address of the person or organization;~~

(e) ~~States that the communication is independently funded and an independent expenditure and not made in consultation or coordination with any candidate, political party, or political committee or any authorized committee or agent of the candidate; and~~

(d) (c) ~~If the independent expenditure is undertaken by an organization not including a candidate, public office holder, political party, or political committee, then the following notation~~ the communication must also be included include a clear and conspicuous statement entitled: "Top Five Contributors" followed by a listing of the names of the five persons making the largest contributions in aggregate to an the organization during the twelve months preceding that communication.

A violation of this subdivision is a Class 1 misdemeanor;

(2) Any person or organization that makes a payment or promise of payment of for an independent expenditure aggregating one hundred dollars or more in any calendar year, including an in-kind contribution, for a communication described in subdivision (1) shall file by electronic transmission a statement with the secretary of state within forty-eight hours of the time that the communication is disseminated, broadcast, or otherwise published; payment or promise of payment is made and each time any additional payment or promise of payment aggregating one-hundred dollars or more is made. The statement for each person or organization shall include:

(a) The name, street address, city, and state of the person or organization and any expenditures made for the independent expenditure during that calendar year, but not yet reported on a prior statement;

(b) The elections to which the independent expenditures pertain and name of candidate, ballot question, or political party identified in each independent expenditure;

(c) The amount spent on each independent expenditure, as well as the name, street address, city, and state of the person or organization paid; and

(d) Whether the independent expenditure was for or against the candidate, ballot question, or political party.

(e) For an organization, the full name, residence address including city and state, occupation, name of employer, and aggregate amount of the payment of each person whose funds were used for the independent expenditure. The identity of the person or persons whose funds were used for the independent expenditures shall be determined in the following manner. Any person or persons who made payments in the aggregate in excess of \$100 during that calendar year pursuant to an agreement or understanding that person's funds would be used for an independent expenditure shall be identified. A person's payment can only be credited to all independent expenditures up to the amount given in the calendar year. If the funds identified pursuant to this subdivision are insufficient to cover the cost of the independent expenditure, the organization shall report its donors utilizing a "last in, first out" accounting method, reporting donors in reverse chronological order beginning with the most recent of its donors or, if there are any prior payments or expenditures, beginning with the most recent donor for which unattributed payments remain, until the full amount expended for the independent expenditure is accounted for.

~~(3) The statements required by this section shall include the name, street address, city, and state of the person or organization and, any expenditures made for communications described in subdivision (1) during that calendar year but not yet reported on a prior statement, the name of each candidate, public office holder, ballot question, or political party mentioned or identified in each communication, the amount spent on each communication, and a description of the content of each communication. For an organization, the statement shall also include the name and title of the person filing the report, the name of its chief executive, if any, and the name of the person who authorized the expenditures on behalf of the organization;~~

(4) For an organization whose majority ownership is owned by, controlled by, held for the benefit of, or comprised of twenty or fewer persons, partners, owners, trustees, beneficiaries, participants, members, or shareholders, the statement shall also identify by name and address each person, partner, owner, trustee, beneficiary, participant, shareholder, or member who owns, controls, or comprises ten percent or more of the organization;

(5) An organization shall also provide supplemental statements, as defined in subdivision ~~(3)~~ (2), for any of its partners, owners, trustees, beneficiaries, participants, members, or shareholders identified pursuant to subdivision (4) which are owned by, controlled by, held for the benefit of, or comprised of twenty or fewer persons, partners, owners, trustees, beneficiaries, participants, members, or shareholders, until no organization identified in the supplemental statements meets the ownership test set forth in subdivision (4);

~~(6) For the purposes of this section, the term, communication, does not include:~~

~~(a) Any news articles, editorial endorsements, opinion, or commentary writings, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate, political committee, or political party;~~

~~(b) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, political committee, or political party;~~

~~(c) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families; and~~

~~(d) Any communication that refers to any candidate only as part of the popular name of a bill or statute.~~

**Section 17:** That § 12-27-17 be repealed.

~~12-27-17. Any political committee, organization, person, or political party that makes a payment or promise of payment totaling one hundred dollars or more, including an in-kind contribution, for a communication that clearly identifies a candidate or public office holder, but does not expressly advocate the election or defeat of the candidate or public office holder, and that is disseminated, broadcast, or otherwise published, shall file a statement with the secretary of state disclosing the name, street address, city, and state of such political committee, organization, person, or political party. The statement shall also include the name of the candidate or public office holder mentioned in the communication, the amount spent on the communication, and a description of the content of the communication. The statement shall be received and filed within forty-eight hours of the time that the communication is disseminated, broadcast, or otherwise published.~~

~~For the purposes of this section, the term, communication, does not include:~~

~~(1) Any news articles, editorial endorsements, opinion or commentary writings, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate, political committee, or political party;~~

~~(2) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, political committee, or political party;~~

~~(3) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families;~~

~~(4) Any communication that refers to any candidate only as part of the popular name of a bill or statute; and~~

~~(5) Any communication used for the purpose of polling if the poll questions do not expressly advocate for or against a candidate, public office holder, ballot question, or political party.~~

**Section 18:** That § 12-27-17.1 be repealed.

~~12-27-17.1. Any political committee, organization, person, or political party that makes a communication as defined in § 12-27-17, which does not expressly advocate for or against a candidate, public office holder, ballot question, or political party, shall append to or include in each communication a disclaimer that:~~

~~(1) Identifies the political committee, organization, person, or political party making the communication; and~~

~~(2) States the address or website address of the political committee, organization, person, or political party.~~

~~If the communication is an independent expenditure made by a person or organization, then the disclaimer shall include the following: "This communication is independently funded and not made in consultation with any candidate, political party, or political committee." If the independent expenditure is undertaken by an organization not including a candidate, public office holder, political party, or political committee, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five persons making the largest contributions to an organization during the twelve months preceding that communication.~~

~~A violation of this section is a Class 1 misdemeanor.~~

**Section 19:** That § 12-27-20 be amended to read as follows:

12-27-20. The state, an agency of the state, and the governing body of a county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question. This section does not prohibit the use of any type of state funds for the democracy credit fund or Democracy Credit Program pursuant to this Act.

**Section 20:** That § 12-27-21 be amended to read as follows:

12-27-21. No candidate, political committee, or political party may accept any contribution from any state, state agency, political subdivision of the state, foreign government, Indian tribal entity as defined in the Federal Register Vol. 72, No. 55 as of March 22, 2007, federal agency, or the federal government. This section does not prohibit a candidate or candidate's campaign committee from redeeming or accepting a democracy credit pursuant to sections 43 to 62, inclusive, of this Act. A violation of this section is a Class 1 misdemeanor.



**Section 21:** That § 12-27-22 be amended to read as follows:

12-27-22. A campaign finance disclosure statement shall be submitted to the secretary of state by the treasurer of every:

- (1) Candidate or candidate campaign committee for any statewide or legislative office;
- (2) Political action committee;
- (3) Political party;
- (4) Ballot question committee; and
- (5) Candidate or candidate committee for any statewide or legislative office whose name appears on the primary ballot, but does not appear on the general election ballot, shall submit a campaign finance disclosure statement, or termination report, which shall be received by the secretary of state by 5:00 p.m. on the second Friday of August following that primary election.

The statement shall be signed and submitted by the treasurer of the political committee or political party. The statement shall be received by the secretary of state and submitted by 5:00 p.m. on the first Monday of February and shall cover the contributions and expenditures for the preceding calendar year. The statement shall also be received by the secretary of state and submitted by 5:00 p.m. on the fifth Tuesday before each primary and general election complete through the fiftieth day prior to that election. The statement shall also be received by the secretary of state and submitted by 5:00 p.m. on the second Friday prior to each primary and general election complete through the fifteenth day prior to that election. The statement shall also be received by the secretary of state and submitted by 5:00 p.m. on the fourth Friday after each primary and general election complete through second Friday after that election. Any statement submitted pursuant to this section shall be consecutive and shall cover contributions and expenditures since the last statement submitted.

The following are not required to submit a campaign finance disclosure statement:

- (1) A candidate campaign committee for ~~legislative or~~ county office on February first following a year in which there is not an election for the office;
- (2) ~~A county, local, or auxiliary committee of any political party, qualified to participate in a primary or general election, prior to a statewide primary election;~~
- (3) ~~A legislative or county candidate campaign committee without opposition in a primary election, prior to a primary election;~~
- (4) ~~A candidate campaign committee whose name is not on the general election ballot, prior to the general election;~~

~~(5)~~ A political committee that regularly submits a campaign finance disclosure statement with ~~another state or~~ the Federal Election Commission or a report of contributions and expenditures with the Internal Revenue Service;

~~(6)~~ (3) A statewide candidate who is publicly seeking a nomination by that candidate's party convention prior to a primary election; and

~~(7)~~ (4) An independent statewide candidate prior to a primary election.

A violation of this section is a Class 1 misdemeanor.

**Section 22:** That § 12-27-24 be amended to read as follows:

12-27-24. A campaign finance disclosure statement shall include the following information, regardless of whether it has previously been included in a timely contribution disclosure statement pursuant to section 23 of this Act:

- (1) Political committee or political party name, street address, postal address, city, state, zip code, daytime and evening telephone number, and e-mail address;
- (2) Type of campaign statement (fifth Tuesday pre-primary, second Friday pre-primary, fourth Friday post-primary, fifth Tuesday pre-general, second Friday pre-general, fourth Friday post-general, mid-year, year-end, amendment, supplement, or termination);
- (3) If a ballot question committee, the ballot question number and whether the committee is for or against the measure;
- (4) The balance of cash and cash equivalents on hand at the beginning of the reporting period;
- (5) The total amount of all contributions received during the reporting period;
- (6) The total amount of all in-kind contributions received during the reporting period;
- (7) The total of refunds, rebates, interest, or other income not previously identified during the reporting period;
- (8) The total of contributions, loans, and other receipts during the reporting period;
- (9) The total value of loans made to any person, political committee, or political party during the reporting period;
- (10) The total of expenditures made during the reporting period;
- (11) The total amount of all expenditures incurred but not yet paid, detailed in an itemized list. An expenditure incurred but not yet paid shall be reported on each report filed after the date of

receipt of goods or services until payment is made to the vendor. A payment shall be listed as an expenditure when the payment is made;

(12) The statement shall state the cash balance on hand as of the close of the reporting period;

(13) The total amount of contributions of ~~one~~ two hundred dollars or less in the aggregate from one source received during the ~~reporting period~~ calendar year;

(14) The name, residence address, city, and state of each person contributing a contribution of more than ~~one~~ two hundred dollars in the aggregate during the ~~reporting period~~ calendar year and the amount of the contribution, as well as the occupation and name of employer of each person contributing a contribution of more than five hundred dollars in the aggregate during the calendar year. Any contribution from any political committee or political party shall be itemized. Any contribution from a federal political committee or political committee organized outside this state shall also include the name and internet website address of the filing office where campaign finance disclosure statements are regularly filed for the committee. If all of the information required is not on file, the political committee or political party may not deposit the contribution;

(15) The statement shall contain the same information for in-kind contributions as for monetary contributions, and shall also include a description of the in-kind contribution;

(16) Upon the request of the treasurer, a person making an in-kind contribution shall provide all necessary information to the treasurer, including the value of the contribution;

(17) Any monetary or in-kind contribution made by the reporting political committee or political party to any political committee, political party, or nonprofit charitable organization shall be itemized;

(18) A categorical description and the amount of the refunds, rebates, interest, sale of property, or other receipts not previously identified during the reporting period;

(19) A categorical description and the amount of funds or donations by any organization to its political committee for establishing and administering the political committee and for any solicitation costs of the political committee;

(20) The total balance of loans owed by the political committee or political party;

(21) The balance of loans owed by the political committee or political party, itemized by lender's name, street address, city, and state, including the terms, interest rate, and repayment schedule of each loan;

(22) The total balance of loans owed to the political committee or political party;

(23) The amount of each loan made during the reporting period. The name, street address, city, and state of the recipient of the loan;

(24) The balance of each loan owed to the political committee or political party, itemized by name, street address, city, and state;

(25) The expenditures made during the reporting period shall be categorized. Disbursements to consultants, advertising agencies, credit card companies, and similar firms shall be itemized into expense categories. Any contribution made by the reporting political committee or political party that is not in exchange for any item of value or service shall be itemized;

(26) The expenditures incurred but not yet paid during the reporting period and to whom the expenditure is owed;

(27) The amount of each independent expenditure, as defined in this chapter, made during the reporting period, the name of the candidate, public office holder, or ballot question related to the expenditure and a description of the expenditure;

(28) The information contained in any statement provided under § 12-27-19; and

(29) The statement shall include a certification that the contents of the statement is true and correct signed by the treasurer of the political committee or political party.

**Section 23.** That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

When a candidate campaign committee for any statewide or legislative office, political action committee, political party, or ballot question committee has accepted contributions in the aggregate of more than five hundred dollars in the calendar year, the treasurer of that political committee or political party is required to file a "timely contribution disclosure statement" by electronic transmission with the secretary of state. Further timely contribution disclosure statements must be filed each time new contributions accepted in that same calendar year from that same source exceed five hundred dollars in the aggregate. A timely contribution disclosure statement shall include the following:

(1) If the contributor is a person, the amount and date of the contribution in the aggregate as well as the person's full name, residence address including city and state, occupation and name of employer; or

(2) If the contributor is a political committee or political party, the amount and date of the contribution in the aggregate as well as the name of the political committee or political party and its registered street address including city and state.

A timely contribution disclosure statement shall be filed with the secretary of state by electronic transmission within five business days after the day of the receipt of the contribution. However, if a contribution is received within twenty days of a South Dakota primary, general, or special election, the filing shall be made within twenty-four hours of the time of the receipt of the contribution. A political committee or political party does not have to file a report within twenty-four hours of the receipt of a contribution received within twenty days of a special election if the

political committee or political party has not made any expenditures in connection with that special election.

**Section 24:** That § 12-27-29.1 be amended to read as follows:

12-27-29.1. In addition to any other penalty or relief provided under this chapter, the secretary of state or the ethics commission, after notice and opportunity for hearing pursuant to chapter 1-26, may impose an administrative penalty for the failure to timely file any statement, amendment, or correction required to be filed by this chapter. The administrative penalty is fifty dollars per day for each violation not to exceed three thousand dollars. However, if the violation is made by a county political party or auxiliary, the administrative penalty is ten dollars per day for each violation not to exceed six hundred dollars. Any administrative penalty collected pursuant to this section shall be deposited in the state general fund.

**Section 25:** That § 12-27-35 be amended to read as follows:

12-27-35. The attorney general shall investigate violations of the provisions of this chapter ~~relating to a legislative office, statewide office, or statewide ballot question~~ and prosecute any violation thereof. In lieu of bringing a criminal action, the attorney general may elect to file a civil action. In a civil action, in addition to other relief, the court may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation. Any civil penalty recovered shall be paid to the state general fund. A civil action brought by the attorney general shall be commenced in Hughes County, in the county where the person resides, or in the county where the organization, political party, or political committee has its principal office.

**Section 26:** That § 12-27-36 be amended to read as follows:

12-27-36. The attorney general and ethics commission may, for the purpose of enforcing the provisions of this chapter, inspect or examine any political committee or political party records required to be maintained by this chapter. It is a Class 1 misdemeanor for any person having charge, control, or possession of political committee or political party records to neglect or refuse the attorney general or ethics commission reasonable access to any records required to be maintained by this chapter which are necessary to enforce the provisions of this chapter.

**Section 27:** That § 12-27-37 be amended to read as follows:

12-27-37. The attorney general and ethics commission shall keep each record inspected or examined confidential except when the records are used to enforce provisions of this chapter associated with a criminal or civil action.

**Section 28.** That § 12-27-41 be amended to read as follows:

12-27-41. ~~Any~~ Each statement required to be filed under this chapter ~~may be filed~~ by electronic transmission shall be filed in accordance with the methods approved by the secretary of state pursuant to the requirements of section 29 of this Act. The treasurer of a candidate campaign committee for any statewide or legislative office, political action committee, political party, or

ballot question committee is required to file by electronic transmission with the secretary of state the campaign finance disclosure statements required pursuant to § 12-27-22, if the political committee or political party has received contributions in the aggregate of one thousand dollars or more during the period covered by the statement. If a political committee or political party is required by this chapter to file a statement by electronic transmission, the secretary of state may not accept nor consider filed any statement that uses handwriting as input, aside from a signature. Any statement or disclosure not required to be filed by electronic transmission may be filed by electronic transmission in accordance with the methods approved by the secretary of state.

~~To be timely filed, any statement received by electronic transmission shall be legible and readable when received by the means it was delivered.~~

**Section 29.** That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of state shall ensure that political committee and political party treasurers need only a commonly used internet web browser to properly submit the campaign finance disclosure statements required pursuant to § 12-27-22, the timely contribution disclosure statements required pursuant to section 23 of this Act, and any other campaign finance information required to be filed by electronic transmission by this chapter. The secretary of state shall develop a secure method for electronically signing statements. The methods provided to treasurers by the secretary of state to file by electronic transmission shall when feasible facilitate bulk itemized data submission using a standardized format prescribed by the secretary of state. The secretary of state shall provide training materials for filing required statements by electronic transmission.

The secretary of state may grant brief extensions with no penalty for filing by electronic transmission in the event of prolonged circumstances outside the control of the secretary of state or a treasurer that make electronic filing unfeasible.

**Section 30.** That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of state shall make the information contained in the campaign finance disclosure statements and timely contribution disclosure statements that have been filed by electronic transmission after January 1, 2018 available to the public in an open format that:

- (1) Is retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications;
- (2) Is platform independent and machine readable;
- (3) Is available free of charge and without any restriction that would impede the non-commercial reuse or redistribution of the public record;
- (4) Employs a descriptive and uniform naming system; and

- (5) Retains the data definitions and structure present when the data was compiled, if applicable.

The secretary of state shall also provide to the public free of charge a bulk data download file of the contribution information contained in all campaign finance disclosure statements submitted after January 1, 2018, complete with annotation of amended information. This file shall be offered in an open, platform independent, and machine readable format that when appropriate displays information in an itemized and non-duplicated manner. The same shall be provided, but in a separate file, for the contribution information contained in all timely contribution disclosure statements submitted up to the present.

**Section 31.** That chapter 12-27 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this section, the term "gift" means any compensation, reward, employment, gift, honorarium, beverage, meal, food, or other thing of value made or given directly or indirectly to any person.

No lobbyist or employer of a lobbyist may make gifts to one person who is an elected state officer, legislative official or staffperson, or executive department official or staffperson aggregating more than one hundred dollars in a calendar year, nor may a lobbyist or employer of a lobbyist act as an agent or intermediary in the making of any such gift, or to arrange for the making of any such gift by any other person.

The value of gifts given to an immediate family member of any elected state officer, legislative official, or executive branch official shall be attributed to the officer or official for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member, subject to approval by the commission in a manner to be promulgated by rule by the commission pursuant to its rulemaking authority under section 40 of this Act.

No person may knowingly receive any gift which is made unlawful by this section. A violation of this section is a Class 1 misdemeanor.

**Section 32.** There is hereby established the South Dakota Ethics Commission, an independent commission to prevent corruption and its appearance, to protect the integrity of the democratic process, to ensure that state ethics laws are not violated, and to administer the democracy credit fund and Program.

**Section 33.** The commission shall consist of five members who shall be chosen on the basis of experience, integrity, impartiality, and good judgment. No more than two of the members may be affiliated with the same political party. No member of the commission may be a state employee or an elected or appointed official of the state or any of its political subdivisions. No member may be a lobbyist registered pursuant to chapter 2-12.

**Section 34.** The initial members of the commission shall be appointed no later than January 31, 2017, and all appointments to the board made thereafter are to be made by January thirty-first of each year. Members of the commission shall serve for a single term of six years, except that of the members first appointed: three members, not presently or generally affiliated with the same political party, shall be appointed by the Governor for terms ending in three years, with one chosen from a list of nominees, ordered by preference, that shall be supplied by the state senate majority leader, one chosen from a list of nominees, ordered by preference, that shall be supplied by the state senate minority leader, and one chosen from a list of nominees, ordered by preference, that shall be jointly agreed upon and supplied by the state senate majority and minority leaders, and two of the members, not presently or generally affiliated with the same political party, shall be appointed by the Governor for terms ending in six years, with both chosen from a list of nominees, ordered by preference, that shall be jointly agreed upon and supplied by the presidents of the University of South Dakota and South Dakota State University.

If the Governor fails to make any appointment to the commission by the date indicated above, the nominee in the relevant supplied list is automatically appointed in order of indicated preference as necessary to fill the commission. Any vacancy on the commission shall be filled in the same manner as the initial appointment and shall be made within thirty days of the vacancy.

A vacancy occurring prior to the end of the Commissioner's term shall be filled for the remainder of the term and shall count as that appointee's single allowable term. All appointed members of the board shall file with the secretary of state an oath in the form prescribed by § 3-1-5.

**Section 35.** Except where expressly provided otherwise, each decision of the commission with respect to the exercise of its duties and powers under section 39 of this Act shall be made by a majority vote of the members of the commission.

**Section 36.** The members of the commission shall select a chair by majority vote for each calendar year. The chair shall have the authority to call meetings of the commission, sign documents on behalf of the commission, and take other administrative actions necessary to carry out the decisions of the commission made by majority vote. The chair may delegate duties as chair to another member of the commission. Any decision or action by the chair may be overruled by majority vote of the members. If the Chair does not call a meeting, a meeting of the commission may be called by two or more members.

**Section 37.** Each Commissioner shall receive a per diem of fifty dollars per day for days when the Commissioner is carrying out duties as a member of the commission, to be paid from the budget of the commission.

**Section 38.** The commission may employ staff and contract employees as necessary to carry out its duties and responsibilities.

**Section 39.** The commission has primary responsibility for the impartial, effective administration and implementation of this Act, including:



- (1) Implementing and administering the Democracy Credit Program and democracy credit fund established by sections 42 to 62, inclusive, of this Act, including but not limited to:
  - (a) Prior to each election cycle, informing the public about democracy credits and the Program;
  - (b) Publishing appropriate guidebooks for candidates and democracy credit recipients, and all forms, instructions, brochures and documents necessary and proper for this Program;
  - (c) Promptly after the effective date of this section, projecting Program revenue, expenditures, and democracy credit fund balances five years into the future, and revising and updating such projections regularly;
  - (d) Managing the democracy credit fund as a fiduciary, ensuring proper accumulation and distribution of funds, during nonelection and election years, to achieve Program purposes and goals;
  - (e) Managing the budget of the commission as a fiduciary, ensuring proper accumulation and distribution of funds, during nonelection and election years, to achieve the purposes of this Act;
  - (f) By January first of each state election year, publishing the amount of democracy credit funds available for that year for all democracy credit redemptions, using best efforts to reasonably project and ensure that adequate democracy credit fund moneys are available for that election year consistent with this Act, its goals and purposes and all reasonably foreseeable circumstances and contingencies; and
  - (g) During any state election year, as soon as receiving or reasonably determining it shall receive democracy credits for redemption in excess of the amount of democracy credit funds available of this section for that year, publicly announcing that Program funds are no longer available and setting a deadline date for assigned democracy credit delivery, following which the commission shall consider democracy credits received and shall allocate remaining available Program Funds proportionately per delivered but unredeemed verified democracy credits on hand, pro rata among all participating candidates for all offices without discrimination;
- (2) Issuing recommendations to public agencies to minimize corruption and its appearance and promote trust in the government. The commission may make recommendations to the Legislature, constitutional officers, and other government officials on legislation and policies that would provide public trust;

- (3) Reviewing statements and records. To ensure compliance with the law, the commission shall review all statements and records required to be filed under campaign finance and lobbying law and may audit the records of entities required to file reports and statements;
- (4) Investigation and Enforcement. If the commission, upon receiving a complaint or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines that there is reason to believe a violation of state campaign finance or lobbying law may have been committed, the commission may:
  - (a) Immediately refer the matter to the secretary of state or the attorney general, as appropriate, for investigation and enforcement; or
  - (b) Initiate an investigation to determine whether there is probable cause to believe a violation has been committed. If the commission determines there is probable cause to believe a violation was committed, the commission shall refer the matter to the secretary of state or the attorney general for investigation and enforcement, as appropriate;

If the commission refers a matter for enforcement to the secretary of state or attorney general, as appropriate, such agency shall review the matter and notify the commission in writing within thirty days of the referral whether or not the agency intends to take further action and what action it will take. If either the secretary of state or attorney general, as appropriate, notifies the commission it will take further action, it must report to the commission every thirty days on the further actions it has taken. Upon completion of its enforcement action, the secretary of state or attorney general, as appropriate, must submit a final report to the commission on the resolution of the matter. The report shall include an explanation of the actions taken and any relevant evidence obtained.

If the secretary of state or attorney general, as appropriate, fails to report to the commission, notifies the commission that no action will be taken, fails to take final action on a matter within six months or takes final action that the commission believes is insufficient to remedy the violation, the commission may determine to seek civil enforcement of the law. If the commission determines to seek civil enforcement of the law, it may conduct any further investigation it believes necessary. The commission may seek monetary penalties and an order requiring corrective action.

The commission has the power to subpoena documents and witnesses related to any commission investigation. The commission may conduct investigations privately or in executive session, however, any findings on an investigation or a decision on a recommendation shall be determined publicly. The commission shall publish a public report on each investigation, including the commission findings. The commission, secretary of state and attorney general shall make every effort to cooperate and share

information in order to effectively enforce the law, while maximizing the efficient use of resources.

(5) Issuing upon request and publishing advisory opinions.

**Section 40.** The ethics commission may adopt rules as may be necessary to implement the provisions of this Act. The rules may be adopted to regulate:

- (1) The procedure by which the commission reviews all statements and records required to be filed under campaign finance and lobbying law;
- (2) The manner in which the commission fulfills its investigatory and enforcement duties;
- (3) The manner in which commission advisory opinions may be requested and are issued;
- (4) Gifts by lobbyists and employers of lobbyists to public officials and related persons;
- (5) The physical form, printed content, distribution, and issuance of democracy credits;
- (6) The assignment of democracy credits, including the development of an online electronic system for such assignment and the role of potential vendors related to such development;
- (7) The submission, verification, and redemption of assigned democracy credits;
- (8) The expiration of democracy credits;
- (9) The qualification and certification of candidates, committees, registered representatives, treasurers, and other persons involved or participating in the Program;
- (10) The conditions that must be met for continued participation in the Program, including reporting requirements;
- (11) The use of democracy credits in special elections; and
- (12) Any other matters inherent to the effective implementation, operation, or administration of the Program.

The rules shall be adopted pursuant to chapter 1-26 and shall be in accordance this Act.

Only if necessary to address an unforeseen problem or a change in circumstances that arises in the ethics commission's implementation or operation of the Program, the commission may adopt rules that replace or modify the requirements established in sections 43 to 62, inclusive, of this Act, to further the purposes of the Program. The commission shall issue public written findings regarding the need for any such rule that it adopts.

**Section 41.** The commission shall submit an annual report to the Governor and the Legislature no later than February first. This report shall detail the action taken by the commission and a summary of disclosable information regarding the number and nature of complaints received and addressed.

The commission shall maintain a telephone hotline as well as a website through which persons may anonymously report instances of corruption in state government. The commission shall

maintain a website to educate the public about its role and the Program, publish its reports and findings, and promote public trust in government.

**Section 42.** There is hereby created the “democracy credit fund,” a special, dedicated, non-lapsing fund. Moneys appropriated, deposited, or paid into this fund may not lapse at any time or be transferred to any other fund, except as provided in this section. Any money in the fund is continuously appropriated to the ethics commission for expenditure in accordance with the provisions of this chapter, including for the purposes of:

- (1) Providing funds to the election campaigns of participating candidates in exchange for redeemed democracy credits, pursuant to this Act; and
- (2) Paying for the administrative and enforcement costs of the ethics commission and other state staff or vendors related to the administration of the South Dakota Democracy Credit Program, pursuant to this Act.

The sources of revenue to be deposited in the democracy credit fund shall include, without limitation: unspent democracy credit contributions received by any participating candidate who does not remain a candidate until the election for which the funds were distributed, or such funds that remain unspent by a participating candidate following the date of the election for which the funds were distributed; voluntary donations made directly to the democracy credit fund; other funds appropriated by the state; any interest generated by the democracy credit fund; and any other sources of revenue determined as necessary by the state.

The total amount of revenue in the democracy credit fund may not exceed at any time twelve million dollars. Any amount exceeding this limit that would otherwise be deposited in the democracy credit fund shall instead be deposited in the state general fund.

**Section 43.** The South Dakota Democracy Credit Program (“Program”) is hereby established. The purposes of the Program are to minimize corruption or the appearance of corruption in government; to promote broad, diverse, fair, and undistorted influence and participation by South Dakotans in state electoral politics; to better inform the public about candidates running for office; and to promote meaningful and open discussion of political issues in the context of electoral politics.

**Section 44.** On the first business day in January of every even-numbered year, the ethics commission shall mail to each person who was by the previous December first registered to vote in the state, to voter’s address in the voter registration records, two democracy credits valued at fifty dollars each, accompanied by instructions for the assignment of democracy credits and information about the Program. However, the commission may deliver democracy credits electronically or in other manners if the person to be issued the democracy credits elects other manner of delivery as allowed under commission regulation. Thereafter, the commission shall on the first and eleventh business day of every month in that election year issue two democracy credits valued at fifty dollars each to any person not yet issued democracy credits in that election year who becomes a registered voter in the state after the previous December first and before October first of the election year. Any registered voter may request that the voter’s democracy

credits be mailed to an address other than that indicated in the voter registration records, or be delivered at the office or physical address of the commission. No person who is not a resident and registered voter of the state, no corporation or other non-human entity, and no person ineligible to make political contributions under federal or state law, may receive a democracy credit.

**Section 45.** Each democracy credit shall:

- (1) State the voter's name, a unique and non-sequential democracy credit identification number, and the election year for which the democracy credit is valid;
- (2) Provide a space for the voter to designate the name and office sought of the candidate to whom the voter chooses to assign the democracy credit;
- (3) Require the voter to enter the voter's date of birth, as well as any other verification information required by the commission by rule that is reasonable and not overly burdensome for the voter to provide, in a designated area on the democracy credit for verification purposes; and
- (4) Provide a blank space for the voter to sign and date these words of assignment and agreement in substantially the following form: "I attest that I am a registered voter and resident of the State of South Dakota. I attest that I obtained this democracy credit properly and make this assignment freely, voluntarily and without duress or in exchange for any payment of any kind for this assignment, and not for any consideration of any kind, and that I am aware that assignment does not guarantee availability of funds and is irrevocable. I understand that assignment is complete upon delivery to the South Dakota Ethics Commission, the named candidate, or the candidate's registered representative. I understand that sale or transfer for consideration of this democracy credit is strictly prohibited. I understand that if I have been approached by a person attempting to collect democracy credits on behalf of a participating candidate, that the person shall produce upon request official documentation showing that the person has been certified by the Ethics Commission as a registered representative of the participating candidate. I understand that a democracy credit may be redeemed only by participating candidates and only if such candidate has complied with all applicable campaign finance laws and if funds are available."

A democracy credit, as well as any attached instructions, shall contain the following statement or substantially the same: "In order to redeem the democracy credit you are assigning, a candidate must be or become a participating candidate and not be or become ineligible to redeem democracy credits. You may check on the eligibility status of any candidate by calling the South Dakota Ethics Commission or visiting its website," followed by the phone number of the commission line for this purpose and the direct address to the section of the commission website detailing current candidate eligibility.

**Section 46.** A democracy credit is only transferable or assignable as stated within sections 43 to 62, inclusive, of this Act. Only the voter to whom the democracy credit was issued by the

commission may assign the democracy credit. A voter assigns a democracy credit by writing the name of the assignee candidate, signing by hand or by secure electronic signature the voter's name, providing all verification information required by section 45 of this Act and commission regulations, dating the democracy credit where indicated thereon, and delivering the signed and dated democracy credit to the candidate, or to the commission, or to any candidate's representative who shall be registered for this purpose with the commission pursuant to section 56 of this Act. Delivery may be by mail, in person (by any person the holder requests to deliver the democracy credit), or electronically via a secure online system developed and implemented by the commission or through a duly contracted vendor.

The commission shall establish a secure online system for assignment of democracy credits no later than December 31, 2017, unless the commission determines this target date is not practicable; and in any event no later than December 31, 2019. The commission may also develop a secure online system for issuance of democracy credits to registered voters in the state if it so elects.

**Section 47.** The name, address, and any other information that reveals the identity of a voter who is issued or assigns a democracy credit, insofar as that information exists apart from proper inclusion in a campaign finance disclosure statement as described under § 12-27-24, may not be disclosed to the public and shall be, pursuant to chapter 1-27, kept confidential by the commission, involved vendors, and any other entities or government agency involved in the proceedings of the Program. Information that does not identify a voter and that is descriptive of the general or specific functioning of the Program, such as the number of democracy credits assigned to and redeemed by all or specific candidates or the date of assignment of democracy credits, is intended for public disclosure.

**Section 48.** A person may only assign a democracy credit to a candidate who has been certified as a participating candidate by the commission. No democracy credit may be assigned after the day of the general election in the year the democracy credit was issued, or to any candidate who has not yet been certified as a participating candidate, loses status as a participating candidate, or becomes unqualified for the position sought. A candidate or registered representative of the candidate may seek assignment in person, by mail (including by providing to voters prepaid and preaddressed envelopes through which to deliver voter's assigned democracy credits), or by assisting a voter to access the secure online system implemented by the commission. A valid assignment is irrevocable. A person may assign any number of the person's democracy credits to the same candidate in a given year. Assignment or transfer of a democracy credit for cash or any consideration is prohibited. Offering to purchase, buy or sell a democracy credit is prohibited. Any person who offers to purchase or buy a democracy credit is guilty of a Class 1 misdemeanor. No person may gift a democracy credit to another person, except by assigning it to a candidate as provided pursuant to sections 43 to 62, inclusive, of this Act. A democracy credit has no cash value and is not an asset, income or property of the holder. A democracy credit may not be assigned by proxy, power of attorney or by an agent.

**Section 49.** A democracy credit expires if the holder is not a registered voter and resident in the state, or is not eligible to make political contributions under state or federal law, if such circumstances take place prior to the assignment to a participating candidate. The holder of a

democracy credit assumes the risk that holder may change holder's mind after assignment, or that the democracy credit may not have use or be redeemed due to any contingency, including but not limited to unavailability of Program funds; the assignee candidate becoming ineligible to further redeem democracy credits for reasons including, but not limited to, the candidate's reaching the applicable redemption limits pursuant to sections 59 and 60 of this Act; a candidate's death, disqualification, withdrawal, failure to redeem or use the democracy credit; or otherwise as determined by commission rule.

**Section 50.** Only a candidate who has filed with the commission for participation in the Program may receive assignment of a democracy credit. Only a candidate certified as a participating candidate by the commission may redeem a democracy credit. Only a person eligible for and seeking legislative office in South Dakota is eligible to file for Program participation in the years 2017 and 2018. After the year 2018, only a person eligible for and seeking statewide or legislative office in South Dakota is eligible to file for Program participation. The commission shall determine by criteria established by rule if and when candidates running in a special election may participate in the Program.

**Section 51.** To be certified by the commission as a participating candidate, a candidate seeking election to statewide or legislative office shall file with the commission, on or after July first the year before an election year and within two weeks after filing a declaration of candidacy, a sworn statement in a format provided by the commission attesting to the candidate's intent to participate in the Program, asserting that the candidate shall timely file or has filed a declaration of candidacy for the office indicated, and that the candidate shall comply with Program requirements and applicable campaign laws. The Program requirements are that the candidate:

- (1) May not expend, contribute, or lend to the candidate's own controlled committee personal funds in excess of two thousand dollars if the person is a candidate for statewide office, or one thousand dollars if he or she is a candidate for legislative office;
- (2) May not solicit, accept, direct, or otherwise coordinate receipt or spending of funds in connection with the candidate's election other than democracy credits and Qualified Contributions;
- (3) May not make contributions using funds received through redemption of democracy credits to another political committee or a political party; and
- (4) Must, if the candidate is a candidate for Governor, agree to withdraw from the Program and return any unspent funds received through democracy credits within three weeks of official selection of the candidate's lieutenant governor running mate if that lieutenant governor running mate does not before those three weeks have elapsed agree to Program requirements (1), (2), and (3) of this section.

**Section 52.** No candidate for lieutenant governor may become a participating candidate unless the candidate's Governor candidate running mate has already become a participating candidate. Any democracy credit assigned to and redeemed by a participating candidate for lieutenant

governor is considered to be redeemed by that candidate's participating candidate running mate for Governor.

**Section 53.** To become certified by the commission as a participating candidate eligible to solicit, accept, and redeem democracy credits, a candidate for statewide or legislative office shall demonstrate to the commission that the candidate has not spent any funds directed at an upcoming election that were raised from contributions that are not Qualified Contributions. The candidate shall also demonstrate, using a form prescribed by the commission, that the candidate has received the following number of Qualified Contributions of at least ten dollars each, each contributed by a separate person, as well as the signature, full name, address, city and state of the person making each Qualified Contribution: if the candidate is running for the South Dakota legislature, at least twenty-five; for statewide office other than the office of Governor, at least one hundred; and for Governor, at least two hundred.

**Section 54.** A candidate loses status as a participating candidate by publicly announcing withdrawal, abandoning the race, or if the commission finds sufficient material violations of election laws or Program requirements such as violation of contribution limits, or fraudulent or attempted fraudulent assignment of democracy credits.

**Section 55.** The commission shall maintain an interactive, easily searchable and current list of participating candidates, sortable by name, office sought, district, and party, and make it readily accessible to the public, including by publishing it in a conspicuous location on the commission's website. This list shall be designed to facilitate viewing on the full range of common screen sizes of internet devices, including mobile devices.

**Section 56.** A participating candidate is permitted to solicit and collect democracy credits that have been properly assigned to the candidate. A registered representative is permitted to solicit and collect democracy credits that have been properly assigned to the participating candidate of whom the person is a registered representative. Only a volunteer may become a registered representative of a participating candidate, and no person may be compensated to solicit and collect democracy credits as a registered representative. In order to become a registered representative of a participating candidate, a person shall file with, and affirm understanding of the regulations and penalties associated with the Program to, the commission in a manner to be specified by commission regulation. The commission shall give to any person who successfully becomes a registered representative a standardized and personalized form of documentation, able to be carried upon their person, confirming that person's registered representative status. A registered representative shall carry this documentation on their person when soliciting or collecting democracy credits, and present it upon request to persons from whom registered representative is soliciting or accepting democracy credits.

The following may not be considered soliciting or accepting a democracy credit: discussing democracy credits or the Program; suggesting that another person can or should assign a democracy credit to a certain participating candidate; assisting another with learning about the Program or the proper method to assign a democracy credit; or any other speech or discussion about democracy credits or the Program that does not involve or relate to any coercion as well as



any gift, advance, distribution, deposit, or payment of money or any other valuable consideration.

**Section 57.** The treasurer of a candidate committee shall make and keep copies of all physical democracy credits received. The commission shall by rule set forth the manner in which participating candidates, candidate committees and treasurers, and registered representatives may send or deliver to the commission a physical democracy credit assigned to the candidate that has been received by the foregoing.

**Section 58.** The commission shall redeem a democracy credit only after verifying the assignment by ensuring the democracy credit was assigned to a participating candidate, and verifying, in a manner that includes at least the verification of signatures and dates of birth, that the democracy credit was assigned by the voter to whom it was issued. The Office of the Secretary of State and each county auditor shall give the commission access to the voter registration lists and other information necessary for purposes of verification. The commission shall strive for prompt verification of assigned democracy credits. The commission shall redeem a democracy credit within three business days of verification by transferring fifty dollars from the democracy credit fund to the campaign committee of the participating candidate who redeems the democracy credit. A democracy credit may not be redeemed by any candidate other than the one to whom it was assigned by the holder originally issued the democracy credit.

**Section 59.** A participating candidate is eligible to receive no more than the following amounts in democracy credit funds during a single election year:

- (1) In the case of a candidate for South Dakota Senate or House of Representatives, fifteen thousand dollars;
- (2) In the case of a candidate for South Dakota commissioner of school and public lands, fifteen thousand dollars;
- (3) In the case of a candidate for South Dakota treasurer, twenty-five thousand dollars;
- (4) In the case of a candidate for South Dakota auditor, fifty thousand dollars;
- (5) In the case of a candidate for South Dakota public utilities commissioner, seventy-five thousand dollars;
- (6) In the case of a candidate for South Dakota secretary of state, seventy-five thousand dollars;
- (7) In the case of a candidate for South Dakota attorney general, one hundred and seventy-five thousand dollars; and
- (8) In the case of a candidate for Governor of South Dakota, seven hundred thousand dollars.

**Section 60.** A participating candidate running for the following categories of office becomes ineligible to further redeem democracy credits if the total amount redeemed during that year by all candidates running for the same category of office reaches the following amounts:

- (1) In the case of all candidates for South Dakota legislative office, six million dollars;
- (2) In the case of all candidates, grouped together, for South Dakota commissioner of school and public lands, treasurer, auditor, public utilities commissioner, secretary of state, and attorney general, one million five hundred thousand dollars; and

(3) In the case of all candidates for Governor of South Dakota, four million dollars.

**Section 61.** A candidates may only use democracy credit proceeds for campaign costs or debts for the relevant office and election cycle, and may not use such proceeds after a reasonable period, to be set by commission rule, following the election to pay campaign debts. No candidate may use democracy credit proceeds for any cash payments or in violation of any law; to pay the candidate; to pay any entity in which the candidate or an immediate family member holds in aggregate a ten percent or greater ownership interest; to pay any amount over fair market value for any services, goods, facilities or things of value; or to pay any penalty or fine; nor to pay any inaugural costs or post-election officeholder costs.

**Section 62.** Any candidate who has redeemed a democracy credit, then withdraws, dies, becomes ineligible, loses participating candidate status, is eliminated in a primary election, is eliminated in a special election, or is eliminated in or wins a general election, shall within a reasonable period, as set by commission rule, pay all debts and obligations, account to the commission and restore to the commission and the Program "Unspent Democracy Credit Proceeds." The commission shall define "Unspent Democracy Credit Proceeds" by rule.

**Section 63.** The ethics commission shall in January of every odd-numbered year adjust the following dollar amounts to reflect changes in the Consumer Price Index for the Midwest Region, All Items, as computed by the United States Department of Labor. The adjustment for the following shall be made by comparing the most current Consumer Price Index for the Midwest Region, All Items, with that index from November 2015, and:

- (a) For those dollar amounts set in chapter 12-7 and this Act in the tens of dollars, rounding to the nearest dollar;
- (b) For those dollar amounts set in chapter 12-7 and this Act in the hundreds of dollars, rounding to the nearest ten dollars;
- (c) For those dollar amounts set in chapter 12-7 and this Act in the thousands of dollars, rounding to the nearest hundred dollars; and
- (d) For those dollar amounts set in chapter 12-7 and this Act in the tens of thousands of dollars or more, rounding to the nearest thousand dollars.

**Section 64.** That § 2-12-1 be amended to read as follows:

2-12-1. Any person who employs any other person to act as a lobbyist ~~to seek the introduction of legislation or to promote, oppose, or influence in any manner the passage by the Legislature of any legislation affecting the special interests of any agency, individual, association, or business, as distinct from those of the whole people of the state, or to act in any manner as a lobbyist in connection with any such legislation~~ for the purpose of influencing state legislation, executive action, regulation, or governmental processes, shall register the name and address of the person so employed or agreed to be employed, with the secretary of state, to be included in a directory of registered lobbyists as hereinafter provided. The lobbyist shall also register with the secretary

of state. The registration shall be completed electronically in a standardized and machine readable manner provided by the secretary of state. Upon the termination of such employment prior to the adjournment sine die of a legislative session, such fact shall be entered opposite the name of any person so employed, either by the employer or employee.

**Section 65.** That § 2-12-8.2 be amended to read as follows:

2-12-8.2. No elected officer, appointed officer, state agency or division director, or the highest paid aide, employee, or staffperson reporting to any of the foregoing may be compensated to act or register as a lobbyist, other than a public employee lobbyist, during a period of ~~one year~~ two years after ~~the officer's~~ that person's termination of service in the state government. A violation of this section is a Class 1 misdemeanor.

**Section 66.** That § 2-12-9 be amended to read as follows:

2-12-9. It is a ~~Class 1 misdemeanor~~ Class 5 felony to threaten, to harm, to offer or make bribes of money or other inducements, to offer or to give gifts or other types of consideration, to any person for the purpose of obtaining sponsorship or introduction of legislation, influencing the form of legislation, attempting to influence any member of the Legislature to vote for or against any measure pending therein, or for or against any candidate for any office to be elected or appointed by the Legislature, attempting to influence any officer of either house of the Legislature in naming of members and officers of committees, or in the performance of any of his duties, or attempting to influence or control the action of any member in relation to any matter coming before the Legislature, or any of its committees.

**Section 67.** That § 2-12-11 be amended to read as follows:

2-12-11. On or before July first of each year, each registered lobbyist and each employer of a registered lobbyist whose name appears in the directory in that year shall submit to the secretary of state a complete and detailed report of all costs incurred for the purpose of influencing ~~legislation~~ state legislation, executive action, regulation or governmental processes. The report shall be submitted ~~in writing~~ or electronically in a standardized and machine readable format prescribed by the secretary of state. However, the personal expenses of the lobbyist spent upon the lobbyist's own meals, travel, lodging, phone calls or other necessary personal needs while in attendance at the legislative session need not be reported. The completed reports shall be open to public inspection and available online to the public free of charge in an open format that is machine readable, downloadable and bulk downloadable, employs a descriptive and uniform naming system, and presents data in an itemized view if possible. The terms, costs, and expenses, as used in this section do not mean the compensation paid by the employer to the lobbyist.

Any lobbyist expense report filed pursuant to this section is exempt from the ten dollar filing fee prescribed in subdivision 1-8-10(2).

If a person has been authorized to act as a lobbyist on behalf of an employer pursuant to § 2-12-4, but the lobbyist does not conduct any lobbying activities pursuant to § 2-12-1 nor acts in any

manner as a lobbyist in connection with representing that employer, a report is not required to be filed under this chapter.

The secretary of state may impose an administrative penalty for the failure to timely file the report required by this section. The secretary of state may impose a penalty on a registered lobbyist or employer of a registered lobbyist for each report not timely filed not to exceed a total of one hundred dollars per report not timely filed. Any administrative penalty collected pursuant to this section shall be deposited in the general fund.

**Section 68.** There is hereby appropriated from the general fund, on July 1, 2017, and every July first of each year thereafter, the sum of nine dollars, to be adjusted every year for inflation based on the Consumer Price Index for the Midwest Region, All Items, as determined by the United States Department of Labor, per South Dakota registered voter as most recently determined by the Secretary of State, to the democracy credit fund for the identified purposes of that fund.

**Section 69.** The chair of the ethics commission shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

**Section 70.** Sections 21, 22, 23, 28, 29, 30, 64, and 67 are effective on January 1, 2018.