STATE OF SOUTH DAKOTA

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HAND DELIVERED

March 27, 2017

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

RE: **Attorney General's Statements for initiated measures legalizing marijuana**

Dear Secretary Krebs,

This Office received proposed initiated measures that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of each of the initiated measures, 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 both measures.

By copy of this letter, I am providing copies of the Attorney General's Statements to the sponsor of the initiated measures pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: Melissa Mentele
Jason Hancock, Director of LRC

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize certain amounts of marijuana, drugs made from marijuana, and drug paraphernalia, and to regulate and tax marijuana establishments.

Explanation:

The measure makes it lawful under the laws of a political subdivision (county, city, etc.) to possess, grow, use, process, purchase, transport, or distribute certain amounts of marijuana and drugs made from marijuana. This includes some drugs that are felony controlled substances under existing State law. It also legalizes drug paraphernalia for people over age 21.

The measure prevents the State from seizing or forfeiting assets of a person involved in manufacturing, possessing, transporting, or trafficking certain amounts of marijuana or some kinds of controlled substances.

The measure authorizes local jurisdictions and the State Department of Revenue to regulate marijuana establishments. It imposes an excise tax payable by marijuana cultivation facilities for marijuana sales to other establishments.

For people who have already been convicted or incarcerated for non-violent drug-related offenses that this measure legalizes, their cases must be reviewed or sentences commuted.

With limited exceptions, the acts described in the measure would remain illegal under State or Federal law. This 35-section measure has numerous conflicts with other State laws and within the measure itself. Because its full scope and effect are unclear, judicial or legislative clarification will likely be necessary. A court may find portions of the measure unconstitutional.

An Act to provide for the regulation and taxation of cannabis and cannabis products.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA

Section 1. Terms used in this Act shall mean:

1. "Consumer" means a person twenty one years of age or older who purchases cannabis or cannabis products for personal use, but not for resale.

2. "Department" means South Dakota Department of Revenue.

3. "Immature cannabis plant" any cannabis plant that has not flowered and that does not have buds that may be observed by visual examination.

4. "Hemp" means any plant within the genus cannabis and any part of the plant, whether growing or not growing, with a delta-9 tetrahydrocannabinol concentration that does not exceed three tenths of a percent on a dry weight basis of any part of the plant, or per volume or weight of cannabis product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant regardless of moisture content.

5. "Locality" means any municipality or county.

6. "Local regulatory authority" the office or entity designated to process cannabis establishment applications by a county.

7. "Cannabis" the plant of the genus cannabis, the seeds,, the resin extracted from any part of the plant, compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including cannabis concentrate. The term does not include hemp, or any fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with the plant to prepare topical or oral administrations, food, drink, or any other product.

8. "Cannabis accessories" any equipment, product, or other material that is used, intended to be used, or designed to be used in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body.

9. "Cannabis cultivation facility" an entity registered to cultivate, prepare or package and sell cannabis to a cannabis establishment, but not to consumers. No cannabis cultivation facility may produce cannabis concentrates, tinctures, extracts, or other cannabis products.

10. "Cannabis establishment" means a cannabis cultivation facility, cannabis testing facility, cannabis product manufacturing facility, or retail cannabis store.

11. "Cannabis product manufacturing facility" any entity registered pursuant to this Act to purchase cannabis, manufacture, prepare, or package cannabis products; or sell cannabis and cannabis products to cannabis product manufacturing facilities or retail cannabis stores, but not to consumers.

12. "Cannabis products" products that are comprised of cannabis and other ingredients and are intended for use or consumption

13. "Cannabis testing facility" an entity registered pursuant to this Act to test cannabis for potency or contaminants.

14. "Possession limit" the amount of cannabis that may be possessed at any one time by any individual pursuant to this Act.

(1) For a South Dakota resident, the possession limit is no more than:

a. One ounce of cannabis, no more than five grams of which may be concentrated cannabis;

b. Five cannabis plants; and

c. Any additional cannabis produced by the person's cannabis plants, provided that any amount of cannabis in excess of one ounce of cannabis must be possessed in the same secure facility where the plants were cultivated.

(2) For a non resident of South Dakota, the possession limit is no more than one- fourth of an ounce of cannabis, including up to one gram of concentrated cannabis.

15. "Public place"any place to which the general public has access.

16. "Retail cannabis store" an entity registered pursuant to this Act to purchase cannabis from cannabis cultivation facilities or cannabis and cannabis products from cannabis product manufacturing facilities and to sell cannabis and cannabis products to consumers.

17. "Unreasonably impracticable" measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a cannabis establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

Section 2.

Notwithstanding any other law, the following acts are not unlawful under law of any subdivision or be a basis for seizure or forfeiture of assets under South Dakota law

(a) Possessing, consuming, growing, using, processing, purchasing, or transporting an amount of cannabis that does not exceed the possession limit;

(b) Transferring one ounce or less of cannabis and up to six immature cannabis plants to a person who is twenty one years of age or older without remuneration;

(c) Controlling property where actions described by this Act occur; and

(d) Assisting any other person who is twenty one years of age or older in any of the acts described in this Act.

Section 3.

No person may cultivate cannabis in a location where the plant is subject to public view, or subject to view from any other private property, without the use of binoculars, aircraft, or other optical aids.

Any person who cultivates cannabis shall take reasonable precautions to ensure any plant are secure from unauthorized access.

A person may cultivate cannabis on any property in the person's lawful possession or any property in the lawful possession of any other person who consents to the cultivation of cannabis

If a person violates the provisions of this section the department may impose a civil penalty of up to seven hundred fifty dollars.

Section 4.

If any person smokes cannabis in a public place the department may impose a civil penalty of up to one hundred dollars.

Section 5.

No person may consume cannabis while operating a motor vehicle, boat, vessel, aircraft, or any other motorized device used for transportation.

Punishment for prohibited driving--First offense. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days.

Punishment for second offense--Revocation of driving privilege--Jail sentence for driving while privilege revoked--Limited driving privilege for certain purposes. If conviction for a violation of § 32-23-1 is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year.

Section 6.

No person who is under twenty one years of age may purchase, attempt to purchase, or otherwise procure or attempt to procure cannabis; or gain access to a cannabis establishment.

If any person violates any provisions of this section the department may impose a civil penalty of not less than two hundred dollars and not more than four hundred dollars.

Section 7.

No person. other than a registered cannabis product manufacturer, may perform solvent-based extractions on cannabis using solvents other than water or vegetable glycerin.

Any person who violates the provisions of this section is guilty of a Class 6 felony.

Section 8.

Notwithstanding any other law, it is not unlawful under the law of the state or the subdivision, or be a basis for seizure or forfeiture of assets for any person who is twenty one years of age or older to manufacture, possess, or purchase cannabis accessories, or to distribute or sell cannabis accessories to any other person who is twenty one years of age or older.

Any person who is twenty one years of age or older is authorized to manufacture, possess, and purchase cannabis accessories, and to distribute or sell cannabis accessories to any other person twenty one years of age or older.

Section 9.

No person other than a registered retail cannabis store, or any person who is an owner, employee, or agent of a retail cannabis store may:

1. Possess, display, store, or transport cannabis or cannabis products;
2. Purchase cannabis from a cannabis cultivation facility
3. Purchase cannabis or cannabis products from a cannabis product manufacturing facility;
4. Deliver or transfer cannabis or cannabis to a cannabis testing facility; or
5. Deliver, distribute, or sell cannabis or cannabis products to consumers or retail cannabis stores.

Section 10.

No person other than a registered cannabis cultivation facility , or any person who is an owner, employee, or agent of a cannabis cultivation facility may:

1. Cultivate, harvest, process, package, transport, display, store, or process cannabis;
2. Deliver or transfer cannabis to a cannabis testing facility;
3. Deliver, distribute, or sell cannabis to a cannabis cultivation facility, a cannabis product manufacturing facility, or a retail cannabis store;
4. Receive or purchase cannabis from a cannabis cultivation facility; or
5. Receive cannabis seeds or immature plants.

Section 11.

No person other than a registered product manufacturing facility, or a person who is an owner, employee, or agent of a product manufacturing facility may;

1. Package, process, transport, manufacture, display or possess cannabis or cannabis products;
2. Deliver or transfer cannabis or cannabis products to a cannabis testing facility;
3. Deliver or sell cannabis or cannabis products to a retail cannabis store, or a cannabis product manufacturing facility;
4. Purchase cannabis from a cannabis cultivation facility;
5. Purchase cannabis or cannabis products from a cannabis product manufacturing facility.

Section 12.

No person other than a registered cannabis testing facility or a person who is an owner, employee, or agent of a cannabis testing facility may:

1. Possess, cultivate, process, repackage, store, transport, or display cannabis or cannabis products;
2. Receive cannabis or cannabis products from a cannabis establishment or a person twenty one years of age or older;
3. Return cannabis or cannabis products to a cannabis establishment, or a person twenty one years of age or older; or

Section 13.

No cannabis establishment or any agent or employee of a cannabis establishment may sell, deliver, give, transfer, or otherwise provide cannabis to any person who is under the age of twenty one..

Except as otherwise provided this section, in any prosecution for selling, transferring, delivering, giving, or otherwise furnishing cannabis, cannabis products, or cannabis paraphernalia to any other person who is under twenty one years of age, it is a complete defense if:

(1) The person who sold, gave, or otherwise furnished cannabis, cannabis products, or cannabis paraphernalia was a retailer or was acting in his or her capacity as an owner, employee, or agent of a retailer at the time the cannabis, cannabis products, or cannabis paraphernalia was sold, given, or otherwise furnished to the person; and

(2) Before selling, giving, or otherwise furnishing cannabis, cannabis products, or cannabis paraphernalia to a person who is under twenty one years of age, the person who sold, gave, or otherwise furnished the cannabis or cannabis paraphernalia, or a staffer or agent of the retailer, was shown a document which appeared to be issued by an agency of a federal, state, tribal, or foreign sovereign government and that indicated the person to whom the cannabis or cannabis paraphernalia was sold, given, or otherwise furnished was twenty one years of age or older at the time the cannabis or cannabis paraphernalia was sold, given, or otherwise furnished to the person.

Section 14.

The complete defense set forth in this section does not apply if:

(1) The document that was shown to the person who sold, gave, or otherwise furnished the cannabis, cannabis products, or cannabis paraphernalia was counterfeit, forged, altered, or issued to a person other than the person to whom the cannabis, cannabis products or cannabis paraphernalia was sold, given, or otherwise furnished; and

(2) Under the circumstances, a reasonable person would have known or suspected that the document was counterfeit, forged, altered, or issued to a person other than the person to whom the cannabis, cannabis products, or cannabis paraphernalia was sold, given, or otherwise furnished. Reasonable reliance upon proof of age of the purchaser or the recipient of the cannabis is a complete defense to any action brought against a person for a violation of this section.

Section 15.

Not later than one hundred eighty days after the effective date of this Act, the department shall adopt rules pursuant to chapter 1-25 that are necessary for the implementation of this Act. No rule adopted by the department may prohibit the operation of cannabis establishments, either expressly or through regulations that make their operation unreasonably impracticable. Rules adopted by the department shall include:

1. Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a cannabis establishment;

2. A schedule of fees for any application, registration, or renewal not to exceed five thousand dollars adjusted annually for inflation, unless the department determines a greater fee is necessary to carry out its responsibilities under this chapter;

3. Qualifications for registration that are related to the operation of a cannabis establishment;

4. Security requirements;

5. Requirements for the transportation and storage of cannabis and cannabis products by cannabis establishments;

6. Employment and training requirements,

7. Requirements and standards for each cannabis establishment to create an identification badge for each employee or agent;

8. Requirements designed to prevent the sale or diversion of cannabis and cannabis products to persons under the age of 21;

9. Standards for cannabis product manufacturers to determine the amount of cannabis to which cannabis products are considered an equivalent to;

10. Requirements for cannabis and cannabis products sold or distributed by a cannabis establishment,

11. Contents of cannabis product labels including:

a. The length of time it typically takes for a product to take effect;
b. The amount of cannabis to which the product is considered an equivalent;
c. Disclosure of ingredients and any possible allergens; and
d. A nutritional fact panel;

12. Requirements for opaque, child resistant packaging, that must be designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995);

13. Requirements that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;

14. Health and safety regulations and standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by cannabis establishments;

15. Restrictions on advertising, marketing, and signage including but not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors;

16. Restrictions on the display of cannabis and cannabis products.

17. Restrictions or prohibitions on additives to cannabis and cannabis-infused products, including those that are toxic, designed to make the product more addictive, designed to make the product more appealing to children, or misleading to consumers; Any prohibition may not include common baking or cooking items;

18. Restrictions on the use of pesticides that are injurious to human health;

19. Regulations governing visits to cultivation facilities and product manufacturers, including requiring the cannabis establishment to log visitors;

20. A definition of the amount of delta-9 tetrahydrocannabinol that constitutes a single serving in a cannabis product;

21. Standards for the safe manufacture of cannabis extracts and concentrates;

22. Requirements that educational materials be disseminated to consumers who purchase cannabis-infused products;

23. Requirements for random sample testing to ensure quality control, including by ensuring that cannabis and cannabis infused products are accurately labeled for potency. The Rules promulgated under this subdivision shall provide that testing analysis must include testing for residual solvents, poisons, or toxins; harmful chemicals; dangerous molds or mildew; filth; and harmful microbes such as E. Coli or salmonella and pesticides;

24. Standards for the operation of testing laboratories, including requirements for equipment and qualifications for personnel;

25. Civil penalties for the failure to comply with regulations made pursuant to this chapter; and

26. Procedures for collecting taxes levied on cannabis cultivation facilities.

The department may not require a consumer to provide a retail cannabis store with personal information other than proof of the consumer's age. No retail cannabis store may be required to acquire and record personal information about consumers.

Section 16.

Any application or renewal application for an annual registration to operate a cannabis establishment shall be submitted to the department. A renewal application may be submitted up to ninety days prior to the expiration of the cannabis establishment's registration

Section. 17.

The department shall begin accepting and processing applications to operate cannabis establishments no later than one hundred eighty days following the effective date of this Act.

Section 18.

Upon receiving an application or renewal application for a cannabis establishment, the department shall immediately forward a copy of each application and half of the registration application fee to the local regulatory authority in this jurisdiction in which the cannabis establishment shall be located, unless the locality has not designated a local regulatory authority.

Section 19.

No more than ninety days following receipt of an application or renewal application, the department shall issue an annual registration to the applicant, unless the department determines the applicant is not in compliance with regulations enacted pursuant to this Act or the department is notified by the local regulatory authority that the applicant is not in compliance with ordinances or regulations enacted pursuant to this Act

Section 20.

If a locality has enacted a limit on the number of cannabis establishments within that locality and a greater number of applicants seeks a registration than the locality provides, the department shall solicit and consider input from the local regulatory authority as to the locality's preference or preferences for registration.

Section 21.

Upon denial of any application, the department shall provide the applicant with the specific reason for the denial.

Section 22.

Every cannabis establishment registration shall specify the location where the cannabis establishment will operate. A separate registration shall be required for each location at which a cannabis establishment operates.

Section 23.

The department may inspect any cannabis establishment and any record maintained or created by any cannabis establishment.

Section 24.

Any locality may prohibit the operation of cannabis cultivation facilities, cannabis product manufacturing facilities, cannabis testing facilities, or retail cannabis store through initiated or referred measure, on a general election ballot.

Section 25.

Any locality may enact ordinances or regulations not in conflict with this Act, or with regulations enacted pursuant to this Act, governing cannabis establishments. Any locality may establish civil penalties for violation of any ordinance or regulation governing a cannabis establishment in the locality.

Section 26.

Any locality may designate a local regulatory authority that is responsible for processing applications submitted for a registration to operate a cannabis establishment in the locality.

Section 27.

Any locality may establish procedures for the issuance, suspension, or revocation of a registration issued by the locality.

Section 28.

Any locality may establish a schedule of annual operating and registration fees for cannabis establishments.

Section 29.

No employer may permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of cannabis in the workplace.

Section 30.

No lessor of residential real property may prohibit the possession or the consumption of cannabis by non-smoked means unless:

1. The lessee does not hold a lease for the entirety of the single unit or multiple unit residential real property.
2. The residence is incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
3. The residence is a transitional housing facility; or
4. Failing to prohibit cannabis possession or consumption would Constitute a violation of federal law or regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations.

Section 31.

Any contract related to the operation of a cannabis establishment registered pursuant to this Act is enforceable. No contract entered into by a registered cannabis establishment or its employees or agents as permitted pursuant to a valid registration, or by those who allow property to be used by a registered establishment, its employees, or its agents, shall be unenforceable on the basis that cultivating, obtaining, manufacturing, distributing, dispensing, transporting, selling, possessing, or using cannabis or hemp is prohibited by federal law.

Section 32.

The cannabis Regulation Fund is hereby established within the state treasury consisting of any fee collected or penalty imposed under this Act. The department shall administer the fund. Monies in the fund are continuously appropriated.

Section 33.

There is hereby imposed an excise tax on the sale or transfer of cannabis from a cannabis cultivation facility to a retail cannabis store or cannabis product manufacturing facility at the rate of:

1. Two hundreds per pound on all cannabis flowers;
2. Fifty dollars per pound on all part of cannabis other than cannabis flowers and immature cannabis plants; and
3. Fifteen dollars per immature cannabis plant.

The rates of tax imposed by this section apply proportionately to quantities of less than one ounce. The department shall adjust the rates annually, through rules adopted pursuant to chapter 1-26, to account for inflation or deflation based on the Consumer Price Index.

Any cannabis cultivation facility shall pay no later than the fifteenth day of each month any excise taxes due on the cannabis that the cannabis cultivation facility transferred or sold in the prior calendar month.

Section 34.

Revenues generated in excess of the amount needed to implement and enforce this act by the cannabis excise tax shall be distributed every three months as follows:

1. Forty percent shall be distributed to the South Department of Education to retain and recruit educators. Five percent of the forty percent is to be set aside into an account to provide supplies and aid to all classrooms in South Dakota; including but not limited to classroom supplies, A/V equipment, computers, field trips and unpaid nutrition accounts.
2. Ten percent shall be distributed to the South Dakota Department of Health for use in evidence-based, voluntary programs for the prevention or treatment of alcohol, tobacco, heroin, methamphetamine, prescription drugs, and cannabis abuse;
3. Ten percent shall be distributed to the South Dakota Department of Health for a scientifically and medically accurate public education campaign educating youth and adults about the health and safety risks of alcohol, tobacco, heroin, methamphetamine, prescription drug and cannabis;
4. Twenty Percent shall be distributed to South Dakota Law Enforcement for officer training, detection dogs, equipment and educational programs to aid in youth diversion.
5. Twenty Percent to the General Fund.

Section 35.

Not later than one hundred eighty days following passage of this Act any prisoner in the state penitentiary, or in any county jail who was sentenced under any provision of law that is legal under this

Act, or any person who is awaiting sentence following conviction of any provision of law that is legal under this Act, will have that person's case reviewed or sentence commuted if:

1. The conviction or charge did not include any act that was violent; and
2. The conviction or charge was for cannabis.

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Dear Secretary Krebs,

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Jason Hancock, Director of LRC

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize marijuana for medical use

Explanation:

This 95-section 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 (not maximum) 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.

For an Act Entitled, to provide for regulation, access, and compassionate use of cannabis in South Dakota.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA.

Section 1. Terms used in this Act mean:

(1) "Allowable amount of cannabis,":

(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 HIV, endometriosis, reflex sympathetic dystrophy, epilepsy, AIDS, 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 characteristics 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 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 section 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 cardholder's registry identification card; or

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

(19) "Nonresident cardholder," a person who:

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

(b) Is not a resident of 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

(d) 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 plant is either cultivated in an enclosed, locked facility or is 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 a cannabis seed 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 may be 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 may be 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 may be subject to prosecution, search, inspection, (except by the department pursuant to sections 61-71 of this Act), seizure, or penalty in any manner, or 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 facility or dispensary, or cannabis products from a cannabis product manufacturing facility or dispensary; and

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

Section 9. No cultivation facility or cultivation facility agent may be subject to prosecution, search, or inspection, (except by the department pursuant to sections 61-71 of this Act), seizure, or penalty in any manner, or 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;

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

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

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

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

Section 10. No cannabis product manufacturing facility or cannabis product manufacturing facility agent may be subject to prosecution, search, or inspection, (except by the department pursuant to section 61 to 71 of this Act), seizure, or penalty in any manner or 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 a cultivation facility, and cannabis products or cannabis from a cannabis product manufacturing facility;

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

(3) Deliver, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, related supplies, or educational materials to a dispensary or a 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 may be 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, or 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) Acquire, possess, transport, and store cannabis or cannabis products obtained from a cardholder, nonresident cardholder, or 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 does 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 is considered lawful as long as it is 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 agent, 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; or

(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 a medical purpose 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 regulation.

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

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 forty 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 ninety 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; 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 person's 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 the patient designates into the verification system.

Section 32. 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 Section 1 of 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.

Section 36. 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 denial, 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.

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

(1) A registered qualifying patient shall notify the department of any change in 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 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 cardholder 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 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 section 51 of this Act, 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 a zoning restriction, a sworn statement certifying that the proposed medical cannabis establishment is in compliance with the restriction;

(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 establishment's 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 regulation 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 include 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 agent.

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 is 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 Act;

(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 cardholder's 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 application 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 Act, 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 application and supporting data submitted by a qualifying patient, designated caregiver, nonresident cardholder, or medical cannabis establishment, including data on designated caregiver or practitioner, 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 a medical condition.

Section 90. Any information kept or maintained by a medical cannabis establishment may only identify a cardholder by registry identification number 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 drive 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.

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CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
APR 21 2017
S.D. SEC. OF STATE

HAND DELIVERED

April 21, 2017

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

RE: **Attorney General's Statement for initiated measure (same-sex school facilities)**

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2018 general election ballot. 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 of the initiated measure pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: Jack Heyd
Jason Hancock, Director of LRC

Filed this 21st day of April 2017

Shantel Krebs

SECRETARY OF STATE

RECEIVED
APR 21 2017
S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure requiring people to use certain rooms designated for the same biological sex.

Explanation:

The initiated measure applies to the use of public elementary and secondary school locker rooms, shower rooms, restrooms, and changing facilities that are accessible by multiple people at the same time. These rooms must be designated for and used only by people of the same biological sex. "Biological sex" means a person's sex as objectively determined by anatomy and genetics existing at the time of birth.

The measure contains exceptions allowing people of the opposite sex to enter these rooms for custodial, maintenance, medical, and emergency purposes under certain circumstances.

The measure permits a public school district to adopt a policy to accommodate a person with a disability or a young child needing physical assistance when using these rooms. In addition, a public school district may provide alternative room accommodations for a person under special circumstances, if requested.

The measure also requires that, when participating in an off-campus school activity, any public school student needing to undress while in the presence of other people must do so in a room designated only for that student's biological sex.

Filed this 18th day of April 2017

Shantel Krebs

SECRETARY OF STATE

FOR AN ACT ENTITLED, An Act to ensure student privacy in public school locker rooms, showers, restrooms, and changing facilities by restricting certain access.

RECEIVED
APR 21 2017
S.D. SEC. OF STATE

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

Section 1. That chapter 13-24 be amended by adding a NEW SECTION to read:

The term, biological sex, as used in this Act, means a person's immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth. A person's original birth certificate may be relied upon as definitive evidence of the person's biological sex.

Section 2. That chapter 13-24 be amended by adding a NEW SECTION to read:

Each locker room, shower room, restroom and changing facility located in a public elementary or secondary school that is accessible by multiple persons at the same time shall be designated for and used only by persons of the same biological sex. In addition, any public school student participating in a school-sponsored activity off school premises that includes being in a state of undress in the presence of other persons shall use a room designated for and used only by persons of the same biological sex.

Section 3. That chapter 13-24 be amended by adding a NEW SECTION to read:

Nothing in this Act prohibits a public school from providing accommodations such as a family restroom, or single occupancy restroom or changing facility upon a person's request due to special circumstances. In no event may the accommodation be access to a locker room, shower room, restroom, or changing facility that is designated for use by members of the opposite sex while persons of the opposite sex are present or could be present.

Section 4. That chapter 13-24 be amended by adding a NEW SECTION to read:

The provisions of section 2 of this Act do not apply to any person who enters a locker room, shower room, restroom, or changing facility designated for members of the opposite biological sex if the person is entering as follows:

(1) For custodial or maintenance purposes when the locker room, shower room, restroom, or changing facility is not occupied by any member of the opposite biological sex;

(2) To render medical assistance; or

(3) To prevent a serious threat to good order or safety during a natural disaster or emergency.

Section 5. That chapter 13-24 be amended by adding a NEW SECTION to read:

Nothing in this Act may be construed to prohibit a public school from adopting any policy necessary to accommodate any person with a disability or young child in need of physical assistance when using a locker room, shower room, restroom, or changing facility located in a public school.

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ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
MAY 17 2017
S.D. SEC. OF STATE

HAND DELIVERED

May 17, 2017

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

RE: **Attorney General's Statement for initiated measure (legalizing all quantities of marijuana)**

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2018 general election ballot. 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 of the initiated measure pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: John Dale
Jason Hancock, Director of LRC

RECEIVED
MAY 17 2017
S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize all quantities of marijuana and to make other changes to State law involving marijuana.

Explanation:

This measure legalizes all quantities of marijuana possession and distribution under State law, as well as marijuana paraphernalia. People under 21 who possess or use marijuana are subject to restrictions. The measure removes certain references to marijuana from the statutes prohibiting driving and boating while intoxicated.

A parent's marijuana possession or use cannot be considered in child custody cases. With certain exceptions, marijuana possession, use, or distribution no longer disqualifies students from participating in extracurricular school activities. Nor does it prevent students from receiving State-funded college scholarships.

The measure prohibits law enforcement and State agencies from keeping certain records involving a person's marijuana use or possession, and from enforcing federal marijuana laws. It significantly limits State asset forfeitures involving marijuana. It also limits the ability of a "locality" to regulate marijuana-related activity.

The measure establishes April 20 as "Cannabis Day" and allows residents free admission to State parks on that day.

This 41-section measure makes several other changes and additions to State law. Because it contains internal inconsistencies and may conflict with existing laws, judicial or legislative clarification may be necessary. A court may find provisions of the measure unconstitutional. Marijuana remains illegal under federal law.

Be it enacted by the people of South Dakota:

An Act to provide certain provisions regarding the legalization of cannabis, to take effect immediately upon passage, the content of which was finalized on 4/5/2017.

Section 1. That the code be amended by adding a NEW SECTION to read:

As used in this Act, cannabis means all parts of the plant genus *Cannabis* spp containing one or more of the cannabinoids tetrahydrocannabinol (THC), cannabidiol (CBD), and cannabigerol (CBG), whether growing or not, whether living or not, whether in vegetative or flowering stages, cannabis accessories, cannabis growing implements, means of processing cannabis, means of transporting cannabis, means of reselling cannabis, and cannabis seeds.

Section 2. That the code be amended by adding a NEW SECTION to read:

No law enforcement agency in the state or any agent of the state may enforce any federal cannabis law.

Section 3. That the code be amended by adding a NEW SECTION to read:

A person's right to keep and bear arms may not be infringed for possessing cannabis in accordance with the provisions of this Act.

Section 4. That the code be amended by adding a NEW SECTION to read:

No charge may be brought under chapter 32-23 for consumed Cannabis metabolites. No law enforcement agency in the state or agent of the state may keep any record, whether written, electronic, digital, or otherwise based on a finding that cannabis plant matter or its metabolites are found on a person's body or breath or in the person's possession.

Section 5. That the code be amended by adding a NEW SECTION to read:

Any person under twenty-one years of age who is working in the agriculture industry with a letter from the person's employer describing the legal duties performed by the underage person may handle cannabis products having greater than three percent tetrahydrocannabinol.

Any person under age twenty-one who possesses a doctor's recommendation describing the person's medical condition that requires cannabis as medication may possess and ingest cannabis having greater than three percent tetrahydrocannabinol.

Any person under age twenty-one in possession of cannabis plant material containing greater than three percent tetrahydrocannabinol without an employer letter and without a doctor's recommendation pursuant to this section is subject to a penalty of ten hours of community service for each offense, not to exceed one hundred hours in any calendar year and shall surrender the plant material to law enforcement agents of the state. The cannabis plant material shall be tested by agents of the state in accordance with ISO/IEC 17025:2005 standards deemed applicable by the South Dakota Department of Agriculture, and catalogued without retaining or associating any personally identifying information about the person. Any cannabis plant material that is confiscated under this section shall be destroyed after testing. At least once per year the state shall issue a report disclosing test results and overall weight of confiscated cannabis.

Any person who sells or distributes Cannabis to any other person under age twenty-one who does not have a doctor's recommendation shall be subject to 100 hours of community service for each offense, not to exceed 200 hours in any calendar year, after which the offender shall pay a one thousand dollar fine per offense.

Any person under age twenty-one who is found to be in possession of cannabis containing more than three percent tetrahydrocannabinol shall display a doctor's recommendation or an employee permission letter that verifies the person's cannabis possession privileges. If a person cannot display the documentation required under this section to an official at the time of cannabis possession, the person may display the documentation to a court of competent jurisdiction within thirty days of the offense to avoid prosecution in accordance with the provisions of this Act.

Section 6. That the code be amended by adding a NEW SECTION to read:

The South Dakota Department of Agriculture shall promulgate rules pursuant to chapter 1-26 regarding the manufacture, sale, and transport of cannabis in the state in accordance with the provisions of this Act.

Section 7. That the code be amended by adding a NEW SECTION to read:

Any revenue generated from licensure fees under this Act that is in excess of the amount required to implement any provision of this Act shall be granted to South Dakota small farmers. The grants shall be used to support early-stage, high-risk local agriculture new venture, research and development. The grants shall only be awarded to proof of concept projects that are already completed, taking into account the ratio of investment-level-to-value of the expressed entrepreneurial idea as a key criterion for the award.

Section 8. That the code be amended by adding a NEW SECTION to read:

No court may determine parental suitability based on the parent's use or possession of cannabis when deciding a child custody case.

Section 9. That the code be amended by adding a NEW SECTION to read:

No locality may pass any law, ordinance, or regulation that restricts or controls the location of operation of a cannabis-related business. No locality may tax, regulate, control, or pass any law or regulation governing the use or consumption of cannabis. No locality may enact any zoning requirement that is discriminatory to a cannabis-related business. A locality may require a standard business license to conduct cannabis sales within the locality's jurisdiction. No locality may ban home cultivation or any other cultivation of cannabis.

Section 10. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act may be interpreted to grant the right of an employee to use cannabis while at a workplace, nor to remove the right of employers to enact workplace policies that restrict or prohibit the use of cannabis in the workplace. Nothing in this Act may be interpreted to prohibit a landowner from restricting or prohibiting the use of cannabis on the landowner's private property.

Section 11. That the code be amended by adding a NEW SECTION to read:

The state shall recognize April 20 of each year as "Cannabis Day." State parks shall allow any resident of the state admission free of charge on April 20 of each year.

Section 12. That §13-32-9 be amended to read:

Any person adjudicated, convicted, the subject of an informal adjustment or court-approved diversion program, or the subject of a suspended imposition of sentence or suspended adjudication of delinquency for possession, use, or distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one calendar year from the date of adjudication, conviction, diversion, or suspended imposition of sentence. The one-year suspension may be reduced to thirty calendar days if the person participates in an assessment with a certified or licensed addiction counselor. If the assessment indicates the need for a higher level of care, the student is required to complete the prescribed program before becoming eligible to participate in extracurricular activities. Upon a second adjudication, conviction, diversion, or suspended imposition of a sentence for possession, use, or distribution of controlled ~~drugs,~~ drugs or substances, ~~or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substance as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one year from the date of adjudication, conviction, diversion, or suspended imposition of sentence. The one year suspension may be reduced to sixty calendar days if the person completes an accredited intensive prevention or treatment program. Upon a third or subsequent adjudication, conviction, diversion, or suspended imposition of sentence for possession, use, or distribution of controlled drugs or substances ~~or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education. Upon such a determination in any juvenile court proceeding the Unified Judicial System shall give notice of that determination to the South Dakota High School Activities Association and the chief administrator of the school in which the person is participating in any extracurricular activity. The Unified Judicial System shall give notice to the chief administrators of secondary schools accredited by the Department of Education for any such determination in a court proceeding for any person eighteen to twenty-one years of age without regard to current status in school or involvement in extracurricular activities. The notice shall include name, date of birth, city of residence, and offense. The chief administrator shall give notice to the South Dakota High School Activities Association if any such person is participating in extracurricular activities.

Upon placement of the person in an informal adjustment or court-approved diversion program, the state's attorney who placed the person in that program shall give notice of that placement to the South Dakota High School Activities Association and chief administrator of the school in which the person is participating in any extracurricular activity.

As used in this section, the term, extracurricular activity, means any activity sanctioned by the South Dakota High School Activities Association. Students are ineligible to participate in activity events, competitions, and performances, but a local school district may allow a student to participate in practices.

Section 13. That §13-32-9.2 be amended to read:

If a suspension is reduced pursuant to § 13-32-9, a suspension for a first offense shall make the student ineligible for a minimum of two South Dakota High School Activities Association sanctioned events. If two sanctioned events for which the student is ineligible do not take place within the reduced suspension period, the student's suspension remains in effect until two sanctioned events for which the student is ineligible have taken place. If a suspension is reduced pursuant to § 13-32-9, a suspension for a second offense shall make

the student ineligible for a minimum of six South Dakota High School Activities Association sanctioned events. If six sanctioned events for which the student is ineligible do not take place within the reduced suspension period, the student's suspension remains in effect until six sanctioned events for which the student is ineligible have taken place. To count toward the minimum number of events, the student must participate in the entire activity season and may not drop out or quit the activity to avoid suspension and the failure of a student to complete the entire activity season shall result in the student being ineligible for one year from the date of adjudication, conviction, the subject of an internal adjustment or court approved diversion program, or the subject of a suspended imposition of sentence or suspended adjudication of delinquency. A suspension that is not completed by the student during one activity season shall carry over to the next activity season in which the student participates. In addition, a suspension that is reduced pursuant to § 13-32-9 is only in effect during the South Dakota High School Activities Association's activity year, which begins on the first day of its first sanctioned event and concludes on the last day of its last sanctioned event. A reduced suspension that is not completed by the end of one activity year shall carry over to the next activity year.

A suspension begins on:

(1) The day following the notification to a school administrator by the Unified Judicial System that a student has been adjudicated, convicted, the subject of an informal adjustment or court approved diversion program, or the subject of a suspended imposition of a sentence or a suspended adjudication of delinquency for possession, use, or distribution of controlled ~~drugs,~~ drugs or substances, ~~or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substance prohibited by § 22-42-15 and the school administrator gives notice to the South Dakota High School Activities Association and the students; or

(2) The day following the student's admission to a school administrator that the student committed an offense enumerated in subdivision (1), which shall be made with the student's parent or guardian present if the student is an unemancipated minor, and the school administrator gives notice to the South Dakota High School Activities Association.

Section 14. That §13-53-42 be amended to read:

Any person who has been determined by a court of competent jurisdiction to have possessed, used, or distributed controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law while enrolled at a South Dakota state supported institution of higher education is ineligible to participate in any form of intercollegiate extracurricular competition at any South Dakota state supported institution of higher education. Upon receiving a request from the chief administrator of the postsecondary educational institution, the Unified Judicial System shall send notice of whether the person who is the subject of the request was adjudicated in a juvenile proceeding of possessing, using, or distributing controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law if that person were an adult.

Section 15. That § 13-55-29 be amended to read:

Any person adjudicated, convicted, or the subject of a suspended imposition of sentence for possession, use, or distribution of controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law is ineligible for any scholarship for attendance at a postsecondary institution to the extent such scholarship is funded by the State of South Dakota. Upon receiving a

request from the chief administrator of the postsecondary educational institution, the Unified Judicial System shall send notice of whether the person who is the subject of the request was adjudicated in a juvenile proceeding of possessing, using, or distributing controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law if that person were an adult.

Section 16. That § 22-42-1 be amended to read:

(1) "Controlled drug or substance," a drug or substance, or an immediate precursor of a drug or substance, listed in Schedules I through IV. The term includes an altered state of a drug or substance listed in Schedules I through IV absorbed into the human body;

(2) "Counterfeit substance," a controlled drug or substance which, or the container of labeling of which, without authorization, bears the trade-mark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(3) "Deliver" or "delivery," the actual or constructive transfer of a controlled ~~drug,~~ drug or substance, ~~or marijuana~~ whether or not there exists an agency relationship;

(4) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;

(5) "Distribute," to deliver a controlled ~~drug,~~ drug or substance, ~~or marijuana~~. Distribution means the delivery of a controlled ~~drug,~~ substance~~, or marijuana~~;

(6) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate user;

(7) ~~"Marijuana," all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant;~~

~~(8)~~ "Practitioner," a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or veterinary medicine licensed to practice his or her profession, or pharmacists licensed to practice their profession; physician's assistants certified to practice their profession; government employees acting within the scope of their employment; and persons permitted by certificates issued by the Department of Health to distribute, dispense, conduct research with respect to, or administer a substance controlled by chapter 34-20B;

~~(9)~~(8) "Precursor" or "immediate precursor," a substance which the Department of Health has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled drug or substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

~~(10)~~(9) "Schedule I," "Schedule II," "Schedule III," and "Schedule IV," those schedules of drugs, substances, and immediate precursors listed in chapter 34-20B;

~~(11)~~ (10) "Ultimate user," a person who lawfully possesses a controlled drug or substance for that person's own use or for the use of a member of that person's household or for administration to an animal owned by that person or by a member of that person's household.

Section 17. That § 22-42A-3 be amended to read:

No person, knowing the drug related nature of the object, may use or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body any controlled substance ~~or marijuana~~ in violation of this chapter. Any person who violates any provision of this section is guilty of a Class 2 misdemeanor.

Section 18. That § 22-42A-4 be amended to read:

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

Section 19. That § 22-42-6 be repealed:

~~No person may knowingly possess marijuana. It is a Class 1 misdemeanor to possess two ounces of marijuana or less. It is a Class 6 felony to possess more than two ounces of marijuana but less than one-half pound of marijuana. It is a Class 5 felony to possess one-half pound but less than one pound of marijuana. It is a Class 4 felony to possess one to ten pounds of marijuana. It is a Class 3 felony to possess more than ten pounds of marijuana. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars.~~

Section 20. That § 22-42-7 be repealed:

~~The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana is a Class 5 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana is a Class 3 felony. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana to a minor without consideration is a Class 6 felony; otherwise, the~~

~~distribution, or possession with intent to distribute, of one ounce or less of marijuana to a minor is a Class 5 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana to a minor is a Class 2 felony. A first conviction of a felony under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty, not to exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section.~~

Section 21. That § 22-42A-1 be amended to read:

The term, drug paraphernalia, means any equipment, products, and materials of any kind which are primarily used, intended for use, or designed for use by the person in possession of them, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled substance ~~or marijuana~~ in violation of the provisions of this chapter. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or marijuana or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) ~~Isomerization devices used, intended for use, or designed for use in increasing the potency of marijuana or any species of plant which is a controlled substance;~~

~~(4)~~ Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

~~(5)~~(4) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

~~(6) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;~~

~~(7)~~ (5) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or marijuana;

~~(8)~~(6) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or marijuana;

~~(9)~~(7) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human

body; and

~~(10) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:~~

~~(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;~~

~~(b) Water pipes;~~

~~(c) Carburetion tubes and devices;~~

~~(d) Smoking and carburetion masks;~~

~~(e) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;~~

~~(f) Miniature cocaine spoons and cocaine vials;~~

~~(g) Chamber pipes;~~

~~(h) Carburetor pipes;~~

~~(i) Electric pipes;~~

~~(j) Air-driven pipes;~~

~~(k) Chillums;~~

~~(l) Bongs; and~~

~~(m) Ice pipes or chillers.~~

Section 22. That § 22-42A-2 be amended to read:

In determining whether an object is drug paraphernalia as defined in Â§ 22-42A-1, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) The proximity of the object, in time and space, to a direct violation of this article;

(3) The proximity of the object to controlled substances ~~or marijuana~~;

(4) The existence of any residue of controlled substances ~~or marijuana~~ on the object;

(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom the person knows, or should reasonably know, intends to use the object to facilitate a violation of this article;

(6) Instructions, oral or written, provided with the object concerning its use;

(7) Descriptive materials accompanying the object which explain or depict its use;

(8) National and local advertising concerning its use;

(9) The manner in which the object is displayed for sale;

(10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community;

(11) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(12) The existence and scope of legitimate uses for the object in the community; and

(13) Expert testimony concerning its use.

Section 23. That § 23A-35A-2 be amended to read:

Orders authorizing or approving the interception of wire or oral communications may be granted, subject to the provisions of this chapter when the interception may provide or has provided evidence of the commission of, or of any conspiracy to commit, the following offenses as otherwise defined by the laws of this state: murder; kidnapping; gambling; robbery; bribery; theft; unlawful use of a computer; unauthorized manufacturing, distribution or counterfeiting of controlled substances ~~or marijuana~~; and, rape.

Section 24. That § 24-2-14 be amended to read:

No alcoholic beverage~~, marijuana,~~ or weapon, as defined in subdivision 22-1-2(10), may be possessed by any inmate of the state penitentiary. No prescription or nonprescription drugs, controlled substance as defined by chapter 34-20B, or any article of indulgence may be possessed by any inmate of the state penitentiary except by order of a physician, physician assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively, which order shall be in writing and for a definite period. Any violation of this section constitutes a felony pursuant to the following schedule:

(1) Possession of any alcoholic beverage ~~or marijuana~~ is a Class 6 felony;

(2) Possession of any prescription or nonprescription drug or controlled substance is a Class 4 felony;

(3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

Section 25. That § 24-11-47 be amended to read:

No alcoholic beverages, controlled substances as defined by chapter 34-20B, ~~marijuana,~~ or weapons as defined in subdivision 22-1-2(10), may be possessed by any inmate of a jail. No prescription drugs may be possessed by any inmate of a jail except by order of a physician, physician assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively and such an order shall be in writing and for a definite period. For purposes of this section, prescription drugs include nonprescription medication items that have not been authorized by the sheriff and which are not available to inmates except

through authorized jail personnel or the inmate commissary system. A violation of this section constitutes a felony pursuant to the following schedule:

(1) Possession of alcoholic beverages ~~or marijuana~~ is a Class 6 felony;

(2) Possession of prescription or nonprescription drugs or controlled substances is a Class 4 felony;

(3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

Section 26. That § 26-8A-34 be amended to read:

If the court finds the apparent, alleged, or adjudicated abuse or neglect of a child was related to the use of alcohol ~~, marijuana,~~ or any controlled drug or substance, the placement or return of the child may be subject to the condition, if the court so orders, that a parent, guardian, custodian, or any other adult residing in the home submit to tests for alcohol~~, marijuana,~~ or any controlled drug or substance prior to or during the placement or return of the child. If a parent, guardian, custodian, or any other adult, who resides in the home and has been ordered by the court to submit to testing for alcohol~~, marijuana,~~ or any controlled drug or substance, tests positive for alcohol~~, marijuana,~~ or any controlled drug or substance, or fails to submit to the test as required, the Department of Social Services may immediately remove the child from the physical custody of the parent, guardian, or custodian, without prior court order, subject to a review hearing, which may be telephonic, within forty-eight hours excluding Saturdays, Sundays, and court holidays. As used in this section, any controlled drug or substance means a controlled drug or substance which was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B.

Section 27. That § 26-8A-22 be amended to read:

On completion of the dispositional phase of the proceeding, the court shall enter a final decree of disposition. If the final decree of disposition does not terminate parental rights, the decree shall include one or more of the following provisions which the court finds appropriate as the least restrictive alternative available:

(1) The court may place the child in the custody of one or both of the child's parents, a guardian, a relative of the child or another suitable person, or a party or agency, with or without protective supervision, or the Department of Social Services, subject to the conditions and the length of time that the court deems necessary or appropriate. If the court returns custody to the child's parent, guardian, or custodian, such return of custody may be with supervision during which the court may require the parent, guardian, custodian, and any other adult residing in the home, to cooperate with home visits by the department and may require the parent, guardian, custodian, and any other adult residing in the home, to submit, at the request of the department, to tests for alcohol~~, marijuana,~~ or any controlled drug or substance. If the adjudication of abuse or neglect was related to the use of alcohol~~, marijuana,~~ or any controlled drug or substance, the parent, guardian, or custodian, and any other adult residing in the home, may be required, in those areas where such testing is available, to submit to regular tests for alcohol~~, marijuana,~~ or any controlled drug or substance. If a positive test for alcohol~~, marijuana,~~ or any controlled drug or substance is obtained, or the person fails to submit to the test as required, the department may immediately remove the child from the physical custody of the parent, guardian, custodian, or any other adult residing in the home whose test was positive or who failed to submit to the test, without prior court order subject to a review hearing, which may be telephonic, within forty-eight hours excluding Saturdays, Sundays, and court

holidays. As used in this section, any controlled drug or substance means a controlled drug or substance which was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B;

(2) The court after determining that a compelling reason exists to place the child who is sixteen years of age or older in another planned permanent living arrangement rather than with a relative or with a legal guardian other than the department may place the child in the custody of the department or a child placement agency, with or without guardianship of the child, until the child attains the age of majority or until an earlier date or event as determined by the court;

(3) The court may order that the child be examined or treated by a physician or by a qualified mental health professional or that the child receive other special care and may place the child in a suitable facility for such purposes under conditions that the court deems necessary or appropriate. On completion of the examination, treatment, or hospitalization and on a full report to the court, the court shall conduct a supplemental dispositional hearing or hearings and shall make disposition of the child as otherwise provided in this section or, if the evidence shows need, the court may consider termination of parental rights as an appropriate possible alternative in keeping with the best interests and welfare of the child.

If disposition of the child under this section involves the removal from or nonreturn of the child to the home of the child's parents, guardian, or custodian and placement of the child in the custody of the department for placement in foster care, the court shall include in the decree a written judicial determination that continuation of the child's placement in the home of the child's parents, guardian, or custodian would be contrary to the welfare of the child and that reasonable efforts were made by the department to prevent or eliminate the need for removal of the child from the home. In no case may a child remain in foster care for a period in excess of twelve months from the time the child entered foster care without the court holding a permanency hearing and making a dispositional decree. The court shall review the child's permanency status and make a dispositional decree every twelve months thereafter as long as the child continues in the custody of the department. The court shall determine whether the state has made reasonable efforts to finalize the permanency plan that is in effect. That determination shall be included in the dispositional decree.

Section 28. That § 26-8A-2 be amended to read:

In this chapter and chapter 26-7A, the term, abused or neglected child, means a child:

(1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;

(2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;

(3) Whose environment is injurious to the child's welfare;

(4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;

(5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;

(6) Who is threatened with substantial harm;

(7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;

(8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;

(9) Who was subject to prenatal exposure to abusive use of alcohol~~, marijuana,~~ or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or

(10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

Section 29. That § 26-8A-26 be amended to read:

If an adjudicated, abused, or neglected child whose parental rights have not been terminated has been in the custody of the Department of Social Services and it appears at a dispositional or review hearing that all reasonable efforts have been made to rehabilitate the family, that the conditions which led to the removal of the child still exist, and there is little likelihood that those conditions will be remedied so the child can be returned to the custody of the child's parents, the court shall affirmatively find that good cause exists for termination of the parental rights of the child's parents and the court shall enter an order terminating parental rights. If the court does not find at the hearing, which shall be conducted in the same manner as a dispositional hearing, that good cause exists for termination of parental rights, the court may make further disposition of the child as follows:

(1) Return custody of the child to the child's parents, guardian, or custodian, with or without supervision during which the court may require the parent, guardian, custodian, and any other adult residing in the home, to cooperate with home visits by the department and may require the parent, guardian, custodian, and any other adult residing in the home, to submit, at the request of the department, to tests for alcohol~~, marijuana,~~ or any controlled drug or substance. If the adjudication of abuse or neglect was related to the use of alcohol~~, marijuana,~~ or any controlled drug or substance, the parent, guardian, or custodian, and any other adult residing in the home, may be required, in those areas where such testing is available, to submit to regular tests for alcohol~~, marijuana,~~ or any controlled drug or substance. If a positive test for alcohol~~, marijuana,~~ or any controlled drug or substance is obtained, or if the person fails to submit to the test as required, the department may immediately remove the child from the physical custody of the parent, guardian, custodian, or any other adult residing in the home whose test was positive or who failed to submit to the test, without prior court order subject to a review hearing, which may be telephonic, within forty-eight hours excluding Saturdays, Sundays, and court holidays. As used ~~herein~~ in this section, any controlled drug or substance means a controlled drug or substance which was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B;

(2) Continue foster care placement of the child for a specified period of time, and, if the child is sixteen years of age or older, direct the department to determine

the services needed to assist the child to make the transition from foster care to independent living and, if appropriate, provide a plan for independent living for the child;

(3) Place the child who is sixteen years of age or older in the custody of the department or a child placement agency, with or without guardianship of the child, in another planned permanent living arrangement following a determination that a compelling reason exists that the placement is more appropriate than adoption or with a relative or with a legal guardian other than the department and under a court-approved plan that determines visitation rights of the child's parents, guardian, or custodian. Under this subdivision, the court may retain jurisdiction of the action and proceedings for future consideration of termination of parental rights if termination of parental rights is the least restrictive alternative available in keeping with the best interests of the child.

In no case may a child remain in foster care for a period in excess of twelve months from the time the child entered foster care without the court holding a permanency hearing and making a dispositional decree setting forth one of the above options. The court shall review the child's permanency status and make a dispositional decree every twelve months thereafter as long as the child continues in the custody of the department. The court shall determine whether the state has made reasonable efforts to finalize the permanency plan that is in effect. That determination shall be included in the dispositional decree.

Section 30. That § 32-23-1 be amended to read:

No person may drive or be in actual physical control of any vehicle while:

(1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;

(2) Under the influence of an alcoholic beverage~~, marijuana,~~ or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage~~, marijuana,~~ or such controlled drug or substance;

(3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving;

(4) Under the combined influence of an alcoholic beverage and or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving; or

(5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by Â§ 22-42-15.

Section 31. That § 32-23-10 be amended to read:

Any person who operates any vehicle in this state is considered to have given consent to the ~~withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substance~~ external capture of urine and any chemical analysis of the person's breath, hair, fecal matter, or urine to determine the amount of alcohol in the person's blood and to determine the presence of ~~marijuana or~~ any controlled drug or substance or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may render a person incapable of safely driving. The arresting law enforcement officer may, subsequent to the arrest of any operator for a

violation of § 32-23-1, require the operator to submit to the ~~withdrawal of blood or other bodily substances~~ collection of breath, hair, fecal matter, or urine as evidence.

Section 32. That § 32-23-21 be amended to read:

It is a Class 2 misdemeanor for any person under the age of twenty-one years to drive, operate, or be in actual physical control of any vehicle:

(1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's breath, blood, or other bodily substance; or

(2) After having consumed ~~marijuana or~~ any controlled drug or substance for as long as physical evidence of the consumption remains present in the person's body.

If a person is found guilty of or adjudicated for a violation of this section, the Unified Judicial System shall notify the Department of Public Safety. Upon conviction or adjudication, the court shall suspend that person's driver's license or operating privilege for a period of thirty days for a first offense, one hundred eighty days for a second offense, or one year for any third or subsequent offense. However, the court may, upon proof of financial responsibility pursuant to Â§ 32-35.43.1, issue an order permitting the person to operate a vehicle for purposes of the person's employment, attendance at school, or attendance at counseling programs.

Section 33. That § 32-33-4 be amended to read:

Sections 32-33-2 and 32-33-3 do not apply to any person arrested and charged with an offense causing or contributing to an accident resulting in injury or death to any person, nor to any person charged with reckless driving, nor to any person charged with driving while under the influence of an alcoholic beverage or any controlled drug or substance ~~or marijuana,~~ nor to any person charged with a violation of subdivision 32-12-65(1) or Â§ 32-33-13, nor to any person who the arresting officer has good cause to believe has committed any felony. A law enforcement officer shall take such person without unnecessary delay before the nearest or most accessible magistrate.

Section 34. That § 33-10-282 be amended to read:

The substances referred to in § 33-10-281 are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid~~, and marijuana~~ and any compound or derivative of any such substance;

(2) Any substance not specified in subdivision (1) of this section that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the armed forces of the United States 10 U.S.C. § 801 et seq. as of January 1, 2012; and

(3) Any other substance not specified in subdivision (1) of this section or contained on a list prescribed by the President pursuant to subdivision (2) of this section that is listed in schedules I through V of article 202 of the Controlled Substances Act 21 U.S.C. § 812 as of January 1, 2012.

Section 35. That § 34-20B-1 be amended to read:

Terms as used in this chapter mean:

(1) "Administer," to deliver a controlled drug or substance to the ultimate user or human research subject by injection, inhalation, or ingestion, or by any other means;

(2) "Agent," an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser and includes a common or contract carrier, public warehouseman, or employee thereof;

(3) "Control," to add, remove, or change the placement of a drug, substance, or immediate precursor under §§ 34-20B-27 and 34-20B-28;

(4) "Counterfeit substance," a controlled drug or substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed ~~such~~ the substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(5) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a controlled ~~drug,~~ drug or substance~~, or marijuana~~ whether or not there exists an agency relationship;

(6) "Department," the Department of Health created by chapter 1-43;

(7) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;

(8) "Distribute," to deliver a controlled ~~drug,~~ drug or substance, or marijuana. A distributor is a person who delivers a controlled ~~drug,~~ drug or substance~~, or marijuana~~;

~~(9) "Hashish," the resin extracted from any part of any plant of the genus cannabis, commonly known as the marijuana plant;~~

~~(10)~~ "Imprisonment," imprisonment in the state penitentiary unless the penalty specifically provides for imprisonment in the county jail;

~~(11)~~(10) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

~~(12) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds; but does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant, or the resin when extracted from any part of such plant;~~

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

(a) Opium, coca leaves, and opiates;

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

(c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b) of this subdivision; except that the term, narcotic drug, as used in this chapter does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

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

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

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

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

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

~~(18A)~~(17) "Prescribe," an order of a practitioner for a controlled drug or substance.

~~(19)~~(18) "Production," the manufacture, planting, cultivation, growing, or harvesting of a controlled drug or substance;

~~(20)~~(19) "State," the State of South Dakota;

~~(21)~~(20) "Ultimate user," a person who lawfully possesses a controlled drug or substance for personal use or for the use of a member of the person's household or for administration to an animal owned by the person or by a member of the person's household;

~~(22)~~(21) "Controlled substance analogue," any of the following:

(a) A substance that differs in its chemical structure to a controlled substance listed in or added to the schedule designated in schedule I or II only

by substituting one or more hydrogens with halogens or by substituting one halogen with a different halogen; or

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

(c) A substance intended for human consumption; and

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

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

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

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

Section 36. That § 34-20B-70 be amended to read:

The following are subject to forfeiture pursuant to chapter 23A-49 and no property right exists in them:

(1) All controlled drugs and substances ~~and marijuana~~ which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;

(2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance ~~or marijuana~~ in violation of the provisions of this chapter or chapter 22-42;

(3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);

(4) ~~All conveyances including aircraft, vehicles, or vessels, which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana in excess of one-half pound or any quantity of any other property described in subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive. This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess, or conceal or facilitate the transportation, possession, or concealment of marijuana or a controlled substance in aid of any other offense;~~

~~(5)~~ All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;

~~(6)~~(5) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance or marijuana;

~~(7)~~(6) Any assets, interest, profits, income, and proceeds acquired or derived from the unlawful purchase, attempted purchase, distribution, or attempted distribution of any controlled drug or substance~~ or marijuana~~.

Property described in subdivision (1) shall be deemed contraband and shall be summarily forfeited to the state, property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of § 23A-49-14, and property described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15.

Section 37. That § 34-20C-1 be amended to read:

Terms used in this chapter mean:

(1) "Controlled drug or substance," a drug or substance, or an immediate precursor of a drug or substance, listed in Schedules I to IV, inclusive;

(2) "Illegal drug," a controlled drug or substance ~~or marijuana~~ whose distribution is a violation of state law;

(3) "Illegal drug market," the support system of illegal drug related operations, from manufacture to retail sales, through which an illegal drug reaches the user;

(4) "Illegal drug market target community," the area described under Â§ 34-20C-11;

(5) "Level 1 participation," possession of sixteen ounces or more or distribution of four ounces or more of a controlled drug or substance~~ or possession of ten pounds or more or distribution of one pound or more of marijuana~~;

(6) "Level 2 participation," possession of eight ounces or more, but less than sixteen ounces, or distribution of two ounces or more, but less than four ounces, of a controlled drug or substance~~ or possession of one to ten pounds, or distribution of one-half pound but less than one pound, of marijuana~~;

(7) "Level 3 participation," possession of four ounces or more, but less than eight ounces, or distribution of one ounce or more, but less than two ounces, of a controlled drug or substance~~, or possession of one-half pound but less than one pound, or distribution of more than one ounce but less than one-half pound of marijuana~~;

(8) "Level 4 participation," possession of one-fourth ounce or more, but less than four ounces, or distribution of less than one ounce of a controlled drug or substance~~, or possession of less than one-half pound, or distribution of one ounce or less of marijuana~~;

(9) "Participate in the illegal drug market," to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. The term does not include the purchase or receipt of an illegal drug for personal use only;

(10) "Period of illegal drug use," in relation to the individual drug user, the time of the user's first use of an illegal drug to the accrual of the cause of action. The period of illegal drug use is presumed to commence two years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence;

(11) "Place of illegal drug activity," in relation to the individual drug user, each county in which the user possesses or uses an illegal drug or in which the user resides, attends school, or is employed during the period of the user's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence;

(12) "Place of participation," in relation to a defendant in an action brought under this chapter, each county in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market;

(13) "User," the person whose illegal drug use is the basis of an action brought under this chapter.

Section 38. That § 34-20B-81 be amended to read:

All property described in subdivision 34-20B-70(1) shall be deemed contraband and shall be summarily forfeited to the state. Controlled substances ~~or marijuana~~ that are seized or come into possession of the state, the owners of which are unknown, shall be deemed contraband and shall be summarily forfeited to the state.

Section 39. That § 39-15-8 be amended to read:

For the purposes of this chapter a drug shall be deemed to be misbranded if the contents of the package as originally packed shall have been removed in whole or in part and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, ~~cannabis indica,~~ chloral hydrate, or acetanilide or any derivative or preparation of any such substance contained therein. Nothing in this section shall be construed to apply to the dispensing of prescriptions written by regularly licensed practicing physicians, veterinary surgeons, or dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopoeia and the National Formulary, and which are sold under the name by which they are so recognized.

Section 40. That § 42-8-45 be amended to read:

No person may operate a boat as defined in subdivisions 42-8-2(2B), (3), (5A), or (6) while underway on the public waters of the state while:

(1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;

(2) Under the influence of an alcoholic beverage~~, marijuana,~~ or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance;

(3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving or operating such boat;

(4) Under the combined influence of an alcoholic beverage and any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving or operating such boat; or

(5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

Any violation of this section is a Class 1 misdemeanor.

Section 41. That § 42-8-45.6 be amended to read:

Any person who operates a boat while underway on the public waters of the state in this state is considered to have given consent to the withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substance to determine the amount of alcohol in the person's blood ~~and to determine the presence of marijuana~~ or any controlled drug or substance or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may render a person incapable of safely operating a boat. The arresting law enforcement officer may, subsequent to the arrest of any operator for a violation of § 42-8-45, require the operator to submit to the withdrawal of blood or other bodily substances as evidence.

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
JUN 05 2017
S.D. SEC. OF STATE

HAND DELIVERED

June 5, 2017

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

RE: **Attorney General's Statement for initiated constitutional amendment (regarding initiated and referred measures)**

Dear Secretary Krebs,

This Office received a proposed initiated constitutional amendment that the sponsor will seek to place on the November 2018 general election ballot. 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 of the constitutional amendment pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: Roxanne Weber
Jason Hancock, Director of LRC

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CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution regarding initiated and referred measures.

Explanation:

Currently, most laws enacted by the Legislature or a municipality may be referred to a vote of the people. Laws that cannot be referred are those necessary for public peace, health or safety, or for the support of government and its existing public institutions, including laws containing an emergency clause (with an immediate effective date). The amendment removes this restriction and permits referral of all laws except general appropriation bills.

Under the amendment, if an initiated or referred measure is approved by voters and becomes law, it cannot be repealed or amended by the Legislature for 7 years, except by a two-thirds vote of each legislative chamber. This restriction likewise applies to municipal governing bodies.

If the Legislature enacts certain laws changing the initiative, referendum, or constitutional amendment process, those laws must be referred.

The current Constitution establishes a minimum number of petition signatures required to propose a constitutional amendment: at least 10% of the total votes cast in the last governor's election. Under this amendment, that number becomes a maximum ("cap") instead.

Some of the amendment's provisions lack clarity and may conflict with existing state and federal election laws. Judicial or legislative clarification may be necessary.

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~~ the general appropriation bill. A law enacted by the Legislature that is necessary for the immediate preservation of the public peace, health or safety, or support of the state government and its existing public institutions may be referred within ninety days of the law going into effect. A law enacted with an emergency clause but referred to a public vote shall remain in effect until the law is voted upon by the people. If a law enacted with an emergency clause is rejected by a majority vote in a general or special election, 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.

If a majority of votes cast upon an initiated or referred measure are affirmative, the measure shall be enacted. An initiated or referred measure which is approved is effective thirty days after the election. If conflicting measures are approved, the measure receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the Legislature for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

This section ~~shall~~ may not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. The veto power of the Executive ~~shall~~ may not be exercised as to measures referred to a vote of the people. This section ~~shall apply~~ also applies 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: That Article III of the Constitution of the State of South Dakota be amended by adding a new section to read as follows:

§33. The Legislature shall refer to a vote of the electors of the state any law effectively changing the number of electors required to submit an initiated measure, referred law, or constitutional amendment to a public vote; the time available for electors to circulate an initiative, referendum, or constitutional amendment petition; or the number of electors who must vote to pass an initiated measure, referred law, or constitutional amendment. No law changing the criteria enumerated in this section may take effect until after that law has received a majority vote in a general or special election.

Section 3: That Article XXIII, Section 1 of the Constitution of the State of South Dakota be amended to read as follows:

§1. Amendments to this Constitution may be proposed by initiative or by a majority vote of all members of each house of the Legislature. An amendment proposed by initiative shall require a petition signed by qualified voters. ~~equal in number to at least~~ A number of qualified electors of the state not greater than ten percent of the total votes cast for Governor in the last gubernatorial election shall be required to sign the petition to submit an amendment to a vote of the electors of the state. The petition containing the text of the proposed amendment and the names and addresses of its sponsors shall be filed at least one year before the next general election at which the proposed amendment is submitted to the voters. A proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment.

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ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

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JUN 19 2017
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HAND DELIVERED

June 19, 2017

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

RE: **Attorney General's Statements for four initiated constitutional amendments (regarding campaign finance and lobbying laws, government accountability board, etc.)**

Dear Secretary Krebs,

This Office received four separate versions of proposed constitutional amendments that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of each version 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 each version of the amendment. The titles of the amendments are:

1. An initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, creating a government accountability board, and changing certain initiative and referendum provisions. **(VERSION #1)**
2. An initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, creating a government accountability board, and changing certain initiative and referendum provisions. **(VERSION #2)**
3. An initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, and creating a government accountability board. **(VERSION #3)**
4. An initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, and creating a government accountability board. **(VERSION #4)**

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

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

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VERSION 1

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, creating a government accountability board, and changing certain initiative and referendum provisions.

Explanation:

This constitutional amendment lowers campaign contribution amounts to candidates and political parties. It prohibits contributions to candidates or political parties by labor unions and corporations. Candidates and elected officials are prohibited from using campaign contributions for personal use.

The amendment expands the scope of activities requiring people to register as lobbyists, and places additional restrictions on lobbyists.

The amendment replaces the government accountability board recently created by the Legislature. The new board is granted broad power, including the power to investigate, adopt rules, issue advisory opinions, and conduct audits. It may impose sanctions, including fines, on any elected or appointed official, judge, or State or local government employee. The amendment annually appropriates State funds to be solely administered by the board.

The amendment limits the number of votes necessary for approval of any initiative or referendum to a simple majority. It requires the Legislature to make specific factual findings when enacting laws that are not subject to referral. If the Legislature wants to change the initiative or referendum process, or a law passed by initiative, it must submit the change to the voters.

This multiple-section amendment makes other additions to the Constitution. It will likely be challenged on constitutional grounds.

VI

Section 1. This amendment shall be known as the South Dakota Voter Protection and Anti-Corruption Amendment.

Section 2. That the Constitution of the State of South Dakota be amended by adding a new Article to read as follows:

§1. Whereas the motto of the state of South Dakota is "Under God the People Rule" and whereas the Legislature inherently derives its power from the consent of the people, the people of South Dakota hereby find and declare that in order to protect the public trust:

(1) Public officials, candidates, and lobbyists must be subject to robust ethics, conflict-of-interest, and anti-corruption laws;
(2) A strong and independent citizen ethics commission is necessary to oversee and enforce those laws in the name of the people of South Dakota; and
(3) The will of the people, especially when voiced to ensure the integrity, honesty, and accountability of their government, must be respected.

§2. The offenses of bribery and corrupt solicitation provided under Article III § 28 are felonies punishable as provided by law.

§3. A lobbyist may not knowingly give or offer to give a gift to an individual who they know or should know is a senior public servant. The prohibition under this section does not apply if the lobbyist is the spouse, fiancée, or fiancé of the senior public servant, or is, whether by blood or marriage, a child, parent, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew of the senior public servant. A violation of this section is a misdemeanor punishable as provided by law.

§4. No public official may knowingly use state resources for improper personal gain. A violation of this section is a misdemeanor punishable as provided by law, but a violation of this section where a public official knowingly uses state resources for improper personal gain exceeding ten thousand dollars is a felony punishable as provided by law.

§5. A foreign government outside of the United States may not make a contribution or expenditure in connection with any state or local candidate election.

§6. A candidate or person holding elective office may not knowingly use a campaign contribution for personal use. A violation of this section is a felony punishable as provided by law.

§7. A labor union or corporation may not, directly or through an intermediary, make a campaign contribution to a candidate or political party.

§8. A candidate may not knowingly solicit, accept, or receive a campaign contribution within the South Dakota capitol building. A violation of this section is a misdemeanor punishable as provided by law.

§9. A senior public servant may not become a lobbyist, other than a public lobbyist for state or local government, while holding office as a senior public servant and for a period of two years after holding office as a senior public servant. A violation of this section is a misdemeanor punishable as provided by law.

§10. A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. A violation of this section is a misdemeanor punishable as provided by law.

As used in this section, "deliver" means to transport, carry, transfer, or otherwise transmit, either

physically or electronically. The prohibition in this section does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This section may not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or otherwise to support or oppose a candidate.

§11. A judge shall avoid the appearance of bias, and shall disqualify himself or herself in any proceeding in which monetary or in-kind support related to the judge's election or retention creates an appearance of bias to a reasonable person.

§12. A candidate may not accept campaign contributions from a single source that, in total and per election cycle for the office sought, exceed:

(1) $500 for the office state representative, or for any local elective office other than state senator, including any county, municipal, or school district office;
(2) $750 for the office of state senator;
(3) $1,500 for the office of attorney general, lieutenant governor, commissioner of school and public lands, auditor, treasurer, secretary of state, or any other statewide elective office other than Governor; and
(4) $4,000 for the office of Governor.

Any limit prescribed in this section does not apply to a contribution made by a political party, or to a contribution made by the candidate or the candidate's spouse to the candidate's own campaign. The secretary of state shall by administrative rule adjust any dollar amount in this section for inflation after each general election.

§13. A political party may not accept campaign contributions from a single source that, in total and per calendar year, exceed five thousand dollars. For purposes of this section, a state political party and its affiliated local committees or subdivisions shall be treated as a single political party. The secretary of state shall by administrative rule adjust the dollar amount in this section for inflation after each general election.

§14. The Legislature shall regulate persons who are employed or otherwise gainfully compensated to act as a lobbyist to influence in any manner legislative, executive, or administrative action, and shall ensure that such persons promptly register with the state as lobbyists and disclose information that is pertinent to the public interest.

§15. (1) The people of South Dakota find and declare that the Legislature's State Government Accountability Board did not fully respond to the people's demand for strong and accountable ethics oversight, in that:

(1) The Legislature exempted itself from oversight by that board; and
(2) The oversight authority of that board was inadequate to protect the public trust.

Therefore, the people of South Dakota find and declare that they are best suited to create an ethics commission that can adequately protect the public trust, and hereby nullify the State Government Accountability Board created by the Legislature in 2017 in House Bill 1076 and in its place create a new State Government Accountability Board to serve as an independent citizen ethics commission.

The State Government Accountability Board is as an independent entity, notwithstanding any other provision of the Constitution of South Dakota, including Article II, that shall be conducted in a nonpartisan manner with integrity, honesty, and fairness. Any rule adopted, investigation conducted, or sanction imposed by the board is subject to judicial review consistent with the Constitution.

(2) All South Dakota registered voters are eligible to apply for membership on the board. Only registered voters may be members. The board shall be directed by seven members who are appointed from those who have applied as follows:

(1) Two members appointed by the South Dakota Supreme Court, each of whom shall be a former or retired judge, and each of whom shall be registered with a different major political party;
(2) One member appointed by the Governor from a list of at least three registered voters provided by the speaker of the house of representatives;
(3) One member appointed by the Governor from a list of at least three registered voters provided by the minority leader of the house of representatives; and
(4) Three members, at least two of whom are nonlawyers, each appointed by majority vote of the other four members.

No member of the board may be registered as a lobbyist or may hold any other local, state, or federal public office or political party office while serving as a member of the board. Each member shall have been continuously registered with the same political party, or continuously registered as unaffiliated with any political party, for the two years preceding appointment to the board. Each member of the board shall serve for a term of not more than four years, except that after the initial appointments are made, the secretary of state shall select, in a random public drawing, one member to serve a one-year term and two members each to serve two-year, three-year, and four-year terms, respectively, for each member's first term only, to achieve staggered ending dates. No member may serve more than two terms. Service of a term means service of more than two years of a term. Any vacancy shall be filled within seventy-five days in the manner in which that position was originally filled. If a vacancy is not filled within seventy-five days, the Supreme Court shall fill the vacancy within an additional sixty days. Initial members shall be appointed by September 1, 2019. If all seven initial members are not appointed by the date provided under this section, the Supreme Court shall appoint the remaining members by November 1, 2019. The secretary of state shall impartially facilitate the member appointment process.

Members may be removed by the Governor, with the concurrence of the senate, only for substantial neglect of duty, gross misconduct, or inability to discharge the powers and duties of office, after written notice and an opportunity for response.

(3) The board has the power, notwithstanding any other provision of the Constitution, to:

(1) Investigate any allegation of bribery, theft, or embezzlement of public funds, or any violation of this Article, ethics rule, or state law related to government ethics, campaign finance, lobbying, government contracts, or corruption by any elected or appointed official, judge, or employee of any state or local government, and to issue subpoenas related to the investigation;
(2) Adopt ethics rules, subject to rulemaking procedures as defined by law, including provisions on campaign finance, conflicts of interest, confidential information, use of position, contracts with government agencies, legislative recusal, and financial interest disclosure, to which any elected or appointed official, judge, or employee of state or local government shall be subject. The process for adopting ethics rules shall include opportunities for public input and public participation. Nothing in this Article prohibits the Legislature from enacting any law that is not inconsistent with, or contradictory to, the ethics rules adopted by the board;
(3) Issue advisory opinions, which may be relied upon by any person involved in the specific transaction or activity for which the advisory opinion is issued, and by any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity for which the advisory opinion is issued. Notwithstanding any other provisions of law, a person who relies upon any provision or finding of an advisory opinion in this regard and who acts in good faith in accordance with the provisions and findings of the advisory opinion is not, as a result of the act, subject to any sanction provided by this Article;

(4) Adopt rules of procedure for the board, including rules to prevent the abuse or overuse of the submission of complaints;
(5) Hire and supervise staff, including any legal, investigative, or administrative and clerical employee who is necessary to support the functions of the board;
(6) Conduct specific or random audits of disclosures required by state campaign finance, ethics, lobbying, or government contracting law;
(7) Impose sanctions on any elected or appointed official, judge, or employee of state or local government, including the power to issue orders, impose fines, and commence administrative actions. The board shall issue a written explanation for any sanction;
(8) Refer information or complaints alleging a violation of this Article, the board's ethics rules, or state law related to ethics, campaign finance, or corruption to the appropriate prosecutorial authority or to internal or outside counsel hired or selected by the board, before, during, or after an investigation;
(9) Conduct educational programs for the benefit of the public and those subject to this Article; and
(10) Exercise additional powers not inconsistent with this Article as may be provided by law.

(4) The board shall convene at least once every quarter. The assent of four members shall be required for the consideration and resolution of any matter that involves the exercise of the board's duties and powers under this Article, including the adoption or approval of any motion, procedure, provision, or appeal, the hiring of staff, the issuance of an advisory opinion, the referral to the appropriate prosecutorial authority of a complaint alleging a violation, and the imposition of sanctions, except that the assent of three members shall be required for the convening of meetings, the initiation and carrying out of investigations, including the issuance of subpoenas, the approval of public education materials, the approval of minutes of previous meetings, and actions related to board contracts.

(5) Unless otherwise prohibited by federal or state law, any person acting in good faith may furnish information or file a complaint with the board, which may be anonymous, alleging a suspected or anticipated violation, and may request a status update to which the board shall respond in writing within sixty days. Any public employee may file a grievance with the Civil Service Commission, or other appropriate agency or entity, if the employee believes that there has been retaliation from his or her employer because the employee reported a violation through the chain of command of the employee's department, or to the board.

(6) All final reports and findings shall be made available to the public within ten days of completion. The board shall annually report to the people on its activities. The report shall include comprehensive information concerning the board's activities, including the number of complaints received, complaints filed by separate persons, investigations conducted, hearings held, sanctions imposed, and advisory opinions issued.

(7) On an annual basis beginning in 2020, the board shall issue to the Legislature written recommendations for legislation that seeks to increase public trust, transparency, and accountability in government and elections and decrease the risk of corruption and conflicts of interest.

(8) Each member of the board shall complete a financial interest disclosure statement. Any member of the board who has a personal, private interest in a matter before the board or with a direct and substantially related interest in a matter before the board shall disclose the fact of such interest and recuse himself or herself from working on the matter, unless the board member's vote is necessary to resolve the matter.

(9) The provisions of this section shall be enforceable by any circuit court. The board may intervene as a matter of right in any civil action involving any government entity, agency, or instrumentality alleged to be in violation of any mandate or prohibition under this Article, and in any civil action relating to the

board's powers or to the sufficiency of resources provided for the board's implementation and operation.

(10) The Legislature shall annually appropriate, via the general appropriation bill, three hundred and eighty-nine thousand dollars, indexed to inflation, to a separate constitutional Ethics Law Enforcement Fund to be administered solely by the board. This appropriation via the general appropriation bill shall occur, and shall not be subject to item veto by the Governor, notwithstanding any other provision of the Constitution. If the Legislature does not appropriate such funding by the beginning of the fiscal year, the state treasurer shall transfer this amount, less any amount so appropriated by the Legislature, from the state general fund to the Ethics Law Enforcement Fund as soon as such funds are available. The Legislature shall ensure that this money is available in the state general fund for the state treasurer to make such a transfer. This transfer shall occur notwithstanding any other provision of the Constitution. Only the board may authorize the spending or transfer of moneys from the Ethics Law Enforcement Fund. The Legislature may appropriate additional funds to the Ethics Law Enforcement Fund or another fund for use by the board for its various expenses. While serving on business of the board, members shall receive reasonable travel expense reimbursement and per diem compensation. This provision shall be self-executing.

§16. Terms used in this Article mean:

(1) "Corporation," any for-profit corporation, nonprofit corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity;
(2) "Elective office," a non-federal office elected by South Dakota voters;
(3) "Gift," any item, service, or thing of value not given for fair market consideration. The term does not mean any purely informational material or campaign contribution;
(4) "Local," any subdivision of the state for governmental, political, or related purposes, including a county, municipality, town, township, or school district subdivision;
(5) "Major political party," the two parties that earned for the party's respective candidates for the office of President of the United States the highest and the second highest number of votes at the most recent general election for such office;
(6) "Personal use," a commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign; and
(7) "Senior public servant," any person holding a non-federal office elected by South Dakota voters, or an unelected individual who is an appointed officer, director, commissioner, head, or other executive or co-executive of a state agency, board, division, institution, or principal department, including a member of the State Government Accountability Board and any member of the Governor's cabinet.

§17. Each provision of this Article is intended to be independent and severable, and if any provision is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby.

In any case of a conflict between any provision of this Article and any other provision contained in this Constitution, the provisions of this Article shall control.

§18. This Article is self-executing and shall take effect sixty days after approval. Each provision shall be justiciable and enforceable by any circuit court. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, the powers this Article grants and the protections it establishes.

Section 3. That Article III, Section 1 of the Constitution of South Dakota be amended to read as follows:

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~~. Such measures, if approved by a simple majority of those voting on the measure, shall become effective sixty days after approval. Legislation or other action that repeals, amends, or otherwise frustrates the effectuation or implementation of any such measure shall not go into effect until submitted to a vote of the electors of the state and approved by a simple majority of those voting on the question.

The people also expressly reserve 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 and approved by a simple majority of those voting on the question before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, for which the Legislature shall state specific facts evidencing such necessity.

No law substantively changing the rules, requirements, or criteria governing the initiative or referendum process may take effect until after that law has been submitted to a vote of the electors of the state and approved by a simple majority of those voting on the question. 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. The veto power of the Executive shall not be exercised as to ~~measures~~ an initiated measure approved by the people or a measure 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 4. Each provision of this Amendment is intended to be independent and severable, and if any provision is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby.

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JUN 19 2017
S.D. SEC. OF STATE

VERSION 2

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, creating a government accountability board, and changing certain initiative and referendum provisions.

Explanation:

This constitutional amendment lowers campaign contribution amounts to candidates and political parties. It prohibits contributions to candidates or political parties by labor unions and corporations. Candidates and elected officials are prohibited from using campaign contributions for personal use.

The amendment expands the scope of activities requiring people to register as lobbyists, and places additional restrictions on lobbyists.

The amendment replaces the government accountability board recently created by the Legislature. The new board is granted broad power, including the power to investigate, adopt rules, issue advisory opinions, and conduct audits. It may impose sanctions, including fines, on any elected or appointed official, judge, or State or local government employee.

The amendment limits the number of votes necessary for approval of any initiative or referendum to a simple majority. It requires the Legislature to make specific factual findings when enacting laws that are not subject to referral. If the Legislature wants to change the initiative or referendum process, or a law passed by initiative, it must submit the change to the voters.

This multiple-section amendment makes other additions to the Constitution. It will likely be challenged on constitutional grounds.

V2

RECEIVED
JUN 19 2017
S.D. SEC. OF STATE

Section 1. This amendment shall be known as the South Dakota Voter Protection and Anti-Corruption Amendment.

Section 2. That the Constitution of the State of South Dakota be amended by adding a new Article to read as follows:

§1. Whereas the motto of the state of South Dakota is "Under God the People Rule" and whereas the Legislature inherently derives its power from the consent of the people, the people of South Dakota hereby find and declare that in order to protect the public trust:

(1) Public officials, candidates, and lobbyists must be subject to robust ethics, conflict-of-interest, and anti-corruption laws;
(2) A strong and independent citizen ethics commission is necessary to oversee and enforce those laws in the name of the people of South Dakota; and
(3) The will of the people, especially when voiced to ensure the integrity, honesty, and accountability of their government, must be respected.

§2. The offenses of bribery and corrupt solicitation provided under Article III § 28 are felonies punishable as provided by law.

§3. A lobbyist may not knowingly give or offer to give a gift to an individual who they know or should know is a senior public servant. The prohibition under this section does not apply if the lobbyist is the spouse, fiancée, or fiancé of the senior public servant, or is, whether by blood or marriage, a child, parent, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew of the senior public servant. A violation of this section is a misdemeanor punishable as provided by law.

§4. No public official may knowingly use state resources for improper personal gain. A violation of this section is a misdemeanor punishable as provided by law, but a violation of this section where a public official knowingly uses state resources for improper personal gain exceeding ten thousand dollars is a felony punishable as provided by law.

§5. A foreign government outside of the United States may not make a contribution or expenditure in connection with any state or local candidate election.

§6. A candidate or person holding elective office may not knowingly use a campaign contribution for personal use. A violation of this section is a felony punishable as provided by law.

§7. A labor union or corporation may not, directly or through an intermediary, make a campaign contribution to a candidate or political party.

§8. A candidate may not knowingly solicit, accept, or receive a campaign contribution within the South Dakota capitol building. A violation of this section is a misdemeanor punishable as provided by law.

§9. A senior public servant may not become a lobbyist, other than a public lobbyist for state or local government, while holding office as a senior public servant and for a period of two years after holding office as a senior public servant. A violation of this section is a misdemeanor punishable as provided by law.

§10. A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. A violation of this section is a misdemeanor punishable as provided by law.

As used in this section, "deliver" means to transport, carry, transfer, or otherwise transmit, either

physically or electronically. The prohibition in this section does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This section may not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or otherwise to support or oppose a candidate.

§11. A judge shall avoid the appearance of bias, and shall disqualify himself or herself in any proceeding in which monetary or in-kind support related to the judge's election or retention creates an appearance of bias to a reasonable person.

§12. A candidate may not accept campaign contributions from a single source that, in total and per election cycle for the office sought, exceed:

(1) $500 for the office state representative, or for any local elective office other than state senator, including any county, municipal, or school district office;
(2) $750 for the office of state senator;
(3) $1,500 for the office of attorney general, lieutenant governor, commissioner of school and public lands, auditor, treasurer, secretary of state, or any other statewide elective office other than Governor; and
(4) $4,000 for the office of Governor.

Any limit prescribed in this section does not apply to a contribution made by a political party, or to a contribution made by the candidate or the candidate's spouse to the candidate's own campaign. The secretary of state shall by administrative rule adjust any dollar amount in this section for inflation after each general election.

§13. A political party may not accept campaign contributions from a single source that, in total and per calendar year, exceed five thousand dollars. For purposes of this section, a state political party and its affiliated local committees or subdivisions shall be treated as a single political party. The secretary of state shall by administrative rule adjust the dollar amount in this section for inflation after each general election.

§14. The Legislature shall regulate persons who are employed or otherwise gainfully compensated to act as a lobbyist to influence in any manner legislative, executive, or administrative action, and shall ensure that such persons promptly register with the state as lobbyists and disclose information that is pertinent to the public interest.

§15. (1) The people of South Dakota find and declare that the Legislature's State Government Accountability Board did not fully respond to the people's demand for strong and accountable ethics oversight, in that:

(1) The Legislature exempted itself from oversight by that board; and
(2) The oversight authority of that board was inadequate to protect the public trust.

Therefore, the people of South Dakota find and declare that they are best suited to create an ethics commission that can adequately protect the public trust, and hereby nullify the State Government Accountability Board created by the Legislature in 2017 in House Bill 1076 and in its place create a new State Government Accountability Board to serve as an independent citizen ethics commission.

The State Government Accountability Board is as an independent entity, notwithstanding any other provision of the Constitution of South Dakota, including Article II, that shall be conducted in a nonpartisan manner with integrity, honesty, and fairness. Any rule adopted, investigation conducted, or sanction imposed by the board is subject to judicial review consistent with the Constitution.

(2) All South Dakota registered voters are eligible to apply for membership on the board. Only registered voters may be members. The board shall be directed by seven members who are appointed from those who have applied as follows:

(1) Two members appointed by the South Dakota Supreme Court, each of whom shall be a former or retired judge, and each of whom shall be registered with a different major political party;
(2) One member appointed by the Governor from a list of at least three registered voters provided by the speaker of the house of representatives;
(3) One member appointed by the Governor from a list of at least three registered voters provided by the minority leader of the house of representatives; and
(4) Three members, at least two of whom are nonlawyers, each appointed by majority vote of the other four members.

No member of the board may be registered as a lobbyist or may hold any other local, state, or federal public office or political party office while serving as a member of the board. Each member shall have been continuously registered with the same political party, or continuously registered as unaffiliated with any political party, for the two years preceding appointment to the board. Each member of the board shall serve for a term of not more than four years, except that after the initial appointments are made, the secretary of state shall select, in a random public drawing, one member to serve a one-year term and two members each to serve two-year, three-year, and four-year terms, respectively, for each member's first term only, to achieve staggered ending dates. No member may serve more than two terms. Service of a term means service of more than two years of a term. Any vacancy shall be filled within seventy-five days in the manner in which that position was originally filled. If a vacancy is not filled within seventy-five days, the Supreme Court shall fill the vacancy within an additional sixty days. Initial members shall be appointed by September 1, 2019. If all seven initial members are not appointed by the date provided under this section, the Supreme Court shall appoint the remaining members by November 1, 2019. The secretary of state shall impartially facilitate the member appointment process.

Members may be removed by the Governor, with the concurrence of the senate, only for substantial neglect of duty, gross misconduct, or inability to discharge the powers and duties of office, after written notice and an opportunity for response.

(3) The board has the power, notwithstanding any other provision of the Constitution, to:

(1) Investigate any allegation of bribery, theft, or embezzlement of public funds, or any violation of this Article, ethics rule, or state law related to government ethics, campaign finance, lobbying, government contracts, or corruption by any elected or appointed official, judge, or employee of any state or local government, and to issue subpoenas related to the investigation;
(2) Adopt ethics rules, subject to rulemaking procedures as defined by law, including provisions on campaign finance, conflicts of interest, confidential information, use of position, contracts with government agencies, legislative recusal, and financial interest disclosure, to which any elected or appointed official, judge, or employee of state or local government shall be subject. The process for adopting ethics rules shall include opportunities for public input and public participation. Nothing in this Article prohibits the Legislature from enacting any law that is not inconsistent with, or contradictory to, the ethics rules adopted by the board;
(3) Issue advisory opinions, which may be relied upon by any person involved in the specific transaction or activity for which the advisory opinion is issued, and by any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity for which the advisory opinion is issued. Notwithstanding any other provisions of law, a person who relies upon any provision or finding of an advisory opinion in this regard and who acts in good faith in accordance with the provisions and findings of the advisory opinion is not, as a result of the act, subject to any sanction provided by this Article;

(4) Adopt rules of procedure for the board, including rules to prevent the abuse or overuse of the submission of complaints;
(5) Hire and supervise staff, including any legal, investigative, or administrative and clerical employee who is necessary to support the functions of the board;
(6) Conduct specific or random audits of disclosures required by state campaign finance, ethics, lobbying, or government contracting law;
(7) Impose sanctions on any elected or appointed official, judge, or employee of state or local government, including the power to issue orders, impose fines, and commence administrative actions. The board shall issue a written explanation for any sanction;
(8) Refer information or complaints alleging a violation of this Article, the board's ethics rules, or state law related to ethics, campaign finance, or corruption to the appropriate prosecutorial authority or to internal or outside counsel hired or selected by the board, before, during, or after an investigation;
(9) Conduct educational programs for the benefit of the public and those subject to this Article; and
(10) Exercise additional powers not inconsistent with this Article as may be provided by law.

(4) The board shall convene at least once every quarter. The assent of four members shall be required for the consideration and resolution of any matter that involves the exercise of the board's duties and powers under this Article, including the adoption or approval of any motion, procedure, provision, or appeal, the hiring of staff, the issuance of an advisory opinion, the referral to the appropriate prosecutorial authority of a complaint alleging a violation, and the imposition of sanctions, except that the assent of three members shall be required for the convening of meetings, the initiation and carrying out of investigations, including the issuance of subpoenas, the approval of public education materials, the approval of minutes of previous meetings, and actions related to board contracts.

(5) Unless otherwise prohibited by federal or state law, any person acting in good faith may furnish information or file a complaint with the board, which may be anonymous, alleging a suspected or anticipated violation, and may request a status update to which the board shall respond in writing within sixty days. Any public employee may file a grievance with the Civil Service Commission, or other appropriate agency or entity, if the employee believes that there has been retaliation from his or her employer because the employee reported a violation through the chain of command of the employee's department, or to the board.

(6) All final reports and findings shall be made available to the public within ten days of completion. The board shall annually report to the people on its activities. The report shall include comprehensive information concerning the board's activities, including the number of complaints received, complaints filed by separate persons, investigations conducted, hearings held, sanctions imposed, and advisory opinions issued.

(7) On an annual basis beginning in 2020, the board shall issue to the Legislature written recommendations for legislation that seeks to increase public trust, transparency, and accountability in government and elections and decrease the risk of corruption and conflicts of interest.

(8) Each member of the board shall complete a financial interest disclosure statement. Any member of the board who has a personal, private interest in a matter before the board or with a direct and substantially related interest in a matter before the board shall disclose the fact of such interest and recuse himself or herself from working on the matter, unless the board member's vote is necessary to resolve the matter.

(9) The provisions of this section shall be enforceable by any circuit court. The board may intervene as a matter of right in any civil action involving any government entity, agency, or instrumentality alleged to be in violation of any mandate or prohibition under this Article, and in any civil action relating to the

board's powers or to the sufficiency of resources provided for the board's implementation and operation.

§16. Terms used in this Article mean:

(1) "Corporation," any for-profit corporation, nonprofit corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity;
(2) "Elective office," a non-federal office elected by South Dakota voters;
(3) "Gift," any item, service, or thing of value not given for fair market consideration. The term does not mean any purely informational material or campaign contribution;
(4) "Local," any subdivision of the state for governmental, political, or related purposes, including a county, municipality, town, township, or school district subdivision;
(5) "Major political party," the two parties that earned for the party's respective candidates for the office of President of the United States the highest and the second highest number of votes at the most recent general election for such office;
(6) "Personal use," a commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign; and
(7) "Senior public servant," any person holding a non-federal office elected by South Dakota voters, or an unelected individual who is an appointed officer, director, commissioner, head, or other executive or co-executive of a state agency, board, division, institution, or principal department, including a member of the State Government Accountability Board and any member of the Governor's cabinet.

§17. Each provision of this Article is intended to be independent and severable, and if any provision is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby.

In any case of a conflict between any provision of this Article and any other provision contained in this Constitution, the provisions of this Article shall control.

§18. This Article is self-executing and shall take effect sixty days after approval. Each provision shall be justiciable and enforceable by any circuit court. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, the powers this Article grants and the protections it establishes.

Section 3. That Article III, Section 1 of the Constitution of South Dakota be amended to read as follows:

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~~. Such measures, if approved by a simple majority of those voting on the measure, shall become effective sixty days after approval. Legislation or other action that repeals, amends, or otherwise frustrates the effectuation or implementation of any such measure shall not go into effect until submitted to a vote of the electors of the state and approved by a simple majority of those voting on the question.

The people also expressly reserve 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 and approved by a simple majority of those voting on the question before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, for which the Legislature shall state specific facts evidencing such necessity.

No law substantively changing the rules, requirements, or criteria governing the initiative or referendum process may take effect until after that law has been submitted to a vote of the electors of the state and

approved by a simple majority of those voting on the question. 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. The veto power of the Executive shall not be exercised as to ~~measures~~ an initiated measure approved by the people or a measure 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 4. Each provision of this Amendment is intended to be independent and severable, and if any provision is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby.

RECEIVED
JUN 19 2017
S.D. SEC. OF STATE

VERSION 3

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, and creating a government accountability board.

Explanation:

This constitutional amendment lowers campaign contribution amounts to candidates and political parties. It prohibits contributions to candidates or political parties by labor unions and corporations. Candidates and elected officials are prohibited from using campaign contributions for personal use.

The amendment expands the scope of activities requiring people to register as lobbyists, and places additional restrictions on lobbyists.

The amendment replaces the government accountability board recently created by the Legislature. The new board is granted broad power, including the power to investigate, adopt rules, issue advisory opinions, and conduct audits. It may impose sanctions, including fines, on any elected or appointed official, judge, or State or local government employee. The amendment annually appropriates State funds to be solely administered by the board.

This multiple-section amendment makes other additions to the Constitution. It will likely be challenged on constitutional grounds.

V3

RECEIVED
JUN 19 2017
S.D. SEC. OF STATE

Section 1. This amendment shall be known as the South Dakota Voter Protection and Anti-Corruption Amendment.

Section 2. That the Constitution of the State of South Dakota be amended by adding a new Article to read as follows:

§1. Whereas the motto of the state of South Dakota is "Under God the People Rule" and whereas the Legislature inherently derives its power from the consent of the people, the people of South Dakota hereby find and declare that in order to protect the public trust:

(1) Public officials, candidates, and lobbyists must be subject to robust ethics, conflict-of-interest, and anti-corruption laws;
(2) A strong and independent citizen ethics commission is necessary to oversee and enforce those laws in the name of the people of South Dakota; and
(3) The will of the people, especially when voiced to ensure the integrity, honesty, and accountability of their government, must be respected.

§2. The offenses of bribery and corrupt solicitation provided under Article III § 28 are felonies punishable as provided by law.

§3. A lobbyist may not knowingly give or offer to give a gift to an individual who they know or should know is a senior public servant. The prohibition under this section does not apply if the lobbyist is the spouse, fiancée, or fiancé of the senior public servant, or is, whether by blood or marriage, a child, parent, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew of the senior public servant. A violation of this section is a misdemeanor punishable as provided by law.

§4. No public official may knowingly use state resources for improper personal gain. A violation of this section is a misdemeanor punishable as provided by law, but a violation of this section where a public official knowingly uses state resources for improper personal gain exceeding ten thousand dollars is a felony punishable as provided by law.

§5. A foreign government outside of the United States may not make a contribution or expenditure in connection with any state or local candidate election.

§6. A candidate or person holding elective office may not knowingly use a campaign contribution for personal use. A violation of this section is a felony punishable as provided by law.

§7. A labor union or corporation may not, directly or through an intermediary, make a campaign contribution to a candidate or political party.

§8. A candidate may not knowingly solicit, accept, or receive a campaign contribution within the South Dakota capitol building. A violation of this section is a misdemeanor punishable as provided by law.

§9. A senior public servant may not become a lobbyist, other than a public lobbyist for state or local government, while holding office as a senior public servant and for a period of two years after holding office as a senior public servant. A violation of this section is a misdemeanor punishable as provided by law.

§10. A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. A violation of this section is a misdemeanor punishable as provided by law.

As used in this section, "deliver" means to transport, carry, transfer, or otherwise transmit, either

physically or electronically. The prohibition in this section does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This section may not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or otherwise to support or oppose a candidate.

§11. A judge shall avoid the appearance of bias, and shall disqualify himself or herself in any proceeding in which monetary or in-kind support related to the judge's election or retention creates an appearance of bias to a reasonable person.

§12. A candidate may not accept campaign contributions from a single source that, in total and per election cycle for the office sought, exceed:

(1) $500 for the office state representative, or for any local elective office other than state senator, including any county, municipal, or school district office;
(2) $750 for the office of state senator;
(3) $1,500 for the office of attorney general, lieutenant governor, commissioner of school and public lands, auditor, treasurer, secretary of state, or any other statewide elective office other than Governor; and
(4) $4,000 for the office of Governor.

Any limit prescribed in this section does not apply to a contribution made by a political party, or to a contribution made by the candidate or the candidate's spouse to the candidate's own campaign. The secretary of state shall by administrative rule adjust any dollar amount in this section for inflation after each general election.

§13. A political party may not accept campaign contributions from a single source that, in total and per calendar year, exceed five thousand dollars. For purposes of this section, a state political party and its affiliated local committees or subdivisions shall be treated as a single political party. The secretary of state shall by administrative rule adjust the dollar amount in this section for inflation after each general election.

§14. The Legislature shall regulate persons who are employed or otherwise gainfully compensated to act as a lobbyist to influence in any manner legislative, executive, or administrative action, and shall ensure that such persons promptly register with the state as lobbyists and disclose information that is pertinent to the public interest.

§15. (1) The people of South Dakota find and declare that the Legislature's State Government Accountability Board did not fully respond to the people's demand for strong and accountable ethics oversight, in that:

(1) The Legislature exempted itself from oversight by that board; and
(2) The oversight authority of that board was inadequate to protect the public trust.

Therefore, the people of South Dakota find and declare that they are best suited to create an ethics commission that can adequately protect the public trust, and hereby nullify the State Government Accountability Board created by the Legislature in 2017 in House Bill 1076 and in its place create a new State Government Accountability Board to serve as an independent citizen ethics commission.

The State Government Accountability Board is as an independent entity, notwithstanding any other provision of the Constitution of South Dakota, including Article II, that shall be conducted in a nonpartisan manner with integrity, honesty, and fairness. Any rule adopted, investigation conducted, or sanction imposed by the board is subject to judicial review consistent with the Constitution.

(2) All South Dakota registered voters are eligible to apply for membership on the board. Only registered voters may be members. The board shall be directed by seven members who are appointed from those who have applied as follows:

(1) Two members appointed by the South Dakota Supreme Court, each of whom shall be a former or retired judge, and each of whom shall be registered with a different major political party;
(2) One member appointed by the Governor from a list of at least three registered voters provided by the speaker of the house of representatives;
(3) One member appointed by the Governor from a list of at least three registered voters provided by the minority leader of the house of representatives; and
(4) Three members, at least two of whom are nonlawyers, each appointed by majority vote of the other four members.

No member of the board may be registered as a lobbyist or may hold any other local, state, or federal public office or political party office while serving as a member of the board. Each member shall have been continuously registered with the same political party, or continuously registered as unaffiliated with any political party, for the two years preceding appointment to the board. Each member of the board shall serve for a term of not more than four years, except that after the initial appointments are made, the secretary of state shall select, in a random public drawing, one member to serve a one-year term and two members each to serve two-year, three-year, and four-year terms, respectively, for each member's first term only, to achieve staggered ending dates. No member may serve more than two terms. Service of a term means service of more than two years of a term. Any vacancy shall be filled within seventy-five days in the manner in which that position was originally filled. If a vacancy is not filled within seventy-five days, the Supreme Court shall fill the vacancy within an additional sixty days. Initial members shall be appointed by September 1, 2019. If all seven initial members are not appointed by the date provided under this section, the Supreme Court shall appoint the remaining members by November 1, 2019. The secretary of state shall impartially facilitate the member appointment process.

Members may be removed by the Governor, with the concurrence of the senate, only for substantial neglect of duty, gross misconduct, or inability to discharge the powers and duties of office, after written notice and an opportunity for response.

(3) The board has the power, notwithstanding any other provision of the Constitution, to:

(1) Investigate any allegation of bribery, theft, or embezzlement of public funds, or any violation of this Article, ethics rule, or state law related to government ethics, campaign finance, lobbying, government contracts, or corruption by any elected or appointed official, judge, or employee of any state or local government, and to issue subpoenas related to the investigation;
(2) Adopt ethics rules, subject to rulemaking procedures as defined by law, including provisions on campaign finance, conflicts of interest, confidential information, use of position, contracts with government agencies, legislative recusal, and financial interest disclosure, to which any elected or appointed official, judge, or employee of state or local government shall be subject. The process for adopting ethics rules shall include opportunities for public input and public participation. Nothing in this Article prohibits the Legislature from enacting any law that is not inconsistent with, or contradictory to, the ethics rules adopted by the board;
(3) Issue advisory opinions, which may be relied upon by any person involved in the specific transaction or activity for which the advisory opinion is issued, and by any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity for which the advisory opinion is issued. Notwithstanding any other provisions of law, a person who relies upon any provision or finding of an advisory opinion in this regard and who acts in good faith in accordance with the provisions and findings of the advisory opinion is not, as a result of the act, subject to any sanction provided by this Article;

(4) Adopt rules of procedure for the board, including rules to prevent the abuse or overuse of the submission of complaints;
(5) Hire and supervise staff, including any legal, investigative, or administrative and clerical employee who is necessary to support the functions of the board;
(6) Conduct specific or random audits of disclosures required by state campaign finance, ethics, lobbying, or government contracting law;
(7) Impose sanctions on any elected or appointed official, judge, or employee of state or local government, including the power to issue orders, impose fines, and commence administrative actions. The board shall issue a written explanation for any sanction;
(8) Refer information or complaints alleging a violation of this Article, the board's ethics rules, or state law related to ethics, campaign finance, or corruption to the appropriate prosecutorial authority or to internal or outside counsel hired or selected by the board, before, during, or after an investigation;
(9) Conduct educational programs for the benefit of the public and those subject to this Article; and
(10) Exercise additional powers not inconsistent with this Article as may be provided by law.

(4) The board shall convene at least once every quarter. The assent of four members shall be required for the consideration and resolution of any matter that involves the exercise of the board's duties and powers under this Article, including the adoption or approval of any motion, procedure, provision, or appeal, the hiring of staff, the issuance of an advisory opinion, the referral to the appropriate prosecutorial authority of a complaint alleging a violation, and the imposition of sanctions, except that the assent of three members shall be required for the convening of meetings, the initiation and carrying out of investigations, including the issuance of subpoenas, the approval of public education materials, the approval of minutes of previous meetings, and actions related to board contracts.

(5) Unless otherwise prohibited by federal or state law, any person acting in good faith may furnish information or file a complaint with the board, which may be anonymous, alleging a suspected or anticipated violation, and may request a status update to which the board shall respond in writing within sixty days. Any public employee may file a grievance with the Civil Service Commission, or other appropriate agency or entity, if the employee believes that there has been retaliation from his or her employer because the employee reported a violation through the chain of command of the employee's department, or to the board.

(6) All final reports and findings shall be made available to the public within ten days of completion. The board shall annually report to the people on its activities. The report shall include comprehensive information concerning the board's activities, including the number of complaints received, complaints filed by separate persons, investigations conducted, hearings held, sanctions imposed, and advisory opinions issued.

(7) On an annual basis beginning in 2020, the board shall issue to the Legislature written recommendations for legislation that seeks to increase public trust, transparency, and accountability in government and elections and decrease the risk of corruption and conflicts of interest.

(8) Each member of the board shall complete a financial interest disclosure statement. Any member of the board who has a personal, private interest in a matter before the board or with a direct and substantially related interest in a matter before the board shall disclose the fact of such interest and recuse himself or herself from working on the matter, unless the board member's vote is necessary to resolve the matter.

(9) The provisions of this section shall be enforceable by any circuit court. The board may intervene as a matter of right in any civil action involving any government entity, agency, or instrumentality alleged to be in violation of any mandate or prohibition under this Article, and in any civil action relating to the

board's powers or to the sufficiency of resources provided for the board's implementation and operation.

(10) The Legislature shall annually appropriate, via the general appropriation bill, three hundred and eighty-nine thousand dollars, indexed to inflation, to a separate constitutional Ethics Law Enforcement Fund to be administered solely by the board. This appropriation via the general appropriation bill shall occur, and shall not be subject to item veto by the Governor, notwithstanding any other provision of the Constitution. If the Legislature does not appropriate such funding by the beginning of the fiscal year, the state treasurer shall transfer this amount, less any amount so appropriated by the Legislature, from the state general fund to the Ethics Law Enforcement Fund as soon as such funds are available. The Legislature shall ensure that this money is available in the state general fund for the state treasurer to make such a transfer. This transfer shall occur notwithstanding any other provision of the Constitution. Only the board may authorize the spending or transfer of moneys from the Ethics Law Enforcement Fund. The Legislature may appropriate additional funds to the Ethics Law Enforcement Fund or another fund for use by the board for its various expenses. While serving on business of the board, members shall receive reasonable travel expense reimbursement and per diem compensation. This provision shall be self-executing.

§16. Terms used in this Article mean:

(1) "Corporation," any for-profit corporation, nonprofit corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity;
(2) "Elective office," a non-federal office elected by South Dakota voters;
(3) "Gift," any item, service, or thing of value not given for fair market consideration. The term does not mean any purely informational material or campaign contribution;
(4) "Local," any subdivision of the state for governmental, political, or related purposes, including a county, municipality, town, township, or school district subdivision;
(5) "Major political party," the two parties that earned for the party's respective candidates for the office of President of the United States the highest and the second highest number of votes at the most recent general election for such office;
(6) "Personal use," a commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign; and
(7) "Senior public servant," any person holding a non-federal office elected by South Dakota voters, or an unelected individual who is an appointed officer, director, commissioner, head, or other executive or co-executive of a state agency, board, division, institution, or principal department, including a member of the State Government Accountability Board and any member of the Governor's cabinet.

§17. Each provision of this Article is intended to be independent and severable, and if any provision is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby.

In any case of a conflict between any provision of this Article and any other provision contained in this Constitution, the provisions of this Article shall control.

§18. This Article is self-executing and shall take effect sixty days after approval. Each provision shall be justiciable and enforceable by any circuit court. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, the powers this Article grants and the protections it establishes.

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VERSION 4

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution changing campaign finance and lobbying laws, and creating a government accountability board.

Explanation:

This constitutional amendment lowers campaign contribution amounts to candidates and political parties. It prohibits contributions to candidates or political parties by labor unions and corporations. Candidates and elected officials are prohibited from using campaign contributions for personal use.

The amendment expands the scope of activities requiring people to register as lobbyists, and places additional restrictions on lobbyists.

The amendment replaces the government accountability board recently created by the Legislature. The new board is granted broad power, including the power to investigate, adopt rules, issue advisory opinions, and conduct audits. It may impose sanctions, including fines, on any elected or appointed official, judge, or State or local government employee.

This multiple-section amendment makes other additions to the Constitution. It will likely be challenged on constitutional grounds.

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JUN 19 2017
S.D. SEC. OF STATE

Section 1. This amendment shall be known as the South Dakota Voter Protection and Anti-Corruption Amendment.

Section 2. That the Constitution of the State of South Dakota be amended by adding a new Article to read as follows:

§1. Whereas the motto of the state of South Dakota is "Under God the People Rule" and whereas the Legislature inherently derives its power from the consent of the people, the people of South Dakota hereby find and declare that in order to protect the public trust:

(1) Public officials, candidates, and lobbyists must be subject to robust ethics, conflict-of-interest, and anti-corruption laws;
(2) A strong and independent citizen ethics commission is necessary to oversee and enforce those laws in the name of the people of South Dakota; and
(3) The will of the people, especially when voiced to ensure the integrity, honesty, and accountability of their government, must be respected.

§2. The offenses of bribery and corrupt solicitation provided under Article III § 28 are felonies punishable as provided by law.

§3. A lobbyist may not knowingly give or offer to give a gift to an individual who they know or should know is a senior public servant. The prohibition under this section does not apply if the lobbyist is the spouse, fiancée, or fiancé of the senior public servant, or is, whether by blood or marriage, a child, parent, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew of the senior public servant. A violation of this section is a misdemeanor punishable as provided by law.

§4. No public official may knowingly use state resources for improper personal gain. A violation of this section is a misdemeanor punishable as provided by law, but a violation of this section where a public official knowingly uses state resources for improper personal gain exceeding ten thousand dollars is a felony punishable as provided by law.

§5. A foreign government outside of the United States may not make a contribution or expenditure in connection with any state or local candidate election.

§6. A candidate or person holding elective office may not knowingly use a campaign contribution for personal use. A violation of this section is a felony punishable as provided by law.

§7. A labor union or corporation may not, directly or through an intermediary, make a campaign contribution to a candidate or political party.

§8. A candidate may not knowingly solicit, accept, or receive a campaign contribution within the South Dakota capitol building. A violation of this section is a misdemeanor punishable as provided by law.

§9. A senior public servant may not become a lobbyist, other than a public lobbyist for state or local government, while holding office as a senior public servant and for a period of two years after holding office as a senior public servant. A violation of this section is a misdemeanor punishable as provided by law.

§10. A lobbyist may not knowingly deliver a campaign contribution made by another individual or entity. A violation of this section is a misdemeanor punishable as provided by law.

As used in this section, "deliver" means to transport, carry, transfer, or otherwise transmit, either

physically or electronically. The prohibition in this section does not apply to a person who delivers a campaign contribution to the person's own campaign, or to the campaign of the person's immediate family member. This section may not be interpreted to prohibit any person from making a campaign contribution or from encouraging others to make a campaign contribution or otherwise to support or oppose a candidate.

§11. A judge shall avoid the appearance of bias, and shall disqualify himself or herself in any proceeding in which monetary or in-kind support related to the judge's election or retention creates an appearance of bias to a reasonable person.

§12. A candidate may not accept campaign contributions from a single source that, in total and per election cycle for the office sought, exceed:

(1) $500 for the office state representative, or for any local elective office other than state senator, including any county, municipal, or school district office;
(2) $750 for the office of state senator;
(3) $1,500 for the office of attorney general, lieutenant governor, commissioner of school and public lands, auditor, treasurer, secretary of state, or any other statewide elective office other than Governor; and
(4) $4,000 for the office of Governor.

Any limit prescribed in this section does not apply to a contribution made by a political party, or to a contribution made by the candidate or the candidate's spouse to the candidate's own campaign. The secretary of state shall by administrative rule adjust any dollar amount in this section for inflation after each general election.

§13. A political party may not accept campaign contributions from a single source that, in total and per calendar year, exceed five thousand dollars. For purposes of this section, a state political party and its affiliated local committees or subdivisions shall be treated as a single political party. The secretary of state shall by administrative rule adjust the dollar amount in this section for inflation after each general election.

§14. The Legislature shall regulate persons who are employed or otherwise gainfully compensated to act as a lobbyist to influence in any manner legislative, executive, or administrative action, and shall ensure that such persons promptly register with the state as lobbyists and disclose information that is pertinent to the public interest.

§15. (1) The people of South Dakota find and declare that the Legislature's State Government Accountability Board did not fully respond to the people's demand for strong and accountable ethics oversight, in that:

(1) The Legislature exempted itself from oversight by that board; and
(2) The oversight authority of that board was inadequate to protect the public trust.

Therefore, the people of South Dakota find and declare that they are best suited to create an ethics commission that can adequately protect the public trust, and hereby nullify the State Government Accountability Board created by the Legislature in 2017 in House Bill 1076 and in its place create a new State Government Accountability Board to serve as an independent citizen ethics commission.

The State Government Accountability Board is as an independent entity, notwithstanding any other provision of the Constitution of South Dakota, including Article II, that shall be conducted in a nonpartisan manner with integrity, honesty, and fairness. Any rule adopted, investigation conducted, or sanction imposed by the board is subject to judicial review consistent with the Constitution.

(2) All South Dakota registered voters are eligible to apply for membership on the board. Only registered voters may be members. The board shall be directed by seven members who are appointed from those who have applied as follows:

(1) Two members appointed by the South Dakota Supreme Court, each of whom shall be a former or retired judge, and each of whom shall be registered with a different major political party;
(2) One member appointed by the Governor from a list of at least three registered voters provided by the speaker of the house of representatives;
(3) One member appointed by the Governor from a list of at least three registered voters provided by the minority leader of the house of representatives; and
(4) Three members, at least two of whom are nonlawyers, each appointed by majority vote of the other four members.

No member of the board may be registered as a lobbyist or may hold any other local, state, or federal public office or political party office while serving as a member of the board. Each member shall have been continuously registered with the same political party, or continuously registered as unaffiliated with any political party, for the two years preceding appointment to the board. Each member of the board shall serve for a term of not more than four years, except that after the initial appointments are made, the secretary of state shall select, in a random public drawing, one member to serve a one-year term and two members each to serve two-year, three-year, and four-year terms, respectively, for each member's first term only, to achieve staggered ending dates. No member may serve more than two terms. Service of a term means service of more than two years of a term. Any vacancy shall be filled within seventy-five days in the manner in which that position was originally filled. If a vacancy is not filled within seventy-five days, the Supreme Court shall fill the vacancy within an additional sixty days. Initial members shall be appointed by September 1, 2019. If all seven initial members are not appointed by the date provided under this section, the Supreme Court shall appoint the remaining members by November 1, 2019. The secretary of state shall impartially facilitate the member appointment process.

Members may be removed by the Governor, with the concurrence of the senate, only for substantial neglect of duty, gross misconduct, or inability to discharge the powers and duties of office, after written notice and an opportunity for response.

(3) The board has the power, notwithstanding any other provision of the Constitution, to:

(1) Investigate any allegation of bribery, theft, or embezzlement of public funds, or any violation of this Article, ethics rule, or state law related to government ethics, campaign finance, lobbying, government contracts, or corruption by any elected or appointed official, judge, or employee of any state or local government, and to issue subpoenas related to the investigation;
(2) Adopt ethics rules, subject to rulemaking procedures as defined by law, including provisions on campaign finance, conflicts of interest, confidential information, use of position, contracts with government agencies, legislative recusal, and financial interest disclosure, to which any elected or appointed official, judge, or employee of state or local government shall be subject. The process for adopting ethics rules shall include opportunities for public input and public participation. Nothing in this Article prohibits the Legislature from enacting any law that is not inconsistent with, or contradictory to, the ethics rules adopted by the board;
(3) Issue advisory opinions, which may be relied upon by any person involved in the specific transaction or activity for which the advisory opinion is issued, and by any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity for which the advisory opinion is issued. Notwithstanding any other provisions of law, a person who relies upon any provision or finding of an advisory opinion in this regard and who acts in good faith in accordance with the provisions and findings of the advisory opinion is not, as a result of the act, subject to any sanction provided by this Article;

(4) Adopt rules of procedure for the board, including rules to prevent the abuse or overuse of the submission of complaints;
(5) Hire and supervise staff, including any legal, investigative, or administrative and clerical employee who is necessary to support the functions of the board;
(6) Conduct specific or random audits of disclosures required by state campaign finance, ethics, lobbying, or government contracting law;
(7) Impose sanctions on any elected or appointed official, judge, or employee of state or local government, including the power to issue orders, impose fines, and commence administrative actions. The board shall issue a written explanation for any sanction;
(8) Refer information or complaints alleging a violation of this Article, the board's ethics rules, or state law related to ethics, campaign finance, or corruption to the appropriate prosecutorial authority or to internal or outside counsel hired or selected by the board, before, during, or after an investigation;
(9) Conduct educational programs for the benefit of the public and those subject to this Article; and
(10) Exercise additional powers not inconsistent with this Article as may be provided by law.

(4) The board shall convene at least once every quarter. The assent of four members shall be required for the consideration and resolution of any matter that involves the exercise of the board's duties and powers under this Article, including the adoption or approval of any motion, procedure, provision, or appeal, the hiring of staff, the issuance of an advisory opinion, the referral to the appropriate prosecutorial authority of a complaint alleging a violation, and the imposition of sanctions, except that the assent of three members shall be required for the convening of meetings, the initiation and carrying out of investigations, including the issuance of subpoenas, the approval of public education materials, the approval of minutes of previous meetings, and actions related to board contracts.

(5) Unless otherwise prohibited by federal or state law, any person acting in good faith may furnish information or file a complaint with the board, which may be anonymous, alleging a suspected or anticipated violation, and may request a status update to which the board shall respond in writing within sixty days. Any public employee may file a grievance with the Civil Service Commission, or other appropriate agency or entity, if the employee believes that there has been retaliation from his or her employer because the employee reported a violation through the chain of command of the employee's department, or to the board.

(6) All final reports and findings shall be made available to the public within ten days of completion. The board shall annually report to the people on its activities. The report shall include comprehensive information concerning the board's activities, including the number of complaints received, complaints filed by separate persons, investigations conducted, hearings held, sanctions imposed, and advisory opinions issued.

(7) On an annual basis beginning in 2020, the board shall issue to the Legislature written recommendations for legislation that seeks to increase public trust, transparency, and accountability in government and elections and decrease the risk of corruption and conflicts of interest.

(8) Each member of the board shall complete a financial interest disclosure statement. Any member of the board who has a personal, private interest in a matter before the board or with a direct and substantially related interest in a matter before the board shall disclose the fact of such interest and recuse himself or herself from working on the matter, unless the board member's vote is necessary to resolve the matter.

(9) The provisions of this section shall be enforceable by any circuit court. The board may intervene as a matter of right in any civil action involving any government entity, agency, or instrumentality alleged to be in violation of any mandate or prohibition under this Article, and in any civil action relating to the

board's powers or to the sufficiency of resources provided for the board's implementation and operation.

§16. Terms used in this Article mean:

(1) "Corporation," any for-profit corporation, nonprofit corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity;
(2) "Elective office," a non-federal office elected by South Dakota voters;
(3) "Gift," any item, service, or thing of value not given for fair market consideration. The term does not mean any purely informational material or campaign contribution;
(4) "Local," any subdivision of the state for governmental, political, or related purposes, including a county, municipality, town, township, or school district subdivision;
(5) "Major political party," the two parties that earned for the party's respective candidates for the office of President of the United States the highest and the second highest number of votes at the most recent general election for such office;
(6) "Personal use," a commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign; and
(7) "Senior public servant," any person holding a non-federal office elected by South Dakota voters, or an unelected individual who is an appointed officer, director, commissioner, head, or other executive or co-executive of a state agency, board, division, institution, or principal department, including a member of the State Government Accountability Board and any member of the Governor's cabinet.

§17. Each provision of this Article is intended to be independent and severable, and if any provision is held to be invalid, either on its face or as applied to any person, entity, or circumstance, the remaining provisions, and the application thereof to any person, entity, or circumstance other than those to which it is held invalid, shall not be affected thereby.

In any case of a conflict between any provision of this Article and any other provision contained in this Constitution, the provisions of this Article shall control.

§18. This Article is self-executing and shall take effect sixty days after approval. Each provision shall be justiciable and enforceable by any circuit court. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, the powers this Article grants and the protections it establishes.

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
JUL 11 2017
S.D. SEC. OF STATE

HAND DELIVERED

July 11, 2017

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

RE: **Attorney General's Statement for initiated constitutional amendment (open primary elections)**

Dear Secretary Krebs,

This Office received a proposed constitutional amendment that the sponsor will seek to place on the November 2018 general election ballot. 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 the amendment. The title is: "An initiated amendment to the South Dakota Constitution establishing open primary elections."

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

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

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution establishing open primary elections.

Explanation:

Currently, in order to appear on the general election ballot as a political party's nominee, candidates for the following offices must participate in a partisan primary election: Governor, State Legislature, U.S. Senate and House of Representatives, and elected county offices. On the primary ballot, each candidate is listed with a party designation. Only registered members of the candidate's chosen party may vote for that candidate unless the political party has also opened the primary to voters with no party affiliation.

Under current law, candidates unaffiliated with a political party (independents) do not participate in the primary election. Rather, they appear on the general election ballot by filing proper nominating petitions.

For the above offices, this amendment establishes an open primary election for candidates, including independents. All registered voters may vote for any candidate. The two candidates with the most votes advance to the general election. For some offices, more than one candidate is to be elected at the general election. In those instances, two candidates will advance to the general election for each position to be filled.

If this amendment is adopted, State election laws will need to be changed or be subject to challenge under the U.S. Constitution.

That Article VII of the Constitution of South Dakota be amended by adding thereto NEW SECTION to read as follows:

§ 4. An open primary election shall be held prior to the general election to nominate candidates for the office of Governor, the Legislature, all county elective offices, and the United States Senate and House of Representatives. The primary election for such candidates shall be open to all registered voters. The two candidates who receive the most votes in the open primary are the nominees for each office. If more than one candidate is to be elected to an office, the number of nominees shall be twice the number to be elected.

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HAND DELIVERED

July 26, 2017

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

RE: **Attorney General's Statement for initiated constitutional amendment (legislative redistricting by a commission)**

Dear Secretary Krebs,

This Office received a proposed constitutional amendment that the sponsor will seek to place on the November 2018 general election ballot. 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 the amendment. The title is: "An initiated amendment to the South Dakota Constitution providing for state legislative redistricting by a commission."

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

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

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JUL 26 2017
S.D. SEC. OF STATE

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution providing 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 amendment removes that authority from the Legislature and grants it to a redistricting commission.

Under the amendment, the commission is made up of nine registered voters selected each redistricting year by the State Board of Elections. 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.

Commission members may not hold certain state or local public offices, nor hold office in a political party organization. This restriction also applies for three years immediately prior to appointment to the commission, and three years immediately after appointment.

The commission will redistrict in 2021 and every ten years thereafter. The commission must make a draft redistricting map available for public inspection, and must accept written comments for thirty days. The commission will then establish final legislative district boundaries. The districts must be drawn in compliance with state and federal law.

An Amendment to the Constitution to provide for legislative redistricting by a nonpartisan commission.

Section 1. 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.~~

Terms used in this section mean:

(1) "Commission," the independent redistricting commission established pursuant to this section;

(2) "Political party," 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," an office of a political party organization as distinct from a state public office;

(4) "State public office," an elective office in the executive or legislative branch of the government of this state; or an office in the executive or legislative branch of the government of this state which is filled by gubernatorial appointment; or an office of a county, municipality 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 may 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 plan shall be completed by the commission in 2021 and every ten years after 2021. Redistricting shall be accomplished by December first of the year in which the redistricting is required.

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

Each commission member must 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.

Within the three years immediately preceding appointment, no commission member may have been appointed to or elected to any state public office or political party office. Within the three years immediately after

appointment, no commission member may 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 shall provide the technical staff and clerical services that the commission needs to prepare its redistricting plan. Each commission member shall receive per diem and expenses in the same manner and amount as paid to members of the Legislature.

Five commissioners, including the chair or vice chair, constitute a quorum. Five or more affirmative votes are required for any official action.

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 determines 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 legislative districts shall be made to:

(1) Comply with the United States Constitution, the South Dakota Constitution, and federal laws, as interpreted by the United States Supreme Court and other courts of competent jurisdiction;

(2) Have equal population to the extent practicable;

(3) Be geographically compact and contiguous to the extent practicable;

(4) Respect communities of interest to the extent practicable; and

(5) 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 place of residence of any legislative incumbent or candidate may 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 Legislature 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 Office of the Secretary of State the establishment of each legislative district.

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 may determine whether the Attorney General or other legal counsel shall be used or selected by the commission to represent the commission in any matter relating to a redistricting plan.

The duties of each commission member expire upon the appointment of the next commission. The commission may not meet or incur expense 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 decision.

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RECEIVED
JUL 31 2017
S.D. SEC. OF STATE

HAND DELIVERED

July 31, 2017

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

RE: **Attorney General's Statement for initiated measure (prohibiting contributions to ballot question committees by non-residents, out-of-state political committees, and entities that are not filed with the Secretary of State)**

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2018 general election ballot. 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 the measure. The title is: "An initiated measure prohibiting contributions to ballot question committees by non-residents, out-of-state political committees, and entities that are not filed with the Secretary of State."

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.
cc w/enc.: G. Mark Mickelson, Speaker
Jason Hancock, Director of LRC

RECEIVED
JUL 31 2017
S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure prohibiting contributions to ballot question committees by non-residents, out-of-state political committees, and entities that are not filed with the Secretary of State.

Explanation:

This measure prohibits contributions to statewide ballot question committees by non-residents, by political committees organized outside South Dakota, and by any entity that is not filed as an entity with the Secretary of State for the four years prior to making a contribution. It requires the Secretary of State to impose a civil penalty on any ballot question committee that accepts a prohibited contribution. The civil penalty is double the amount of the contribution. The measure requires the Secretary of State to investigate alleged contribution violations prohibited by this measure.

Currently, there are state laws regulating other kinds of election-related contributions, disclaimers, and disclosures. Violations of these laws are classified as misdemeanors and are subject to criminal penalties. The measure allows a court to impose a civil penalty (up to $5,000 per violation) in addition to the criminal penalty. Under the measure, the Secretary of State must investigate alleged violations of these particular election-related laws.

All civil penalties collected under this measure will be placed in the State general fund.

The measure is likely to be challenged on constitutional grounds.

Be it enacted by the people of South Dakota:

An Act to prohibit contributions to ballot question committees by out-of-state residents, political committees, and entities and to establish civil penalties therefor.

Section 1: That chapter 12-27 be amended by adding a NEW SECTION to read:

Any contribution to a statewide ballot question committee by a person who is not a resident of the state at the time of the contribution, a political committee that is organized outside South Dakota, or an entity that is not filed as an entity with the secretary of state for the four years preceding such contribution is prohibited. If a statewide ballot question committee accepts a contribution prohibited by this section, the secretary of state shall impose a civil penalty equal to two hundred percent of the prohibited contribution after notice and opportunity to be heard pursuant to chapter 1-26. Any civil penalty collected pursuant to this section shall be deposited into the state general fund.

Section 2: That chapter 12-27 be amended by adding a NEW SECTION to read:

Any resident of South Dakota may report a violation of this Act, 12-27-12, 12-27-16(1), or 12-27-19 to the secretary of state, who shall investigate the alleged violation and determine whether a violation occurred. In addition to any criminal penalty imposed under 12-27-12, 12-27-16(1), or 12-27-19, the court may impose on any person, committee, or entity found in violation of 12-27-12, 12-27-16(1) or 12-27-19 a civil penalty of five thousand dollars per violation to be deposited in the state general fund.

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RECEIVED
AUG 01 2017
S.D. SEC. OF STATE

HAND DELIVERED

August 1, 2017

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

RE: **Attorney General's Statements for two initiated measures**
(Increasing the State tobacco tax and creating a postsecondary technical institute fund)

Dear Secretary Krebs,

This Office received two versions of initiated measures that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of each of the initiated measures, 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 each measure. The titles are: "An initiated measure increasing the State tobacco tax and creating a postsecondary technical institute fund for the purposes of lowering student tuition and providing financial support to the State postsecondary technical institutes" (version #1); and "An initiated measure increasing the State tobacco tax and creating a postsecondary technical institute fund for the purposes of lowering student tuition and providing financial support to the State postsecondary technical institutes" (version #2).

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

Very truly yours,

Marty J. Jackley

Marty J. Jackley
ATTORNEY GENERAL
MJJ/PA/lde
Enc.
cc w/enc.: G. Mark Mickelson, Speaker of the House
Jason Hancock, Director of LRC

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure increasing the State tobacco tax and creating a postsecondary technical institute fund for the purposes of lowering student tuition and providing financial support to the State postsecondary technical institutes.

Explanation:

This measure increases the State tax on tobacco products sold in the state. The tax on packs containing 20 cigarettes would increase 50¢ per pack, and 25-cigarette packs would increase 62¢ per pack. Tax on other types of tobacco products such as cigars, roll-your-own, and chewing tobacco would change from the current rate (35% of the wholesale price) and be increased to 45% of the wholesale price.

The measure also creates a postsecondary technical institute tuition reduction and workforce training fund that will be administered by the State Board of Technical Education, which oversees the State postsecondary technical institutes. Currently there are four: Lake Area Technical Institute, Mitchell Technical Institute, Southeast Technical Institute, and Western Dakota Technical Institute. The fund's purposes include lowering tuition and providing financial support for these technical institutes.

Under current law, the first $30 million of tobacco tax revenue collected annually is deposited into the State general fund, and the next $5 million is deposited into the existing tobacco prevention and reduction trust fund. This measure would require the next $15 million to be deposited into the technical institute fund created by this measure.

V1

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

An Act to increase the tax on cigarettes and other tobacco products and to appropriate the revenues for the purposes of lowering student tuition at and providing funding to support the state's four post-secondary technical institutes.

Section 1. That § 10-50-3 be amended to read:

10-50-3. A tax is imposed, whether or not a sale occurs, at the following rates on all cigarettes held in this state for sale by any person:

Class A, on cigarettes weighing not more than three pounds per thousand, ~~seventy-six~~ one hundred one and one-half mills on each cigarette.

Class B, on cigarettes weighing more than three pounds per thousand, ~~seventy-six~~ one hundred one and one-half mills on each cigarette.

Section 2. That § 10-50-52 be amended to read:

10-50-52. The first thirty million dollars in revenue collected annually pursuant to this chapter shall be deposited in the general fund. The next five million dollars in excess of thirty million dollars collected annually shall be deposited in the tobacco prevention and reduction trust fund and shall be used to implement the tobacco prevention and reduction program. The next fifteen million dollars in excess of thirty-five million dollars collected annually shall be deposited in the postsecondary technical institute tuition reduction and workforce training fund created in section 4 of this Act. All revenue collected pursuant to this chapter in excess of ~~thirty-five~~ fifty million dollars shall be deposited in the general fund.

Section 3. That § 10-50-61 be amended to read:

10-50-61. In addition to the tax imposed by § 10-50-3, there is imposed, whether or not a sale occurs, a tax upon all tobacco products in this state and upon any person engaged in business as a licensed distributor or licensed wholesaler thereof, at the rate of ~~thirty-five~~ forty-five percent of the wholesale purchase price of such tobacco products. Such tax shall be

imposed at the time the distributor or wholesaler brings or causes to be brought into this state tobacco products for sale; makes, manufactures, or fabricates tobacco products in this state for sale in this state; or ships or transports tobacco products to dealers in this state to be sold by those dealers. For the purposes of this chapter, wholesale purchase price is the price for which a manufacturer sells tobacco products to a licensed distributor or licensed wholesaler exclusive of any discount or other reduction.

Any licensed distributor or licensed wholesaler who has paid tax pursuant to this section and subsequently sells the tobacco products to another licensed distributor or licensed wholesaler for resale, or sells the tobacco products outside of this state, shall receive a credit for the tax paid pursuant to this section on such tobacco products.

Section 4. That the code be amended by adding a NEW SECTION to read:

There is hereby created the postsecondary technical institute tuition reduction and workforce training fund to be administered by the Board of Technical Education for the following of:

(1) Lowering the cost of tuition and fees at the postsecondary technical institutes;

(2) Providing scholarships;

(3) Providing financial support for critical workforce training and curriculum;

(4) Providing financial support for new and innovative partnerships between the postsecondary technical institutes and employers that provide paid internships and apprenticeships for postsecondary technical institute students; and

(5) Providing financial support for the expansion of technical training for students in public secondary schools who pursue career opportunities in technical trades; and

(6) Providing funding for maintenance, security and safety of buildings and grounds.

The board may accept and expend for the purposes of this section any funds obtained from

appropriations and any other sources. Expenditures from this fund shall be appropriated through the normal budgeting process.

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

August 1, 2017

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

RE: **Attorney General's Statements for two initiated measures**
(Increasing the State tobacco tax and creating a postsecondary technical institute fund)

Dear Secretary Krebs,

This Office received two versions of initiated measures that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of each of the initiated measures, 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 each measure. The titles are: "An initiated measure increasing the State tobacco tax and creating a postsecondary technical institute fund for the purposes of lowering student tuition and providing financial support to the State postsecondary technical institutes" (version #1); and "An initiated measure increasing the State tobacco tax and creating a postsecondary technical institute fund for the purposes of lowering student tuition and providing financial support to the State postsecondary technical institutes" (version #2).

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

Very truly yours,

Marty J. Jackley

Marty J. Jackley
ATTORNEY GENERAL
MJJ/PA/lde
Enc.
cc w/enc.: G. Mark Mickelson, Speaker of the House
Jason Hancock, Director of LRC

RECEIVED
AUG 01 2017
S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure increasing the State tobacco tax and creating a postsecondary technical institute fund for the purposes of lowering student tuition and providing financial support to the State postsecondary technical institutes.

Explanation:

This measure increases the State tax on tobacco products sold in the state. The tax on packs containing 20 cigarettes would increase $1.00 per pack, and 25-cigarette packs would increase $1.25 per pack. Tax on other types of tobacco products such as cigars, roll-your-own, and chewing tobacco would change from the current rate (35% of the wholesale price) and be increased to 55% of the wholesale price.

The measure also creates a postsecondary technical institute tuition reduction and workforce training fund that will be administered by the State Board of Technical Education, which oversees the State postsecondary technical institutes. Currently there are four: Lake Area Technical Institute, Mitchell Technical Institute, Southeast Technical Institute, and Western Dakota Technical Institute. The fund's purposes include lowering tuition and providing financial support for these technical institutes.

Under current law, the first $30 million of tobacco tax revenue collected annually is deposited into the State general fund, and the next $5 million is deposited into the existing tobacco prevention and reduction trust fund. This measure would require the next $20 million to be deposited into the technical institute fund created by this measure.

V2

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

An Act to increase the tax on cigarettes and other tobacco products and to appropriate the revenues for the purposes of lowering student tuition at and providing funding to support the state's four post-secondary technical institutes.

10-50-3. A tax is imposed, whether or not a sale occurs, at the following rates on all cigarettes held in this state for sale by any person:

Class A, on cigarettes weighing not more than three pounds per thousand, ~~seventy-six~~ one hundred twenty-six and one-half mills on each cigarette.

Class B, on cigarettes weighing more than three pounds per thousand, ~~seventy-six~~ one hundred twenty-six and one-half mills on each cigarette.

Section 2. That § 10-50-52 be amended to read:

10-50-52. The first thirty million dollars in revenue collected annually pursuant to this chapter shall be deposited in the general fund. The next five million dollars in excess of thirty million dollars collected annually shall be deposited in the tobacco prevention and reduction trust fund and shall be used to implement the tobacco prevention and reduction program. The next twenty million dollars in excess of thirty-five million dollars collected annually shall be deposited in the postsecondary technical institute tuition reduction and workforce training fund created in section 4 of this Act. All revenue collected pursuant to this chapter in excess of ~~thirty-five~~ fifty-five million dollars shall be deposited in the general fund.

Section 3. That § 10-50-61 be amended to read:

10-50-61. In addition to the tax imposed by § 10-50-3, there is imposed, whether or not a sale occurs, a tax upon all tobacco products in this state and upon any person engaged in business as a licensed distributor or licensed wholesaler thereof, at the rate of ~~thirty-five~~ fifty-five percent of the wholesale purchase price of such tobacco products. Such tax shall be imposed at the time the distributor or wholesaler brings or causes to be brought into this state

tobacco products for sale; makes, manufactures, or fabricates tobacco products in this state for sale in this state; or ships or transports tobacco products to dealers in this state to be sold by those dealers. For the purposes of this chapter, wholesale purchase price is the price for which a manufacturer sells tobacco products to a licensed distributor or licensed wholesaler exclusive of any discount or other reduction.

Any licensed distributor or licensed wholesaler who has paid tax pursuant to this section and subsequently sells the tobacco products to another licensed distributor or licensed wholesaler for resale, or sells the tobacco products outside of this state, shall receive a credit for the tax paid pursuant to this section on such tobacco products.

Section 4. That the code be amended by adding a NEW SECTION to read:

There is hereby created the postsecondary technical institute tuition reduction and workforce training fund to be administered by the Board of Technical Education for the following purposes:

(1) Lowering the cost of tuition and fees at the postsecondary technical institutes;

(2) Providing scholarships;

(3) Providing financial support for critical workforce training and curriculum;

(4) Providing financial support for new and innovative partnerships between the postsecondary technical institutes and employers that create paid internships and apprenticeships for postsecondary technical institute students; and

(5) Providing financial support for the expansion of technical training for students in public secondary schools who pursue career opportunities in technical trades;

(6) Providing funding for maintenance, security and safety of buildings and grounds.

The board may accept and expend for the purposes of this section any funds obtained from appropriations and any other sources. Expenditures from this fund shall be appropriated through the normal budgeting process.

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

August 3, 2017

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

RE: **Attorney General's Statement for initiated constitutional amendment (regarding initiated and referred measures)**

Dear Secretary Krebs,

This Office received a proposed initiated constitutional amendment that the sponsor will seek to place on the November 2018 general election ballot. This was revised by the sponsor after I filed a ballot explanation on June 5, 2017, for her prior version of the amendment. Enclosed is a copy of the revised proposed 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 revised 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/enc.: Roxanne Weber
Jason Hancock, Director of LRC

Version 2

RECEIVED
AUG 03 2017
S.D. SEC. OF STATE

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution regarding initiated and referred measures.

Explanation:

Currently, most laws enacted by the Legislature or a municipality may be referred to a vote of the people. Laws that cannot be referred are those necessary for public peace, health or safety, or for the support of government and its existing public institutions, including laws containing an emergency clause (with an immediate effective date). The amendment removes this restriction and permits referral of all laws except budget bills.

Under the amendment, if an initiated or referred measure is approved by voters and becomes law, it cannot be repealed or amended by the Legislature for 7 years, except by a two-thirds vote of each legislative chamber. This restriction also applies to municipal governing bodies.

The amendment further provides that if the Legislature passes laws making changes to certain requirements involving the initiative, referendum, or constitutional amendment process, those laws must be referred.

The current Constitution establishes a minimum number ("floor") of petition signatures required to propose a constitutional amendment: at least 10% of the total votes cast in the last governor's election. Under this amendment, that number becomes a maximum ("ceiling") instead.

Some of the amendment's provisions may conflict with existing state and federal election laws.

Version 2

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S.D. SEC. OF STATE

INITIATED CONSTITUTIONAL AMENDMENT

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~~ any budget bills. A law enacted by the Legislature that is necessary for the immediate preservation of the public peace, health or safety, or support of the state government and its existing public institutions may be referred within ninety days of the law going into effect. The law enacted with an emergency clause shall remain in effect until the law is voted upon by the people. If a law is rejected by a majority vote in a general or special election, 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.

If a majority of votes cast upon an initiated or referred measure are affirmative, the measure shall be enacted. An initiated or referred measure which is approved is effective thirty days after the election. If conflicting measures are approved, the measure receiving the highest number of affirmative votes shall be law. A measure approved by the electors may not be repealed or amended by the Legislature for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

This section ~~shall~~ may not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. The veto power of the Executive ~~shall~~ may not be exercised as to measures referred to a vote of the people. This section ~~shall apply~~ also applies 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: That Article III of the Constitution of the State of South Dakota be amended by adding a new section to read as follows:
§33. The Legislature shall refer to a vote of the electors of the state any law amending the number of electors required to submit an initiated measure, referred law, or constitutional amendment to a public vote; the time available for electors to circulate an initiative, referendum, or a constitutional amendment petition; or the number of electors who must vote to pass an initiated measure, referred law, or constitutional amendment. No law changing the criteria enumerated in this section may take effect until after that law has received a majority vote in a general or special election.

Section 3: That Article XXIII, Section 1 of the Constitution of the State of South Dakota be amended to read as follows:
§1. Amendments to this Constitution may be proposed by initiative or by a majority vote of all members of each house of the Legislature. An amendment proposed by initiative shall require a petition signed by qualified voters ~~equal in number to at least~~. Not more than ten percent of the total votes cast for Governor in the last gubernatorial election shall be required to sign the petition to amend the constitution. The petition containing the text of the proposed amendment and the names and addresses of its sponsors shall be filed at least one year before the next general election at which the proposed amendment is submitted to the voters. A proposed amendment may amend one or more articles and related subject matter in other articles as necessary to accomplish the objectives of the amendment.

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CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
AUG 22 2017
S.D. SEC. OF STATE

HAND DELIVERED

August 22, 2017

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

RE: **Attorney General's Statement for initiated measure** (regarding prescription drug pricing for state agencies)

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2018 general election ballot. 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 initiated 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/lde
Enc.

cc/enc.: Drey Samuelson
Jason Hancock, Director of LRC

RECEIVED
AUG 22 2017
S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure establishing a cap on the price a State agency may pay for a prescription drug.

Explanation:

This measure limits the amount that a State agency may pay for a prescription drug. Under the measure, a State agency may not directly or indirectly pay more for a prescription drug than the U.S. Department of Veterans Affairs pays for that same drug.

The measure requires the State Bureau of Administration to enact rules establishing prescription drug prices payable by State agencies.

For An Act Entitled, An Act to establish a prescription drug pricing law enabling a State Agency to pay the same or lower prices for prescription drugs as the prices paid by the United States Department of Veterans Affairs.

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

Section 1. Notwithstanding any other provision of law, a State Agency may not enter into any agreement with the manufacturer of any drug for the purchase of a prescribed drug or agree to pay, directly or indirectly, for a prescribed drug, unless the net cost of the drug, inclusive of cash discounts, free goods, volume discounts, rebates, and all other discounts or credits, as determined by the purchasing department, agency, or entity is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

Section 2. The price ceiling described in section 1 of this Act applies to all programs in which the State or any of its agencies is the ultimate payer for the drug, even if it does not purchase the drug directly.

Section 3. In addition to any agreement for any cash discounts, free goods, volume discounts, rebates, and any other discounts or credits already in place for these programs, the State and its agencies shall enter into additional agreements with drug manufacturers for further price reduction so the net cost of the drug, as determined by the purchasing department, agency, or entity, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

Section 4. The Bureau of Administration shall adopt rules, pursuant to chapter 1-26 to obtain information about prescription drug prices, credits, discounts, rebates, and other price advantages for the purpose of determining the lowest price at which a prescription drug is being offered to the United States Department of Veterans Affairs and to establish the lowest price at which prescription drugs may be purchased by any State Agency. Any State agency may seek waivers of federal law, rule or regulation necessary to implement this Act.

Section 5. If any provision of this Act is challenged in court, the committee of individuals responsible for circulating the petition to qualify this Act for the ballot are deemed to have a direct and personal stake in defending this Act from constitutional or other challenges. If the Act is challenged, committee members shall be deemed to have legal standing to assert the member's direct and personal stake by defending the Act's validity.

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

August 29, 2017

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

RE: **Attorney General's Statement for initiated measure** (voting by mail)

Dear Secretary Krebs,

This Office received a proposed initiated measure that the sponsor will seek to place on the November 2018 general election ballot. 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 initiated 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/lde
Enc.

cc/enc.: Drey Samuelson
Jason Hancock, Director of LRC

RECEIVED
AUG 29 2017
S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure allowing certain elections to be conducted through a voting-by-mail process.

Explanation:

This initiated measure gives county commissioners the authority to require elections to be held by mail ballot. It also gives county auditors the authority to require voting by mail in precincts with less than 200 registered voters. The measure applies only to primary, special, and general elections conducted by the county auditor. Voters will receive advance notice that elections will be conducted by mail.

In most circumstances, if an election is conducted by mail the measure requires that ballots must be mailed to voters at least 14 days before the election. Upon completing the ballot, the voter must sign the provided envelope and return the ballot. Ballots may be returned by mail, delivered to the county courthouse, or deposited at designated ballot drop-off sites that are secure and publicly accessible 24 hours a day. Ballots must be received by 8:00 p.m. on the date of an election. A ballot will be counted if the auditor determines the voter's signature on the envelope matches the signature in the voter's registration record.

The measure creates felony and misdemeanor criminal offenses related to voting by mail.

RECEIVED
AUG 29 2017
S.D. SEC. OF STATE

Petition: South Dakota Voter Accessibility, Integrity, and Efficiency Act

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA

Section 1. This Act may be referred to as the "South Dakota Voter Accessibility, Integrity, and Efficiency Act."

Section 2. The people find and declare that the accessibility, integrity, and efficiency of the voting system are of the utmost importance in South Dakota's political system. Statewide vote at home models have been established in other states with no evidence of fraud and abuse and have been deemed highly popular by the general public in those states. Vote at home models decrease the cost of elections, which are currently borne largely by local taxpayers, allowing scarce tax dollars to be reallocated for other pressing needs of county budgets. Increasing voter participation and making voting more accessible among all age and ethnic groups, including seniors and South Dakota's proud Native American citizens, could inspire South Dakotans to feel greater attachment to their home state. Finally, voter participation is too often reduced due to factors of weather, modern work schedules, family obligations, health issues, mobility challenges, and vast geographic distances. Therefore, the purpose of this Act is to increase accessibility for the people of South Dakota in electoral politics, increase the completeness and accuracy of the voter registration list, and to ensure the integrity and efficiency of the system.

Section 3. The board of county commissioners may, be resolution, require the county auditor to conduct all primary, special, and general elections entirely by mail ballot. The board of county commissioners shall give notice to the county auditor at least ninety days before the first election to be conducted entirely by mail ballot. If the board of county commissioners decide to return to a polling place election environment, the board of county commissioners shall give notice to the county auditor at least one hundred eighty before the first election to be conducted using polling places. Any authorization made pursuant to this section applies to each primary, special, and general election conducted by the county auditor.

Section 4. The county auditor may designate any precinct that has less than two hundred registered voters at the time voter registration is closed as a mail ballot precinct. Authorization from the board of county commissioners is not required to designate a precinct as a mail ballot precinct pursuant to this section. A mail ballot precinct means a precinct in which each registered voter shall receive a ballot by mail before each prior to every election.

Section 5. After making a determination under sections 3 and 4 of this Act that each election in the county or mail ballot precinct shall be conducted entirely by mail, the county auditor shall notify each registered voter by mail that the voting shall be by mail ballot. If the board of county commissioners pursuant to section 3 of this Act or the county auditor pursuant to section 4 of this Act make a determination to return to a polling place election environment, the auditor shall notify each registered voter by mail of this decision and the county auditor shall provide the address of the polling place to be used.

Section 6. Except as provided in this section, the person in charge of the election shall mail by non-forwardable mail a ballot with a return identification envelope and a secrecy envelope not more than twenty days preceding an election and not less than fourteen days preceding the election to each voter of the election precinct the person in charge of the election shall use the registration list as updated twenty-one days preceding the election.

If the person in charge of the election determines that any voter of the election precinct does not receive daily mail service from the United States Postal Service, the person in charge of the election shall mail by non-forwardable mail a ballot with a return identification envelope and a secrecy envelope to the voter not more than twenty days preceding an election and not less than eighteen days preceding the election.

If the ballot is mailed to an address outside this state to any voter who is not in the military or overseas, the person in charge of the election may mail the ballot not more than twenty-nine days preceding the election. A voter who wishes to receive a ballot at a temporary address that is outside of the state shall apply to the person in charge of the election not less than fifty days preceding an election. The application shall provide the applicant's voter registration address, the temporary out-of-state address, and an oath verifying the validity of the information contained in the application. The oath does not need to be administered by a notary public. A copy of the voter's personal identification as required by § 12-18-6.1 shall accompany the application.

Section 7. For any voter who updates a voter registration after the voter registration deadline, the person in charge of the election shall make the ballot, the return identification envelope, and the secrecy envelope available either by mail or at the office of the person in charge of the election or another place designated by the person in charge of the election. The voter to whom this section applies shall request a ballot from the person in charge of the election.

Section 8. The outside envelope identification and the return envelope for ballot shall contain the following warning: ANY PERSON WHO FORGES ANOTHER VOTER'S SIGNATURE, OR BY USE OF FORCE OR OTHER MEANS, UNDULY INFLUENCES A VOTER TO VOTE IN ANY PARTICULAR MANNER OR REFRAIN FROM VOTING, IS GUILTY OF A CLASS 6 FELONY.

Section 9. To cast a ballot received pursuant to this Act, the voter shall mark the ballot, sign the return identification envelope supplied with the ballot, and comply with the instructions provided with the ballot.

The voter may return the marked ballot to the person in charge of the election by United States mail or return the ballot to a designated ballot dropoff facility in the county or the county courthouse. The ballot shall be returned in the return identification envelope. If the voter returns the ballot by mail, the voter shall provide the postage.

If an authorized messenger returns a ballot for a voter, the person shall deposit the ballot in a designated ballot drop-off facility in the county or the county courthouse within two days after receiving the ballot.

Section 10. A ballot shall be received by the person in charge of the election via the United States Postal Service or be received at any ballot dropoff facility or county courthouse by a county election official not later than 8:00 p.m. on the date of an election.

A ballot may only be counted if: (1) The ballot is returned in the return identification envelope; (2) The envelope is signed by the voter to whom the ballot was issued; and (3) The voter's signature is verified.

Section 11. The person in charge of the election shall verify the signature of each voter on the return identification envelope with the signature on the voter's registration record. The State Board of Elections shall adopt rules, pursuant to chapter 1-26, establishing the procedure to use to verify voter's signature. If the county auditor determines that a voter to whom a replacement ballot has been issued has voted more than once, the person in charge of the election may only count one ballot cast by that voter.

Section12. Any voter at the county courthouse or a ballot dropoff facility and is in line waiting to vote or deposit a completed ballot is considered to have started the act of voting.

Section 13. A voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. A replacement ballot shall be issued and processed as described in this Act. To request a replacement ballot, the voter shall complete and sign a replacement ballot request form. The request for a replacement ballot may be made electronically, in writing, in person, or by other means designated by the State Board of Elections promulgated pursuant to chapter 1-26 by rule. The county auditor shall keep a record of each replacement ballot provided under this section. Notwithstanding any deadline for mailing in ballots in this Act, a replacement ballot may be mailed or made available in the office of the county auditor. No replacement ballot may be mailed after the fifth day before the date of the election.

Section 14. At least two secure and accessible ballot dropoff facilities shall be provided within each county where an election under sections 3 or 4 of this Act is held. For each county that has a population of more than fifteen thousand persons, there shall be at least one additional ballot dropoff facility provided for each additional five thousand persons.

A ballot dropoff facility shall consist of a secure, accessible, and locked ballot box located as near as possible to established public transportation routes and that is able to receive completed ballots twenty-four hours a day. At each ballot dropoff facility the person in charge of the election shall prominently display a sign stating that the location is an official ballot drop site.

Section 15. If any voter who by reason of physical disability or inability to read or write is unable to mark a ballot, the voter may receive assistance from an authorized messenger in marking the ballot. The authorized messenger assisting the voter shall ascertain the wishes of the voter and assist the voter in voting the ballot accordingly. No authorized messenger may solicit any votes or give information regarding the vote. A voter wishing to use an authorized messenger shall request an authorized messenger from the person in charge of the election before 3:00 p.m. on the day of the election.

Section 16. An authorized messenger may not assist a voter pursuant to this Act if the authorized messenger is:

(1) An employer of the voter or an agent of the employer;

(2) An officer or agent of the union of which the voter is a member; or

(3) A candidate for office in the election or an agent of a candidate for office in the election.

Section 17. If a ballot is challenged because it is returned in an unsigned return identification envelope or because the signature of the voter on a return identification envelope is determined to not match the signature in the voter registration record for the voter, the person in charge of the election shall mail a notice to the voter. The State Board of Elections shall design the form to be used by the persons in charge of the election to provide notification to the voter that the ballot was denied or challenged.

In order for the vote of the voter to be counted, the voter shall provide evidence to disprove the challenge, or provide an updated voter registration card with a signature that is determined to be a match, no later than fourteen days after the date of the election.

If the voter does not provide evidence to disprove a challenge alleging that the signature of the voter on a return identification envelope does not match the signature in the voter registration record for the voter within fourteen days after the election, the registration of the voter shall be moved to the inactive registration file.

Section 18. The filing officer may not release as a public record any information that could be used to identify a voter whose ballot has been challenged pursuant to section 17 of this Act until the eighth day after the date of an election.

Eight days after the date of an election, the filing officer may disclose as a public record the following information about each voter whose ballot was challenged pursuant to section 17 of this Act:

(1) The name of the voter;

(2) The residential address of the voter; and

(3) The reason challenge of voter's ballot.

For the purpose of this section, the term, filing officer, means the secretary of state for any federal election; any statewide election; or any election for the Legislature; or the precinct superintendent for any county, municipal, or district election.

Section 19. The Governor by written proclamation may extend the deadline for returning ballots in any state, county, municipal, or district election if the Governor receives a written request for the extension from the secretary of state. The secretary of state may request the Governor to extend the deadline for returning ballots under this section if, after consultation with affected county auditors, the secretary of state determines that it would be impossible or impracticable for the voters to return ballots or for election officials to tally ballots due to an emergency as defined in § 34-48A-1.

The Governor may not extend the deadline for returning ballots in any state, county, municipal, or district election under this section for more than seven days after the date of an election.

The written proclamation shall state:

(1) The determination of the Governor;

(2) The reason the deadline for returning ballots was extended; and

(3) The date and time by which ballots shall be returned in the election.

Notwithstanding any other provision of this Act, if the Governor extends the deadline for returning ballots under this section, the person in charge of an election in any voting precinct may not order a tally report from any vote tally machine in the election until the date and time set by the Governor by which ballots shall be returned in the election.

Section 20. All received return identification envelopes shall be placed in a secure location from the time of delivery by the voter until the opening of the envelopes.

Not more than seven days before the date of an election, the person in charge of an election may begin opening return identification envelopes and secrecy envelopes of ballots delivered by mail and received by the person in charge of the election for the purpose of preparing the ballots for counting. However, no ballots may be counted before 8:00 am on election day.

Section 21. Each person in charge of an election shall maintain a record, open for public inspection, of each voter issued a ballot and each voter who returned a ballot. For each primary, special election, or general election, not more than seven days before the date of an election, any

political party, political committee, or person may request a list of each registered voter who has or has not voted.

Section 22. Any person who opens, unfolds, or examines any ballot or makes any communication to any person concerning the markings or contents of any ballot before the counting of the votes, is guilty of a Class 2 misdemeanor.

Any person who forges another voter's signature, or by use of force or other means, unduly influences a voter to vote in any particular manner or refrain from voting is guilty of a Class 6 felony.

Any person who intentionally disposes of a ballot in any manner other than provided in this Act is guilty of a Class 2 misdemeanor.

(3) Any person after procuring a ballot for another voter who intentionally fails to deliver the ballot to the voter, intentionally fails to deliver the return identification envelope and secrecy envelope with the ballot to the person in charge of the election, or tampers with the envelope or ballot is guilty of a Class 6 felony.

Section 23. Notwithstanding voter registration update procedures provided by this Act a county auditor shall update the registration of a voter in a county that has opted to conduct elections entirely by mail if evidence is received from the United States Postal Service indicating a residential address that is different from the residential address for the voter as contained in the records of the county auditor.

If a county auditor updates the registration of a voter pursuant to this section, the county auditor shall send a new confirmation mailing by nonforwardable mail as provided in § 12-4-19.

No voter may be disqualified from voting due to any error made pursuant to this section to an update of the voter registration.

Section 24. That § 12-19-2 be amended to read

An absentee voter desiring to vote by mail may apply to the person in charge of the election for an absentee ballot. The application or request shall be made in writing and be signed by the applicant and shall state the applicant's voter registration address. The application or request shall contain an oath verifying the validity of the information contained in the application or request. The oath shall be administered by a notary public or other officer authorized by statute to administer an oath. If the application or request does not contain an oath, the application or request shall be accompanied by a copy of the voter's identification card as required by § 12-18-6.1. The copy of the voter's identification card shall be maintained by the person in charge of the election. However, the voter's identification card is not available for public inspection. <u>The application or request may be used to obtain an absentee ballot for all future elections conducted</u>

by the jurisdiction receiving the application or request if so indicated, unless the jurisdiction has decided to conduct each election by mail pursuant to sections 3 or 4 of the Act. The ballot shall be sent to the voter's residence, as shown in the voter registration file or any temporary residence address designated in writing by the voter, at the time of applying for the absentee ballot. If the application or request is from a voter identified as being covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2010, the voter may designate on the application for the ballot to be sent electronically pursuant to this section through the system provided by the Office of the Secretary of State. The person in charge of the election shall stamp the application with the date it was received. The person in charge of the election shall preserve a record of the name, mailing address, and voting precinct of each applicant and, except as provided by § 12-19-45, deliver a copy of the record to the superintendent of the election board of the home precinct of the applicant.