

REPRESENTATIVE STEVEN G. HAUGAARD, CHAIR | SENATOR BROCK L. GREENFIELD, VICE CHAIR
JASON HANCOCK, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | WENZEL J. CUMMINGS, CODE COUNSEL
500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV



June 28, 2019

Mr. Cory Allen Heidelberger
SD Voice
912 N. 1st St.
Aberdeen, SD 57401

RECEIVED
JUN 28 2019
S.D. SEC. OF STATE

Dear Mr. Heidelberger:

This office is required to review each initiated measure to determine whether it is written in a clear and coherent manner in the style and form of other legislation and worded so that the effect of the measure is not misleading or likely to cause confusion among voters in accordance with SDCL 12-13-24. Further, in accordance with SDCL 12-13-25, this office is required to provide written comments to assist the measure's sponsor in complying with SDCL 12-13-24, including assistance regarding the substantive content of the measure to minimize any conflict with existing law and ensure the measure's effective administration. You are under no obligation to accept any of the suggestions contained in this letter, but please keep in mind the legal standards established in SDCL 12-13-24 and 12-13-25.

Attached is a rewrite of your proposed initiated measure to repeal chapter 14 of the 2019 Session Laws. Simply repealing the session law is not effective since the law will have been codified prior to the election in November of 2020. Since that session law is already codified and in effect on July 1, 2020, the proper style and form of the measure is to show the proposed changes to the law as the law would exist on July 1, 2020. This rewrite accurately shows the proposed changes in a manner not likely to cause confusion among voters. The title has also been removed since the attorney general will provide the title as required by SDCL 12-13-25.1.

If you have any questions regarding our suggested changes, please feel free to contact us.

It has been determined during this review that this proposed initiated measure may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the Legislative Research Council a copy of the initiated measure as submitted in final form to the Attorney General, so we can develop any fiscal note required by SDCL 2-9-30.

This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated measure, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Hancock". The signature is written in a cursive style with a large, looping initial "J".

Jason Hancock, Director

JH:DO:ct

Enclosures

CC: The Honorable Steve Barnett, Secretary of State
The Honorable Jason Ravensborg, Attorney General

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA.

The text of the proposed law is as follows:

Section 1: That chapter 14 of the 2019 Session Laws be repealed.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. That § 2-1-1.3 be amended to read:

2-1-1.3. Terms used in this chapter mean:

~~(1) "Petition circulator," the same as the term is defined under § 12-1-3 a person who is a resident of this state for at least thirty days prior to registration as a petition circulator, is at least eighteen years of age, and who circulates, for pay or as a volunteer, petitions or solicits petition signatures from members of the public for the purpose of placing ballot measures on any statewide election ballot;~~

(2) "Petition sponsor," any person who proposes the placement of a statewide ballot measure on the ballot;

~~(3) "Ballot measure," any measure placed on a statewide ballot in accordance with §§ 2-1-1.1, 2-1-1.2, or 2-1-3.1;~~

~~(4) "Paid circulator," any person who receives money or anything of value to be a petition circulator;~~

~~(5) "Volunteer circulator" any person who does not receive money or anything of value to be a petition circulator.~~

Section 2. That § 2-1-1.4 be reenacted to read:

2-1-1.4. A sworn affidavit filed with the secretary of state pursuant to § 2-1-1.1, 2-1-1.2, or 2-1-3.1 shall include information attesting to residency as defined in § 12-1-4 of each petition circulator. The following information shall be included in the affidavit:

- (1) Current state in which the petition circulator is licensed to drive, driver license number, and expiration date;
- (2) Current state of voter registration;
- (3) Length of time at current physical street address and previous two addresses, and whether the prior addresses were located in South Dakota;
- (4) A sworn statement by the petition circulator indicating the circulator's intention to stay in the state after the petition circulation deadline;
- (5) Any other information relevant to indicate residency, including a library card or utility bill;
- (6) Whether the petition circulator pays in-state tuition at any public postsecondary educational institution, if applicable; and
- (7) Whether the petition circulator obtains any resident hunting or resident fishing license of any kind, if applicable.

The information included in the affidavit are factors in determining residency but are not determinative. The contents under this section of any affidavit filed with the secretary of state shall be held confidential by the secretary of state, and the secretary of state may release the contents only to an interested person for purposes of § 2-1-18 and to the attorney general. Failure to substantially comply with the provisions of this section shall disqualify the petitions from a petition circulator not in substantial compliance with this section from being considered.

Section 3. That § 2-1-1.5 be repealed.

~~2-1-1.5. Prior to circulation of any petition for a ballot measure, a petition circulator shall submit an application to the secretary of state, obtain a circulator identification number, and be included in a directory of registered petition circulators. For each ballot measure on which a petition circulator seeks to circulate a petition, the petition circulator shall certify the circulator's name, that the circulator is at least eighteen years of age, physical address of current residence, physical address of prior residence if current residence is less than one year, email address, phone number, state of issuance for driver license, state of voter registration, occupation, the ballot question committee supporting the ballot measure, whether the petition circulator will be volunteer or paid, and whether the petition circulator is a registered sex offender. The certification under this section shall be submitted to the office of the secretary of state. If any statement included in the petition circulator's certification is determined to be false, any signatures collected by the petition circulator are void and may not be counted. Petition sponsors shall provide a list to the secretary of state of any person acting as a petition circulator for the sponsor's ballot measure, whether the petition circulator is paid or volunteer and, if paid, the rate of compensation.~~

~~— An application submitted under this section may be filed by electronic transmission in accordance with methods approved by the secretary of state. To be timely filed, any application received by electronic transmission shall be legible when received by the means it was delivered.~~

~~— A petition circulator and petition sponsor shall update any information required under this section with the secretary of state not more than seven days of any change.~~

Section 4. That § 2-1-1.6 be repealed.

~~2-1-1.6. The secretary of state shall develop and maintain a directory, available upon request and payment of reasonable fees, that contains information provided by each petition circulator under § 2-1-1.5 and classifies each petition circulator as paid or volunteer. Providing a copy of the application submitted under § 2-1-1.5, together with any update to the information contained in the application, is sufficient to fulfill the requirements of this section. Any information contained in the directory shall be a public record for purposes of chapter 1-25.~~

Section 5. That § 2-1-1.7 be repealed.

~~2-1-1.7. A paid petition circulator who registers under § 2-1-1.5 shall pay to the secretary of state a registration fee for each ballot question committee represented by the petition circulator. The registration fee for a paid circulator is twenty dollars. The registration fee shall be deposited in the state general fund.~~

~~—The fee under this section does not apply to any volunteer circulator.~~

Section 6. That § 2-1-1.8 be repealed

~~—2-1-1.8. Following receipt of any application under § 2-1-1.5 and a registration fee under § 2-1-1.7, if any, the secretary of state shall issue the petition circulator a circulator identification number and badge that contains the information required under § 2-1-1.9.~~

Section 7. That § 2-1-1.9 be repealed.

~~—2-1-1.9. A person shall wear the badge issued under § 2-1-1.8 which shall be visible at all times while acting as a petition circulator. The badge shall contain the words "petition circulator," and include the identity of the ballot question committee on behalf of which the petition circulator is registered, the circulator identification number, and a designation as either "paid" or "volunteer." The badge may not state the name of the petition circulator. A person is guilty of a Class 2 misdemeanor if the person acts as a petition circulator without wearing a badge issued under § 2-1-1.8.~~

Section 8. That § 2-1-1.1 be amended to read:

2-1-1.1. The petition as it is to be circulated for an initiated amendment to the Constitution shall be filed with the secretary of state prior to circulation for signatures and shall:

- (1) Contain the full text of the initiated amendment;
- (2) Contain the date of the general election at which the initiated amendment is to be submitted;
- (3) Contain the title and explanation as prepared by the attorney general;
- (4) Be accompanied by a notarized affidavit form signed by each person who is a petition sponsor that includes the name and address of each petition sponsor; and
- (5) Be accompanied by a statement of organization as provided in § 12-27-6.

The petition circulator shall provide to each person who signs the petition a form containing the title and explanation of the initiated amendment to the Constitution as prepared by the attorney general; any fiscal note prepared pursuant to § 2-9-30; the name, phone number, and email address of each petition sponsor; the name, phone number, and email address of the petition circulator; and a statement whether the petition circulator is a volunteer or paid petition circulator and, if a paid circulator, the amount the circulator is being paid; ~~and the petition circulator's circulator identification number~~. The form shall be approved by the secretary of state prior to circulation. ~~The petition circulator's circulator identification number shall be printed on each signature page of a ballot measure petition the circulator circulates.~~

For any initiated amendment petition, no signature may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. The initiated amendment petition shall be filed with the secretary of state at least one year before the next general election. A sworn affidavit, signed by at least two-thirds of the petition sponsors, containing information required for each petition circulator as required under § 2-1-1.4 and stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the secretary of state. The form of the petition, including petition size and petition font size, and the affidavit shall be prescribed by the State Board of Elections.

Section 9. That § 2-1-1.2 be amended to read:

2-1-1.2. The petition as it is to be circulated for an initiated measure shall be filed with the secretary of state prior to circulation for signatures and shall:

- (1) Contain the full text of the initiated measure;
- (2) Contain the date of the general election at which the initiated measure is to be submitted;
- (3) Contain the title and explanation as prepared by the attorney general;
- (4) Be accompanied by a notarized affidavit form signed by each person who is a petition sponsor that includes the name and address of each petition sponsor; and
- (5) Be accompanied by a statement of organization as provided in § 12-27-6.

The petition circulator shall provide to each person who signs the petition a form containing the title and explanation of the initiated measure as prepared by the attorney general; any fiscal note prepared pursuant to § 2-9-30; the name, phone number, and email address of each petition sponsor; the name, phone number, and email address of the petition circulator; and a statement whether the petition circulator is a volunteer or paid petition circulator and, if a paid circulator, the amount the circulator is being paid; ~~and the petition circulator's circulator identification number.~~ The form shall be approved by the secretary of state prior to circulation. ~~The petition circulator's circulator identification number shall be printed on each signature page of a ballot measure petition the circulator circulates.~~

For any initiated measure petition, no signature may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. The initiated measure petition shall be filed with the secretary of state at least one year before the next general election. A sworn affidavit, signed by at least two-thirds of the petition sponsors, containing information required for each petition circulator as required under § 2-1-1.4 and stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the secretary of state. The form of the petition, including petition size and petition font size, and the affidavit shall be prescribed by the State Board of Elections.

Section 10. That § 2-1-3.1 be amended to read:

2-1-3.1. The petition as it is to be circulated for a referred law shall be filed with the secretary of state prior to circulation for signatures and shall:

- (1) Contain the title of the referred law;
- (2) Contain the effective date of the referred law;
- (3) Contain the date of the general election at which the referred law is to be submitted;
- (4) Be accompanied by a notarized form that includes the names and addresses of the petition sponsors; and
- (5) Be accompanied by a statement of organization as provided in § 12-27-6.

The petition shall be filed with the secretary of state within ninety days after the adjournment of the Legislature which passed the referred law. A sworn affidavit, signed by at least two-thirds of the petition sponsors, containing information required for each petition circulator as required under § 2-1-1.4 and stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures shall also be filed with the secretary of state. The form of the petition and affidavit shall be prescribed by the State Board of Elections.

The petition circulator shall provide to each person who signs the petition a form containing the title of the referred law; any fiscal note or summary of a fiscal note obtained pursuant to § 2-9-32; the name, phone number, and email address of each petition sponsor; the name, phone number, and email address of the petition circulator; and a statement whether the petition circulator is a volunteer or paid petition circulator and, if a paid circulator, the amount the circulator is being paid; and the petition circulator's circulator identification number. The form shall be approved by the secretary of state prior to circulation. ~~The petition circulator's circulator identification number shall be printed on each signature page of a ballot measure petition the circulator circulates.~~