STATE OF SOUTH DAKOTA

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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,

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;~~

~~(c)~~ 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.

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

September 4, 2015

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

Re: **Attorney General's Statement—initiated measure to allow the charging of fees**

Dear Secretary Krebs,

This Office received an initiated measure to give certain organizations the right to charge fees for services. The sponsor is Scott Niles. Enclosed is a copy of the initiated measure, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this measure.

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/dd
Enc.

cc w/enc.: Scott Niles
Jason Hancock, Director of LRC

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to give certain organizations the right to charge fees

Explanation:

The measure gives corporate organizations and non-profit organizations the right to charge a fee for any service provided. This measure takes effect on July 1, 2017.

An Act to provide the right for businesses or nonprofit organizations to collect certain fees.

Be it enacted by the people of South Dakota:

Section 1. Notwithstanding any other provisions of law, an organization, corporate or nonprofit, has the right to charge a fee for any service provided by the organization.

Section 2. The effective date of this Act is July 1, 2017.

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CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

August 12, 2015

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

Re: **Attorney General's Statement—Amendment establishing nonpartisan elections**

Dear Secretary Krebs,

This Office received an initiated constitutional amendment establishing nonpartisan elections. The sponsors are Rick Weiland and Drew Samuelson. Enclosed is a copy of the constitutional amendment, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this amendment.

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Rick Weiland
Drew Samuelson
Jason Hancock, Director of LRC

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution establishing nonpartisan elections

Explanation:

Currently, most general election candidates for federal, state, and county offices are selected through a partisan primary or at a state party convention. This Constitutional amendment eliminates those methods by establishing a nonpartisan primary to select candidates for all federal, state, and county elected offices. This amendment does not apply to elections for United States President and Vice President.

Under the amendment, candidates are not identified by party affiliation on the primary or general election ballot. All qualified voters, regardless of party affiliation, may vote for any candidate of their choice.

The two candidates with the most votes advance to the general election. For certain offices where more than one candidate is elected at the general election, the number of candidates advancing to the general election will be double the number of seats to be filled.

If the amendment is approved, a substantial re-write of state election laws will be necessary.

FULL TEXT OF INITIATED MEASURE

For An Initiated Measure Entitled An Initiated Amendment to the South Dakota Constitution to provide for open nonpartisan elections giving all qualified voters the right to vote for the candidates of their choice in the primary and general elections.

Section 1. That Article VII of the Constitution of South Dakota be amended by adding thereto NEW SECTIONS to read as follows:

§4 There is hereby established an open nonpartisan primary election, in which each candidate nominated for an office appears together on the same ballot. Neither the candidate's party affiliation nor lack of party affiliation may appear on the primary or general election ballots in any election.

This section applies to the election of candidates for all federal, state and county elective offices except for the election of President and Vice President of the United States.

§5 An open nonpartisan primary election shall be conducted to select the candidates who shall compete in the general election. All registered voters may vote in the open nonpartisan primary election for any qualified candidate, provided that the voter is otherwise qualified to vote for the candidate for the office in question. The two candidates who receive the most votes in the primary election shall compete in the general election. However, for any office to which more than one candidate is elected, the number of candidates who compete in the general election shall be the number of candidates to be elected times two.

§6 Each qualified voter is guaranteed the unrestricted right to vote for the qualified candidate of the voter's choice in all elections. No voter may be denied the right to vote for the qualified candidate of the voter's choice in a primary or general election based upon the voter's party affiliation or lack of party affiliation.

§7 Each candidate running for an elective office shall file, with the appropriate elections officer, petitions containing the signatures of registered voters in an amount to be established by law. The signature requirements established shall be based on the total votes cast for that office in the previous general election and shall be the same for all candidates for that

office, regardless of party affiliation or lack of party affiliation.

§8 Nothing in this article restricts the right of any person to join or organize into a political party or in any way restrict the right of private association of political party. Nothing in this article restricts a party's right to contribute to, endorse, or otherwise support or oppose candidates for elective office. Each political party may establish such procedures as the party determines to elect party officers, endorse or support candidates, or otherwise participate in all elections. However, no such procedures may be paid for or subsidized using public funds. All qualified voters and candidates shall be treated equally by law and regulations governing elections regardless of party affiliation or lack of party affiliation. To the extent that any privileges or procedures are made available to any candidate or political party, such privileges and procedures shall be made equally available to all candidates or political parties, regardless of party affiliation or lack of party affiliation.

§9 The provisions of §§4 to 9, inclusive, of this article apply to all elections occurring after January 1, 2018, except for the election of President and Vice President of the United States, and shall supersede any existing law, regulation, and elections procedure to the extent that such are inconsistent with this article. The Legislature, Secretary of State and local officials shall make such changes in and additions to laws, regulations, and elections procedures as are necessary to fully implement the provisions of this article in time for the open primary election in 2018 and for each open primary and general election thereafter. Laws, regulations, and elections procedures implementing this article shall permit and encourage all qualified voters in South Dakota to vote in primary and general elections for the candidates of the voter's choice.

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CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

August 12, 2015

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

Re: **Attorney General's Statement—Amendment establishing nonpartisan elections and requiring secret ballot elections for certain legislative officers**

Dear Secretary Krebs,

This Office received a constitutional amendment establishing nonpartisan elections and requiring secret ballot elections for certain legislative officers. The sponsors are Rick Weiland and Drew Samuelson. Enclosed is a copy of the constitutional amendment, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this amendment.

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Rick Weiland
Drew Samuelson
Jason Hancock, Director of LRC

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution establishing nonpartisan elections and requiring secret ballot elections for certain legislative officers

Explanation:

Currently, most general election candidates for federal, state, and county offices are selected through a partisan primary or at a state party convention. This Constitutional amendment eliminates those methods by establishing a nonpartisan primary to select candidates for all federal, state, and county elected offices. This amendment does not apply to elections for United States President and Vice President.

Under the amendment, candidates are not identified by party affiliation on the primary or general election ballot. All qualified voters, regardless of party affiliation, may vote for any candidate of their choice.

The two candidates with the most votes advance to the general election. For certain offices where more than one candidate is elected at the general election, the number of candidates advancing to the general election will be double the number of seats to be filled.

In addition, this amendment requires secret ballot elections for: Speaker and Speaker Pro Tempore of the State House; President Pro Tempore of the State Senate; and chair and vice-chair of all standing legislative committees.

If the amendment is approved, a substantial re-write of state election laws will be necessary. Additionally, the amendment may be challenged and declared invalid under the State Constitution.

FULL TEXT OF INITIATED MEASURE

For An Initiated Measure Entitled An Initiated Amendment to the South Dakota Constitution to provide for open nonpartisan elections giving all qualified voters the right to vote for the candidates of their choice in the primary and general elections and to provide for the election of certain legislative officers.

Section 1. That Article VII of the Constitution of South Dakota be amended by adding thereto NEW SECTIONS to read as follows:

§4 There is hereby established an open nonpartisan primary election, in which each candidate nominated for an office appears together on the same ballot. Neither the candidate's party affiliation nor lack of party affiliation may appear on the primary or general election ballots in any election.

This section applies to the election of candidates for all federal, state and county elective offices except for the election of President and Vice President of the United States.

§5 An open nonpartisan primary election shall be conducted to select the candidates who shall compete in the general election. All registered voters may vote in the open nonpartisan primary election for any qualified candidate, provided that the voter is otherwise qualified to vote for the candidate for the office in question. The two candidates who receive the most votes in the primary election shall compete in the general election. However, for any office to which more than one candidate is elected, the number of candidates who compete in the general election shall be the number of candidates to be elected times two.

§6 Each qualified voter is guaranteed the unrestricted right to vote for the qualified candidate of the voter's choice in all elections. No voter may be denied the right to vote for the qualified candidate of the voter's choice in a primary or general election based upon the voter's party affiliation or lack of party affiliation.

§7 Each candidate running for an elective office shall file, with the appropriate elections officer, petitions containing the signatures of registered voters in an amount to be established by law. The signature requirements established shall be based on the total votes cast for that office in the previous general election and shall be the same for all candidates for that

office, regardless of party affiliation or lack of party affiliation.

§8 Nothing in this article restricts the right of any person to join or organize into a political party or in any way restrict the right of private association of political party. Nothing in this article restricts a party's right to contribute to, endorse, or otherwise support or oppose candidates for elective office. Each political party may establish such procedures as the party determines to elect party officers, endorse or support candidates, or otherwise participate in all elections. However, no such procedures may be paid for or subsidized using public funds. All qualified voters and candidates shall be treated equally by law and regulations governing elections regardless of party affiliation or lack of party affiliation. To the extent that any privileges or procedures are made available to any candidate or political party, such privileges and procedures shall be made equally available to all candidates or political parties, regardless of party affiliation or lack of party affiliation.

§9 The provisions of §§4 to 9, inclusive, of this article apply to all elections occurring after January 1, 2018, except for the election of President and Vice President of the United States, and shall supersede any existing law, regulation, and elections procedure to the extent that such are inconsistent with this article. The Legislature, Secretary of State and local officials shall make such changes in and additions to laws, regulations, and elections procedures as are necessary to fully implement the provisions of this article in time for the open primary election in 2018 and for each open primary and general election thereafter. Laws, regulations, and elections procedures implementing this article shall permit and encourage all qualified voters in South Dakota to vote in primary and general elections for the candidates of the voter's choice.

Section 2. That Article III of the Constitution of South Dakota be amended by adding thereto a NEW SECTION to read as follows:

§33 Each election held for Speaker of the House, Speaker Pro Tempore and for chair and vice chair of each standing committee in the House of Representatives and for President Pro Tempore and for chair and vice chair of each standing committee in the Senate shall be by secret ballot.

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HAND DELIVERED

August 10, 2015

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

Re: **Attorney General's Statement—Amendment to expand rights for crime victims**

Dear Secretary Krebs,

This Office received an initiated constitutional amendment to expand rights for crime victims. The sponsor is Jason Glodt. Enclosed is a copy of the constitutional amendment, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this amendment.

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Jason Glodt
Jason Hancock, Director of LRC

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution to expand rights for crime victims

Explanation:

Currently, state statutes provide certain rights to crime victims. This measure expands these rights and places them in the State Constitution.

Under the amendment, the rights provided to a victim generally include: protection from harassment or abuse; the right to privacy; timely notice of all trial, sentence, and post-judgment proceedings including pardon or parole; the right to confer with the attorney for the government; and the opportunity to provide input during all phases of the criminal justice process. Victims will be given written notification of their rights.

The rights may be enforced by the victim, the victim's attorney or representative, or the attorney for the government. They may be enforced in any trial court, appeals court, or other proceeding affecting the victim's rights.

The definition of "victim" includes a person who suffers direct or threatened harm as the result of any crime, attempted crime, or act of juvenile delinquency. It also includes that person's spouse, children, extended family members, guardians, and others with a substantially similar relationship.

If a victim's rights provided by this amendment conflict with a criminal defendant's rights under the South Dakota and United States Constitutions, a court may determine that the defendant's rights take priority.

MARSY'S LAW: A SOUTH DAKOTA CONSTITUTIONAL AMENDMENT TO AFFORD CRIME VICTIMS EQUAL RIGHTS

Section 1. That Article VI of the Constitution of the State of South Dakota be amended by adding a new section to read as follows:

§29. A victim shall have the following rights, beginning at the time of victimization:

1.The right to due process and to be treated with fairness and respect for the victim's dignity;

2.The right to be free from intimidation, harassment and abuse;

3.The right to be reasonably protected from the accused and any person acting on behalf of the accused;

4.The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions;

5.The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records;

6.The right to privacy, which includes the right to refuse an interview, deposition or other discovery request, and to set reasonable conditions on the conduct of any such interaction to which the victim consents;

7.The right to reasonable, accurate and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication and disposition, and any proceeding during which a right of the victim is implicated;

8.The right to be promptly notified of any release or escape of the accused;

9.The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding during which a right of the victim is implicated;

10.The right to confer with the attorney for the government;

11.The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence or disposition investigation or compiling any pre-sentence investigation report or plan of disposition, and to have any such information considered in any sentencing or disposition recommendations;

12.The right to receive a copy of any pre-sentence report or plan of disposition, and any other report or record relevant to the exercise of a victim's right, except for those portions made confidential by law;

13.The right to the prompt return of the victim's property when no longer needed as evidence in the case;

14.The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal conduct and as provided by law for all losses suffered as a result of delinquent conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government;

15.The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings;

16.The right to be informed of the conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody;

17.The right to be informed in a timely manner of all post-judgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. Any parole authority shall extend the right to be heard to any person harmed by the offender;

18.The right to be informed in a timely manner of clemency and expungement procedures, to provide information to the Governor, the court, any clemency board and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made, and to be notified of such decision in advance of any release of the offender; and

19.The right to be informed of these rights, and to be informed that a victim can seek the advice of an attorney with respect to the victim's rights. This information shall be made available to the general public and provided to each crime victim in what is referred to as a Marsy's Card.

The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government, upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right and ensuring that victims' rights and interests are protected in a manner no less vigorous than the protections afforded to criminal defendants and children accused of delinquency. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.

The granting of these rights to any victim shall ensure the victim has a meaningful role throughout the criminal and juvenile justice systems and may not be construed to deny or disparage other rights possessed by victims. All provisions of this section apply throughout criminal and juvenile justice processes, are self-enabling and require no further action by the Legislature.

As used in this section, the term, victim, means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term also includes any spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, and includes a lawful representative of a victim who is deceased, incompetent, a minor, or physically or mentally incapacitated. The term does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim.

STATE OF SOUTH DAKOTA

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

August 10, 2015

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

Re: **Attorney General's Statement—Amendment limiting the ability to set statutory interest rates for loans**

Dear Secretary Krebs,

This Office received an initiated constitutional amendment limiting the ability to set statutory interest rates for loans. The sponsor is Lisa Furlong. Enclosed is a copy of the constitutional amendment, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this amendment.

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Lisa Furlong
Jason Hancock, Director of LRC

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution limiting the ability to set statutory interest rates for loans

Explanation:

Under this constitutional amendment, there is no limit on the amount of interest a lender may charge for a loan of money if the interest rate is agreed to in writing by the borrower. If there is no written agreement, however, a lender may not charge more than 18% interest per year. A law setting an interest rate for loans is not valid unless the law gives the lender and borrower the ability to agree to a different rate. If an interest rate for loans is established by law, it must apply to every type of lender.

The amendment eliminates the ability to set statutory interest rates that are inconsistent with this amendment.

AN AMENDMENT TO THE CONSTITUTION

ENTITLED, An Amendment to Limit Certain Interest Rates on Loans to Eighteen Percent Under Certain Conditions and to Prohibit Discrimination in Setting Certain Interest Rates.

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

Section 1. That article VI of the Constitution of South Dakota be amended by adding new sections to read as follows:

29. No lender may charge interest for the loan or use of money in excess of eighteen per cent per annum unless the borrower agrees to another rate in writing. No law fixing an annual percentage rate of interest for the loan or use of money is valid unless the law provides borrowers the right to contract at interest rates as may be agreed to by the parties.

30. No law fixing a rate of interest or return for the loan or use of money, or fixing the service or any other charge that may be made or imposed for the loan or use of money, for any particular group or class engaged in lending money is valid. Any rate of interest or charge fixed by law shall apply generally and to all lenders without regard to the type or classification of the lender's business.

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HAND DELIVERED

July 14, 2015

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

Re: **Attorney General's Statement—State legislative redistricting by a commission**

Dear Secretary Krebs,

This Office received an initiated constitutional amendment regarding state legislative redistricting by a commission. The sponsor is Doug Sombke on behalf of the South Dakota Farmers Union. Enclosed is a copy of the constitutional amendment, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this amendment.

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Doug Sombke
Jason Hancock, Director of LRC

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution to provide for state legislative redistricting by a commission

Explanation:

State senators and representatives are elected from within legislative districts. The South Dakota Constitution currently requires the Legislature to establish these legislative districts every ten years. This measure removes that authority from the Legislature and grants it to a redistricting commission.

The commission is made up of nine registered voters selected each redistricting year by the State Board of Elections from a pool of up to 30 applicants. This pool consists of applicants registered with South Dakota's two largest political parties (ten from each), and ten not registered with either of those parties. A commission member must have the same party registration, or be registered as unaffiliated with a party, for three continuous years immediately prior to appointment.

No more than three commission members may belong to the same political party. For three years immediately prior to and three years immediately after appointment, commission members may not hold office in certain state or local public offices, or in a political party organization.

The commission will redistrict in 2017, in 2021, and every ten years thereafter. The commission must produce a draft map and allow for public comment. The districts must be drawn in compliance with state and federal law.

An initiated measure submitted to the electors at the next general election an amendment to Article III, section 5 of the Constitution of the State of South Dakota, relating to non-partisan legislative redistricting.

Section 1. That at the next general election held in the state, the following amendment to Article III, section 5 of the Constitution of the State of South Dakota, as set forth in section 2, shall be submitted to the electors of the state for approval.

Section 2. That Article III, Section 5 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 5. ~~The Legislature shall apportion its membership by dividing the state into as many single-member, legislative districts as there are state senators. House districts shall be established wholly within senatorial districts and shall be either single-member or dual-member districts as the Legislature shall determine.~~

~~Legislative districts shall consist of compact, contiguous territory and shall have population as nearly equal as is practicable, based on the last preceding federal census. An apportionment shall be made by the Legislature in 1983 and in 1991, and every ten years after 1991. Such apportionment shall be accomplished by December first of the year in which the apportionment is required. If any Legislature whose duty it is to make an apportionment shall fail to make the same as herein provided, it shall be the duty of the Supreme Court within ninety days to make such apportionment.~~

Definition of Terms. Terms used in this section mean:

1. "Commission" or "commission" means the independent redistricting commission established pursuant to this section.

2. "Political party" means a party whose candidate for Governor at the last preceding general election at which a Governor was elected received at least two and one-half percent of the total votes cast for Governor.

3. "Political party office" means an office of a political party organization as distinct from a public office.

4. "State public office" means

(a) An elective office in the executive or legislative branch of the government of this state; or

(b) An office in the executive or legislative branch of the government of this state which is filled by gubernatorial appointment; or

(c) An office of a county, city or other political subdivision of this state which is filled by an election process involving nomination and election of candidates on a partisan basis.

The independent redistricting commission is hereby created and shall be composed of nine registered voters in South Dakota, none of whom shall hold a state public office or a political party office. The commission shall prepare the plan for redistricting the state into legislative districts. This redistricting shall be made by the commission in 2017 and 2021, and every ten years after 2021. Such redistricting shall be accomplished by December first of the year in which the redistricting is required.

By January 31 of each year in which the redistricting is required, the board overseeing state

elections and procedures shall accept applications from persons who are willing to serve on and are qualified for appointment to the commission. The pool of candidates shall consist of no more than thirty individuals, ten from each of the two largest political parties in South Dakota based on party registration, and ten not registered with either of the two largest political parties in South Dakota.

By February 28 of each year in which the redistricting is required, the board shall establish a commission to provide for the redistricting of state legislative districts. No more than three members of the commission shall be members of the same political party. The commission shall select by majority vote one of its members to serve as chair and one of its members to serve as vice chair.

Each commission member shall have been continuously registered with the same political party or registered as unaffiliated with a political party for three or more years immediately preceding appointment, and who is committed to applying the provisions of this section in

an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process.

Within the three years immediately preceding appointment, a commission member shall not have been appointed to, or elected to, any state public office or political party office. Within the three years immediately after appointment, a commission member shall not be appointed to, or elected to, any state public office or political party office.

If a vacancy occurs on the commission, the board shall select a successor who has the same qualifications as the commissioner whose position is being vacated.

The Legislature, under the direction of the commission, shall provide the technical staff and clerical services that the commission needs to prepare its districting plans. Each commission member shall receive per diem and expenses as established by the Legislature.

Five commissioners, including the chair or vice chair, constitute a quorum. Five or more affirmative

votes are required for any official action. If a quorum is present, the commission shall conduct its business in meetings in accordance with South Dakota's open meetings law.

The commission shall establish legislative districts by dividing the state into as many single-member, legislative districts as there are state senators. House districts shall be established wholly within senatorial districts and shall be either single-member or dual-member districts as the commission shall determine in compliance with federal and state law.

The commission shall commence the mapping process for the legislative districts by creating districts of equal population in a grid-like pattern across the state. Adjustments to the districts shall be made as necessary to accommodate the following:

1. Districts shall comply with the United States Constitution, the South Dakota Constitution, and federal statutes, as interpreted by the United States Supreme Court and other courts with jurisdiction;

2. Districts shall have equal population to the extent practicable;

3. Districts shall be geographically compact and contiguous to the extent practicable;

4. District boundaries shall respect communities of interest to the extent practicable; and

5. District lines shall use visible geographic features, municipal and county boundaries, and undivided census tracts to the extent practicable.

Party registration and voting history shall be excluded from the redistricting process. The places of residence of incumbents or candidates shall not be identified or considered.

The commission shall notify the public that a draft map of legislative districts is available for inspection and written comments. The commission shall accept written comments for thirty calendar days following notification to the public. The senate and house of representatives may act within this period to submit written comments to the commission. After the comment period has ended, the commission shall establish final

district boundaries. The commission shall certify to the secretary of state the establishment of legislative districts.

The commission shall have standing in legal actions regarding the redistricting plan and the adequacy of resources provided for the operation of the commission. The commission shall have the authority to determine whether the attorney general or counsel hired or selected by the commission shall represent the people of South Dakota in the legal defense of a redistricting plan.

Each commissioner's duties established by this section expire upon the appointment of the next commission. The commission shall not meet or incur expenses after the redistricting plan is completed, except if litigation or any government approval of the plan is pending, or to revise districts if required by court decisions, or if the number of legislative districts is changed.

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to decriminalize the possession of one ounce or less of marijuana and marijuana paraphernalia

Explanation:

Under the measure, it will no longer be a state crime to possess one ounce or less of marijuana, including metabolites of marijuana within the body, and marijuana paraphernalia. Adults possessing one ounce or less of marijuana or marijuana paraphernalia are subject to a civil penalty, and minors are required to complete a drug awareness program. The marijuana may be forfeited.

Except as provided by the measure or by federal law, the State and its political subdivisions cannot penalize, sanction, restrict, or disqualify a person in any way for possessing one ounce or less of marijuana or marijuana paraphernalia.

The measure does not prohibit political subdivisions from regulating public consumption of marijuana and imposing penalties, as long as the penalties do not exceed those for public consumption of alcohol.

The measure does not change existing state law regarding possession of more than one ounce of marijuana, or its distribution. Marijuana possession remains illegal under federal law.

The purpose and effect of many provisions of the measure are unclear and will require legislative or judicial clarification if the measure is approved.

An Act to decriminalize the possession and use of one ounce or less of marijuana.

Be it enacted by the people of South Dakota:

Section 1. Notwithstanding any law to the contrary, any person eighteen years of age or older who possesses one ounce or less of marijuana may be subject to a civil penalty of one hundred dollars and forfeiture of the marijuana. Any unpaid fine shall double if not paid within ninety days of the offense. An offender under the age of eighteen shall be subject to the same forfeiture of the marijuana and shall complete a drug awareness program that meets the criteria set forth in this Act. If the parents or legal guardian of any drug offender under the age of eighteen fails within one year of the notice to complete a drug awareness program, a civil penalty of up to three hundred fifty dollars may be imposed pursuant to this Act.

Section 2. Except as specifically provided in this Act, neither the state nor any of its political subdivisions may impose any form of penalty, sanction, restriction or disqualification on a person for possessing one ounce or less of marijuana or paraphernalia for marijuana use, nor may any penalties or obligations exceeding those outlined in Section 1 of this Act be imposed by the state or any of its political subdivisions for having cannabinoids or cannabinoid metabolites in any tissue or fluid of the human body. Neither Possession of one ounce or less of marijuana, or possession of paraphernalia for marijuana use, or the presence of cannabinoids or cannabinoid metabolites in any tissue or fluid of the human body may provide a basis to deny a person student financial aid, public housing, or any form of public assistance including unemployment benefits, to deny a person the right to operate a motor vehicle, or to disqualify a person from serving as a foster parent or adoptive parent. However, nothing contained in this Act permits the operation of motor vehicles or other actions taken while under the influence of marijuana. Any records concerning the offense of possession of one ounce or less of marijuana may not be recorded in any database of criminal offenders.

Section 3. As used in this Act, the term "possession of one ounce or less of marijuana, " includes possession of one ounce or less of marijuana, or any mixture or preparation thereof, and does not include the weight of other ingredients in marijuana prepared for

consumption as food or drink. The term include the possession of paraphernalia for the ingestion, use, inhalation, preparation, or storage of marijuana or person use.

Section 4. Nothing contained in this Act may be construed to repeal or modify any law concerning the medical use of marijuana or tetrahydrocannabinol in any other form, or the possession of more than one ounce of marijuana or the selling, manufacturing, or trafficking of marijuana.

Section 5. Nothing contained in this Act prohibits a political subdivision of the state from enacting ordinances or bylaws regulating or prohibiting the consumption of marijuana or tetrahydrocannabinol in public places and providing for additional penalties for the public use of marijuana, if the additional penalties are no greater than those related to the public consumption of alcohol.

Section 6. No violation of this Act shall be considered a violation of parole or probation.

Section 7. Any person in possession of a license or other form of identification who fails to produce the same upon request of a law enforcement officer who informs the person that he or she has been found in possession of what appears to be an ounce or less of marijuana, or any person without any form of identification who fails or refuses to truthfully provide his or her name, address and date of birth to law enforcement officer who intends to provide the person with a citation for possession of an ounce or less of marijuana may be charged with SDCL chapter 22-42-6, Class 1 misdemeanor to possess more than one ounce but less than two ounces of marijuana.

Section 8. Any offender under the age of eighteen shall complete a drug awareness program within one year of when his or her parents or legal guardian are given notice of the offense and available drug awareness programs. Failure of such an offender to complete such program may be basis for imposing a civil penalty of up to three hundred fifty dollars pursuant to Section 1 of this Act.

Section 9. The drug awareness program must provide at least four hours of classroom instruction or group discussion and ten hours of community service. In addition to the programs and curricula it must establish and maintain, the Department of Health shall develop a compliant drug awareness program specific to the use and abuse of

marijuana, alcohol and controlled substances. The department shall set fees for the program sufficient to cover all costs of administering the program, which may not exceed one hundred fifty dollars. All fees shall be paid by the offender upon entry in the drug awareness program.

Section 10. A law enforcement officer shall comply with the provisions of Chapter 23-1A when issuing any citation pursuant to this Act.

Section 11. A copy of the notice delivered, pursuant to Section 1 of this Act, to an offender under the age of eighteen shall be mailed or delivered to at least one of that offender's custodial parents or, where there is no such person, to that offender's legal guardian at the last known address. If the offender or a parent or legal guardian fails to file with the clerk of court, a certificate that the offender has completed a drug awareness program in accordance with this Act within one year of the relevant offense; the clerk shall notify the offender, parent or guardian, and the enforcing person who issued the original notice of a hearing to show cause why a civil penalty of up to three hundred fifty dollars should not be imposed. Factors to be considered by the court in weighing cause shall be limited to financial capacity to pay any increase, the offender's ability to participate in a compliant drug awareness program, and the offender's willingness to complete such program within a timeframe to be determined by the court.

Section 12. Fifty percent of the revenue generated from civil penalties imposed under the provisions of this Act shall be released to the municipality or county where the offense occurred. The remaining fifty percent of the revenue generated from civil penalties imposed under the provisions of this Act shall be transmitted to the Department of Health to fund awareness and substance abuse treatment.

Section 13. SDCL 22-42-6. Possession of marijuana prohibited--Degrees according to amount; needs to be amended to include Class 1 misdemeanor to possess more than one ounce but less than two ounces of marijuana. All other laws stand as is.

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize marijuana for medical use

Explanation:

The measure legalizes medical use of marijuana by qualifying patients, including minors. No person or entity may be penalized, or denied any right or privilege, for conduct that is lawful under the measure.

Qualifying patients must be certified by a practitioner as having a debilitating medical condition. South Dakota patients must obtain a registration card from the State Department of Health ("Department"). Non-resident patients are permitted to use their registration cards from other jurisdictions.

Qualifying patients may designate caregivers to assist with their use of marijuana. A designated caregiver must obtain a registration card from the Department for each qualifying patient.

Allowable amounts of marijuana include three ounces of marijuana, a minimum of six marijuana plants (if cultivation is permitted for that cardholder), and quantities of other marijuana products as determined by the Department.

The measure legalizes marijuana testing, manufacturing, and cultivation facilities, as well as dispensaries where marijuana may be acquired by cardholders. These establishments must register with the Department.

Schools and landlords cannot penalize, or refuse to enroll or lease, based solely on a person's cardholder status, absent federal law to the contrary.

Marijuana possession, use, cultivation and distribution remain illegal under federal law.

An act to provide for regulation, access and compassionate use of cannabis in South Dakota.

Section 1 Terms used in this act mean:

(1) "Allowable amount of cannabis" means:

(a) Three ounces of cannabis;

(b) The quantity of cannabis products as established by rules promulgated by the department;

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

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

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

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

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

(c) the practitioner is available to or offers to provide follow-up care and treatment to the patient, including, but not limited to, patient examinations;

(3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes, without limitation, edible cannabis products, beverages, topical products, ointments, oils, and tinctures;

(4) "Cannabis product manufacturing facility" an entity registered with the department pursuant to this act that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary;

(5) "Cannabis testing facility" or "testing facility" an independent entity registered with the department pursuant to this act to analyze the safety and potency of cannabis;

(6) "Cardholder," a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;

(7) "Cultivation facility," an entity registered with the department pursuant to this act that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment.;

(8) "Debilitating medical condition,"

(a) Cancer, glaucoma, positive status for human immunodeficiency virus, endometriosis, reflex sympathetic dystrophy, epilepsy, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease,IBS, ulcerative colitis, agitation of Alzheimer's disease, post-traumatic stress disorder, or the treatment of any of these conditions;

(b) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and persistent muscle spasms, including, those characteristic of multiple sclerosis; or

(c) Any other medical condition or its treatment added by the department, as provided for in section 26 of this act;

(9) "Department," means the South Dakota Department of Health.

(10) "Designated caregiver," a person who:

(a) Is at least 21 years of age;

(b) Has agreed to assist with a qualifying patient's medical use of cannabis;

(c) Has not been convicted of a disqualifying felony offense; and

(d) Assists no more than five qualifying patients with the medical use of cannabis, unless the designated caregiver's qualifying patients each reside in or are admitted to a health care facility or residential care facility where the designated caregiver is employed;

(11) "Disqualifying felony offense,"

(a) A violent crime that was classified as a felony in the jurisdiction where the person was convicted; or

(b) A violation of a state or federal controlled substances law that was classified as a felony in the jurisdiction where the person was convicted, not including:

(i) An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed ten or more years earlier; or

(ii) An offense that consisted of conduct for which this Act would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this Act or was prosecuted by an authority other than the state of South Dakota .

(12) "Edible cannabis products" any product that:

(a) Contains or is infused with cannabis or an extract thereof;

(b) Is intended for human consumption by oral ingestion; and

(c) Is presented in the form of foodstuffs, beverages, extracts, oils, tinctures, and other similar products;

(13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other enclosed area that is equipped with locks or other security devices that permit access only by a cardholder or allowed to cultivate the plants. Two or more cardholders who reside in the same dwelling may share one enclosed, locked facility for cultivation;

(14) "Medical cannabis" or "cannabis," marijuana as defined in SD 22-42-1 (7);

(15) "Medical cannabis dispensary" or "dispensary," an entity registered with the department pursuant to this Act that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;

(16) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;

(17) "Medical cannabis establishment agent," an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;

(18) "Medical use," includes the acquisition, administration, cultivation, manufacture, delivery, harvest, possession, preparation, transfer, transportation, or use of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a registered qualifying patient's debilitating medical condition or symptom associated with the patient's debilitating medical condition. The term does not include:

(a) The cultivation of cannabis by a nonresident cardholder;

(b) The cultivation of cannabis by a cardholder who is not designated as being allowed to cultivate on the card holder's registry identification card; or

(c) The extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility;

(19) "Nonresident cardholder" a person who:

(a) Has been diagnosed with a debilitating medical condition, or is the parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition;

(b) Is not a resident of South Dakota or who has been a resident of South Dakota for less than forty five days;

(c) Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and

(4) Has submitted any documentation required by the department, and has received confirmation of registration;

(20) "Practitioner," a person who is licensed with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence;

(21) "Qualifying patient," means a person who has been diagnosed by a practitioner as having a debilitating medical condition;

(22) "Registry identification card," a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to sections 29-41 of this Act;

(23) "Written certification," a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's debilitating medical condition or symptom associated with the debilitating medical condition. A written certification shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall specify the qualifying patient's debilitating medical condition.

Section 2. A cardholder who possesses a valid registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for:

(1) The medical use of cannabis pursuant to this Act, if the cardholder does not possess more than the allowable amount of cannabis, and if any cannabis plants is either cultivated in an enclosed, locked facility or are being transported;

(2) Reimbursement by a registered qualifying patient to the patient's registered designated caregiver for direct costs incurred by the registered designated caregiver for assisting with the registered qualifying patient's medical use of cannabis;

(3) Transferring the cannabis to a testing facility for testing;

(4) Compensating a dispensary or a testing facility for goods or services provided;

(5) Selling, transferring, or delivering cannabis seeds produced by the cardholder to a cultivation facility or dispensary; or

(6) Offering or providing cannabis to a cardholder for a registered qualifying patient's medical use, to a nonresident cardholder, or to a dispensary if nothing of value is transferred in return and the person giving the cannabis does not knowingly cause the recipient to possess more than the allowable amount of cannabis.

Section 3. No nonresident cardholder maybe subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, for the transporting, purchasing, possessing, or using medical cannabis pursuant to this Act if the nonresident cardholder does not possess more than three ounces of cannabis and the quantity of cannabis products established by rules promulgated by the department.

Section 4. There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of cannabis pursuant to this Act if the cardholder is in possession of a registry identification card and an amount of cannabis that does not exceed the allowable amount of cannabis. The presumption may be rebutted by evidence that conduct related to cannabis was not for the purpose of treating or alleviating a qualifying patient's debilitating medical condition or symptom associated with the qualifying patient's debilitating medical condition pursuant to this Act.

Section 5. No practitioner maybe subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by the South Dakota Board of Medical and Osteopathic Examiners or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, However nothing in this Act prevents a practitioner from being sanctioned for:

(1) Issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship; or

(2) Failing to properly evaluate a patient's medical condition.

Section 6. No attorney maybe subject to disciplinary action by the State Bar of South Dakota or other professional licensing association for providing legal assistance to a prospective or registered medical cannabis establishment or other related to activity that is no longer subject to criminal penalties under state law pursuant to this Act.

Section 7. No person may be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

(1) Providing or selling cannabis paraphernalia to a cardholder, nonresident cardholder, or to a medical cannabis establishment;

(2) Being in the presence or vicinity of the medical use of cannabis that is exempt from criminal penalties by this Act;

(3) Allowing the person's property to be used for an activity that is exempt from criminal penalties by this Act; or

(4) Assisting a registered qualifying patient with the act of using or administering cannabis.

Section 8. No dispensary or a dispensary agent maybe subject to prosecution, search, or inspection, except by the department pursuant to sections 61-71 of this Act , seizure, or penalty in any manner;, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by this Act to:

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

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

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

(4) Purchase or otherwise acquire cannabis from a cultivation facilities or dispensaries, and cannabis products from cannabis product manufacturing facilities or dispensaries; and

(5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cardholders, nonresident cardholder, and dispensary.

Section 9. No cultivation facility or a cultivation facility agent maybe subject to prosecution, search, or inspection, except by the department pursuant to section 61-71 of this Act, seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by this Act to:

(1) Possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, or store cannabis;

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

(c) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;

(4) Purchase or otherwise acquire cannabis from a cultivation facility;

(5) Purchase cannabis seeds from a cardholder, nonresident cardholders, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction; or

(6) Deliver, sell, supply, transfer, or transport cannabis, cannabis paraphernalia, or related supplies or educational materials to a cultivation facility and dispensary.

Section 10. No cannabis product manufacturing facility or a cannabis product manufacturing facility agent maybe subject to prosecution, search, or inspection, except by the department pursuant to section 61to 71 of this Act, seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act or rules authorized by this Act to:

(1) Purchase or otherwise acquire cannabis from cultivation facilities, and cannabis products or cannabis from a cannabis product manufacturing facility;

(2) Possess, produce, process, manufacture, compound, convert, prepare, pack, repack, and store cannabis or cannabis products;

(3) Deliver, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a dispensary and cannabis product manufacturing facility;

(4) Deliver, transfer, or transport cannabis to testing facility and compensate testing facility for services provided; or

(5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cannabis product manufacturing facility or dispensary.

Section 11. No testing facility or testing facility agent maybe subject to prosecution, search, or inspection, except by the department pursuant to sections 61 to 71 of this Act, seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Act and rules authorized by this Act to:

(1) Acquire, possess, transport, and store cannabis or cannabis products obtained from cardholders, nonresident cardholders, and medical cannabis establishments;

(2) Return the cannabis or cannabis products to a cardholder, nonresident cardholder, or medical cannabis establishment from whom it was obtained;

(3) Test cannabis, including for potency, pesticides, mold, or contaminants; or

(4) Receive compensation for those services.

Section 12. A cardholder, nonresident cardholder, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction may sell or donate cannabis seeds to a cultivation facility.

Section 13. Any cannabis, cannabis product, cannabis paraphernalia, or other interest in or right to property that is possessed, owned, or used in connection with the medical use of cannabis as allowed under this Act, or acts incidental to such use, may not be seized or forfeited. This Act shall not prevent the seizure or forfeiture of cannabis exceeding the amount allowed under this Act, nor does it prevent seizure or forfeiture if the basis for the action is unrelated to the cannabis that is possessed, manufactured, transferred, or used pursuant to this Act.

Section 14. Possession of, or application for, a registry identification card does not constitute probable cause or reasonable suspicion, nor may it be used to support a search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any governmental agency.

Section 15. For the purposes of South Dakota state law, an activity related to medical cannabis shall be considered lawful as long as it's conducted in accordance with this Act.

Section 16. No law enforcement officer employed by an agency which receives state or local government funds may expend any state or local resources, including the officer's time, to effect any arrest or seizure of cannabis, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of the federal Controlled Substances Act 21 U.S.C. § 801 if the officer has reason to believe that the activity is in compliance with state medical cannabis laws, no officer may expend any state or local resources, including the officer's time, to provide any information or logistical support related to such activity to any federal law enforcement authority or prosecuting entity.

Section 17. It is the public policy of the state of South Dakota that a contract related to medical cannabis that is entered into by a cardholder, medical cannabis establishment, or medical cannabis establishment agents, and a person who allows property to be used by those persons, is enforceable. It is the public policy of the state of South Dakota that no contract entered into by a cardholder, a medical cannabis establishment, or medical cannabis establishment agent, or by a person who allows property to be used for

an activity that is exempt from state criminal penalties by this Act is unenforceable on the basis that activity related to cannabis is prohibited by federal law.

Section 18. This Act does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalty for engaging in, the following conduct:

(1) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;

(2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any correctional facility;

(3) Smoking cannabis:

(a) On any form of public transportation; or

(b) In any public place or any place that is open to the public.

(4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis, except that a registered qualifying patient or nonresident cardholder is not considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

Section 19. No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for the person's status as a cardholder, unless failing to do so would violate federal law or regulations or cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulation.

Section 20. For the purposes of medical care, including organ and tissue transplants, a registered qualifying patient's use of cannabis according to this Act is considered the equivalent of the authorized use of any other medication used at the discretion of a practitioner and does not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.

Section 21. No person may be denied custody of or visitation rights or parenting time with a minor solely for the person's status as a cardholder, and there is no presumption of neglect or child endangerment for conduct allowed under this Act, unless the person's behavior is such that it creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

Section 22. Except as provided in this Act, a registered qualifying patient who uses cannabis for medical purposes shall be afforded all the same rights under state and local law, including those guaranteed under South Dakota law, as the individual would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to:

(1) Any interaction with a person's employer;

(2) Drug testing by a person's employer; or

(3) Drug testing required by any state or local law, agency, or government official.

Section 23. The rights provided by sections 19 to 25 of this act do not apply to the extent that they conflict with an employer's obligations under federal law or regulation or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulations.

Section 24. No employer is required to allow the ingestion of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. A registered qualifying patient may not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

Section 25. No school, landlord, or employer may be penalized or denied any benefit under state law for enrolling, leasing to, or employing a cardholder.

Section 26. Any resident of South Dakota may petition the department to add a serious medical condition or treatment to the list of debilitating medical conditions as defined by this Act. The department shall consider a petition in the manner required by rules promulgated by the department pursuant to this Act, including public notice and hearing. The department shall approve or deny a petition within one hundred eighty days of submission. The approval or denial of any petition is a final decision of the department, subject to judicial review.

Section 27. Nothing in this Act requires:

(1) A government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of cannabis;

(2) Any person or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to smoke cannabis on or in that property; or

(3) A landlord to allow the cultivation of cannabis on the rental property.

Section 28. Nothing in this Act prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.

Section 29. No later than one hundred fourty days after the effective date of this Act, the department shall begin issuing registry identification cards to qualifying patients who submit the following, in accordance with rules promulgated by the department:

(1) A written certification issued by a practitioner within nintey days immediately preceding the date of an application;

(2) The application or renewal fee;

(3) The name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;

(4) The name, address, and telephone number of the qualifying patient's practitioner;

(5) The name, address, and date of birth of the designated caregiver, or designated caregivers, chosen by the qualifying patient;

(6) If more than one designated caregiver is designated at any given time, documentation demonstrating that a greater number of designated caregivers are needed due to the patient's age or medical condition;

(7) The name of no more than two dispensaries that the qualifying patient designates, if any; and

(8) If the qualifying patient designates a designated caregiver, a designation as to whether the qualifying patient or designated caregiver will be allowed under state law to possess and cultivate cannabis plants for the qualifying patient's medical use.

Section 30. If the qualifying patient is unable to submit the information required by section 29 of this Act due to the persons' age or medical condition, the person responsible for making medical decisions for the qualifying patient may do so on behalf of the qualifying patient.

Section 31. Except as provided in section 32 of this Act, the department shall:

(1) Verify the information contained in an application or renewal submitted pursuant to this Act and approve or deny an application or renewal within fifteen days of receiving a completed application or renewal application;

(2) Issue registry identification cards to a qualifying patient and to a qualifying patient's designated caregivers, if any, within five days of approving the application or renewal. A designated caregiver must have a registry identification card for each of the qualifying patients; and

(3) Enter the registry identification number of the dispensary or dispensaries the patient designates into the verification system.

Section32. The department may conduct a background check of the prospective designated caregiver in order to carry out the provisions of section 31 of this Act.

Section 33. The department may not issue a registry identification card to a qualifying patient who is younger than eighteen years of age unless:

(1) The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and

(2) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:

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

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

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

Section 34. The department may deny an application or renewal of a qualifying patient's registry identification card only if the applicant:

(1) Does not provide the required information, fee, or materials;

(2) Previously had a registry identification card revoked; or

(3) Provided false information.

Section 35. The department may deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted only if:

(1) The designated caregiver does not meet the requirements of a designated caregiver as provided in Section1of this Act

(2) The applicant does not provide the information required;

(3) The designated caregiver previously had a registry identification card revoked; or

(4) The applicant or the designated caregiver provided false information.

Section36. The department shall give written notice to the qualifying patient of the reason for denying a registry identification card to the qualifying patient or to the qualifying patient's designated caregiver.

Section 37. Denial of an application or renewal is considered a final department action, subject to judicial review.

Section 38. Until a qualifying patient who has submitted an application and the required fee to the department receives a registry identification card or a deniel, a copy of the individual's application, written certification, and proof that the application was submitted to the department is considered a registry identification card.

Section 39. Until a designated caregiver whose qualifying patient has submitted an application and the required fee receives a registry identification card or a rejection, a copy of the a qualifying patient's application, written certification, and proof that the application was submitted to the department shall be deemed a registry identification card.

Section 40. Until twenty five days after the department makes applications available, a valid, written certification issued within the previous year shall be deemed a registry identification card for a qualifying patient.

Section 41. Until twenty five days after the department makes applications available, the following is considered a designated caregiver registry identification card:

(1) A copy of a qualifying patient's valid written certification issued within the previous year; and

(2) A signed affidavit attesting that the person has significant responsibility for managing the well-being of the patient and that the person has been chosen to assist the qualifying patient.

Section 42. A registry identification cards must contain all of the following:

(1) The name of the cardholder;

(2) A designation of whether the cardholder is a qualifying patient or a designated caregiver;

(3) The date of issuance and expiration date of the registry identification card;

(4) A random 10-digit alphanumeric identification number, containing at least four numbers and at least four letters, that is unique to the cardholder;

(5) If the cardholder is a designated caregiver, the random identification number of the qualifying patient the designated caregiver will assist;

(6) A clear indication of whether the cardholder has been designated to cultivate cannabis plants for the qualifying patient's medical use;

(7) A photograph of the cardholder; and

(8) The phone number or web address where the card can be verified.

Section 43. A registry identification card expires one year after the date of issue. However if the practitioner stated in the written certification that the qualifying patient would benefit from cannabis until a specified earlier date, then the registry identification card expires on that date.

Section 44. The department shall maintain a confidential list of the persons to whom the department has issued a registry identification card and the addresses, phone number, and registry identification number of each person. This confidential list may not be combined or linked in any manner with any other list or database, nor may it be used for any purpose not provided for in this Act.

Section 45. Within one hundred twenty days of the effective date of this Act, the department shall establish a secure phone or web-based verification system. The verification system must allow law enforcement personnel and medical cannabis establishments to enter a registry identification number and determine whether the number corresponds with a current, valid registry identification card. The system may disclose only:

(1) Whether the identification card is valid;

(2) The name of the cardholder;

(3) Whether the cardholder is a qualifying patient or a designated caregiver;

(4) Whether the cardholder is permitted to cultivate cannabis plants;

(5) The registry identification number of any affiliated registered qualifying patient; and

(6) The registry identification of the qualifying patient's dispensary or dispensaries, if any.

Section 46. The following notifications and department responses are required:

(1) A registered qualifying patient shall notify the department of any change in his or her name or address, or if the registered qualifying patient ceases to have a debilitating medical condition, within 10 days of the change;

(2) A registered designated caregiver shall notify the department of any change in his or her name or address, or if the designated caregiver becomes aware the qualifying patient passed away, within ten days of the change;

(3) Before a registered qualifying patient changes a designated caregiver, the qualifying patient shall notify the department;

(4) When a registered qualifying patient changes a preference as to who may cultivate cannabis for the qualifying patient, the qualifying patient shall notify the department;

(5) If a cardholder loses a registry identification card, the card holder shall notify the department within ten days of becoming aware the card has been lost; and

(6) Before a registered qualifying patient changes a designated dispensary, the qualifying patient must notify the department;

Section 47. Each notification a registered qualifying patient is required to make may instead be made by the patient's designated caregiver if the qualifying patient is unable to make the notification due to age or medical condition.

Section 48. If a cardholder notifies the department of any item listed in section 46 of this Act, but remains eligible under this Act, the department shall issue the cardholder a new registry identification card with a new random 10-digit alphanumeric identification number within ten days of receiving the updated information and a twenty dollar fee. If the person notifying the department is a registered qualifying patient, the department shall also issue the registered qualifying patient's registered designated caregiver, if any, a new registry identification card within ten days of receiving the updated information.

Section 49. If the registered qualifying patient's certifying practitioner notifies the department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of cannabis, the card is null and void. However, the registered qualifying patient shall have fifteen days to dispose of or give away any cannabis in the registered qualifying patient's possesion.

Section 50. A medical cannabis establishment shall notify the department within one business day of any theft or significant loss of cannabis.

Section 51. Except as provided in section 18 of this Act and this section, a person may assert the medical purpose for using cannabis as a defense to any prosecution involving cannabis, and such defense is presumed valid where the evidence shows that:

(1) A practitioner has stated that, in the practitioner's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide practitioner-patient relationship, the patient has a debilitating medical condition and the potential benefits of using cannabis for medical purposes would likely outweigh the health risks for the person;

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

(3) The person was engaged in the acquisition, possession, use, manufacture, cultivation, or transportation of cannabis, paraphernalia, or both, relating to the administration of cannabis to treat or alleviate the person's debilitating medical condition or symptoms associated with the person's debilitating medical condition; and

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

Section 52. An affirmative defense and motion to dismiss shall fail if the prosecution proves that:

(1) The person had a registry identification card revoked for misconduct; or

(2) The purposes for the possession or cultivation of cannabis was not solely for palliative or therapeutic use by the person with a debilitating medical condition who raised the defense.

Section 53. A person is not required to possess a registry identification card to raise the affirmative defense set forth in section 51 of this Act

Section 54. If a person demonstrates the person's medical purpose for using cannabis pursuant to this section, except as provided in section 18 of this Act, the person may not be subject to the following for the person's use of cannabis for medical purposes:

(1) Disciplinary action by an occupational or professional licensing board or bureau; or

(2) Forfeiture of any interest in or right to any property other than cannabis.

Section 55. Not later than ninety days after receiving an application for a medical cannabis establishment, the department shall register the prospective medical cannabis establishment and issue a registration certificate and a random 10-digit alphanumeric identification number if all of the following conditions are satisfied:

(1) the prospective medical cannabis establishment has submitted all of the following:

(a) The application fee.

(b) An application, including:

(i) The legal name of the prospective medical cannabis establishment;

(ii) The physical address of the prospective medical cannabis establishment that is not within 1,000 feet of a public or private school existing before the date of the medical cannabis establishment application;

(iii) The name and date of birth of each principal officer and board member of the proposed medical cannabis establishment; and

(iv) Any additional information requested by the department.

(c) Operating procedures consistent with rules for oversight of the proposed medical cannabis establishment, including procedures to ensure accurate recordkeeping and adequate security measures.

(d) If the city or county where the proposed medical cannabis establishment would be located has enacted zoning restrictions, a sworn statement certifying that the proposed medical cannabis establishment is in compliance with the restrictions.

(e) If the city or county where the proposed medical cannabis establishment requires a local registration, license, or permit, a copy of the registration, license, or permit.

(2) None of the principal officers or board members has served as a principal officer or board member for a medical cannabis establishment that has had its registration certificate revoked.

(3) None of the principal officers or board members is under twenty one years of age; and

(4) At least one principal officer is a resident of South Dakota.

Section 56. If a local government has enacted a numerical limit on the number of medical cannabis establishments in the locality and a greater number of applicants seek registration, the department shall solicit and consider input from the local government as to its preference for registration.

Section 57. The department shall issue a renewal registration certificate within ten days of receipt of the prescribed renewal application and renewal fee from a medical cannabis establishment if the establishments' registration certificate is not under suspension and has not been revoked.

Section 58. A local government may enact an ordinance or regulation not in conflict with this Act, or with rules promulgated pursuant to this Act, governing the time, place, manner, and number of medical cannabis establishment operations in the locality. A local government may establish civil penalties for violation of an ordinance or regulations governing the time, place, and manner of a medical cannabis establishment that may operate in such locality.

Section 59. No local government may prohibit dispensaries, either expressly or through the enactment of an ordinance or regulation which make their operation impracticable in the jurisdiction.

Section 60. A local government may require a medical cannabis establishment to obtain a local license, permit, or registration to operate, and may charge a reasonable fee for the local license, permit, or registration.

Section 61. Each medical cannabis establishment shall conduct a background check into the criminal history of every person seeking to become a principal officer, board member, agent, volunteer, or employee before the person begins working at the medical cannabis establishment.

Section 62. A medical cannabis establishment may not employ any person who:

(1) was convicted of a disqualifying felony offense; or

(2) is under twenty one years of age.

Section 63. Each medical cannabis establishment shall have operating documents that includes procedures for the oversight of the medical cannabis establishment and procedures to ensure accurate recordkeeping.

Section 64. A medical cannabis establishment shall implement appropriate security measures designed to deter and prevent the theft of cannabis and unauthorized entrance into any area containing cannabis.

Section 65. All cultivation, harvesting, manufacture, and packaging of cannabis must take place in a secure facility at a physical address provided to the department during the registration process. The secure facility may only be accessed by agents of the medical cannabis establishment, emergency personnel, and adults who are twenty one years and older and who are accompanied by a medical cannabis establishment agents.

Section 66. No medical cannabis establishment other than a cannabis product manufacturer may produce cannabis concentrates, cannabis extractions, or other cannabis products.

Section 67. A medical cannabis establishment may not share office space with or refer a patient to a practitioner.

Section 68. A medical cannabis establishment may not permit any person to consume cannabis on the property of a medical cannabis establishment.

Section 69. A medical cannabis establishment is subject to inspection by the department during business hours.

Section 70. Before cannabis may be dispensed to a cardholder or nonresident cardholder, a dispensary agent shall:

(1) Make a diligent effort to verify that the registry identification card or registration presented to the dispensary is valid;

(2) Make a diligent effort to verify that the person presenting the documentation is the person identified on the document presented to the dispensary agent;

(3) Not believe that the amount dispensed would cause the person to possess more than the allowable amount of cannabis; and

(4) Make a diligent effort to verify that the dispensary is the current dispensary that was designated by the cardholder or nonresident cardholder.

Section 71. A dispensary may not dispense more than three ounces of cannabis to a nonresident cardholder or a registered qualifying patient, directly or via a designated caregiver, in any fourteen day period. A dispensary shall ensure compliance with this limitation by maintaining internal, confidential records that include records specifying how much cannabis is dispensed to a nonresident cardholder or registered qualifying patient and whether it is dispensed directly to a registered qualifying patient or to the designated caregiver.

Section 72. Not later than one hundred twenty days after the effective date of this Act, the department shall promulgate rules pursuant to sections 1-26:

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

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

(3) Establishing a system to numerically score competing medical cannabis establishment applicants, in cases where more applicants apply than are allowed by the local government, that must include analysis of:

(a) The preference of the local government;

(b) In the case of dispensaries, the suitability of the proposed location and its accessibility for patients;

(c) The character, veracity, background, qualifications, and relevant experience of principal officers and board members; and

(d) The business plan proposed by the applicant, which in the case of a cultivation facility or dispensary shall include the ability to maintain an adequate supply of cannabis, plans to ensure safety and security of patrons and the community, procedures to be used to prevent diversion, and any plan for making cannabis available to low-income registered qualifying patients;

(4) Governing the manner in which the department shall consider applications for and renewals of registry identification cards, which may include creating a standardized written certification form;

(5) Governing medical cannabis establishments with the goals of ensuring the health and safety of qualifying patients and preventing diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including:

(a) Oversight requirements;

(b) Recordkeeping requirements;

(c) Security requirements, including lighting, physical security, and alarm requirements;

(d) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health;

(e) Standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by a cultivation facility;

(f) Requirements for the transportation and storage of cannabis by a medical cannabis establishment;

(g) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent;

(h) Standards for the safe manufacture of cannabis products, including extracts and concentrates;

(i) Restrictions on the advertising, signage, and display of medical cannabis, provided that the restrictions may not prevent appropriate signs on the property of a dispensary,

listings in business directories including phone books, listings in marijuana-related or medical publications, or the sponsorship of health or not-forprofit charity or advocacy events;

(j) Requirements and procedures for the safe and accurate packaging and labeling of medical cannabis; and

(k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel;

(6) Establishing procedures for suspending or terminating the registration certificates or registry identification cards of cardholders and medical cannabis establishments that commit multiple or serious violations of the provisions of this Act or the rules promulgated pursuant to this section;

(7) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis products' labels to include the following:

(a) The length of time it typically takes for a product to take effect;

(b) Disclosing ingredients and possible allergens;

(c) A nutritional fact panel; and

(d) Requiring that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;

(8) Procedures for the registration of nonresident cardholders and the cardholders designation of no more than two dispensaries, which must require the submission of:

(a) A practitioner's statement confirming that the patient has a debilitating medical condition; and

(b) Documentation demonstrating that the nonresident cardholder is allowed to possess cannabis or cannabis preparations in the jurisdiction where the nonresident cardholder resides;

(9) Establishing the amount of cannabis products, including the amount of concentrated cannabis, each cardholder and nonresident cardholder can possess; and

(10) Establishing reasonable application and renewal fees for registry identification cards and registration certificates, according to the following:

(a) Application fees for medical cannabis establishments may not exceed five thousand dollars, with this upper limit adjusted annually for inflation;

(b) The total fees collected must generate revenues sufficient to offset all expenses of implementing and administering this Act;

(c) The department may establish a sliding scale of patient application and renewal fees based upon a qualifying patient's household income;

(d) The fees charged to qualifying patients, nonresident cardholders, and caregivers must be no greater than the costs of processing the applications and issuing a registry identification card or registration; and

(e) the department may accept donations from private sources to reduce application and renewal fees.

Section 73. A cardholder or medical cannabis establishment who willfully fails to provide a notice required by this Act is guilty of a civil infraction, punishable by a fine of no more than one hundred fifty dollars.

Section 74. In addition to any other penalty applicable in law, a medical cannabis establishment or an agent of a medical cannabis establishment who intentionally sells or otherwise transfers cannabis in exchange for anything of value to a person other than a cardholder, a nonresident cardholder, or to a medical cannabis establishment or its agent is guilty of a class 6 felony. A person convicted under this section may not continue to be affiliated with the medical cannabis establishment and is disqualified from further participation under this Act.

Section 75. In addition to any other penalty applicable in law, a cardholder or nonresident cardholder who intentionally sells or otherwise transfers cannabis in exchange for anything of value to a person other than a cardholder, a nonresident cardholder, or to a medical cannabis establishment or its agent is guilty of a class 6 felony.

Section 76. A person who intentionally makes a false statement to a law enforcement official about any fact or circumstance relating to the medical use of cannabis to avoid arrest or prosecution is guilty of a class 2 misdemeanor. This penalty is in addition to any other penalties that may apply for making a false statement or for the possession, cultivation, or sale of cannabis not protected by this Act. If a person convicted of violating this section is a cardholder, the person is disqualified from further participation under this Act.

Section 77. A person who knowingly submits false records or documentation required by the department to certify a medical cannabis establishment under this Act is guilty of class 6 felony.

Section 78. A practitioner who knowingly refers patients to a medical cannabis establishment or to a designated caregiver, who advertises in a medical cannabis establishment, or who issues written certifications while holding a financial interest in a medical cannabis establishment shall be fined up to one thousand dollars.

Section 79. It is a class 2 misdemeanor for any person, including an employee or official of the department or another state agency or local government who breaches the confidentiality of information obtained pursuant to this Act.

Section 80. A medical cannabis establishment shall be fined up to one thousand dollars for any violation of this Act, or the rules promulgated pursuant to this Act where no penalty is specified. This penalty is in addition to any other penalties applicable in law.

Section 81. The department may on its own motion or on complaint, after investigation and opportunity for a public hearing at which the medical cannabis establishment has been afforded an opportunity to be heard, suspend or revoke a registration certificate for multiple negligent or knowing violations or for a

serious and knowing violation by the registrant or any of its agents of this Act or any rules promulgated pursuant to this Act.

Section 82. The department shall provide notice of suspension, revocation, fine, or other sanction, as well as the required notice of the hearing, by mailing the same in writing to the medical cannabis establishment at the address on the registration certificate. A suspension may not be for a longer period than six months.

Section 83. A medical cannabis establishment may continue to possess cannabis during a suspension, but it may not dispense, transfer, or sell cannabis. A cultivation facility may continue to cultivate and possess cannabis plants during a suspension, but it may not dispense, transfer, or sell cannabis.

Section 84.The department shall immediately revoke the registry identification card of any cardholder who sells cannabis to a person who is not allowed to possess cannabis for medical purposes under this chapter, and the cardholder is disqualified from further participation under this Act.

Section 85. The department may revoke the registry identification card of any cardholder who knowingly commits multiple unintentional violations or a serious knowing violation of this Act.

Section 86. Revocation is a final decision of the department subject to judicial review.

Section 87. Data in a registration applications and supporting data submitted by a qualifying patient, designated caregiver, nonresident cardholder or medical cannabis establishment, including data on designated caregivers or practitioners, is private data that is confidential.

Section 88. Data kept or maintained by the department may not be used for any purpose not provided for in this Act and may not be combined or linked in any manner with any other list or database.

Section 89. Data kept or maintained by the department may be disclosed as necessary for:

(1) The verification of a registration certificate or registry identification card pursuant to this Act;

(2) Submission of the annual report required by this Act;

(3) Notification of state or local law enforcement of an apparent criminal violation of this Act;

(4) Notification of state and local law enforcement about falsified or fraudulent information submitted for the purpose of obtaining or renewing a registry identification card; or

(5) Notification of the South Dakota Board of Medical and Osteopathic Examiners if there is reason to believe that a practitioner provided a written certification and the department has reason to believe the practitioner otherwise violated the standard of care for evaluating medical conditions.

Section 90. Any information kept or maintained by a medical cannabis establishment may only identify cardholder by registry identification numbes and may not contain names or other personally identifying information.

Section 91.At the cardholder's request, the department may confirm the cardholder's status as a registered qualifying patient or a registered designated caregiver to a third party, such as a landlord, school, medical professional, or court.

Section 92. Any department hard drives or other data-recording media that is no longer in use and that contains cardholder information must be destroyed.

Section 93. The Executive Board of the Legislative Research Council shall appoint a nine-member oversight committee comprised of: one member of the House of Representatives; one representative of the department; one member of the Senate; one practitioner with experience in medical cannabis issues; one nurse; one board member or principal officer of a cannabis testing facility; one person with experience in policy development or implementation in the field of medical cannabis; and three qualifying patients.

Section 94. The oversight committee shall meet at least two times per year for the purpose of evaluating and making recommendations to the Legislature and the department regarding:

(1) The ability of qualifying patients in all areas of the state to obtain timely access to high-quality medical cannabis;

(2) the effectiveness of the dispensaries and cultivation facilities, individually and together, in serving the needs of qualifying patients, including the provision of educational and support services by dispensaries, the reasonableness of their prices, whether they are generating any complaints or security problems, and the sufficiency of the number operating to serve the state's registered qualifying patients;

(3) The effectiveness of the cannabis testing facilities, including whether a sufficient number are operating;

(4) The sufficiency of the regulatory and security safeguards contained in this Act and adopted by the department to ensure that access to and use of cannabis cultivated is provided only to cardholders;

(5) Any recommended additions or revisions to the department regulations or this Act, including relating to security, safe handling, labeling, and nomenclature; and

(6) any research studies regarding health effects of medical cannabis for patients.

Section 95. The department shall report annually to the Legislature on the number of applications for registry identification cards received, the number of qualifying patients and designated caregivers approved, the number of registry identification cards revoked, the number of each type of medical cannabis establishment that are registered, and the expenses incurred and revenues generated from the medical cannabis program. The department may not include identifying information on a qualifying patient, designated caregiver, or practitioner in the report.

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to set a maximum finance charge for certain licensed money lenders

Explanation:

The initiated measure prohibits certain State-licensed money lenders from making a loan that imposes total interest, fees and charges at an annual percentage rate greater than 36%. The measure also prohibits these money lenders from evading this rate limitation by indirect means. A violation of this measure is a misdemeanor crime. In addition, a loan made in violation of this measure is void, and any principal, fee, interest, or charge is uncollectable.

The measure's prohibitions apply to all money lenders licensed under South Dakota Codified Laws chapter 54-4. These licensed lenders make commercial and personal loans, including installment, automobile, short-term consumer, payday, and title loans. The measure does not apply to state and national banks, bank holding companies, other federally insured financial institutions, and state chartered trust companies. The measure also does not apply to businesses that provide financing for goods and services they sell.

FOR AN ACT ENTITLED, An Act to provide for a limit on finance charges on payday, car title, and installment loans and to provide a penalty therefor.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. That 54-3-14 be amended to read as follows:

The term "regulated lenders" as used in § 54-3-13 means:

(1) A bank organized pursuant to chapter 51A-1, et seq.;

(2) A bank organized pursuant to 12 U.S.C. § 21;

(3) A trust company organized pursuant to chapter 51A-6;

(4) A savings and loan association organized pursuant to chapter 52-1, et seq.;

(5) A savings and loan association organized pursuant to 12 U.S.C. § 1464;

(6) Any wholly owned subsidiary of a state or federal bank or savings and loan association which subsidiary is subject to examination by the comptroller of the currency, or the federal reserve system, or the South Dakota Division of Banking, or the federal home loan bank board and which subsidiary has been approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act;

(7) A federal land bank organized pursuant to 12 U.S.C. § 2011;

(8) A federal land bank association organized pursuant to 12 U.S.C. § 2031;

(9) A production credit association organized pursuant to 12 U.S.C. § 2091;

(10) A federal intermediate credit bank organized pursuant to 12 U.S.C. § 2071;

(11) An agricultural credit corporation or livestock loan company or its affiliate, the principal business of which corporation is the extension of short and intermediate term credit to farmers and ranchers;

(12) A federal credit union organized pursuant to 12 U.S.C. § 1753;

(13) A federal financing bank organized pursuant to 12 U.S.C. § 2283;

(14) A federal home loan bank organized pursuant to 12 U.S.C. § 1423, et seq.;

(15) A national consumer cooperative bank organized pursuant to 12 U.S.C. § 3011;

(16) A bank for cooperatives organized pursuant to 12 U.S.C. § 2121;

(17) Bank holding companies organized pursuant to 12 U.S.C. § 1841, et seq.;

(18) National Homeownership Foundation organized pursuant to 12 U.S.C. § 1701y;

(19) Farmers Home Administration as provided by 7 U.S.C. § 1981;

(20) Small Business Administration as provided by 15 U.S.C. § 633;

(21) Government National Mortgage Association and Federal National Mortgage Association as provided by 12 U.S.C. § 1717;

(22) South Dakota Housing Development Authority as provided by chapter 11-11;

(23) Insurance companies, whether domestic or foreign, authorized to do business in this state, and which as a part of their business engage in mortgage lending in this state. However, § 54-3-13 does not exempt insurance companies from the provisions of § 58-15-15.8; or

(24) Any wholly owned service corporation subsidiary of a domestic or foreign insurance company, authorized to do business in this state, and which subsidiary is subject to examination by the same insurance examiners as the parent company~~; or~~.

~~(25) An installment loan licensee under the provisions of chapter 54-4 and 54-6~~

Section 2. That 54-4-44 be amended to read as follows:

After procuring such license from the Division of Banking, the licensee may engage in the business of making loans and may contract for and receive interest charges and other fees at rates, amounts, and terms as agreed to by the parties which may be included in the principal balance of the loan and specified in the contract. However, no licensee may contract for or receive finance charges in excess of an annual rate of thirty-six percent, including all charges for any ancillary product or service and any other charge or fee incident to the extension of credit. A violation of this section is a Class 1 misdemeanor. Any loan made in violation of this section is void and uncollectable as to any principal, fee, interest, or charge.

Section 3. That chapter 54-4 be amended by adding a NEW SECTION to read as follows:

No person may engage in any device, subterfuge, or pretense to evade the requirements of § 54-4-44, including, but not limited to, making loans disguised as a personal property sale and leaseback transaction; disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services; or making, offering, assisting, or arranging a debtor to obtain a loan with a greater rate of interest, consideration, or charge than is permitted by this chapter through any method including mail, telephone, internet, or any electronic means regardless of whether the person has a physical location in the state. Notwithstanding any other provision of this chapter, a violation of this section is subject to the penalties in § 54-4-44.

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution to allow referral of state and municipal laws affecting public peace, health, safety and the support of government and also to limit the ability to amend or repeal initiated laws.

Explanation:

Under the Constitution, laws enacted by the Legislature or a municipality may be referred to a vote of the people, except for laws necessary for the immediate preservation of the public peace, health or safety, or laws required for the support of government and its existing public institutions.

The amendment removes this restriction and allows such laws to be referred if a petition is filed within ninety days after the law goes into effect. The referred law remains in effect unless repealed by majority vote at the following general election. In even-numbered years, referrals under this amendment may conflict with current state election laws and may violate federal absentee voting laws.

In addition, under the Constitution the people may enact state and municipal laws by initiated measure. The amendment changes the Constitution to prohibit the amendment or repeal of an initiated law without a two-thirds vote of each house of the legislature. A municipality would likewise be prohibited from amending or repealing an initiated law without a two-thirds vote of the governing body.

Title: An Amendment to the South Dakota Constitution relating to initiatives and referendum.

Section 1. That Article III, section 1 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 1. The legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives. However, the people expressly reserve to themselves the right to propose measures, which shall be submitted to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect; ~~except such laws as may be~~. A law enacted by the Legislature that is necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions may be referred to a vote of the electors of the state within ninety days of the law going into effect. The law shall remain in effect until the law is voted upon by the people. If the law is rejected by a majority of the electors, the law is repealed. Not more than five percent of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. However, the Legislature may only repeal or amend an initiated measure by a two-thirds vote of all the members elect of each branch of the Legislature. The veto power of the Executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of this section.

Section 2. The provisions of this Amendment are effective on November 9, 2016, and apply to any initiated measure approved by the electors on November 8, 2016.

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to criminalize the transfer of tobacco and tobacco paraphernalia

Explanation:

The initiated measure prohibits a person or business from transferring tobacco, tobacco pipes, or tobacco rolling paper to another person or business in this state. In the measure, "tobacco" means cigarettes, cigars, cigarellos, or loose tobacco. "Transfer" includes the sale, delivery, trade, or gift. A transfer of tobacco or tobacco paraphernalia in violation of this measure is a crime. The severity of the maximum criminal penalty increases based upon the quantity of the tobacco or tobacco paraphernalia transferred. In addition, a civil penalty up to ten thousand dollars may be imposed.

If approved, this measure will result in a loss of state and local tax and license revenues. Also, this measure will likely be challenged in court on constitutional grounds. If the challenge is successful, the State of South Dakota may be required to pay money damages, attorney fees and costs.

We, the undersigned qualified voters of the State of South Dakota, petition that the following proposed law be submitted to the voters of the State of South Dakota at the general election on November 8, 2016, for their approval or rejection pursuant to the Constitution of the State of South Dakota:

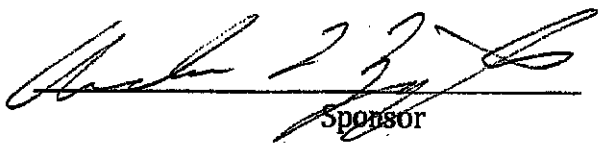
FOR AN ACT ENTITLED: An Act to ban the transfer of tobacco or tobacco paraphernalia in South Dakota.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:
Section 1. No person or business may transfer tobacco, in the form of cigarettes, cigars, cigarillos, or loose tobacco, or a tobacco pipe or tobacco rolling paper, from one person or business to another person or business in the State of South Dakota. It is a Class 1 misdemeanor to transfer two ounces or less of tobacco, tobacco pipes, or tobacco rolling papers. It is a Class 6 felony to transfer more than two ounces but less than one-half pound of tobacco, tobacco pipes, or tobacco rolling papers. It is a Class 5 felony to transfer one-half pound but less than one pound of tobacco, tobacco pipes, or tobacco rolling papers. It is a Class 4 felony to transfer one to ten pounds of tobacco, tobacco pipes, or tobacco rolling papers. It is a Class 3 felony to transfer more than ten pounds of tobacco, tobacco pipes, or tobacco rolling papers. In addition to any criminal penalty imposed upon conviction of a violation of this section, a civil penalty, not to exceed ten thousand dollars, may be imposed.

That is the text of a proposed change in statute law in South Dakota. It is submitted by an ad hoc political committee called Consistent South Dakota. We, the sponsors, have filed the statement of organization for Consistent South Dakota with the secretary of state.

Sponsor

Bob Newland
345 Jennings Ave.
Hot Springs SD 57747
605-745-3613



Sponsor

Andrew Ziegler
2901 S. Hawthorne Ave.
Sioux Falls SD 57105
605-553-5541

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to criminalize the transfer of alcoholic beverages

Explanation:

The initiated measure prohibits a person or business from transferring any alcoholic beverage containing more than one percent ethyl alcohol to another person or business in this state. "Transfer" includes the sale, delivery, trade, or gift of the alcoholic beverage. A transfer of an alcoholic beverage in violation of this measure is a crime. The severity of the maximum criminal penalty increases based upon the quantity of the alcoholic beverage transferred. In addition, a civil penalty up to ten thousand dollars may be imposed.

If approved, this measure will result in a loss of state and local tax and license revenues. Also, the measure will likely be challenged in court on constitutional grounds. If the challenge is successful, the State of South Dakota may be required to pay money damages, attorney fees and costs.

We, the undersigned qualified voters of the State of South Dakota, petition that the following proposed law be submitted to the voters of the State of South Dakota at the general election on November 8, 2016, for their approval or rejection pursuant to the Constitution of the State of South Dakota:

FOR AN ACT ENTITLED: An Act to ban the transfer of alcoholic beverages with more than one per-cent alcohol content in South Dakota.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:
Section 1. No person or business may transfer an alcoholic beverage, as defined in SDCL 35-1-1, containing more than one per-cent ethyl alcohol to another person or business in the State of South Dakota. It is a Class 1 misdemeanor to transfer two ounces or less of an alcoholic beverage containing more than one per-cent ethyl alcohol. It is a Class 6 felony to transfer more than two ounces but less than one-half pound of an alcoholic beverage containing more than one per-cent ethyl alcohol. It is a Class 5 felony to transfer one-half pound but less than one pound of an alcoholic beverage containing more than one per-cent ethyl alcohol. It is a Class 4 felony to transfer one to ten pounds of an alcoholic beverage containing more than one per-cent ethyl alcohol. It is a Class 3 felony to transfer more than ten pounds of an alcoholic beverage containing more than one per-cent ethyl alcohol. In addition to any criminal penalty imposed upon conviction of a violation of this section, a civil penalty, not to exceed ten thousand dollars, may be imposed.

That is the text of a proposed change in statute law in South Dakota. It is submitted by an ad hoc political committee called Consistent South Dakota. We, the sponsors, have filed the statement of organization for Consistent South Dakota with the secretary of state.

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Sponsor

NEWS RELEASE

Marty J. Jackley
South Dakota Attorney General

Charles McGuigan
Chief Deputy Attorney General

FOR IMMEDIATE RELEASE: Wednesday, May 20, 2015
CONTACT: Sara Rabern (605) 773-3215

Attorney General Explanation for Initiated Measure Petitions Relating to Alcohol and Tobacco Released

PIERRE, S.D.- South Dakota Attorney General Marty Jackley announced today that two Attorney General Explanations for initiated measures have been filed with the Secretary of State. These statements will appear on petitions that will be circulated by the sponsors of the measures. If the sponsors obtain a sufficient number of signatures on the petitions, as certified by the Secretary of State, the measures will be placed on the ballot for the November 2016 general election.

1. An initiated measure to criminalize the transfer of alcoholic beverages

2. An initiated measure to criminalize the transfer of tobacco and tobacco paraphernalia

Under South Dakota law, the Attorney General is responsible for preparing explanations for proposed initiated measures, referred laws, and South Dakota Constitutional Amendments.

It is anticipated that additional Attorney General Statements for initiated measures and initiated constitutional amendments will be filed in the near future. Specifically, the explanation includes a title, a clear and simple summary of the effect of the proposed measure and a description of the legal consequences.

To view the Attorney General Statements for the measures, as well as the final form of the measures submitted to this office, please click on the link below:

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