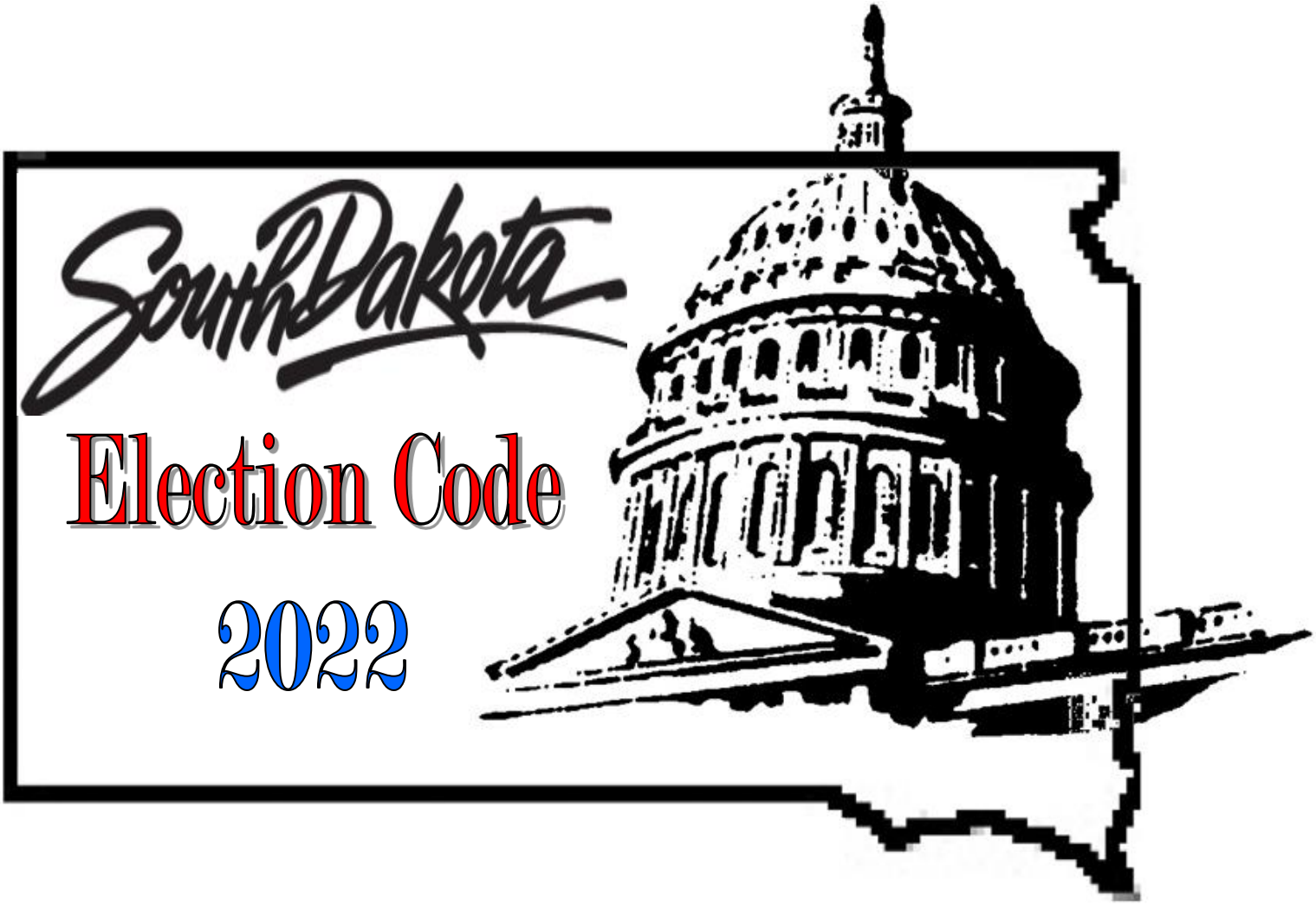

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****Statues are subject to change after each Legislative Session ****

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South Dakota 2022 Election Code

PREFACE

This book contains a reprint of South Dakota Codified Laws Title 12 - Elections. Also included are the United States and South Dakota Constitutional provisions regarding the right to vote and initiative and referendum, SDCL 2-1 Initiative and Referendum, SDCL 7-18A Ordinances and Resolutions (County), SDCL 9-13 Municipal Elections, SDCL 9-20 Initiative and Referendum (Municipal) and 13-7 School District Elections.

Title 12 is a codification of the statutes dealing with primary and general elections in the state of South Dakota **in effect on July 1, 2022**. Administration Rules may be found in the 2022 Administrative Rules document. The South Dakota Secretary of State's Office will hold an Administrative Rules Hearing on September 28, 2022. Any changes will take effect 20 days after, and that publication will be updated.

For statutes concerning elections in other subdivisions of government, please refer to the following South Dakota Codified Laws:

SDCL 6-8B	**Bond Elections**
SDCL 6-16	**Special District Formation Elections**
SDCL Title 7	**Counties**
SDCL Title 8	**Townships**
SDCL Title 9	**Municipal Government**
SDCL Title 13	**School Districts**
SDCL Title 16	**Courts and Judiciary**
SDCL 31-12A	**County Road Districts**
SDCL 34-11A	**Ambulance**
SDCL 34-31A	**Rural Fire Protection Districts**
SDCL 34A-5	**Sanitary Districts**
SDCL 46A-4	**Irrigation**
SDCL 46A-9	**Water User**
SDCL 46A-14	**Watershed**
SDCL 46A-18	**Water Project**
SDCL 46A-19	**River Basin Natural Resource Districts**

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UNITED STATES CONSTITUTION

ARTICLE XXVI

Passed by Congress March 23, 1971. Ratified July 1, 1971.

Note: Amendment 14, section 2, of the Constitution was modified by section 1 of the 26th amendment.

Section 1.
The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2.
The Congress shall have power to enforce this article by appropriate legislation.

SOUTH DAKOTA CONSTITUTION

ARTICLE III

LEGISLATIVE DEPARTMENT

§ 1. Legislative power--Initiative and referendum.

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 necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions. 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 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.

History: Amendment proposed by SL 1897, ch 39, approved Nov. 8, 1898; amendment proposed by SL 1913, ch 132, rejected Nov. 3, 1914; amendment proposed by SL 1921, ch 146, rejected Nov., 1922; amendment proposed by SL 1969, ch 242, rejected Nov. 3, 1970; amendment proposed by SL 1974, ch 1, rejected Nov. 5, 1974; amendment proposed by SL 1975, ch 2, as amended by SL 1976, ch 1, rejected Nov. 2, 1976; amendments proposed by SL 1980, chs 2 and 3, rejected Nov. 4, 1980; amendment proposed by SL 1987, ch 1, approved November 8, 1988.

ARTICLE VII

ELECTIONS AND RIGHT OF SUFFRAGE

§ 1. Right to vote.

Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

History: 1889 Const., art. VII, § 5; amendment proposed by SL 1974, ch 2, approved Nov. 5, 1974.

§ 2. Voter qualification.

Every United States citizen eighteen years of age or older who has met all residency and registration requirements shall be entitled to vote in all elections and upon all questions submitted to the voters of the state unless disqualified by law for mental incompetence or the conviction of a felony. The Legislature may by law establish reasonable requirements to insure the integrity of the vote.

Each elector who qualified to vote within a precinct shall be entitled to vote in that precinct until he establishes another voting residence. An elector shall never lose his residency for voting solely by reason of his absence from the state.

History: 1889 Const., art. VII, §§ 1, 2, 6, 8, 9; amendment of § 9 proposed by SL 1893, ch 38, rejected Nov., 1894; amendment of § 1 proposed by SL 1897, ch 37, rejected Nov., 1898; amendment adding new § 10 proposed by SL 1909, ch 138, rejected Nov., 1910; amendment of § 1 proposed by SL 1913, ch 134, rejected Nov., 1914; amendment of § 1 proposed by SL 1915, ch 234, rejected Nov., 1916; amendment of § 1 proposed by SL 1918 (SS), ch 31, approved Nov., 1918; amendment of § 1 proposed by SL 1951, ch 292, rejected Nov., 1952; amendment of § 1 proposed by SL 1957, ch 303, rejected Nov., 1958; amendment of § 1 proposed by SL 1957, ch 304, approved Nov., 1958; amendment of § 1 proposed by SL 1969, ch 241, approved Nov. 3, 1970; amendment of § 1 proposed by SL 1970, ch 3, rejected Nov. 3, 1970; amendment adding new § 10 proposed by SL 1970, ch 4, approved Nov. 3, 1970; amendment of § 1 proposed by SL 1971, ch 1, approved Nov. 7, 1972; amendment proposed by SL 1974, ch 2, approved Nov. 5, 1974; amendment of § 2 proposed by SL 1993, ch 2, §§ 1 and 2, rejected Nov. 8, 1994.

§ 3. Elections.

The Legislature shall by law define residence for voting purposes, insure secrecy in voting and provide for the registration of voters, absentee voting, the administration of elections, the nomination of candidates and the voting rights of those serving in the armed forces.

History: 1889 Const., art. VII, §§ 3, 6, 7; amendment proposed by SL 1974, ch 2, approved Nov. 5, 1974.

§§ 4 to 10. Superseded.

SOUTH DAKOTA CODIFIED LAW

CHAPTER 2-1 - INITIATIVE AND REFERENDUM

2-1-1 Initiative petitions—Number of signatures required.
2-1-1.1 Initiated constitutional amendment—Petition—Contents—Signatures and filing.
2-1-1.2 Initiated measure—Petition—Contents—Signatures and filing.
2-1-1.3 Definitions.
2-1-1.4 Repealed.
2-1-1.5 Paid circulators—Application for registration—Process—Certification requirements.
2-1-1.6 Paid circulators—Directory.
2-1-1.7 Registration fees.
2-1-1.8 Identification number and badge.
2-1-1.9 Paid circulator badge—Requirement—Violation as misdemeanor.
2-1-2 Repealed by SL 2012, ch 18, §§ 4, 5.
2-1-2.2 Withdrawal of initiated constitutional amendment.
2-1-2.3 Withdrawal of initiated measure.
2-1-3 Referendum—Laws subject to petition—Form.
2-1-3.1 Referred law—Petition—Contents—Signatures and filing.
2-1-3.2 Withdrawal of petition for referred law.
2-1-4 Repealed by SL 2012, ch 18, § 6.
2-1-5 Total vote used to determine number of signers required in petitions.
2-1-6 Persons qualified to sign petitions--False or unqualified signing as misdemeanor.
2-1-6.1 Repealed by SL 1989, ch 23, § 3.
2-1-6.2 Repealed by SL 2012, ch 18, § 7.
2-1-6.3 Repealed by SL 2009, ch 64, § 6, eff. July 1, 2010.
2-1-7 Petitions to be signed in person.
2-1-8 Repealed by SL 1990, ch 104, § 1.
2-1-9 Separate papers constituting single petition.
2-1-10 Verification of petition circulator--Violation as misdemeanor.
2-1-11 Petitions liberally construed.
2-1-11.1 Initiated measure to embrace only one subject.
2-1-12 Effective date of measures approved by voters.
2-1-13 Repealed by SL 1989, ch 23, § 5.
2-1-14 Signatures secured contrary to law not to be counted.
2-1-15 Examination of petition by secretary of state--Signature not to be counted unless person is registered voter and information is accurate and complete.
2-1-16 Signatures to be verified by random sampling--Methodology.
2-1-17 Certification of results of random sampling--Notification of petition sponsors.
2-1-17.1 Submission of affidavit challenging petition to secretary of state--Appeal.
2-1-18 Court challenge to petition.
2-1-19 Transferred to §§ 2-9-33, 2-9-34 by SL 2017, ch 17, § 3 .
2-1-21 Violations by petition sponsor or circulator--Four-year prohibition--Civil penalty.

2-1-1. Initiative petitions--Number of signatures required. All measures proposed by initiative shall be presented by petition. The petition shall be signed by not less than five percent of the qualified electors of the state.

Source: SDC 1939, § 55.0401; SL 1957, ch 278, § 1; SL 1976, ch 105, § 76; SL 1978, ch 19, § 1; SL 1989, ch 23, § 1.

2-1-1.1. Initiated constitutional amendment--Petition--Contents--Signatures and filing. The petition as it is to be circulated for an initiated amendment to the Constitution shall be filed with the secretary of state, including an electronic copy of the petition as it is to be circulated, prior to circulation for signatures and shall:

(1) Contain the full text of the initiated amendment in fourteen-point font;

(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.

Each 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; 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. The form shall be approved by the secretary of state prior to circulation. The petition form, as prescribed by the State Board of Elections, shall include the paid circulator identification number within the verification of any paid circulator.

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, 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 otherwise, including petition size and petition font size for ballot measure language not prescribed in this section, and the affidavit shall be prescribed by the State Board of Elections.

Source: SL 2012, ch 18, § 2; SL 2016, ch 23, § 1; SL 2016, ch 24, § 1; SL 2017, ch 16, § 7; SL 2018, ch 21, § 1; SL 2018, ch 22, § 3; SL 2018, ch 75, § 2; SL 2018, ch 80, § 4; SL 2019, ch 14, § 8, eff. July 1, 2020; SL 2020, ch 8, § 9; SL 2021, ch 15, § 2.

2-1-1.2. Initiated measure--Petition--Contents--Signatures and filing. The petition as it is to be circulated for an initiated measure shall be filed with the secretary of state, including an electronic copy of the petition as it is to be circulated, prior to circulation for signatures and shall:

(1) Contain the full text of the initiated measure in fourteen-point font;

(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.
Each 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; 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. The form shall be approved by the secretary of state prior to circulation. The petition form, as prescribed by the State Board of Elections, shall include the paid circulator identification number within the verification of any paid circulator.
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 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 otherwise, including petition size and petition font size for ballot measure language not prescribed in this section, and the affidavit shall be prescribed by the State Board of Elections.

Source: SL 2012, ch 18, § 3; SL 2016, ch 23, § 2; SL 2016, ch 24, § 2; SL 2017, ch 16, § 8; SL 2018, ch 21, § 2; SL 2018, ch 22, § 4; SL 2018, ch 75, § 3; SL 2018, ch 80, § 5; SL 2019, ch 14, § 9, eff. July 1, 2020; SL 2020, ch 8, § 11; SL 2021, ch 15, § 1.

2-1-1.3. Definitions. Terms used in this chapter mean:
(1) "Circulates," either:
(a) Physically presents or otherwise makes available a ballot measure petition to another person for that person's signature; or
(b) Solicits from another person, personally and in the presence of such other person, a signature on a ballot measure petition, while acting in concert with another person who simultaneously physically presents or otherwise makes available the ballot measure petition;
(2) "Petition circulator," a person who is a resident of this state for at least thirty days prior to acting as a petition circulator, is at least eighteen years of age, and who, for pay or as a volunteer, circulates petitions for the purpose of placing ballot measures on any statewide election ballot;
(3) "Petition sponsor," any person who proposes the placement of a statewide ballot measure on the ballot;
(4) "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;
(5) "Paid circulator," any person who receives money or anything of value as consideration, in whole or in part, for acting as a petition circulator;

(6) "Volunteer circulator," any person who does not receive money or anything of value as consideration, in whole or in part, for acting as a petition circulator.

Source: SL 2016, ch 24, § 4; SL 2018, ch 22, § 1; SL 2019, ch 14, § 1, eff. July 1, 2020; SL 2020, ch 8, § 2.

2-1-1.4. Affidavit to include information as to residency. - (This section is repealed effective July 1, 2020 pursuant to SL 2019, ch 14, § 2.) 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. (This section is repealed effective July 1, 2020 pursuant to SL 2019, ch 14, § 2.)

Source: SL 2018, ch 22, § 6.

2-1-1.5. (Text of section effective July 1, 2020) Paid circulators--Application for registration--Process--Certification requirements. Prior to circulation of any petition for a ballot measure, a paid circulator shall submit an application to the secretary of state, obtain a circulator identification number, and be included in a directory of registered paid circulators. For each ballot measure on which a paid circulator seeks to circulate a petition, the paid 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 or other government-issued identification, state of voter registration, the name of the petition sponsor, and whether the paid circulator is a registered sex offender. The certification under this section shall be submitted to the office of the secretary of state. If a paid circulator fails to file the registration required by this section before circulating a petition, or if the

registration is incomplete, or if any statement included in the paid circulator's certification is determined to be false, any signatures collected by the paid 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 paid circulator for the sponsor's ballot measure and 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 paid 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.

Source: SL 2019, ch 14, § 3, eff. July 1, 2020; SL 2020, ch 8, § 3.

2-1-1.6. (Text of section effective July 1, 2020) Paid circulators--Directory. The secretary of state shall develop and maintain a directory, available upon request and payment of reasonable fees, that contains information provided by each paid circulator under § 2-1-1.5. 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.

Source: SL 2019, ch 14, § 4, eff. July 1, 2020; SL 2020, ch 8, § 4.

2-1-1.7. (Text of section effective July 1, 2020) Registration fees. A paid 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 paid circulator. The registration fee for a paid circulator is twenty dollars. The registration fee shall be deposited in the state general fund.

Source: SL 2019, ch 14, § 5, eff. July 1, 2020; SL 2020, ch 8, § 5.

2-1-1.8. (Text of section effective July 1, 2020) Identification number and badge. 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 paid circulator a circulator identification number and badge that contains the information required under § 2-1-1.9.

Source: SL 2019, ch 14, § 6, eff. July 1, 2020; SL 2020, ch 8, § 6.

2-1-1.9. (Text of section effective July 1, 2020) Paid circulator badge--Requirement--Violation as misdemeanor. A person shall wear the badge issued under § 2-1-1.8 which shall be visible at all times while acting as a paid circulator. The badge shall contain the words "paid petition circulator." 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 paid circulator without wearing a badge issued under § 2-1-1.8.

Source: SL 2019, ch 14, § 7, eff. July 1, 2020; SL 2020, ch 8, § 7.

2-1-2, 2-1-2.1. Repealed by SL 2012, ch 18, §§ 4, 5.

2-1-2.2. Withdrawal of initiated constitutional amendment. A petition of the voters proposing an amendment to the Constitution may be withdrawn within the meaning of section 3 of article XXIII of the Constitution not later than one hundred twenty days prior to the next general election, if not less than two-thirds of the named sponsors file with the secretary of state, in writing, their request for withdrawal of the question from the ballot. The secretary of state shall attach to the petitions on file the request for withdrawal and shall take no other action thereon.

Source: SL 1974, ch 118, § 50.

2-1-2.3. Withdrawal of initiated measure. A petition of the voters proposing an initiated measure may be withdrawn not later than one hundred twenty days prior to the next general election, if not less than two-thirds of the named sponsors file with the secretary of state, in writing, their request for withdrawal of the question from the ballot. The secretary of state shall attach to the petitions on file the request for withdrawal and shall take no other action thereon.

Source: SL 2009, ch 64, § 9, eff. July 1, 2010.

2-1-3. Referendum--Laws subject to petition--Form. Any law which the Legislature may have enacted, except one that may be necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, shall, upon the filing of a petition as provided in this chapter, be submitted to a vote of the electors of the state at the next general election. The petition shall be signed by not less than five percent of the qualified electors of the state. The form of the petition, including petition size and petition font size, shall be prescribed by the State Board of Elections.

Source: SDC 1939, § 55.0402; SL 1957, ch 278, § 2; SL 1976, ch 105, § 77; SL 2018, ch 75, § 4.

2-1-3.1. Referred law--Petition--Contents--Signatures and filing. 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 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; 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. The form shall be approved by the secretary of state prior to circulation. The petition form, as prescribed by the State Board of Elections, shall include the paid circulator identification number within the verification of any paid circulator.

Source: SL 2012, ch 18, § 1; SL 2016, ch 23, § 3; SL 2017, ch 16, § 9; SL 2018, ch 21, § 3; SL 2018, ch 22, § 5; SL 2019, ch 14, § 10, eff. July 1, 2020; SL 2020, ch 8, § 13.

2-1-3.2. Withdrawal of petition for referred law. A petition of the voters referring a law to the vote of the electors pursuant to § 2-1-3 may be withdrawn no later than one hundred twenty days prior to the next general election, if no less than two-thirds of the petition sponsors file with the secretary of state, in writing, their request for withdrawal of the question from the ballot. The secretary of state shall attach to the petitions on file the request for withdrawal and shall take no other action thereon.

Source: SL 2012, ch 19, § 1.

2-1-4. Repealed by SL 2012, ch 18, § 6.

2-1-5. Total vote used to determine number of signers required in petitions. The total number of votes cast for Governor at the last preceding gubernatorial election, shall for the purposes of this chapter, be the basis for determining the number of petitioners required.

Source: SDC 1939, § 55.0404; SL 1976, ch 105, § 78.

2-1-6. Persons qualified to sign petitions--False or unqualified signing as misdemeanor. Every person who is a qualified voter may sign a petition to initiate a constitutional amendment or other measure or to refer a law. If a person, knowing he or she is not a qualified voter of the state or knowing that he or she has already signed the same petition, signs a petition for initiation of a constitutional amendment or other measure or for referral of legislation or if any person signs a name other than his or her own, that person is guilty of a Class 1 misdemeanor.

Source: SDC 1939, §§ 55.0404, 55.9901; SL 1980, ch 24, § 15; SL 2007, ch 15, § 2.

2-1-6.1. Repealed by SL 1989, ch 23, § 3.

2-1-6.2. Repealed by SL 2012, ch 18, § 7.

2-1-6.3. Repealed by SL 2009, ch 64, § 6, eff. July 1, 2010.

2-1-7. Petitions to be signed in person. Every petition proposing a measure shall be signed in person by the petitioners.

Source: SDC 1939, § 55.0403; SL 1957, ch 278, § 3; SL 2009, ch 64, § 7, eff. July 1, 2010.

2-1-8. Repealed by SL 1990, ch 104, § 1.

2-1-9. Separate papers constituting single petition. A single petition may be made up of one or more papers, each having the requisite heading and verification.

Source: SDC 1939, § 55.0403; SL 1957, ch 278, § 3; SL 1986, ch 114, § 2.

2-1-10. Verification of petition circulator--Violation as misdemeanor. Before filing a petition to initiate an amendment to the Constitution, initiated measure, or referred law with the officer in whose office the petition is required to be filed, each petition circulator shall sign a verification attesting that the circulator personally circulated the petition and is not attesting to any signature obtained by any other person, that the petition circulator is a resident of South Dakota, that the circulator made reasonable inquiry and, to the best of the circulator's knowledge, each person signing the petition is a qualified voter of the state in the county indicated on the signature line and that no state statute regarding the circulation of petitions was knowingly violated. The State Board of Elections shall prescribe the form for the verification. The circulator's signature on the verification shall be witnessed and notarized by a notary public commissioned in South Dakota or other officer authorized to administer oaths pursuant to § 18-3-1. Any person who falsely attests to the verification under this section is guilty of a Class 1 misdemeanor.

Source: SDC 1939, § 55.0405; SL 1957, ch 278, § 4; SL 1974, ch 22; SL 1976, ch 105, § 79; SL 1989, ch 23, § 4; SL 2000, ch 19, § 1; SL 2007, ch 15, § 1; SL 2010, ch 74, § 1; SL 2018, ch 22, § 8.

2-1-11. Petitions liberally construed. The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality.

Source: SDC 1939, § 55.0406.

2-1-11.1. Initiated measure to embrace only one subject. No initiated measure may embrace more than one subject, which shall be expressed in the title.

Source: SL 2018, ch 23, § 1.

2-1-12. Effective date of measures approved by voters. Each constitutional amendment, initiated measure, or referred law that is approved by a majority of all votes cast is effective on the first day of July after the completion of the official canvass by the State Canvassing Board.

Source: SL 1979, ch 11, § 2; SL 2017, ch 11, § 1.

2-1-13. Repealed by SL 1989, ch 23, § 5.

2-1-14. Signatures secured contrary to chapter not to be counted. All signatures secured in a manner contrary to the provisions of this chapter may not be counted.

Source: SL 1988, ch 23, § 2; 1st SS 1991, ch 1, §§ 3, 4.

2-1-15. Examination of petition by secretary of state--Signatures not to be counted unless persons are registered voters and information is complete. Upon the receiving of any initiative petition, referred law petition, or initiated constitutional amendment petition, the secretary of state shall examine the petition. No signature of a person may be counted by the secretary of state unless the person is a registered voter in the county indicated on the signature line. No signature of a person may be counted if the information required on the petition form is not complete.

Source: SL 2007, ch 16, § 1.

2-1-16. Signatures to be verified by random sampling--Methodology. The secretary of state shall verify the signatures pursuant to § 2-1-15 by random sampling. The random sample of signatures to be verified shall be drawn so that each signature received by the secretary of state is given an equal opportunity to be included in the sample. The secretary of state shall calculate the number of valid signatures by multiplying the total number of signatures received by the percentage of successfully verified signatures from the random sample. The secretary of state shall promulgate rules, pursuant to chapter 1-26, establishing the methodology for conducting the random sample. The random sampling shall be an examination of the signatures received consisting of a number of signatures that is statistically correlative to not less than ninety-five percent level of confidence with a margin of error equal to not more than three and sixty-two one-hundredths percent.

Source: SL 2007, ch 16, § 2; SL 2017, ch 12, § 7.

2-1-17. Certification of results of random sampling--Notification of petition sponsors. If the random sample indicates that a sufficient number of qualified electors have signed the petition, the secretary of state shall certify that the petition has been signed by the required number of qualified electors and shall place the proposed measure or amendment on the next general election ballot. If the random sample indicates that an insufficient number of qualified electors have signed the petition, the secretary of state shall certify that the petition has not been signed by the required number of qualified electors and may not place the proposed measure or amendment on the next general election ballot.

The secretary of state shall, within five days of certifying, notify the petition sponsors by certified mail of the secretary of state's action pursuant to this section.

Source: SL 2007, ch 16, § 3; SL 2017, ch 12, § 1.

2-1-17.1. Submission of affidavit challenging petition to secretary of state--Appeal. Not more than thirty days after a statewide petition for an initiated amendment to the Constitution, initiated measure, or referred law has been validated and filed, any interested person who has researched the signatures contained on the petition may submit a sworn affidavit to the Office of Secretary of State to challenge the petition. The sworn affidavit shall include each specific deficiency other than the following:

(1) Signer does not live at address listed on the petition;
(2) Circulator does not live at address listed on the petition;
(3) Circulator listed a residence address in South Dakota but is not a South Dakota resident;
(4) Circulator did not witness the signers;
(5) Signatures not included in the random sample; and
(6) Petition that was originally rejected.

Any challenge by the same person or party in interest shall be included in one sworn affidavit.

The original sworn affidavit shall be received by the Office of Secretary of State by 5:00 p.m. central time on the date. If the sworn affidavit challenges any deficiency prohibited under this section, that deficiency shall be rejected. A challenge to a deficiency is not a challenge to the petition as a whole.

No deficiency may be challenged a second time with the secretary of state. The secretary of state's decision regarding a challenge under this section may be appealed to the circuit court of Hughes County. Any person who does not challenge a petition pursuant to this section, may bring a challenge pursuant to § 2-1-18.

Source: SL 2017, ch 12, § 3; SL 2018, ch 24, § 1.

2-1-18. Court challenge to petition. Nothing in §§ 2-1-15 to 2-1-18, inclusive, prohibits any interested person who has researched the signatures contained on a validated petition from challenging in circuit court the validity of any signature, the veracity of the petition circulator's attestation, or any other information required on a petition by statute or administrative rule, including any deficiency that is prohibited from challenge under § 2-1-17.1. The results of the process of signature verification by the Office of the Secretary of State under chapter 2-1 shall be presumed valid as applied to all signatures for purposes of considering any additional ground for disqualifying petition signatures, including any ground listed in subdivisions 2-1-17.1(1) to 2-1-17.1(4), inclusive, and cumulating total valid signatures to determine the results of an appeal under § 2-1-17.1. The summons and complaint for a challenge under this section shall be served on each petition sponsor as a party defending the validated petition being challenged. Any appearance by the attorney general at a challenge under this section shall be limited to the process of signature verification by the Office of the Secretary of State under chapter 2-1.

Source: SL 2007, ch 16, § 4; SL 2017, ch 12, § 2; SL 2018, ch 24, § 2.

2-1-19, 2-1-20. Transferred to §§ 2-9-33, 2-9-34 by SL 2017, ch 17, § 3 .

2-1-21. Violations by petition sponsor or circulator--Four-year prohibition--Civil penalty. If any petition sponsor, or any person or entity compensated by the petition sponsor or a ballot question committee for purposes of petition circulation, knowingly or with reckless disregard commits multiple violations of the law regarding petition circulation, residency of a petition circulator, or campaign finance regulation, the petition sponsor, person, or entity, including any person serving as a member of the board or as an officer of the entity, is prohibited from being a petition sponsor or petition circulator, and from performing any work for any ballot question committee for a period of four years in addition to any other penalty imposed under state or federal law. Any violation of the provisions of this section shall also result in a civil penalty of up to five thousand dollars to be deposited into the state general fund.

Source: SL 2018, ch 22, § 7.

CHAPTER 7-18A - COUNTY ORDINANCES AND RESOLUTIONS

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7-18A-1. **Definition of terms**. Terms used in this chapter, unless the context plainly requires otherwise, shall mean:

(1) "Board," a board of county commissioners;

(2) "Ordinance," a permanent legislative act of a board of county commissioners passed within the limits of its powers;

(3) "Publish," publication in the official county newspapers;

(4) "Resolution," any determination, decision, or direction of a board of county commissioners of a special or temporary character, made for the purpose of initiating, effecting, or carrying out its administrative duties and functions.

Source: SL 1975, ch 82, § 1.

7-18A-2. Authority to enact, amend, and repeal ordinances and resolutions--Penalties for violation. Each county may enact, amend, and repeal such ordinances and resolutions as may be proper and necessary to carry into effect the powers granted to it by law and provide for the enforcement of each violation of any ordinance by means of any or all of the following:

(1) A fine not to exceed the fine established by subdivision 22-6-2(2) for each violation, or by imprisonment for a period not to exceed thirty days for each violation, or by both the fine and imprisonment; or

(2) An action for civil injunctive relief, pursuant to chapter 21-8.

Source: SL 1975, ch 82, § 2; SL 1989, ch 67, § 1; SL 1991, ch 187, § 1; SL 2007, ch 39, § 1.

7-18A-3. One subject in title. An ordinance shall embrace only one subject, which shall be expressed in its title.

Source: SL 1975, ch 82, § 5.

7-18A-4. Ordaining clause. The style of all ordinances shall be as follows: "An ordinance _____ (inserting the title)" followed by: "Be it ordained by _____ county," followed by the substance of the ordinance.

Source: SL 1975, ch 82, § 6.

7-18A-5. Reading, signing, filing, and publication required. The title of all ordinances shall be read twice with at least five days intervening between the first and second reading. Any ordinance shall be signed by the chairman of the board or the acting chairman, filed with the county auditor and published once. However, an ordinance incorporating and adopting comprehensive regulations or a code promulgated, approved, and published by a recognized and established national organization prescribing building, electrical, plumbing, safety, fire, or

health regulations need not be published in a newspaper, but, upon adoption of such an ordinance, the auditor shall publish a notice of the fact of adoption once a week for two successive weeks.

Source: SL 1975, ch 82, § 7; SL 1989, ch 68; SL 2021, ch 38, § 1.

7-18A-6. Vote on ordinances--Entry in minutes. The vote on all ordinances on the second reading shall be taken by yeas and nays and entered in the minutes of the meeting.

Source: SL 1975, ch 82, § 8.

7-18A-7. Passage of resolutions--Record of votes--Publication in minutes. A resolution may be passed after one reading. It shall be recorded at length in the minutes of the meeting at which it is passed, with a statement of the number of votes for and against the same. It shall be published in full as part of the minutes of the board.

Source: SL 1975, ch 82, § 9**.**

7-18A-8. Effective date of ordinances and resolutions--Exceptions. Except such resolutions or ordinances as may be necessary for the immediate preservation of the public peace, health, or safety, or support of the county government and its existing public institutions; which provide for an election or hearing on an improvement or assessment; or which call for bids which take effect upon the passage and publication thereof, every resolution or ordinance passed by a board shall take effect on the twentieth day after its completed publication unless suspended by operation of a referendum.

Source: SL 1975, ch 82, § 10.

7-18A-9. Initiated measures--Number of voters required. The right to propose ordinances and resolutions for the government of a county shall rest with five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election.

Source: SL 1975, ch 82, § 19; SL 1987, ch 67, § 6.

7-18A-10. Nullification by initiated ordinance of emergency provisions prohibited--Time for initiated measure to nullify bond purposes. An initiated ordinance may not be proposed which would nullify such ordinances or resolutions as may be necessary for the immediate preservation of the public peace, health, or safety or for the support of any government or existing public institutions, or which would nullify the purpose for which bonds have been sold by a county pursuant to statutory authority, unless proposed within a period of thirty days after the first publication of the advertisement of the notice of sale of such bonds.

Source: SL 1975, ch 82, § 22.

7-18A-11. Initiative petition--Form and contents. The right to propose an ordinance or resolution shall be exercised by filing with the auditor a petition in proper form containing the proposed ordinance or resolution, signed by the required number of qualified voters of the county. The signer or circulator of the petition shall add the signer's place of residence and the month and day of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class.

Source: SL 1975, ch 82, § 20; SL 1985, ch 53; SL 1990, ch 104, § 2; SL 1992, ch 110, § 3; SL 2010, ch 74, § 4.

7-18A-12. Affidavit required of circulators of petition. Each person who has circulated a petition shall, before filing the petition, sign an affidavit, under oath, verifying that he or she circulated the petition and that either the circulator or the signer added the signer's place of residence and date of signing. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator.

Source: SL 1975, ch 82, § 21; SL 1989, ch 69; SL 2016, ch 44, § 48.

7-18A-13. Board action on initiative petition--Submission to voters. If a petition to initiate is filed with the auditor, the auditor shall present it to the board of county commissioners at its next regular or special meeting. The board shall enact the proposed ordinance or resolution and shall submit it to a vote of the voters in the manner prescribed for a referendum within sixty days after the final enactment. However, if the petition is filed within three months prior to the primary or general election, the ordinance or resolution may be submitted at the primary or general election.

Source: SL 1975, ch 82, § 23; SL 1983, ch 47, § 1; SL 2016, ch 44, § 49.

7-18A-14. Majority vote required for approval of initiated measure--Effective date. No initiated ordinance or resolution is effective unless approved by a majority of the votes cast for and against the ordinance or resolution. If approved, the ordinance or resolution takes effect upon the completion of the canvass of the election returns.

Source: SL 1975, ch 82, § 24; SL 2016, ch 44, § 50.

7-18A-15. Referendum petition--Number of signatures required--Emergency measures excepted. Any ordinance or resolution adopted by a board of county commissioners may be referred to a vote of the qualified voters of the county by the filing of a petition signed by five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election, except such ordinances and resolutions as may be necessary for the immediate preservation of the public peace, health, or safety, or for the support of the county government and its existing public institutions.

Source: SL 1975, ch 82, § 25; SL 1988, ch 63, § 3.

7-18A-15.1. Legislative decision of board subject to referendum--Administrative decision not subject to referendum. Any legislative decision of a board of county commissioners is subject to the referendum process. A legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision.

No administrative decision of a governing body is subject to the referendum process, unless specifically authorized by this code. An administrative decision is one that merely puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining, and setting the salaries of employees are administrative decisions.

Source: SL 1986, ch 73, § 3.

7-18A-16. Time of filing referendum petition--Submission to voters required. A petition to refer an ordinance or resolution subject to referendum may be filed with the auditor within twenty days after publication of the ordinance or resolution in the last to publish official county newspaper. The filing of the petition requires the submission of the ordinance or resolution to a vote of the qualified voters of the county for rejection or approval of the ordinance or resolution.

Source: SL 1975, ch 82, § 26; SL 2022, ch 20, § 1.

7-18A-17. Description in petition of referred matters. If the matter intended to be covered by a referendum petition is the whole of any ordinance or resolution, the petition shall contain the title of such ordinance or the subject of such resolution, and the date of its passage, but if only a portion of such ordinance or resolution is intended to be covered by the petition, such portion shall be set out at length.

Source: SL 1975, ch 82, § 27.

7-18A-18. Signature requirements for referendum petition--Verification. Voters signing a referendum petition shall comply with the requirements of § 7-18A-11, and it shall be verified in accordance with § 7-18A-12.

Source: SL 1975, ch 82, § 28.

7-18A-18.1. Certification regarding petition signatures by county auditor--Notice to petition sponsors. If the validation process of a petition indicates that a sufficient number of qualified electors have signed the petition, the county auditor shall certify that the petition has been signed by the required number of qualified electors and shall place the proposed measure on the ballot pursuant to the provisions of this chapter. If the validation process of the petition indicates that an insufficient number of qualified electors have signed the petition, the county auditor shall certify that the petition has not been signed by the required number of qualified electors and may not place the proposed measure or amendment on a ballot pursuant to the provisions of this chapter. The county auditor shall, within five days of certifying, notify the petition sponsors by certified mail of the county auditor's action pursuant to this section.

Source: SL 2017, ch 12, § 4.

7-18A-19. Special election on referendum petition--Submission at primary or general election. A special election shall be held within sixty days after the filing of a petition under § 7-18A-15. However, if the petition is filed within three months prior to a primary, general, or statewide special election, the ordinance or resolution may be submitted at the primary, general, or statewide special election.

Source: SL 1975, ch 82, § 29; SL 1983, ch 47, § 2; SL 2002, ch 40, § 1.

7-18A-20. Publication of referred measure--Contents. The auditor shall have the entire referred ordinance or resolution published once a week for two successive weeks immediately preceding the election.

Such publication shall include a notice stating the day of election on which the ordinance or resolution will be submitted to the voters. If only a portion thereof is covered by the petition, the notice will state what portion will be submitted.

Source: SL 1975, ch 82, § 30.

7-18A-21. Referendum ballot printing and distribution--Form and contents. The auditor shall have ballots printed for the vote upon the referred ordinance or resolution and have them distributed as other official ballots are distributed.

Such ballots shall conform as near as may be to the law governing the submission of questions by the Legislature, except that the statement required to be printed on the ballots shall be prepared by the state's attorney.

All questions to be voted upon at the same election may be submitted upon the same ballot.

Source: SL 1975, ch 82, § 31.

7-18A-22. **Majority vote required to approve referred measure--Effective date**. No referred ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If approved, it shall take effect upon completion of the canvass of the election returns relating thereto.

Source: SL 1975, ch 82, § 32.

7-18A-23. Preservation of referendum petitions--Public inspection. The auditor shall preserve all petitions invoking the referendum for at least two years. The petitions shall be open to public inspection upon reasonable request.

Source: SL 1975, ch 82, § 33.

7-18A-24. Waiting period before second vote on initiated or referred question. No question contained in a referred or initiated ordinance or resolution may be voted upon again within one year from the date of the election thereon.

Source: SL 1975, ch 82, § 34.

7-18A-25. Ordinance book kept--Contents. After an ordinance takes effect, the auditor shall record it with a certificate of the date of its publication in a book to be known as the "Ordinance Book" and shall file the affidavit of publication with the original ordinance.

Source: SL 1975, ch 82, § 11.

7-18A-25.1. Posting of ordinance book on county website. If a county posts the ordinance book or any part of the book on the county's official website, the county shall ensure the most current version of the ordinance book or any part of the book is posted.

Source: SL 2019, ch 50, § 1.

7-18A-26. Repealed by SL 2016, ch 44, § 51.

7-18A-27. Compilation of ordinances in book form--Publication. Every county shall have power to compile its ordinances without revision or amendment, not more often than once in five years, for publication in book form. The compilation shall be effective without the publication required for ordinances.

Source: SL 1975, ch 82, § 12.

7-18A-28. Revision committee appointed by board. Each board, not more often than once every five years, may appoint a committee of one or more competent persons to prepare and submit for its consideration an ordinance which revises the ordinances of the county.

Source: SL 1975, ch 82, § 14.

7-18A-29. **Publication of notice of adoption of revision**--Revised ordinance effective unless referendum invoked--Ordinances published in book form. Upon the adoption of an ordinance in revision by the board, the auditor shall publish a notice, once each week for two successive weeks, that an ordinance in revision was adopted. Twenty days after the completed publication of the notice, unless the referendum shall have been invoked, such ordinance shall become effective without publication in a newspaper. The board shall publish the revised ordinances in book form.

Source: SL 1975, ch 82, § 15.

7-18A-30. Admissibility of ordinances and resolutions as evidence. An original ordinance or resolution, the record in the ordinance book or a certified copy thereof, or any compilation or revision of ordinances purporting to be printed under the authority of a board are admissible in evidence without further proof.

Source: SL 1975, ch 82, § 16.

7-18A-31. Proof of compliance with procedural provisions not required unless controverted. In any action or proceeding instituted pursuant to an ordinance or resolution passed pursuant to this chapter, it shall not be required to show compliance with the provisions of this chapter as to the passage or publication of any ordinance or resolution unless the same be controverted under oath.

Source: SL 1975, ch 82, § 17.

7-18A-32. Actions for violations as civil cases--County as plaintiff--Pleadings--Rules of conduct. Actions for violations of county ordinances shall be civil cases and the county shall be the plaintiff. The actions shall be commenced by the filing of a complaint and the response thereto shall be by oral plea or written answer. Conduct for the trials of violation of county ordinances and resolutions shall be governed by the procedure used in all proceedings for violations of ordinances and bylaws of units of local government of this state as referred to in § 23A-1-1. If the procedure does not cover or apply to a specific portion of the proceeding, the rules of civil procedure apply.

Source: SL 1975, ch 82, § 2; SL 1989, ch 67, § 2.

7-18A-33. Degree of proof when jail sentence authorized. In the prosecution for the violation of any county ordinance which authorizes a penalty of a jail sentence, the county shall prove the defendant guilty of the violation of the ordinance beyond a reasonable doubt.

Source: SL 1975, ch 82, § 3.

7-18A-34. Appeal to circuit court from magistrate court--Trial de novo and jury trial. In any action or proceeding brought in magistrate court for the violation of an ordinance or resolution passed pursuant to this chapter, the defendant shall have the right to appeal the verdict to the circuit court and the right to a trial de novo and a jury trial in the circuit court.

Source: SL 1975, ch 82, § 18.

7-18A-35. Disposition of fines and penalties. All fines, penalties, and forfeitures collected for violations of a county ordinance, resolution, or charter shall be distributed in accordance with § 16-2-34.

Source: SL 1975, ch 82, § 4; SL 1984, ch 12, § 7.

7-18A-36. Firearms regulation prohibited--Action by attorney general. No county may pass an ordinance that restricts or prohibits, or imposes any tax, licensure requirement, or licensure fee on the possession, storage, transportation, purchase, sale, transfer, ownership, manufacture, or repair of firearms or ammunition or their components. Any ordinance prohibited by this section is null and void. The attorney general shall send a cease and desist order to any county that passes or enforces an ordinance in violation of this section. If the

county fails to comply with the order, the attorney general shall bring an action in the name of the state for injunctive relief against any county that has passed an ordinance in violation of this section. A court shall grant any person charged with a violation of an ordinance prohibited under this section reasonable costs, expenses, and attorney's fees. This section does not apply to any generally applicable zoning ordinance, building regulation, or fire code so long as the ordinance, regulation, or code is not used to circumvent the prohibition under this section.

Source: SL 1983, ch 38, § 2; SL 2019, ch 51, § 1.

7-18A-37. Criminal background check of persons seeking employment with county. Any county may, by ordinance, require any person over eighteen years of age seeking employment with the county to submit to a state and federal criminal background investigation by means of fingerprint checks by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation. The ordinance shall specify which occupations or positions require a criminal background check. The county may submit completed fingerprint cards to the Division of Criminal Investigation before the prospective new employee enters into service. Upon completion of the state and federal criminal background check, the Division of Criminal Investigation shall forward to the county all information obtained as a result of the check. Failure to submit or cooperate with the criminal background investigation is grounds for denial of employment.

Source: SL 2010, ch 38, § 1.

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9-13-40 Municipal elections held on first Tuesday after first Monday in June--Notice--Nominating petitions.

9-13-1. Date of annual municipal election--Hours of voting. In each municipality an annual election for the election of officers shall be held on the second Tuesday of April of each year, at a place in each ward of the municipality as the governing body shall designate. If the governing body of the municipality chooses a different election day as provided in this chapter, the governing body shall establish such election day by January fourteenth of the election year. The polls at the election shall be kept open continuously from seven a.m. until seven p.m.

Source: SDC 1939, § 45.1301; SL 1941, ch 196; SL 1955, ch 203; SL 1961, ch 249; SL 1971, ch 56, § 1; SL 1977, ch 68, § 1; SL 1999, ch 39, § 1; SL 2002, ch 45, § 1; SL 2009, ch 69, § 8.

9-13-1.1. Joint municipal and school district elections authorized--Date--Sharing costs and responsibilities. Any other provision of this chapter notwithstanding, the members of the governing body of a municipality may choose to hold a general municipal election in conjunction with a regular school district election. The combined election is subject to approval by the governing body of the school district. The combined election shall be held on the regular date set for either the general municipal election or the school district election and all dates associated with either election pursuant to chapters 9-13 and 13-7 shall be adjusted accordingly. Expenses of a combined election shall be shared in a manner agreed upon by the governing bodies of the municipality and the school district. All other governmental responsibilities associated with holding elections under the provisions of chapters 9-13 and 13-7 shall be shared as agreed upon by the governing bodies.

Source: SL 1981, ch 66, § 1.

9-13-1.2. Dates associated with joint election. If the joint election provided for in §§ 9-13-1.1 and 13-7-10.1 is scheduled for a date other than the second Tuesday in April, all dates associated with the election are those provided in chapter 13-7.

Source: SL 1985, ch 119, § 11; SL 1986, ch 67, § 1; SL 2004, ch 75, § 1.

9-13-2. Repealed by SL 1971, ch 56, § 3.

9-13-3. Repealed by SL 1973, ch 130, § 14.

9-13-4. Superseded.

9-13-4.1. Registration and residence required to vote in municipal election--Residence defined--Challenge--Contest of election. No person may vote at any municipal election unless the person is registered to vote pursuant to chapter 12-4 and resides in the municipality at the time of the election. For the purposes of this section, a person resides in the municipality if the person actually lives in the municipality for at least thirty days each year, is a full-time postsecondary education student who resided in the municipality immediately prior to leaving for the postsecondary education, or is on active duty as a member of the armed forces whose home of record is within the municipality. A voter's qualification as a resident may be challenged in the manner provided in § 12-18-10. No election may be contested on the grounds that any nonresident was allowed to vote if the nonresident was not challenged in the manner provided in § 12-18-10.

Source: SL 1998, ch 45, § 1; SL 2001, ch 43, § 1; SL 2002, ch 46, § 1.

9-13-5. Election not held in absence of contest--Certificate of election issued to unopposed candidates. No election shall be held in any municipality, or ward thereof, wherein there is no question to be submitted to the voters or wherein there are no opposing candidates for any office; in case there are no opposing candidates the auditor or clerk shall issue certificates of election to the nominees, if any, in the same manner as to successful candidates after election.

Source: RC 1919, § 6315; SL 1931, ch 186; SDC 1939, § 45.1301; SL 1941, ch 196; SL 1955, ch 203; SL 1961, ch 249.

9-13-5.1. Repealed by SL 2010, ch 41, § 2.

9-13-6. Publication of notice of vacancies--Times. The finance officer of the municipality shall have a notice published in the official newspaper of the municipality setting forth the vacancies which will occur by termination of the terms of office of elective officers. The notice shall also state the time and place where nominating petitions may be filed for such

offices. The notice shall be published once each week for two consecutive weeks between the fifteenth day of January and the thirtieth day of January.

Source: SL 1949, ch 203; SDC Supp 1960, § 45.1301-1; SL 1977, ch 68, § 2; SL 1986, ch 67, § 2; SL 2004, ch 75, § 2.

9-13-6.1. Individual contests authorized when more than one seat vacant. If more than one commissioner or alderman is to be elected for a like term, the governing body before October first in the year preceding the election may approve an ordinance designating that candidates shall run for a specific position such as "A" and "B" with each position representing one of the incumbent seats.

Source: SL 1996, ch 59.

9-13-7. Municipal office--Nominating petition--Contents. No candidate for elective municipal office may be nominated unless a nominating petition is filed with the finance officer no later than five p.m. on the last Friday in February preceding the day of election. The petition shall be considered filed if it is mailed by registered mail by five p.m. on the last Friday in February before the election. The petition shall contain the name, residence address, and mailing address of the candidate and the office for which the candidate is nominated and shall be on the form prescribed by the State Board of Elections. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. The finance officer may only accept nominating petitions that are on the prescribed form and were circulated and submitted pursuant to the provisions in chapters 9-13 and 12-6. Upon verification signed by the municipal finance officer or clerk that the nominating petition contains the minimum number of signatures of registered voters within either the municipality or ward, or both, and that the candidate is a registered voter within either the municipality or ward, or both, the filing of the petition constitutes nomination.

Source: RPolC 1903, § 1902; SL 1915, ch 115, § 4; SL 1915, ch 258, § 4; RC 1919, § 6318; SDC 1939, § 45.1307; SL 1939, ch 186; SL 1985, ch 58, § 1; SL 1986, ch 67, § 3; SL 1992, ch 110, § 4; SL 2004, ch 75, § 3; SL 2015, ch 77, § 15 rejected Nov. 8, 2016; SL 2020, ch 26, § 1.

9-13-7.1. Withdrawal or death of candidate--Procedure. Any person who has filed a nominating petition pursuant to § 9-13-7 may withdraw from the nomination by a written request, signed by the person and properly acknowledged and filed with the finance officer of the municipality. The name of a withdrawn or deceased candidate may not be printed on the ballot if the candidate withdraws or dies no later than five p.m. on the deadline day for filing nominating petitions. If the withdrawal or death of a candidate occurs at any time prior to five p.m. on the deadline day for filing nominating petitions results in there being no contest on the ballot, that ballot need not be voted. In addition, if that contest constitutes the only ballot to be voted upon, then the election shall be canceled by the official in charge of the election and the unopposed candidate shall be issued a certificate of election.

Source: SL 1980, ch 63; SL 1986, ch 67, § 4; SL 1996, ch 60, § 2; SL 2010, ch 41, § 1.

9-13-8. Repealed by SL 1979, ch 50, § 1.

9-13-9. Number of signers required for nominating petitions in first, second, and third class municipalities--Time for circulating petitions. In municipalities of the first and second class, if the candidate is to be voted for by the voters at large, a nominating petition shall be signed by five percent of the registered voters of the municipality based on the number of registered voters recorded by the county auditor on the second Tuesday in January of the year of the election. No petition need be signed by more than fifty voters.

If the candidate is to be voted for by the voters of a ward of a municipality of the first or second class having more than one ward, a nominating petition shall be signed by five percent of the registered voters of the ward based on the number of registered voters recorded by the county auditor on the second Tuesday in January of the year of the election. No petition need be signed by more than fifty voters.

In municipalities of the third class, if the candidate is to be voted for by the voters at large, the nominating petition shall be signed by not less than three registered voters of the municipality. If the candidate is to be voted for by the voters of a ward of a municipality having more than one ward, the nominating petition shall be signed by not less than three registered voters of the ward. A petition signer in a municipality of the third class is not restricted in the number of petitions which the person may sign.

No nominating petition may be circulated until on or after the last Friday in January before the election.

Source: SL 1913, ch 119, § 106; SL 1915, ch 115, § 4; RC 1919, § 6320; SDC 1939, § 45.1309; SL 1973, ch 49; SL 1978, ch 60, § 2; SL 1980, ch 64, § 1; SL 1981, ch 67; SL 1983, ch 52, § 4; SL 1986, ch 67, § 5; SL 1987, ch 76, § 1; SL 1988, ch 63, § 7; SL 1992, ch 60, § 2; SL 2004, ch 75, § 4; SL 2017, ch 57, § 1.

9-13-10. Repealed by SL 1987, ch 76, § 2.

9-13-11. Residence mailing address and date added to signature--Form and verification of petition. Each voter signing a nominating petition or the person circulating such petition shall add to the voter's signature the voter's residence mailing address and the date of signing. The petition may be composed of several sheets, which shall have identical headings and shall be verified under oath by the persons circulating it, attesting the legality of the signatures thereon.

Source: SL 1913, ch 119, § 106; SL 1915, ch 115, § 4; RC 1919, § 6322; SDC 1939, § 45.1311; SL 1973, ch 50; SL 1978, ch 60, § 4; SL 1980, ch 64, § 2; SL 1985, ch 58, § 2; SL 1990, ch 104, § 3.

9-13-12. Repealed by SL 1992, ch 62.

9-13-13. Notice of municipal election--Publication or posting. A notice of each municipal election shall be published once each week for two successive weeks, the first publication may not be less than ten days prior to the election. A facsimile of the official ballot shall be published in the calendar week prior to each election. The notice and ballot shall be published in the official newspaper or newspapers of the municipality as designated in § 9-12-6.

If no newspaper is published in the municipality, the notice shall also be posted in three of the most public places in the municipality.

Source: SDC 1939, § 45.1302; SL 1945, ch 201; SL 1977, ch 68, § 3; SL 1985, ch 59, § 1; SL 2002, ch 45, § 2; SL 2003, ch 43, § 1.

9-13-14. Special elections governed by general provisions--Questions to be stated in notice. Every special election authorized by law, except as provided in §§ 6-8B-4 and 9-13-14.2, shall be held upon the same notice, at the same polling places, be conducted, returned, and canvassed, and the result declared as provided herein for the annual municipal election.

The notice of such special election shall state any question or questions to be voted upon.

Source: SL 1890, ch 37, art XIV, § 9; SL 1897, ch 61, § 1; RPolC 1903, §§ 1292, 1437; SL 1913, ch 119, § 111; RC 1919, § 6331; SDC 1939, § 45.1304; SL 1984, ch 43, § 67A; SL 2005, ch 48, § 4.

9-13-14.1. Filling of vacancy on municipal governing body--Appointment or special election. If a vacancy exists on a municipal governing body, the remaining members shall appoint a replacement to serve until the next annual municipal election, or the vacancy may be filled by special election for the remainder of the unexpired term as provided in § 9-13-14.2. In the aldermanic form of municipal government, the appointment shall be a person from the same ward of the municipality. If electing a person to fill the remainder of the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the publication required by § 9-13-6.

Source: PolC 1877, ch 24, § 18; CL 1887, § 1039; SL 1890, ch 37, art IV, §§ 6, 7; RPolC 1903, §§ 1203, 1204, 1434; RC 1919, §§ 6198, 6210; SL 1931, ch 200, § 2; SDC 1939, §§ 45.0603, 45.0704; SDCL §§ 9-7-4, 9-8-6; SL 1979, ch 50, § 2; SL 1992, ch 60, § 2; SL 2005, ch 48, § 5; SL 2006, ch 28, § 1; SL 2010, ch 74, § 5.

9-13-14.2. Special election to fill vacancy on governing body or in office of mayor--Procedures. The governing body of any municipality may, by ordinance enacted prior to the vacancy, require that any vacancy on the governing body or in the office of the mayor is to be filled by a special election called for that purpose to be conducted as provided in § 9-13-14 and this section. No special election may be held less than ninety days before the annual municipal election. The finance officer of the municipality shall publish a notice in the official newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by special election, the date of the election, and the time and place where nominating petitions may be filed for the office. The notice shall be published once each week for two consecutive weeks beginning at least sixty days before the date of the special election. Nominating petitions for the vacancy shall be prepared and filed as provided in § 9-13-7, may not be circulated more than sixty days before the date of the special election, and shall be filed at least thirty days before the date of the special election. The number of signers required for a nominating petition shall be calculated as provided in § 9-13-9. If a nominating petition is filed before the second Tuesday in January, the prior year's calculation of registered voters shall be used. A notice of the special election shall be published as provided in §§ 9-13-13 and 9-13-14.

Source: SL 2005, ch 48, § 6; SL 2010, ch 74, § 6; SL 2019, ch 53, § 3.

9-13-14.3. Elected official to hold office until vacancy filled. If for any reason a municipality fails to elect any person to succeed an elected official whose term has expired or an elected official fails to file a nominating petition or qualify, the office is deemed vacant. The elected official whose term has expired shall continue to act in an official capacity until the vacancy is filled by election or appointment pursuant to § 9-13-14.1 or 9-13-14.2.

Source: SL 2014, ch 50, § 1.

9-13-15. Repealed by SL 1973, ch 69, § 4.

9-13-16. Election precincts--Division and consolidation of wards into precincts--Application to state and county elections. Except as otherwise provided each ward shall constitute an election precinct. Whenever the number of legal voters in any ward shall exceed five hundred, the governing body may divide such ward into two or more precincts by ordinance. Whenever the number of legal voters in any two or more contiguous wards shall not exceed three hundred fifty as determined by the last annual election, the governing body may consolidate by ordinance such two or more wards into one precinct for voting purposes. Such ordinances shall be passed and take effect before the time of giving notice of election. Except as provided in §§ 12-14-1 to 12-14-4, inclusive, such wards and precincts shall be election precincts for all state and county elections.

Source: SL 1890, ch 37, art XIV, § 2; RPolC 1903, § 1285; SL 1915, ch 115, § 2; RC 1919, § 6325; SL 1919, ch 186, § 1; SL 1923, ch 180; SL 1933, ch 103, § 3; SL 1935, ch 110, § 3; SDC 1939, § 45.1319; SL 1941, ch 198; SL 1945, ch 202.

9-13-16.1. Precinct election boards. Each voting precinct shall be presided over by an election board consisting of a minimum of two precinct deputies and one precinct superintendent appointed by the governing body. Any vacancy on the election board that arises between the time of appointment and the day of the election may be appointed by the person in charge of the election. Each precinct superintendent and precinct deputy shall receive compensation which shall be fixed by the governing body.

Source: SL 1985, ch 111, § 2; SL 1999, ch 69, § 1; SL 2015, ch 59, § 1.

9-13-16.2. Terms of and representation by members of governing body following redistricting. Notwithstanding the redistricting provided in § 9-13-16, the term of office of any member of the governing body whose term of office extends beyond the next annual election is not affected, and the governing body, as part of the redistricting process, shall designate the wards to be represented by such members. Such council members may or may not be residents of the district they are designated to represent. Each ward for which representation is not provided by such designation shall, at the next ensuing annual election, elect a council member, the term of office to be determined as provided in § 9-8-4.

Source: SL 2012, ch 55, § 1.

9-13-17. Repealed by SL 1973, ch 67, § 4.

9-13-18 to 9-13-20. Repealed by SL 1971, ch 56, § 3.

9-13-21. Ballots--Preparation--Availability--Form--Candidate names. The finance officer shall prepare and furnish, at the expense of the municipality, all official ballots. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. The ballots shall be prescribed by the State Board of Elections, of good quality of print paper, printed in black ink, and in the English language only.

The ballots for municipal elections shall be available for absentee voting no later than fifteen days prior to election day. If the ballots are for a runoff election, the ballots shall be available no later than seven days prior to the runoff election day. Absentee voting shall be conducted pursuant chapter 12-19.

The names of the candidates for each office to be voted for in the precinct shall be arranged without any other designation than that of the office for which they are candidates. If more than one member of the governing body is to be elected, the ballot shall contain instructions as to how many candidates for the governing body are to be voted for. The finance officer shall determine, by lot, each candidate's position on the ballot. Each candidate may be present or represented when the position on the ballot is being determined.

No candidate's name may be printed upon the official ballot unless the candidate has been nominated as provided in this chapter.

Source: SDC 1939, § 45.1321; SL 2001, ch 44, § 1; SL 2004, ch 75, § 5; SL 2008, ch 34, § 4; SL 2012, ch 85, § 3; SL 2016, ch 43, § 3; SL 2021, ch 40, § 1.

9-13-22. Repealed by SL 2006, ch 29, § 1.

9-13-23. Repealed by SL 1984, ch 43, § 131.

9-13-24. Return and canvass of votes. The election returns shall be reported as soon as possible to the finance officer, and within seven days of the election, the governing body shall canvass the election returns, declare the result, and enter the result on its journal.

Source: SL 1890, ch 37, art XIV, § 5; RPolC 1903, §§ 1288, 1289; SL 1913, ch 119, §§ 105, 108; RC 1919, § 6326; SDC 1939, § 45.1320; SL 1953, ch 256; SL 1988, ch 75.

9-13-25. Election result--Highest vote total--Runoff by ordinance. In any municipality, the person having the highest number of votes for any office shall be declared elected. However, the governing board of any municipality may, on or before the first of October in the year preceding, approve an ordinance requiring a runoff election to be conducted pursuant to §§ 9-13-26.1 and 9-13-27.1.

Source: RPolC 1903, § 1290; RC 1919, § 6329; SDC 1939, § 45.1323; SL 1963, ch 279, § 2; SL 1992, ch 60, § 2; SL 1993, ch 70, § 1; SL 2009, ch 33, § 1; SL 2010, ch 74, § 7; SL 2021, ch 40, § 2.

9-13-26. Repealed by SL 2009, ch 33, § 2.

9-13-26.1. Runoff election when no candidate receives a majority of votes--Conduct of election. If a municipality has passed an ordinance requiring a runoff election, and no candidate in a race involving three or more candidates receives a majority of the votes cast in the race, a runoff election shall be held three weeks from the date of the first election. At the runoff election, the only persons voted for shall be the two candidates receiving the highest number of votes at the first election. However, if there is a tie for second place in the first election and there is no tie for first place, all tying second place candidates shall be placed along with the first place candidate on the ballot for the runoff election. The runoff election shall be held at the same polling places and shall be conducted, returned, and canvassed in the same manner as the first election. The result shall be declared and entered in the minutes of the municipality in the same manner as the first election. The person receiving the highest number of votes at the runoff election is elected.

Source: SL 2010, ch 74, § 8; SL 2017, ch 69, § 6.

9-13-27. Repealed by SL 2009, ch 33, § 3.

9-13-27.1. Runoff election--Notice. The finance officer shall have a notice of election published once during the week next preceding any runoff election. The notice shall include a list of all persons appearing on the ballot for the election. A facsimile of the official ballot need not be published for runoff elections.

Source: SL 1977, ch 68, § 6; SL 1985, ch 59, § 2; SL 2021, ch 40, § 3.

9-13-27.2. Tie vote--Recount--Determination by lot. If a tie vote exists after a canvass of original official returns, the governing body making the canvass shall certify the vote to the finance officer. The finance officer shall then notify the candidates that if no request for recount is made in writing to the finance officer within five days after the certification, the winner shall be determined by drawing of lots. If no recount request is made or a tie vote between candidates is found to exist on the basis of the recount, the finance officer shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. The drawing of lots shall be in the manner directed by the finance officer and the certificate of election shall be issued to the candidate winning in the drawing.

Source: SL 1983, ch 55; SL 1995, ch 44, § 1.

9-13-27.3. Request for recount--Recount board established. If any candidate for the municipal governing body is defeated by a margin not exceeding two percent of the total votes cast for all candidates for the office, or by a margin of five votes or less, the candidate may, within five days after completion of the official canvass, file with the municipal finance officer a written request for a recount. The finance officer shall set the time and place for the recount to occur within ten days of the date of the receipt of the recount request. A recount board shall be established consisting of one person chosen by each candidate declared elected

and by each candidate who is eligible to request a recount. If this board consists of an even number of persons, one additional recount board member shall be appointed by the finance officer who shall be mutually agreeable to each candidate involved in the recount. Each representative to the recount board shall be named within three days of the receipt of the recount request by the finance officer. The person having custody of the ballot boxes containing the ballots to be recounted shall deliver them to the recount board. Any question arising on the recount shall be determined by majority vote of the recount board. The recount shall proceed expeditiously until completed.

Source: SL 1984, ch 55, § 2; SL 1995, ch 44, § 2; SL 2017, ch 58, § 1.

9-13-27.4. **Recount on ballot question--Recount board.** Notwithstanding any other provisions of law, recounts of municipal ballot questions shall be conducted if, within five days after completion of the official canvass of a municipal ballot question election at which a question is approved or disapproved by a margin not exceeding two percent of the total votes cast in the election, any three registered voters of the municipality file a petition duly verified by such voters, setting forth that they believe a recount will change the outcome. The finance officer shall set the time and place for the recount to occur within ten days of the date of the receipt of the recount request. A recount board shall be appointed by the finance officer who shall appoint one person on each side of the question and one person who shall be mutually agreed upon by the other two appointed. Each representative to the recount board shall be named within three days of the receipt of the recount request by the finance officer. The recount shall be conducted according to the provisions of § 9-13-27.3.

Source: SL 1984, ch 55, § 3; SL 1995, ch 44, § 3; SL 2017, ch 58, § 2.

9-13-28. Notice to persons elected--Time allowed for qualification. The finance officer, within two days after the result of the election is declared, shall notify each person elected to office of the person's election. If a person does not qualify by filing an oath or affirmation of office in the usual form provided by law within ten days after the first meeting of the month next succeeding the election, the office becomes vacant.

Source: SDC 1939, § 45.1324; SL 2002, ch 47, § 1; SL 2008, ch 34, § 5; SL 2009, ch 69, § 9.

9-13-29. Municipal officers subject to recall. In any municipality, with or without a city manager, the mayor, any commissioner, any alderman, or any member of the board of trustees may be removed from office at any time by the voters qualified to vote for a successor as provided in §§ 9-13-30 to 9-13-32, inclusive.

Source: SL 1913, ch 119, § 15; RC 1919, § 6332; SL 1935, ch 158, § 9; SL 1937, ch 176, § 1; SDC 1939, § 45.1325; SL 1963, ch 280; SL 2009, ch 34, § 1.

9-13-30. Petition for recall--Number of signatures--Grounds--Time limits--Challenge to petition. A petition signed by fifteen percent of the registered voters of the municipality, based upon the total number of registered voters at the last preceding general election,

demanding the election of a successor to the mayor, commissioner, alderman, or trustee sought to be removed shall be filed with the finance officer and presented by the finance officer to the governing body. The allowable grounds for removal are misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality. The petition shall contain a specific statement of the grounds on which removal is sought. The form for the municipal recall petition shall be prescribed by the state Board of Elections pursuant to chapter 1-26. No signature on a petition is valid if signed more than sixty days before the filing of the petitions. When a petition to recall is filed with the finance officer, the finance officer shall present the petition to the governing body at its next meeting. Only the petition signatures may be challenged in the manner established in §§ 12-1-13 to 12-1-16, inclusive. A failure to challenge petition signatures pursuant to §§ 12-1-13 to 12-1-16, inclusive, does not prohibit an interested person from challenging the filing of the recall petition or the sufficiency of the specific statement of the grounds of the recall petition.

A challenge to the recall petition regarding the specific statement of the grounds of the recall petition must be filed in circuit court within five business days of the filing of the recall petition. The circuit court shall conduct an expedited declaratory judgment hearing with no right to trial by jury.

Source: SDC 1939, § 45.1325; SL 1963, ch 280; SL 1968, ch 184; SL 1979, ch 50, § 6; SL 1983, ch 52, § 6; SL 1987, ch 67, § 13; SL 1992, ch 60, § 2; SL 1997, ch 48, § 1; SL 2009, ch 34, § 2; SL 2016, ch 49, § 1.

9-13-31. Special or annual election--Notice. The governing body shall, within ten days of presentation, order and fix a date for holding a special election, to be on a Tuesday not less than thirty nor more than fifty days from the date of the order of the governing body. If a petition is filed after December thirty-first before the annual municipal election and within sufficient time to comply with the provisions of § 9-13-14, the question of a successor shall be submitted at that annual election.

The governing body shall have a notice of election published in the same manner as provided in § 9-13-13.

Source: SL 1913, ch 119, § 15; RC 1919, § 6332; SL 1937, ch 176, § 1; SDC 1939, § 45.1325; SL 1963, ch 280; SL 1977, ch 68, § 7; SL 1983, ch 53, § 5; SL 2016, ch 49, § 2.

9-13-32. Recall election--Incumbent--Other candidates--Runoff. Any mayor, commissioner, alderman, or trustee sought to be removed may be a candidate to succeed himself or herself and, unless the incumbent requests otherwise in writing, the auditor shall place the incumbent's name on the official ballot without nomination. The auditor shall also place on the official ballot the name of any other candidate nominated as provided in this chapter. If no other candidate is nominated for the position, no recall election may be held, and the incumbent shall remain in office.

Any runoff election required shall be conducted as provided by this chapter.

Source: SL 1913, ch 119, § 15; RC 1919, § 6332; SL 1937, ch 176, § 1; SDC 1939, § 45.1325; SL 1963, ch 280; SL 2009, ch 34, § 3; SL 2021, ch 40, § 4.

9-13-33. Continuation of incumbent in office if re-elected. If the incumbent shall be elected, he shall continue in office and not be obliged again to qualify.

Source: SL 1913, ch 119, § 15; RC 1919, § 6332; SL 1937, ch 176, § 1; SDC 1939, § 45.1325; SL 1963, ch 280.

9-13-34. Removal of incumbent from office by election of another at recall--Qualification of successor. If some person other than the incumbent is elected, the incumbent shall be deemed removed from office upon or at the expiration of the time for qualification of his successor. The successor shall qualify within ten days after receiving notification of his election, and in case of his failure to qualify, the office shall be deemed vacant.

Source: SL 1913, ch 119, § 15; RC 1919, § 6332; SL 1937, ch 176, § 1; SDC 1939, § 45.1325; SL 1963, ch 280.

9-13-35. Term of office of successor elected at recall election. The successor of any removed mayor, commissioner, alderman, or trustee shall hold office during the remainder of the predecessor's unexpired term.

Source: SL 1913, ch 119, § 15; RC 1919, § 6332; SL 1937, ch 176, § 1; SDC 1939, § 45.1325; SL 1963, ch 280; SL 2009, ch 34, § 4.

9-13-36. Election board for wards--Compensation. If a municipality is divided into wards and all of the wards use the same polling places, the governing body of the municipality may appoint a single election board for all of the wards. The election board appointed pursuant to this section shall consist of a minimum of one judge and two clerks. The members of the election board shall receive such compensation as shall be fixed by the governing body. If all of the wards are voting on an identical ballot, a single ballot box and one pollbook may be used for all wards.

Source: SL 1990, ch 60; SL 1992, ch 63.

9-13-37. Municipal elections held in conjunction with June primary elections. Any other provision of this chapter notwithstanding, the members of the governing body of a municipality may choose to hold a municipal election in conjunction with the regular June primary election. The combined election is subject to approval by the county commissions of the counties in which the municipality is located. Expenses of a combined election shall be shared in a manner agreed upon by the governing body of the municipality and the county commissions involved. All other governmental responsibilities associated with holding elections under the provisions of chapters 9-13 and Title 12 shall be shared as agreed upon by the governing bodies. The finance officer shall publish the notice required in § 9-13-6 between February fifteenth and March first. No nominating petition may be circulated for signatures until March first. Nominating petitions shall be filed under the provisions of § 9-13-7 by the

last Tuesday in March. The finance officer shall certify to the appropriate county auditor the candidate names and ballot language to be voted on by the first Thursday after the last Tuesday in March.

Source: SL 1996, ch 60, § 1; SL 2007, ch 81, § 1

9-13-38, 9-13-39. Transferred to §§ 12-2-5, 12-2-6.

9-13-40. Municipal elections held on first Tuesday after first Monday in June--Notice--Nominating petitions. Any other provision of this chapter notwithstanding, the members of the governing body of a municipality may choose to hold a municipal election on the first Tuesday after the first Monday in June. The finance officer shall publish the notice required in § 9-13-6 between February fifteenth and March first. No nominating petition may be circulated for signature until March first. Nominating petitions shall be filed under the provisions of § 9-13-7 by the last Tuesday in March. All other governmental responsibilities associated with holding elections under the provisions of chapter 9-13 shall be met by the municipality.

Source: SL 1996, ch 60, § 8; SL 2005, ch 87, § 4; SL 2007, ch 81, § 2

CHAPTER 9-20 - MUNICIPIAL INITIATIVE AND REFERENDUM

9-20-1 Percentage of voters required to propose ordinance or resolution.
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9-20-17 Waiting period for new action after referendum election.
9-20-18 Legislative finding--Actions of municipal governing boards subject to referendum.
9-20-19 Legislative decision of governing body subject to referendum--Administrative decision not subject to referendum.

9-20-1. Percentage of voters required to propose ordinance or resolution. The registered voters of any municipality may propose ordinances and resolutions for the government of the municipality if the petition is signed by at least five percent of the registered voters in the municipality. The percentage shall be based on the number of registered voters of the municipality as recorded by the county auditor on the second Tuesday in January in the year the petition is filed. If the petition is filed before the second Tuesday in January, the prior year's calculation of registered voters shall be used.

Source: SDC 1939, § 45.1018; SL 1947, ch 199, § 1; SL 1968, ch 183, § 2; SL 2002, ch 40, § 2; SL 2017, ch 57, § 2; SL 2019, ch 53, § 1.

9-20-2. Petition proposing ordinance or resolution--Contents. A petition to propose an ordinance or resolution shall be filed with the finance officer, containing in proper form the proposed ordinance or resolution. It shall be signed by the required number of the resident registered voters of the municipality. The signer or circulator shall add the signer's residence address, county of voter registration, and date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second

or third class. No signature on a petition is valid if signed more than six months prior to the filing of the petitions.

Source: SDC 1939, § 45.1019; SL 1947, ch 199, § 2; SL 1957, ch 245, § 2; SL 1980, ch 64, § 3; SL 1983, ch 52, § 7; SL 1990, ch 104, § 4; SL 1992, ch 110, § 5; SL 1999, ch 41, § 1.

9-20-3. Ordinance may not be initiated to nullify bond purposes. The right to initiate an ordinance shall not be applicable to ordinances proposed to nullify the purpose for which bonds have been sold by a municipality pursuant to statutory authority.

Source: SL 1961, ch 247; SL 1980, ch 66, § 1.

9-20-4. Presentation of initiative petition to governing body--Submission to voters. When a petition to initiate is filed with the finance officer, the finance officer shall present the petition to the governing body at its first ensuing regular or special meeting. The governing body shall submit the petition to a vote of the voters in the manner prescribed for a referendum.

Source: SDC 1939, § 45.1020; SL 1947, ch 199, § 3; SL 1980, ch 67, § 1; SL 2003, ch 41, § 1.

9-20-5. Majority vote at election required for initiated ordinance or resolution--Effective date. No initiated ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon the completion of the canvass of the election returns relating thereto.

Source: SL 1899, ch 94, § 13; RPolC 1903, § 1226; SL 1913, ch 119, § 50; RC 1919, § 6264; SDC 1939, § 45.1021; SL 1947, ch 199, § 4.

9-20-5.1. Year's waiting period required before amendment or repeal. No initiated ordinance or resolution may be amended or repealed by the governing body of a municipality until at least one year has passed from its effective date.

Source: SL 1977, ch 72.

9-20-6. Time for filing referendum petition. The required number of voters residing in any municipality may file within twenty days after the publication of any ordinance or resolution subject to referendum a petition with the auditor or clerk, requiring the submission of any such ordinance or resolution to a vote of the voters of the municipality for its rejection or approval. If filed on the twentieth day after publication, such petitions shall be filed no later than normal closing hours of the city hall or city auditor's office on said twentieth day.

Source: SL 1899, ch 94, § 2; RPolC 1903, § 1215; SL 1913, ch 119, § 39; RC 1919, § 6254; SDC 1939, § 45.1011; SL 1947, ch 198; SL 1975, ch 119, § 20.

9-20-7. Description in referendum petition of matter covered. If the matter intended to be covered by the referendum petition is the whole of any ordinance or resolution, the petition shall contain the title of such ordinance or the subject of such resolution, and the date of its passage, but if only a portion of such ordinance or resolution is intended to be covered by the petition, such portion shall be set out at length.

Source: SL 1899, ch 94, § 3; RPolC 1903, § 1216; SL 1913, ch 119, § 40; RC 1919, § 6255; SL 1921, ch 300, § 1; SDC 1939, § 45.1012; SL 1957, ch 245, § 1.

9-20-8. Percentage of voters required to sign referendum petition--Data concerning signers. The referendum petition shall be signed by at least five percent of the registered voters in the municipality. The percentage shall be based on the number of registered voters of the municipality as recorded by the county auditor on the second Tuesday in January in the year the petition is filed. If the petition is filed before the second Tuesday in January, the prior year's calculation of registered voters shall be used. The signer or circulator shall add the signer's residence address, county of voter registration, and date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class.

Source: SDC 1939, § 45.1012; SL 1957, ch 245, § 1; SL 1968, ch 183, § 1; SL 1979, ch 50, § 7; SL 1980, ch 64, § 4; SL 1987, ch 78; SL 1990, ch 104, § 5; SL 1992, ch 110, § 6; SL 1999, ch 41, § 2; SL 2002, ch 40, § 3; SL 2017, ch 57, § 3; SL 2019, ch 53, § 2.

9-20-9. Requirements for persons circulating petition--Board of elections to promulgate rules--Scope of rules. Any person circulating an initiative or referendum petition shall verify that each person signing the petition is a resident and qualified voter of the municipality. The State Board of Elections shall promulgate rules pursuant to chapter 1-26 prescribing the format for an initiative and referendum petition and its verification.

Source: SDC 1939, § 45.1013; SL 1999, ch 41, § 3; SL 2000, ch 19, § 3.

9-20-10. Liberal construction of referendum petition. Such petition may be made up and signed and shall be liberally construed as provided by the statute governing an initiated law.

Source: SDC 1939, § 45.1012; SL 1957, ch 245, § 1.

9-20-11. Date of election on referendum petition--No action taken pending election. The governing body shall, upon the presentation of a petition pursuant to § 9-20-6, submit the question to the electors at the next annual municipal election or the next general election, whichever is earlier. Pending the election, the governing body may take no action with respect to the subject matter of the petition that would alter or preempt the effect of the proposed petition. However, the governing body may expedite the date of the election by ordering, within ten days of receiving the petition, a special election to be held on a Tuesday not less than thirty days from the date of the order of the governing body.

Source: SL 1899, ch 94, § 2; RPolC 1903, § 1215; SL 1913, ch 119, § 39; RC 1919, § 6254; SDC 1939, § 45.1011; SL 1947, ch 198; SL 1977, ch 68, § 8; SL 1980, ch 67, § 2; SL 1983, ch 53, § 6; SL 1995, ch 47, § 1.

9-20-11.1. Repealed by SL 2003, ch 41, § 2.

9-20-11.2. Date to certify ballot language to county auditor. If a municipality submits a question to the electors at the next general election pursuant to § 9-20-11, the municipality shall certify the ballot language to the county auditor by the first Tuesday in August of the year of the general election. However, the county auditor may extend the certification deadline for the municipality, if the county auditor determines that the extension will not prevent absentee ballots from being available by the date to begin absentee voting.

Source: SL 1995, ch 47, § 3; SL 2003, ch 41, § 3; SL 2007, ch 81, § 3; SL 2009, ch 69, § 10; SL 2018, ch 51, § 1.

9-20-11.3. Additional election costs paid by municipality. If a municipality submits a question to the electors at the next general election pursuant to § 9-20-11, the municipality shall pay the additional election cost related to the municipal question. The cost shall be agreed upon by the county auditor and the municipal finance officer.

Source: SL 1995, ch 47, § 4.

9-20-12. Publication of referred ordinance or resolution--Notice of election. The auditor or clerk shall cause the entire referred ordinance or resolution to be published once a week for two successive weeks immediately preceding the election.

Such publication shall include a notice that on the day of election therein stated such ordinance or resolution will be submitted to the voters or, if only a portion thereof is covered by the petition, then notice as to what portion will be submitted.

Source: SL 1899, ch 94, § 5; RPolC 1903, § 1218; SL 1913, ch 119, § 42; RC 1919, § 6257; SDC 1939, § 45.1014.

9-20-13. Ballots used in referendum election--Form and contents. The auditor or clerk shall have ballots printed for the vote upon such referred ordinance or resolution and cause the same to be distributed as other official ballots are distributed.

Such ballots shall conform as near as may be to the law governing the submission of questions by the Legislature, except that the statement required to be printed on the ballots shall be prepared by the city attorney, or if there be no city attorney, by an attorney at law employed by the governing body for that purpose.

All questions to be voted upon at the same election may be submitted upon the same ballot.

Source: SL 1899, ch 94, § 6; RPolC 1903, § 1219; SL 1913, ch 119, § 43; RC 1919, § 6258; SDC 1939, § 45.1015.

9-20-14. General municipal election law applicable to referendum elections. The elections provided for in this chapter shall be governed by the provisions of chapter 9-13 except as to the form of the ballots otherwise specifically provided.

Source: SL 1899, ch 94, § 9; RPolC 1903, §§ 1222, 1227; SL 1913, ch 119, §§ 46, 51; RC 1919, § 6265; SDC 1939, § 45.1022.

9-20-15. Majority vote required for approval of referred measure--Effective date. No referred ordinance or resolution so submitted shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon completion of the canvass of the election returns relating thereto.

Source: SL 1899, ch 94, § 8; RPolC 1903, § 1221; SL 1913, ch 119, § 45; RC 1919, § 6260; SDC 1939, § 45.1017.

9-20-16. Preservation of referendum petitions--Open to public inspection. The auditor or clerk shall preserve all petitions invoking the referendum filed in his office for a period of at least two years, during which time such petitions shall be open to public inspection upon reasonable request.

Source: SL 1899, ch 94, § 7; RPolC 1903, § 1220; SL 1913, ch 119, § 44; RC 1919, § 6259; SDC 1939, § 45.1016.

9-20-17. Waiting period for new action after referendum election. No referred ordinance or resolution may be again voted upon by the government of any municipality within one year from the date of the election thereon.

Source: SDC Supp 1960, § 45.1022 as enacted by SL 1961, ch 246.

9-20-18. Legislative finding--Actions of municipal governing boards subject to referendum. The Legislature finds that in making past grants of decision-making authority to municipal governing authorities, its intent was to grant that authority to the governing bodies of municipalities and that such actions, unless otherwise excluded from the referendum and initiative process by other state law, are subject to the initiative and referendum process. Therefore, the contrary holding in Baker v. Jackson, 372 NW2d 142 (SD, July 31, 1985) is hereby abrogated.

Source: SL 1986, ch 73, § 1.

9-20-19. Legislative decision of governing body subject to referendum--Administrative decision not subject to referendum. Any legislative decision of a governing body is subject to the referendum process. A legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision.

No administrative decision of a governing body is subject to the referendum process, unless specifically authorized by this code. An administrative decision is one that merely puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining, and setting the salaries of employees are administrative decisions.

Source: SL 1986, ch 73, § 2.

CHAPTER 12-1 - GENERAL PROVISIONS AND STATE BOARD

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12-1-39 Availability of petition to public.

12-1-1. Elections to which title applies. The provisions of this title shall apply to all elections for state, district, and county officers and other officers except in cases where from the context of any statute a different intention plainly appears.

Source: PolC 1877, ch 27, § 1; CL 1887, § 1440; RPolC 1903, § 1863; RC 1919, § 7210; SDC 1939, § 16.0101.

12-1-1.1. Laws applicable to election of county officers. All election laws of this state relating to nomination and election of candidates for office on political ballots shall apply to the nomination and election of a sheriff, county auditor, register of deeds, treasurer, state's attorney, and coroner.

Source: SL 1973, ch 48, § 2.

12-1-2. Application to local elections. The provisions of this title apply to township, municipal, school, and other subdivision elections unless otherwise provided by the statutes specifically governing their elections or this title.

Source: PolC 1877, ch 27, § 1; CL 1887, § 1440; SL 1890, ch 37, art XIV, §§ 5, 6; RPolC 1903, §§ 1288, 1289, 1863; SL 1913, ch 119, §§ 105, 108; RC 1919, §§ 6326, 7210; SL 1931, ch 138, § 182; SDC 1939, §§ 15.2513, 16.0101, 45.1320; SL 1953, ch 256; SL 1955, ch 41, ch 9, §§ 6, 15; SL 1957, ch 65; SDC Supp 1960, §§ 15.2306, 15.2315; SDCL, §§ 9-13-17, 13-7-20; SL 1973, ch 67, § 2; SL 1990, ch 103.

12-1-2.1. Option to adopt campaign finance law. The governing body of any political subdivision may, by ordinance or resolution, adopt the provisions of chapter 12-27.

Source: SL 1988, ch 60, § 4; SL 2008, ch 67, § 20.

12-1-3. Definition of terms used in title. Terms used in this title mean:

(1) "Candidate," a person whose name is on the ballot or who is entitled to be on the ballot to be voted upon for nomination or election at any election;

(2) "Election," any election held under the laws of this state;

(3) "Election officials," state and local officials charged with the duty of conducting elections and the canvass of returns;

(4) "Elector," a person qualified to register as a voter, whether or not the person is registered;

(5) "Electronic pollbook," an electronic system containing both the registration list and pollbook;

(6) "General election," the vote required to be taken in each voting precinct of the state on the first Tuesday after the first Monday in November of each even-numbered year;

(7) "Paid circulator," any person who receives money or anything of value for collecting signatures for a petition;

(8) "Party office," an office of a political party organization as distinct from a public office;

(9) "Person in charge of an election," or "person charged with the conduct of an election," the county auditor in all cases except local elections for a municipality, school district, township, or other political subdivision, in which case it is the officer having the position comparable to the auditor in that unit of government if not specifically designated by law;

(10) "Petition," a form prescribed by the State Board of Elections, which contains the question or candidacy being petitioned, the declaration of candidacy if required and the verification of the circulator. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator;

(11) "Petition circulator," a resident of the State of South Dakota as defined under § 12-1-4, who is at least eighteen years of age who circulates nominating petitions or other petitions for the purpose of placing candidates or issues on any election ballot;

(12) "Political party," beginning with the 2014 general election and each general election thereafter, a party whose candidate for any statewide office received at least two and one-half percent of the total votes cast for that statewide office in either of the two previous general election cycles;

(13) "Pollbook" or "poll list," a list containing in numerical order the names of all persons voting at the election and type of ballot voted;

(14) "Polling place," a designated place voters may go to vote;

(15) "Primary" or "primary election," an election held at which candidates are nominated for public office;

(16) "Public office," an elected position in government;

(17) "Registration list," a list of eligible voters;

(18) "Registered mail," does not include certified mail;

(19) "Registration officials," the county auditor and deputies and other persons authorized to assist in registration pursuant to chapter 12-4;

(20) "Vote center," a polling place when the precinct has been defined as the entire jurisdiction and an electronic pollbook is utilized;

(21) "Voter," a person duly registered to vote or one who is performing the act of voting;

(22) "Independent (IND)" or "no party affiliation (NPA)," any currently registered voter who writes independent, I, Ind, no party affiliation, no party, no choice, nonpartisan, or line crossed off in the choice of party field on the voter registration form and any individual who is not currently registered to vote who leaves the choice of party field blank on the voter registration form;

(23) "Independent candidate," notwithstanding the definition of independent as stated in this chapter, any registered voter regardless of party affiliation who declares to be an independent candidate for public office pursuant to this chapter;

(24) "Other," any voter who writes a political party not recognized in South Dakota in the choice of party field on the voter registration form.

Source: Source: SDC 1939, §§ 16.0102, 16.0601; SL 1973, ch 67, § 3; SL 1974, ch 118, § 2; SL 1978, ch 92, § 1; SL 1986, ch 114, § 1; SL 1989, ch 23, § 7; SL 1993, ch 109, § 1; SL 2000, ch 19, § 4; SL 2005, ch 93, § 5; SL 2007, ch 78, § 2; SL 2012, ch 84, § 4, eff. Feb. 23, 2012; SL 2015, ch 77, § 22 rejected Nov. 8, 2016; SL 2016, ch 23, § 4; SL 2016, ch 75, § 1, eff. Feb. 18, 2016; SL 2017, ch 2, § 7; SL 2018, ch 73, § 1, eff. Mar. 21, 2018; SL 2018, ch 22, § 2; SL 2018, ch 72, § 1, eff. July 1, 2019.

12-1-3.1. Alternative political status defined. For the purposes of this title, the term, alternative political status, means that a political party meets the requirements of this section commencing with the 2014 general election and each general or special statewide election thereafter. Any political party that meets the definition of political party as defined in § 12-1-3 and has a total party registration of less than two and a half percent of the total number of registered voters, as recorded at the Office of the Secretary of State on the date of the last general election, shall receive alternative political status. Any party that has a total party registration of two and a half percent or more of the total number of registered voters, as recorded at the Office of the Secretary of State on the date of the last general election, shall no longer be classified as alternative political status, but shall remain a political party for the next two general election cycles.

Source: SL 2018, ch 74, § 1, eff. Mar. 23, 2018.

12-1-4. Criteria for determining voting residence. For the purposes of this title, the term, residence, means the place in which a person has fixed his or her habitation and to which the person, whenever absent, intends to return.

A person who has left home and gone into another state or territory or county of this state for a temporary purpose only has not changed his or her residence.

A person is considered to have gained a residence in any county or municipality of this state in which the person actually lives, if the person has no present intention of leaving.

If a person moves to another state, or to any of the other territories, with the intention of making it his or her permanent home, the person thereby loses residence in this state.

Source: SL 1973, ch 67, § 1; SL 1992, ch 60, § 2; SL 2003, ch 80, § 1; SL 2004, ch 105, § 1.

12-1-5. State board created--Members--Terms--Vacancies--Oath. There is created a State Board of Elections to be composed of seven members, one of whom shall be the secretary of state who is chairman. Two of the members shall be county auditors appointed by the Speaker of the House of Representatives from a list of nominees supplied by the county auditors meeting at the South Dakota Association of County Officials. The auditors appointed by the

Speaker of the House of Representatives shall be of different political party registration. One auditor appointed in 1991 shall be appointed for a two-year term and one shall be appointed for a four-year term. All appointments of auditors after 1991 shall be for four years. One member of the board shall be appointed by each of the following officers: the democratic leader of the Senate, the democratic leader of the House of Representatives, the republican leader of the Senate and the republican leader of the House of Representatives. Appointments to the board shall be as follows: the appointee of the democratic leader of the House of Representatives, 1980 and each fourth year thereafter; the appointee of the republican leader of the Senate, 1981 and each fourth year thereafter; the appointee of the republican leader of the House of Representatives, 1982 and each fourth year thereafter; the appointee of the democratic leader of the Senate, 1983 and each fourth year thereafter. After the appointments made in 1979, the terms of all appointed members of the board, except auditors, shall be for four years. All appointments to the board are to be made by January thirty-first of each year. Vacancies on the board shall be filled in the same manner as the original appointments were made. All appointed members of the board shall file with the secretary of state an oath in the form prescribed by § 3-1-5.

Source: SL 1974, ch 117, §§ 1, 2; SL 1978, ch 93, § 1; SL 1982, ch 124; SL 1989, ch 126.

12-1-6. Per diem and expenses. The per diem and expenses of the board shall be established by the Executive Board of the Legislative Research Council unless otherwise provided by law.

Source: SL 1974, ch 117, § 2.

12-1-7. Assistance by secretary of state's office. The Office of the Secretary of State is hereby charged with the duty and responsibility to serve as the secretariat of the State Election Board and shall assist the board as may be directed by the said board.

Source: SL 1974, ch 117, § 5.

12-1-7.1. Repealed by SL 2008, ch 34, § 7.

12-1-8. Legal assistance to board. The Office of the Attorney General shall provide such legal assistance as the State Election Board may require.

Source: SL 1974, ch 117, § 6.

12-1-9. Rule-making power of board. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, concerning:

(1) Forms for voter registration and voter file maintenance;

(2) Forms and color of ballots;

(3) Forms for notices;

(4) The uniformity of election procedures;

(5) The operation of the State Board of Elections;

(6) The procedure to accept a petition and verify petition signatures;

(7) Petition forms, including petition size and petition font size;

(8) Envelopes for absentee voting;

(9) Instructions to voters and absentee voters; and

(10) Recounts.

Source: SL 1974, ch 117, § 3; SL 1998, ch 78, § 1; SL 2002, ch 40, § 4; SL 2018, ch 75, § 1.

12-1-10. Recommendations to secretary of state. The Board of Elections shall report to and make recommendations to the secretary of state concerning desirable or necessary changes in the election laws of this state.

Source: SL 1974, ch 117, § 4; SL 1999, ch 70, § 5.

12-1-11. Costs paid by county--Exception for local elections--Prohibition on private funding—-Promulgation of rules. Except as otherwise provided by law, in any election in which all voters of a county participate, the costs relating to the election shall be paid by the county from funds appropriated therefor. In all other elections, costs shall be paid from funds appropriated by the governing body of municipalities, school districts, and other political subdivisions requiring an election for their own purposes. Costs relating to a combined municipal and school board election may be shared under the provisions of §§ 9-13-1.1 and 13-7-10.1. Neither the state nor any political subdivision may accept any funds, grants, or gifts for election costs from any source other than the governing body of a political subdivision, the state, or the federal government, except for gifts of a nominal and intrinsic value as defined by the State Board of Elections and given in compliance with the provisions of § 12-18-3. The State Board of Elections shall promulgate rules pursuant to chapter 1-26 to prescribe the definition of nominal and intrinsic value.

Source: SL 1897, ch 60, § 1; RPolC 1903, § 1885; RC 1919, § 7235; SDC 1939, § 16.1101; SL 1959, ch 95; SL 1961, ch 92, § 19; SL 1963, ch 112; SDCL, §§ 12-4-28, 12-16-22; SL 1974, ch 118, § 1; SL 1981, ch 66, § 3; SL 2022, ch 36, § 1.

12-1-12. Political party office prohibited in county courthouse. No political party may maintain an office in a county courthouse.

Source: SL 1991, ch 118; SL 2005, ch 93, § 4.

12-1-13. Challenge to petition signatures or declaration of candidacy. Within five business days after a nominating, initiative, or referendum petition, excluding petitions for statewide initiative, referendum, or constitutional initiative petitions, is validated and filed with the person in charge of the election, any interested person who has researched the

signatures contained on the petition or, for a nominating petition, has researched the information contained in the declaration of candidacy, may submit an affidavit stating that the petition contains deficiencies as to the number of signatures of persons who are eligible to sign the petition or that the declaration of candidacy is not valid. The affidavit shall include an itemized listing of the specific deficiencies in question.

Any challenge to the following items is prohibited under this challenge process:

(1) Signer does not live at address listed on the petition;
(2) Circulator does not live at address listed on the petition;
(3) Circulator listed a residence address in South Dakota but is not a South Dakota resident;
(4) Circulator did not witness the signers;
(5) Signatures or petition sheets not included in the random sample. This subdivision applies only to petitions for statewide candidates, new party formation petitions, or to local jurisdictions that conduct random sampling; and
(6) Petition that was originally rejected.

All challenges by the same person or party in interest shall be included in one affidavit.

The original signed affidavit shall be received by the person in charge of that election by 5:00 p.m. local time on the deadline date. If the affidavit challenges any item that is prohibited by this section, only that line item shall be summarily rejected.

The decision of the secretary of state or the person in charge of the election regarding a challenge under this section may not be challenged a second time with the secretary of state or the person in charge of the election, but may be appealed to the circuit court. Any challenge with the secretary of state may be appealed in Hughes County. An appeal challenging a nominating petition for a primary election, takes precedence over other cases in circuit court. Any party appealing the circuit court order to the Supreme Court shall file a notice of appeal within ten days of the date of the notice of the entry of the circuit court order.

A failure to challenge a petition in accordance with this section does not deny a person any other legal remedy to challenge the filing of a nominating, initiative, or referendum petition in circuit court. A challenge to a petition in circuit court may include items prohibited in this section.

Source: SL 1999, ch 70, § 1; SL 2014, ch 69, § 1; SL 2015, ch 74, § 1; SL 2016, ch 75, § 2, eff. Feb. 18, 2016; SL 2017, ch 12, § 5; SL 2019, ch 68, § 1.

12-1-14. Verification of petition signatures or declaration of candidacy--Written declaration as to validity. The person in charge of the election shall verify the information contained in the affidavit submitted in accordance with § 12-1-13 and make a written declaration regarding the validity of the signatures in question or, for a nominating petition, of the declaration of candidacy. The person in charge of the election shall verify that each person, challenged under § 12-1-13, was a registered voter at the time the person signed the petition by using the registration documents on file or, for a nominating petition, that the candidate was a resident of the district at the time the declaration of candidacy was signed, in accordance with § 12-6-3.1, and is a registered voter with a party affiliation in accordance with § 12-6-3.2.

Source: SL 1999, ch 70, § 2; SL 2015, ch 74, § 2; SL 2019, ch 68, § 2.

12-1-15. Notification of candidate or sponsor if petition declared invalid. The person in charge of the election shall immediately notify by certified mail any candidate whose nominating petition or any primary sponsor whose referendum or initiative petition is rejected and declared invalid in accordance with §§ 12-1-13 and 12-1-14.

Source: SL 1999, ch 70, § 3.

12-1-16. Other legal remedies to challenge petition not precluded. If a person fails to challenge a petition pursuant to § 12-1-13, it does not deny that person any other legal remedy to challenge the filing of a nominating, initiative, or referendum petition.

Source: SL 1999, ch 70, § 4.

12-1-17. Computation of time allowed for election notice or filing. In computing any period of time prescribed or allowed for an election notice or filing, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until 5:00 p.m. on the next day which is not a Saturday, a Sunday, or a legal holiday. If the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Source: SL 2002, ch 70, § 1.

12-1-18. Time when petition may be circulated. Any referendum petition to refer a measure passed by a local unit of government may be circulated immediately upon final passage of the measure.

Source: SL 2002, ch 71, § 1.

12-1-19, 12-1-20. Repealed by SL 2008, ch 62, §§ 2, 3.

12-1-21. Complaints filed under the Help America Vote Act. The State Board of Elections shall resolve any complaint filed under Section 402 of the Help America Vote Act of 2002, as of January 1, 2003, in accordance with the contested case provisions of chapter 1-26. The complaint shall be signed, notarized, and filed with the secretary of state. The board shall resolve the complaint within ninety days of its filing. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, governing the procedure for the complaint process.

Source: SL 2003, ch 83, § 16; SDCL, § 12-4-42.

12-1-22. Arbitration of complaints under Help America Vote Act--Appointment of arbitrator--Time for resolution. If the State Board of Elections does not resolve the complaint within ninety days of filing, the complainant may ask the circuit court for

alternative dispute resolution by appointing an impartial third party to serve as an arbitrator to resolve the dispute. The arbitrator shall resolve the dispute within sixty days.

Source: SL 2003, ch 83, § 17; SDCL, § 12-4-43.

12-1-23. Time and place of hearing--Notice to parties. The arbitrator shall appoint a time and place for a hearing and serve each party personally or notify each party by registered or certified mail not less than five days before the hearing.

Source: SL 2003, ch 83, § 18; SDCL, § 12-4-44.

12-1-24. Subpoena issued by arbitrator--Service and enforcement. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may administer oaths. Any subpoena shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

Source: SL 2003, ch 83, § 19; SDCL, § 12-4-45.

12-1-25. Depositions permitted by arbitrators--Compelling testimony. On application of either party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. Any provision of law compelling a person under subpoena to testify is applicable.

Source: SL 2003, ch 83, § 20; SDCL, § 12-4-46.

12-1-26. Evidence presented by parties--Cross-examination. Unless otherwise provided by an agreement, each party is entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

Source: SL 2003, ch 83, § 21; SDCL, § 12-4-47.

12-1-27. Adjournment or postponement of hearing--Failure of party to appear. Unless otherwise provided by an agreement, the arbitrator may adjourn the hearing from time to time as necessary and at the request of a party and for good cause. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

Source: SL 2003, ch 83, § 22; SDCL, § 12-4-48.

12-1-28. Issuance of resolution--Delivery to parties. The resolution pronouncement shall be in writing and signed by the arbitrator. The arbitrator shall deliver a copy to each party personally or by registered or certified mail.

Source: SL 2003, ch 83, § 23; SDCL, § 12-4-49.

12-1-29. **Payment of expenses of proceedings.** The arbitrator's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of arbitration, shall be paid as provided in the resolution pronouncement.

Source: SL 2003, ch 83, § 24; SDCL, § 12-4-50.

12-1-30. Grounds to vacate resolution--New arbitrator. Within ten days of pronouncement, the circuit court may vacate a resolution pronouncement if:

(1) The resolution was procured by corruption, fraud, or other undue means;

(2) There was evident partiality or corruption by the arbitrator or misconduct prejudicing the rights of any party;

(3) The arbitrator exceeded his or her power; or

(4) The arbitrator refused to hear evidence material to the controversy or conducted the hearing as to prejudice substantially the rights of a party.

If the resolution pronouncement is vacated, the circuit court shall appoint a new arbitrator to resolve the dispute in the manner provided in §§ 12-1-21 to 12-1-30, inclusive.

Source: SL 2003, ch 83, § 25; SDCL, § 12-4-51.

12-1-31. Invalid candidacy on nominating petition--Vacancy after primary election. If any state court finds that a declaration of candidacy on a nominating petition is not valid, the candidacy shall be invalidated as of the date of filing. If the invalidation creates a vacancy which continues to exist after a primary election, the vacancy may be filled as provided in §§ 12-6-56 and 12-6-57.

Source: SL 2008, ch 34, § 6.

12-1-32. Registered sex offenders prohibited from circulating petitions--Violation as misdemeanor. No registered sex offender may circulate any petition, either on the registered sex offender's own behalf or on the behalf of, or in the employ of, another person in any place frequented by the public or door to door on private property. A violation of this section is a Class 1 misdemeanor.

Source: SL 2012, ch 80, § 1.

12-1-33. Exception for registered sex offender circulating petition under supervision. The provisions of § 12-1-32 do not apply, if the registered sex offender circulating or assisting in circulating petitions under circumstances where the registered sex offender is in the employ of, and under the immediate supervision of, another person and where the circumstances preclude any contact with children.

Source: SL 2012, ch 80, § 2.

12-1-34. Exception for registered sex offender circulating nominating petition on his or her own behalf. The provisions of § 12-1-32 do not apply, if the registered sex offender is circulating any nominating petitions on his or her own behalf for election to any federal, state, or local office for which the registered sex offender is otherwise qualified.

Source: SL 2012, ch 80, § 3.

12-1-35. Secretary of state to examine nominating petitions for statewide office for compliance. The secretary of state shall examine each nominating petition for statewide office upon being received by the Office of Secretary of State. No signature of a person may be counted by the secretary of state unless the person is a registered voter in the county indicated on the signature line and has complied with the laws and rules concerning petitions. No signature of a person may be counted if the information required on the petition form is not complete.

Source: SL 2015, ch 75, § 1.

12-1-36. Verification of signatures on nominating petitions by random sampling. The secretary of state shall verify the signatures received pursuant to § 12-1-35 by random sampling. The random sample of signatures to be verified shall be drawn so that each signature received by the secretary of state is given an equal opportunity to be included in the sample. The secretary of state shall calculate the number of valid signatures by multiplying the total number of signatures received by the percentage of successfully verified signatures from the random sample. The secretary of state shall promulgate rules, pursuant to chapter 1-26, establishing the methodology for conducting the random sample. The random sampling shall be an examination of the signatures received consisting of a number of signatures that is statistically correlative to not less than ninety-five percent level of confidence with a margin of error equal to not more than three and sixty-two one-hundredths percent.

Source: SL 2015, ch 75, § 2; SL 2017, ch 12, § 8.

12-1-37. Certification of sufficient or insufficient number of signatures based on random sampling. If the random sample required by § 12-1-36 indicates that a sufficient number of qualified electors have signed the nominating petition for statewide office, the secretary of state shall certify that the nominating petition for statewide office has been signed by the required number of qualified electors and shall place the candidate's name on the next primary or general election ballot, as the case may be.

If the random sample indicates that an insufficient number of qualified electors have signed the nominating petition for statewide office, the secretary of state shall certify that the nominating petition for statewide office has not been signed by the required number of qualified electors and may not place the candidate's name on the next primary or general

election ballot, as the case may be.

The secretary of state shall, within five days of certifying, notify the candidate of the secretary of state's action pursuant to this section.

Source: SL 2015, ch 75, § 3.

12-1-38. Circuit court challenge not affected by random sampling. Nothing in §§ 12-1-35 to 12-1-37, inclusive, prohibits any person from challenging in circuit court the validity of signatures or other information required on a nominating petition for statewide office by law or rule.

Source: SL 2015, ch 75, § 4.

12-1-39. Availability of petition to public. No petition submitted may be made available to the public until the validation process has been completed and the office where that petition was submitted has filed or rejected the petition, except as provided in § 2-1-15.

Source: SL 2017, ch 2, § 3; SL 2019, ch 15, § 4.

CHAPTER 12-2 - DATES AND HOURS OF ELECTIONS

12-2-1 Date of primary election.
12-2-2 Date of general election--Officers elected.
12-2-2.1 Statewide elections limited to primary, runoff, and general election dates.
12-2-3 Opening and closing times for polls--Voters in line at closing time.
12-2-4 Emergency extension of closing times--Reopening after extended emergency.
12-2-5 Elections of governmental subdivision held in conjunction with June primary election.
12-2-6 Combined elections of governmental subdivisions.
12-2-7 Repealed.
12-2-8 Postponement of election for weather conditions.
12-2-9 Notification to voters of postponement of election.

12-2-1. Date of primary election. The primary election provided for in chapter 12-6 shall be held at the regular polling place in every voting precinct throughout the state on the first Tuesday after the first Monday in June of every even-numbered year.

Source: SDC 1939, §§ 16.0202, 16.0237; SL 1945, ch 75; SL 1955, ch 54, § 1; SL 1968, ch 73, § 1; SL 1972, ch 75, § 1; SL 1973, ch 68, § 1; SL 1986, ch 115, § 1; SL 1997, ch 75, § 1; SL 2005, ch 87, § 1.

12-2-2. Date of general election--Officers elected. On the first Tuesday after the first Monday in November of each even-numbered year an election shall be held in the several election precincts in the state, which shall be known as the general election and the several state, district, and county officers, members of the Legislature, senators and representatives in Congress, and judges of the Supreme and Circuit Courts shall be elected at the general election next preceding the expiration of the term of each of such officers, respectively, except such officers as are required by law to be elected at a special election; and in a year when a President and vice-president of the United States are to be chosen, a number of electors of President and vice-president of the United States, equal to the number of senators and representatives in Congress to which the state may be entitled or such other number as the Congress of the United States may require, shall be selected at such election.

Source: PolC 1877, ch 27, § 2; CL 1887, § 1441; RPolC 1903, § 1864; RC 1919, § 7211; SDC 1939, § 16.0602.

12-2-2.1. Statewide elections limited to primary, runoff, and general election dates. No statewide election or referendum may be held on a date other than a date ordinarily provided by statute for a primary, runoff, or general election, with the exception of a date provided by the Legislature to hold a special election.

Source: SL 1986, ch 116; SL 2000 (SS), ch 2, § 2.

12-2-3. Opening and closing times for polls--Voters in line at closing time. At each election to be held under this title, the polls shall be opened at the hour of seven a.m. and remain continuously open until seven p.m., standard time or daylight savings time, whichever is in effect. However, no polling place may be closed at any election until all the voters who have presented themselves at the polling place inside or outside for the purpose of voting prior to the time of the closing of the polls have had time to cast their ballots.

Source: SDC 1939, §§ 16.0222, 16.1201; SL 1955, ch 54, §§ 3, 5; SL 1968, ch 76, § 1; SDCL Supp, § 12-6-24; SL 1973, ch 68, § 2; SL 1981, ch 119, § 1; SL 2000, ch 71, § 1.

12-2-4. Emergency extension of closing times--Reopening after extended emergency. Notwithstanding § 12-2-3, the county auditor may, upon request of the superintendent of an election precinct, if an emergency exists by reason of mechanical failure of a voting machine or an unanticipated shortage of ballots or like unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved. If the emergency situation is not resolved within two hours, except for a primary or general election, the polling place shall remain closed for one week and reopen at the time of the closure of the polling place.

Source: SL 1974, ch 122; SL 1997, ch 76, § 1; SL 2014, ch 70, § 1, eff. Feb. 19, 2014.

12-2-5. Elections of governmental subdivision held in conjunction with June primary election. Any other provision of law notwithstanding, the members of the governing body of any governmental subdivision may choose to hold their elections in conjunction with the regular June primary election. The combined election is subject to approval by the county commissions of the counties in which the governmental subdivision is located. Expenses of a combined election shall be shared in a manner agreed upon by the governing body of the subdivision and the county commissions involved. All other governmental responsibilities associated with holding elections under the provisions for that subdivision and Title 12 shall be shared as agreed upon by the governing bodies. The governmental subdivision clerk shall publish the notice of vacancy between February fifteenth and March first. No nominating petition may be circulated for signatures until March first. Nominating petitions shall be filed under the provisions required for that subdivision by the last Tuesday in March. The clerk shall certify to the appropriate county auditor the candidate names and ballot language to be voted on by the first Thursday after the last Tuesday in March.

Source: SL 1996, ch 60, § 6; SDCL 9-13-38; SL 2007, ch 81, § 4.

12-2-6. Combined elections of governmental subdivisions. The members of the governing body of any governmental subdivision may choose to hold their election in conjunction with any other governmental subdivision's election if the statutory dates for the election coincide. The combined election is subject to approval by all of the governing bodies involved in the combined election. Expenses of a combined election shall be shared in a manner agreed upon by the governing bodies involved in the combined election. All other governmental statutory responsibilities associated with the election shall be shared as agreed upon by the governing bodies.

Source: SL 1996, ch 60, § 7; SDCL 9-13-39.

12-2-7. Repealed by SL 2016, ch 76, § 1.

12-2-8. Postponement of election for weather conditions. No earlier than twenty-four hours before the polls open, the person in charge of the election may call a special emergency meeting, pursuant to §§ 1-25-1 and 1-25-1.1, of the local governing board to postpone any election, except a primary or general election, for one week if the weather conditions put into question the opening of a polling place. The polling place shall then remain open for the same number of hours as it would normally have been open. Absentee voting shall continue pursuant to chapter 12-19.

Source: SL 2014, ch 70, § 2, eff. Feb. 19, 2014.

12-2-9. Notification to voters of postponement of election. The person in charge of the election shall use any and all means necessary to notify the voters in the jurisdiction of the postponement of an election pursuant to this chapter. If the postponement misses the deadline for the official newspaper, a notice shall be posted in three of the most public places within the jurisdiction.

Source: SL 2014, ch 70, § 3, eff. Feb. 19, 2014.

CHAPTER 12-3 - SUFFRAGE AND RIGHT TO VOTE

12-3-1 General qualifications of voters--Registration required.
12-3-1.1 Residents of federal areas.
12-3-2 Repealed.
12-3-3 Repealed.
12-3-4 Repealed.
12-3-5 Time allowed employees from work to vote--Penalty and pay deduction prohibited--Violation as misdemeanor.
12-3-6 Counties covered by Voting Rights Act Amendments--Designation by federal agencies--Notice from secretary of state.
12-3-7 Proceedings to exempt county from Voting Rights Amendments.
12-3-8 Implementation of Voting Rights Amendments in affected counties.
12-3-9 Sioux dialects defined as historically unwritten.
12-3-10 Linguistic assistance to Indians provided by counties.
12-3-11 Precinct interpreters provided--Payment.
12-3-12 Certification that precinct interpreter not needed--Proof.
12-3-13 Rules promulgated by state board.

12-3-1. General qualifications of voters--Registration required. Every person resident of this state who shall be of the age of eighteen years and upwards, not otherwise disqualified, who shall have complied with the provisions of law relating to the registration of voters shall be entitled to vote at any election in this state.

Source: PolC 1877, ch 27, § 47; CL 1887, § 1486; RPolC 1903, § 1866; RC 1919, § 7213; SDC 1939, § 16.0604; SL 1972, ch 76, § 1; SL 1973, ch 69, § 2.

12-3-1.1. Residents of federal areas. No person residing on an area within the boundaries of this state which has been ceded to, or acquired by, the federal government shall be denied the right to vote in elections of this state or of the county, municipality, school district, or special district wherein such area lies if such person is otherwise qualified to vote in such election or elections.

Source: SL 1970, ch 92.

12-3-2. Repealed by SL 1982, ch 28, § 39.

12-3-3, 12-3-4. Repealed by SL 1973, ch 69, § 4.

12-3-5. Time allowed employees from work to vote--Penalty and pay deduction prohibited--Violation as misdemeanor. Any person entitled to vote at any election held within this state, including a primary election, shall, on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed for a period of two consecutive hours between the time of opening and the time of closing the polls; provided such person does not have a period of two consecutive hours during the time the polls are open during which he is not required to be present at his work or place of

employment. Such voter is not, because of so absenting himself, liable to any penalty, nor may any deduction be made on account of such absence from his usual salary or wages. The employer may specify the hours during which such employee may absent himself as aforesaid.

An employer who refuses an employee the privilege conferred by this section or who subjects an employee to a penalty or reduction of wages because of the exercise of such privilege or who directly or indirectly violates this section is guilty of a Class 2 misdemeanor.

Source: SL 1897, ch 60, § 40; RPolC 1903, § 1924; RC 1919, § 7274; SL 1929, ch 118, § 20; SDC 1939, §§ 16.0202, 16.1211, 16.9922; SL 1945, ch 75; SL 1947, ch 87; SL 1955, ch 54; SL 1955, ch 57, § 1; SL 1968, ch 73, § 1; SL 1982, ch 86.

12-3-6. Counties covered by Voting Rights Act Amendments--Designation by federal agencies--Notice from secretary of state. Whenever the United States Department of Justice and the United States Census Bureau, acting pursuant to Public Law 94-73, designate any county in South Dakota to be covered under the provisions of the Voting Rights Act Amendments of 1975, the county so designated shall be governed by the provisions of §§ 12-3-6 to 12-3-13, inclusive. The secretary of state shall notify those affected counties that they are covered by the provisions of Public Law 94-73.

Source: SL 1976, ch 104, § 1.

12-3-7. Proceedings to exempt county from Voting Rights Amendments. The state's attorney of any affected county is hereby authorized to bring appropriate proceedings, pursuant to Public Law 94-73, to exempt the entire county from the provisions of that act.

Source: SL 1976, ch 104, § 7.

12-3-8. Implementation of Voting Rights Amendments in affected counties. Sections 12-3-6 to 12-3-13, inclusive, shall apply to all elections held within the affected counties designated pursuant to § 12-3-6, and the person in charge of such elections shall be responsible for the implementation of such sections.

Source: SL 1976, ch 104, § 3.

12-3-9. Sioux dialects defined as historically unwritten. The Legislature finds that the Lakota, Nakota, and Dakota dialects of the Sioux language are "historically" unwritten languages and are defined as such by the provisions of Public Law 94-73.

Source: SL 1976, ch 104, § 2.

12-3-10. Linguistic assistance to Indians provided by counties. The county auditor of the counties affected by §§ 12-3-6 to 12-3-13, inclusive, shall provide election assistance to

any Indian by providing a person proficient in both the local Sioux dialect and the English language in all precincts of the county for the purposes of registration, voting and instruction.

Source: SL 1976, ch 104, § 4.

12-3-11. Precinct interpreters provided--Payment. Interpreters shall be provided for precincts as determined by the auditor or person in charge of that election and interpreters shall be paid the same as precinct deputies. All expenses shall be paid out of the county general fund or other appropriate political subdivision fund.

Source: SL 1976, ch 104, § 5; SL 1999, ch 69, § 2.

12-3-12. Certification that precinct interpreter not needed--Proof. If any precinct exists in any county that does not need the assistance of an interpreter, the county auditor and the county state's attorney shall certify such facts to the state board of elections. Appropriate proof shall accompany such certification.

Source: SL 1976, ch 104, § 6.

12-3-13. Rules promulgated by state board. The State Board of Elections shall have the authority, pursuant to chapter 1-26, to promulgate rules to implement, administer and enforce §§ 12-3-6 to 12-3-13, inclusive, and the state board of elections shall have further authority, pursuant to chapter 1-26, to promulgate rules to implement, administer and enforce further federal administrative rulings made pursuant to Public Law 94-73.

Source: SL 1976, ch 104, § 8.

CHAPTER 12-4 - REGISTRATION OF VOTERS

12-4-1 Persons entitled to register.
12-4-1.1 Repealed by SL 2005, ch 89, § 1.
12-4-2 County auditor in charge of voter registration records.
12-4-2.1 Repealed by SL 1982, ch 28, § 40.
12-4-2.2 Repealed by SL 1982, ch 28, § 40.
12-4-2.3 Repealed by SL 1994, ch 107, § 2.
12-4-3 Mail registration cards and instructions provided by auditor--Contact information provided by private entities.
12-4-3.1 Repealed by SL 1994, ch 107, § 4.
12-4-3.2 Deadline for private entities or individuals registering voters to file registration form--Violation as misdemeanor.
12-4-4 Repealed by SL 1974, ch 118, § 200.
12-4-4.1 Repealed by SL 1994, ch 107, § 5.
12-4-4.2 Purpose of overseas voting rights provisions.
12-4-4.3 Overseas citizen defined.
12-4-4.4 Registration and voting by overseas citizens--Conditions.
12-4-4.5 Absentee registration and voting in last county and precinct of residence.
12-4-4.6 Absentee ballot request as registration--Notarization not required.
12-4-4.7 Expedition of registrations and ballot requests.
12-4-4.8 Promulgation of rules by state board.
12-4-4.9 Election laws apply to overseas voting provisions.
12-4-4.10 Secretary of state to provide voter registration and absentee voting information.
12-4-4.11 Repealed by SL 2016, ch 77, § 1.
12-4-4.12 Registration of voter covered by Uniformed and Overseas Citizens Absentee Voting Act.
12-4-5 Entry of applicants in registration file--Deadline--List for runoff election.
12-4-5.1 Repealed by SL 1974, ch 118, § 200.
12-4-5.2 Notice of registration procedures--Publication.
12-4-5.3 Review of voter registration application by auditor--Notice to applicant.
12-4-5.4 Registration--Information provided.
12-4-5.5 Verification of registration information.
12-4-6 Filling out registration card--Registration at driver's license station--Applicant unable to write.
12-4-6.1 Effective date of voter registration.
12-4-7 Repealed by SL 1981, ch 120, § 2.
12-4-7.1 Repealed by SL 1974, ch 118, § 200.
12-4-7.2 Duty to ensure completion of registration cards.
12-4-7.3 Repealed by SL 1994, ch 107, §§ 10, 11
12-4-7.4 Repealed by SL 1994, ch 107, §§ 10, 11.
12-4-8 Records prescribed by state board--Information required.
12-4-8.1 Postcard requests for absentee ballot under federal law--Indexing and furnishing to precinct board.
12-4-8.2 True copy to replace duplicate acknowledgment notice.
12-4-9 Master registration file--Contents--Public inspection--Limitations.

12-4-9.1 Repealed by SL 1974, ch 118, § 200.
12-4-9.2 Secured active designation.
12-4-10 Precinct registration lists--Contents--Entries by superintendent.
12-4-10.1 Registration lists furnished to federal court for jury selection--Return of lists to auditor.
12-4-11 Change of registration file on change in precinct boundaries.
12-4-12 New registration on move between states or counties--Authorization to cancel previous registration.
12-4-13 Repealed by SL 1994, ch 107, § 17.
12-4-14 Repealed by SL 1974, ch 118, § 200.
12-4-15 Designation or change of party affiliation.
12-4-16 Repealed by SL 1994, ch 107, § 19.
12-4-17 Repealed by SL 1975, ch 121.
12-4-18 Persons declared mentally incompetent, deceased or serving sentence for felony conviction removed from registration records.
12-4-19 Address verification request--Confirmation mailing--Exception.
12-4-19.1 Confirmation mailing notice to registrant of proposed registration cancellation--Postcard and return card--Contents.
12-4-19.2 Placement in inactive registration file by auditor.
12-4-19.3 Repealed by SL 1994, ch 107, § 24.
12-4-19.4 Cancellation of voter registration.
12-4-19.5 Repealed by SL 2002, ch 40, § 13.
12-4-19.6 National change of address notice.
12-4-19.7 Voter registration list maintenance confirmation mailing notice--Contents.
12-4-20 Repealed by SL 1974, ch 118, § 200.
12-4-21 Repealed by SL 1974, ch 118, § 200.
12-4-22 Repealed by SL 1974, ch 118, § 200.
12-4-23 Repealed by SL 1996, ch 95, § 3.
12-4-23.1 Repealed by SL 1976, ch 105, § 84.
12-4-24 Precinct lists for local election--Delivery to voting precincts.
12-4-24.1 Repealed by SL 2012, ch 81, § 5.
12-4-25 Repealed by SL 1974, ch 118, § 200.
12-4-26 Repealed by SL 1974, ch 118, § 200.
12-4-27 Repealed by SL 1974, ch 118, § 200.
12-4-28 Repealed by SL 1974, ch 118, § 200.
12-4-29 12-4-29. Repealed by SL 1994, ch 107, § 25.
12-4-30 12-4-30. Repealed by SL 1974, ch 118, § 200.
12-4-31 12-4-31. Repealed by SL 1994, ch 107, § 26.
12-4-32 National Voter Registration Act of 1993.
12-4-33 Chief state election official.
12-4-34 Registered voters referred to in other statutes.
12-4-35 Rules for the National Voter Registration Act.
12-4-36 Rebuttable presumption that certain electors not qualified.
12-4-37 Statewide voter registration file--County auditors to transmit changes to secretary.
12-4-38 County auditor's file is official record in event of discrepancy.
12-4-39 Promulgation of rules--Scope.

12-4-40 Identification of duplicate voter registration--Notification.
12-4-41 Use of voter registration information--Violation as misdemeanor--Civil penalty.
12-4-42 12-4-42 to 12-4-51. Transferred to §§ 12-1-21 to 12-1-30.
12-4-52 Payment for registration of voters based on number of voters registered prohibited--Violation as misdemeanor.
12-4-53 Receipt of payment for registration of voters based on number of voters registered prohibited--Violation as misdemeanor.

12-4-1. Persons entitled to register. Every person residing within the state who has the qualifications of a voter prescribed by § 12-3-1 or 12-3-1.1, or who will have such qualifications at the next ensuing municipal, primary, general, or school district election, shall be entitled to be registered as a voter in the voting precinct in which he resides.

Source: SL 1961, ch 92, § 2; SL 1972, ch 76, § 2; SL 1974, ch 118, § 3.

12-4-1.1. Repealed by SL 2005, ch 89, § 1.

12-4-2. 12-4-2. County auditor in charge of voter registration records. The county auditor has complete charge of maintaining and safeguarding the voter registration records in the county. The county auditor shall retain all voter registration records in the auditor's office in paper or electronic form. All such records shall be open to public inspection at all times during office hours, except pursuant to §§ 12-4-9 and 12-4-9.3.

Voter registration shall be conducted by each county auditor and municipal finance officer. Voter registration shall be available at the secretary of state's office and at those locations which provide driver licenses; food stamps; temporary assistance for needy families; women, infants, and children nutrition program; medicaid; military recruitment; and assistance to the disabled as provided by the Department of Human Services.

Source: SL 1961, ch 92, §§ 3, 4; SL 1969, ch 83, § 1; SDCL § 12-4-4; SL 1974, ch 118, § 4; SL 1976, ch 105, § 1; SL 1985, ch 106, § 1; SL 1994, ch 107, § 1; SL 1997, ch 166, § 3; SL 2003, ch 83, § 10; SL 2008, ch 63, § 1; SL 2012, ch 81, § 1; SL 2022, ch 11, § 3, eff. Feb. 14, 2022.

12-4-2.1, 12-4-2.2. Repealed by SL 1982, ch 28, § 40.

12-4-2.3. Repealed by SL 1994, ch 107, § 2.

12-4-3. Mail registration cards and instructions provided by auditor--Contact information provided by private entities. The county auditor shall provide mail registration cards along with instructions on how to properly register voters to private entities and individuals. Each private entity or individual shall provide information to the voter being registered on how the voter may contact such private entity or individual to determine the status of the voter's registration.

Source: SL 1961, ch 92, § 3; SL 1969, ch 83, § 1; SL 1974, ch 118, § 5; SL 1976, ch 105, § 2; SL 1978, ch 94, § 3; SL 1983, ch 107; SL 1994, ch 107, § 3; SL 2005, ch 88, § 1.

12-4-3.1. Repealed by SL 1994, ch 107, § 4.

12-4-3.2. Deadline for private entities or individuals registering voters to file registration form--Violation as misdemeanor. Any private entity or individual registering a person to vote shall file the completed registration form with the county auditor within ten days or by the voter registration deadline, whichever occurs first. A violation of this section is a Class 2 misdemeanor.

Source: SL 2005, ch 90, § 1.

12-4-4. Repealed by SL 1974, ch 118, § 200.

12-4-4.1. Repealed by SL 1994, ch 107, § 5.

12-4-4.2. Purpose of overseas voting rights provisions. The purpose of §§ 12-4-4.2 to 12-4-4.9, inclusive, is to implement the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff-1--1973ff-6, (Jan. 1, 1996).

Source: SL 1977, ch 112, § 2; SL 1996, ch 95, § 1.

12-4-4.3. Overseas citizen defined. An "overseas citizen" is any person residing outside the territory of the United States of America including its territories and possessions, and who is a citizen of the United States.

Source: SL 1977, ch 112, § 3.

12-4-4.4. Registration and voting by overseas citizens--Conditions. Any overseas citizen may register and vote in any federal, state, county, or local election held within South Dakota under the following conditions:

(1) The overseas citizen, or the spouse or parent of the overseas citizen, was last domiciled in South Dakota immediately prior to departure from the United States;

(2) The overseas citizen does not maintain a domicile, is not registered to vote, and is not voting in any other state;

(3) The overseas citizen is otherwise qualified to vote according to law.

Source: SL 1977, ch 112, § 4; SL 2011, ch 76, § 1.

12-4-4.5. Absentee registration and voting in last county and precinct of residence. The overseas citizen may register and vote absentee in the same county and election precinct in which the overseas citizen, or spouse or parent of the overseas citizen, resided immediately prior to leaving the United States.

Source: SL 1977, ch 112, § 5; SL 2011, ch 76, § 2.

12-4-4.6. Absentee ballot request as registration--Notarization not required. A request for an absentee ballot made by an overseas citizen that contains the information necessary to comply with §§ 12-4-4.4 and 12-4-4.5 shall be sufficient for registration purposes, and these applications need not be notarized or otherwise sworn to.

Source: SL 1977, ch 112, § 8.

12-4-4.7. Expedition of registrations and ballot requests. The person in charge of the election shall expedite the processing of registrations and absentee ballot requests of overseas citizens.

Source: SL 1977, ch 112, § 6.

12-4-4.8. Promulgation of rules by state board. The State Board of Elections may promulgate rules pursuant to chapter 1-26 for the implementation of §§ 12-4-4.2 to 12-4-4.9, inclusive.

Source: SL 1977, ch 112, § 1.

12-4-4.9. Election laws apply to overseas voting provisions. All other provisions of law relating to elections shall apply to §§ 12-4-4.2 to 12-4-4.9, inclusive.

Source: SL 1977, ch 112, § 7.

12-4-4.10. Secretary of state to provide voter registration and absentee voting information. The secretary of state shall provide any absentee uniformed services and overseas voter information on voter registration procedures and how to vote absentee.

Source: SL 2003, ch 83, § 13.

12-4-4.11. Repealed by SL 2016, ch 77, § 1.

12-4-4.12. Registration of voter covered by Uniformed and Overseas Citizens Absentee Voting Act. If a voter is 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 register to vote through the system provided by the Office of the Secretary of State.

Source: SL 2014, ch 72, § 2, eff. Feb. 19, 2014.

12-4-5. Entry of applicants in registration file--Deadline--List for runoff election. The county auditor shall enter in the master registration file the name of each eligible person whose completed application for registration and mail registration card is received no later than 5:00 p.m. local time at least fifteen days preceding the election by the county auditor or the local, state, or federal agency responsible for conducting voter registration under this chapter. A voter registration completed at any local, state, or federal agency during any week

commencing on Tuesday through the following Monday shall be sent to the appropriate county auditor by the agency receiving the registration or mail registration card no later than the following Wednesday. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, for the alternative transmission of voter registration information by computer from the agency to the secretary of state. The name of any voter who has registered to vote by 5:00 p.m. local time fifteen days preceding a runoff election shall be added to the file used for the runoff election.

Source: SL 1961, ch 92, §§ 4, 13; SDCL §§ 12-4-4, 12-4-5.1; SL 1969, ch 83, § 4; SL 1970, ch 86, § 11; SL 1974, ch 118, § 7; SL 1978, ch 94, § 1; SL 1981, ch 120, § 1; SL 1985, ch 106, § 2; SL 1985, ch 107, § 1; SL 1985, ch 110, § 1C; SL 1994, ch 107, § 6; SL 1996, ch 95, § 4; SL 2002, ch 40, § 5; SL 2017, ch 68, § 1; SL 2019, ch 69, § 1.

12-4-5.1. Repealed by SL 1974, ch 118, § 200.

12-4-5.2. Notice of registration procedures--Publication. The county auditor or the person responsible for the conduct of a local election shall give notice of the availability of registration officials and state when registration will be terminated and the effect of a failure to have registered. Such notice shall be published in official newspapers at least once each week for two consecutive weeks, the last publication to be not less than ten nor more than fifteen days before the deadline for registration.

Source: SL 1974, ch 119, § 1.

12-4-5.3. Review of voter registration application by auditor--Notice to applicant. When a voter registration application is received by the county auditor, the county auditor shall review the application for eligibility and completeness. If the applicant is not eligible to be registered or sufficient information to complete the registration card cannot be obtained from the applicant, the applicant shall be sent an acknowledgment notice indicating the reason the registration was not filed. In addition, the acknowledgment notice shall state that the voter needs to submit the corrected information to the county within thirty days or the voter registration form may not be processed. Any applicant whose registration is accepted shall be sent an acknowledgment notice. The acknowledgment notice shall be prescribed by the State Board of Elections and sent by nonforwardable mail. The same confirmation mailing required by § 12-4-19 shall be sent immediately to any person whose registration acknowledgment notice is returned undeliverable.

Source: SL 1994, ch 107, § 7; SL 1996, ch 95, § 5; SL 2017, ch 68, § 2.

12-4-5.4. Registration--Information provided. Any person registering to vote shall provide the person's valid South Dakota driver license number or a South Dakota nondriver identification number on the voter registration form. If a person does not have a valid South Dakota driver license or a South Dakota nondriver identification number, the person shall provide the last four digits of the person's social security number on the voter registration form. If a person does not have a valid South Dakota driver license, a South Dakota nondriver identification number, or a social security number, the person may only register at the county

auditor's office and shall sign a statement verifying the fact that the person does not have a valid South Dakota driver license, a South Dakota nondriver identification number, or a social security number. The statement shall be prescribed by the State Board of Elections.

Source: SL 2003, ch 83, § 11; SL 2006, ch 68, § 1; SL 2020, ch 49, § 1.

12-4-5.5. Verification of registration information. At the time voter registration information is transmitted from a county to the statewide voter registration file, the authenticity of the driver license number or the South Dakota nondriver identification number shall be verified with the driver license database. If the person has provided the last four digits of his or her social security number, the social security database shall be checked to determine that the number, name, and date of birth are accurate and that this information does belong to such person. If any of this information is reported as not being accurate, the county auditor shall withdraw the voter registration and attempt to get the correct information with the process provided in § 12-4-5.3. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, determining technical parameters for the driver license and social security database verification.

Source: SL 2003, ch 83, § 12; SL 2005, ch 89, § 2; SL 2020, ch 49, § 2.

12-4-6. Filling out registration card--Registration at driver's license station--Applicant unable to write. An applicant for registration shall answer questions and sign the oath as required on the form prescribed by the State Board of Elections. An applicant for registration at a driver's license station shall also sign a signature card prescribed by the Department of Public Safety. This signature shall be digitized and used to prepare the registration card as provided in § 12-4-5. If an applicant is unable to write his or her name, the applicant shall make a mark, the applicant's name being written near such mark, and written by a person who writes his or her own name as a witness.

Source: SL 1961, ch 92, § 13; SL 1969, ch 83, § 4; SL 1974, ch 118, § 8; SL 1975, ch 119, § 13; SL 1985, ch 107, § 2; SL 1994, ch 107, § 8; SL 2004, ch 17, § 8.

12-4-6.1. Effective date of voter registration. A voter registration shall be considered to be effective on the date which the card is received by the county auditor. However, if the card was completed at one of the agencies listed in § 12-4-2, is received by the auditor within five days following any registration deadline and is dated by the deadline, the card shall be considered to be effective on the date which it was signed at the agency. If a card does not contain all of the information required by the form prescribed pursuant to § 12-4-6 or if the card contains information which is not correct, it shall be considered to be effective on the date all of the correct, required information is supplied to the county auditor.

Source: SL 1997, ch 78, § 1; SL 2005, ch 89, § 3.

12-4-7. Repealed by SL 1981, ch 120, § 2.

12-4-7.1. Repealed by SL 1974, ch 118, § 200.

12-4-7.2. Duty to ensure completion of registration cards. Any local, state, or federal agency staff person who registers a voter shall ensure that the registration card, as prescribed by the State Board of Elections, is filled out completely.

Source: SL 1975, ch 119, § 14; SL 1976, ch 105, § 5; SL 1978, ch 94, § 2; SL 1985, ch 107, § 3; SL 1989, ch 127; SL 1993, ch 110, § 2; SL 1994, ch 107, § 9.

12-4-7.3, 12-4-7.4. Repealed by SL 1994, ch 107, §§ 10, 11.

12-4-8. Records prescribed by state board--Information required. For the purpose of expediting work of the county auditor, to promote uniformity in registration, and for the preparation of abstracts and other forms to be used by election boards, registration records shall be prescribed by the State Board of Elections. The State Board of Elections may require such information, on registration records, as is necessary to effectuate the state and federal election laws.

Source: SL 1961, ch 92, § 7; SL 1969, ch 83, § 3; SL 1970, ch 86, § 1; SL 1971, ch 83, §§ 10, 12; SL 1972, ch 76, § 3; SL 1974, ch 118, § 9; SL 1975, ch 119, § 16; SL 1994, ch 107, § 12.

12-4-8.1. Postcard requests for absentee ballot under federal law--Indexing and furnishing to precinct board. In lieu of forms for registration prescribed under § 12-4-8, requests for absentee ballots submitted in accordance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAV) (42 U.S.C. § 1973ff) shall be sufficient for registration purposes. The county auditor shall make and file the index card for the master file and attach the card thereto and a photocopy shall be supplied to the election board of the precinct for the purposes of § 12-19-2.

Source: SL 1957, ch 85, § 2; SDC Supp 1960, § 16.0611; SDCL, § 12-19-20; SL 1974, ch 118, § 10; SL 1992, ch 107, § 1; SL 1994, ch 107, § 13.

12-4-8.2. True copy to replace duplicate acknowledgment notice. Any voter whose name appears in the master registration file who makes written application to the county auditor for a duplicate acknowledgment notice, who has not received one or who has lost it, may receive a true copy of the card on file.

Source: SL 1970, ch 86, § 8; SDCL Supp, § 12-4-7.1; SL 1974, ch 118, § 11; SL 1994, ch 107, § 14; SL 2002, ch 40, § 6.

12-4-9. Master registration file--Contents--Public inspection--Limitations. The county auditor shall maintain and safeguard a file of voters in computer format that contains the information of each person registered in each voting precinct within the county. This file shall be known as the master registration file and shall be, at all times during office hours, open to public inspection. However, public access to social security numbers, driver license numbers, and dates of birth contained in the master registration file is prohibited. The master registration file shall contain all information from each voter's registration card. The master

registration file shall also include the date of the last election the voter has voted in and when the voter's information was last updated. The master registration file may also contain additional voter history information. Any voter registration form for a purged or unregistered voter shall be kept for twenty-two months. No purged or unregistered voter may be included in the master registration file.

Source: SL 1961, ch 92, § 5; SL 1974, ch 118, § 12; SL 1976, ch 105, § 6; SL 1994, ch 107, § 15; SL 2001, ch 66, § 6; SL 2008, ch 64, § 1; SL 2012, ch 81, § 2; SL 2017, ch 68, § 3; SL 2020, ch 50, § 1.

12-4-9.1. Repealed by SL 1974, ch 118, § 200.

12-4-9.2. Secured active designation.

A person eligible to vote under § 12-4-1 may apply to the secretary of state to be listed in the master registration file with a secured active designation.

The secretary of state shall certify a secured active designation if an applicant provides a sworn application that affirms one of the following:

(1) The applicant has obtained an active protection order under chapter 25-10 or chapter 22-19A, which the secretary of state shall verify with the Unified Judicial System; or

(2) The applicant resides in a shelter established pursuant to chapter 25-10. The applicant shall obtain authorization signed by an official of the shelter.

Upon receipt of the application, the secretary of state shall verify with the Unified Judicial System that the applicant petitioned for the protection order and the order is active.

A voter record with a secured active designation shall be excluded from public inspection or copying, except if requested by a law enforcement agency, if directed by a court order, or if a secured active designation has been cancelled at the request of the secured active designee.

A secured active designation remains in effect for five years.

The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, to prescribe the notices and forms, as well as any criteria and procedures for approving applications pursuant to this Act.

Source: SL 2021, ch 61, § 1.

12-4-10. Precinct registration lists--Contents--Entries by superintendent. The county auditor shall provide from the master registration file, in paper or electronic format, a separate list of the names and addresses of all registered voters in each voting precinct as established pursuant to chapter 12-14, § 9-13-16, or 13-7-11 in the county, which shall be known as the precinct registration list. The list for any voting precinct shall be designed so that each name can be distinctly marked whenever the registrant presents himself or herself for voting and shall contain a space in which may be recorded the record of any challenge, affidavit, or other information as may be required. Each entry shall be made by the precinct superintendent or precinct deputies when the voter presents himself or herself for voting.

Source: SL 1961, ch 92, § 10; SL 1974, ch 118, § 13; SL 1975, ch 120, § 5; SL 1976, ch 105, § 7; SL 1992, ch 107, § 2; SL 2002, ch 40, § 7; SL 2012, ch 84, § 3, eff. Feb. 23, 2012.

12-4-10.1. Registration lists furnished to federal court for jury selection--Return of lists to auditor. Whenever so requested, the county auditor shall furnish to the clerk of the United States District Court for the district of South Dakota, at no cost to the county, the current precinct registration lists or certified copies thereof referred to in § 12-4-10 for all election precincts in the county whenever such lists are required by said clerk of the United States District Court in furtherance of a plan for random jury selection in the federal courts pursuant to 28 U.S.C. 1863 and other applicable federal statutes. Within thirty days after receipt of such precinct registration lists, the clerk of the United States District Court shall return the same to the county auditor.

Source: SL 1973, ch 81.

12-4-11. Change of registration file on change in precinct boundaries. If the boundaries of any election precinct are changed, the county auditor shall immediately change the registration file to correctly show the names and the other relevant voting information required upon registration of the voters who are residents of the election precinct.

Source: SL 1961, ch 92, § 6; SL 1970, ch 86, § 2; SL 1974, ch 118, § 15; SL 2002, ch 40, § 8.

12-4-12. New registration on move between states or counties--Authorization to cancel previous registration. Any new registrant previously registered elsewhere shall be required to sign an authorization which shall be forwarded by the registration official to the auditor of the county of former registration, or other appropriate registration official, who shall remove the registrant's name from the registration file.

Source: SL 1961, ch 92, § 9; SL 1974, ch 118, § 16; SL 1994, ch 107, § 16; SL 2002, ch 40, § 9.

12-4-13. Repealed by SL 1994, ch 107, § 17.

12-4-14. Repealed by SL 1974, ch 118, § 200.

12-4-15. Designation or change of party affiliation. A person may designate or change that person's party affiliation, name, or address by completing a new registration card. For any registration card completed by a person changing that person's party affiliation, name, or address, if the field for party affiliation is left blank, the person's party affiliation shall be the most recent party affiliation registered for that person. For any registration card completed by a person who is registering to vote for the first time in this state, if the field for party affiliation is left blank, the party affiliation shall be registered as independent or no party affiliation.

Source: SL 1961, ch 92, § 8; SL 1976, ch 105, § 8; SL 1994, ch 107, § 18; SL 2018, ch 72, § 2, eff. July 1, 2019.

12-4-16. Repealed by SL 1994, ch 107, § 19.

12-4-17. Repealed by SL 1975, ch 121.

12-4-18. Persons declared mentally incompetent, deceased or serving sentence for felony conviction removed from registration records. The clerk of courts shall, within fifteen days after the close of each month, prepare and deliver to the auditor an abstract from the records of the names of persons declared mentally incompetent in the preceding month. The notice shall be sent to the county auditor of the county in which the person declared incompetent resides. The county auditor shall remove from the master registration list the names of persons identified in accordance with the information provided pursuant to this section and names of those sentenced to imprisonment in the federal penitentiary system and may remove names published in an obituary.

Voter registration records maintained in or transmitted to the statewide voter registration file shall be matched with the death records maintained as vital statistics records by the Department of Health and the records of felony convictions maintained by the Unified Judicial System. Any voter identified as deceased or who is serving a sentence for a felony conviction shall be removed from the voter registration records. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, determining how voter registration records shall be matched.

Source: SL 1961, ch 92, § 12; SL 1965, ch 93; SL 1972, ch 76, § 5; SL 1974, ch 118, § 20; SL 1978, ch 95, § 1; SL 1980, ch 110; SL 1982, ch 125; SL 1992, ch 108; SL 1993, ch 110, § 4; SL 1999, ch 71, § 1; SL 2001, ch 64, § 1; SL 2002, ch 72, § 1; SL 2003, ch 83, § 15, eff. Jan. 1, 2004; SL 2012, ch 82, § 1.

12-4-19. Address verification request--Confirmation mailing--Exception. Any voter in the active registration file who has failed to vote, has not updated the voter's registration information, and has not replied to a confirmation mailing at least once during the last preceding four consecutive years shall be sent a nonforwardable return-if-undeliverable address verification request. If the request is undeliverable then a confirmation mailing prescribed by the State Board of Elections shall be sent. If a county auditor has determined through a national change of address licensee of the United States Postal Service that the address of a voter who is to be sent an address verification request has changed, the confirmation mailing may be omitted. This process shall be performed by each county auditor from January first to November fifteenth, inclusive, of each odd-numbered year.

Source: SL 1961, ch 92, § 15; SL 1974, ch 118, § 21; SL 1975, ch 120, § 1; SL 1976, ch 105, § 9; SL 1994, ch 107, § 20; SL 1996, ch 95, § 2; SL 1998, ch 79, § 1; SL 2001, ch 64, § 2; SL 2002, ch 40, § 10; SL 2002, ch 72, § 2; SL 2018, ch 76, § 1.

12-4-19.1. Confirmation mailing notice to registrant of proposed registration cancellation--Postcard and return card--Contents. The confirmation mailing notice shall be

a double postcard stating that the voter's registration may be canceled if the card is not returned. In addition, the card shall state that if the information on the return card is correct, the voter must sign and return the card within thirty days or the voter's registration will become inactive. The card shall also state that if the information on the return card is not correct, the voter shall send the correct information to update the voter's registration or the voter's registration will become inactive. If the card is returned indicating a new address in another county in South Dakota or another state, the card shall serve as a cancellation authorization. The card shall also give information on reregistering if the voter has moved to another county or state. The card shall give the information about the voter as it appears in the registration records.

Source: SL 1975, ch 120, § 2; SL 1994, ch 107, § 21; SL 2005, ch 89, § 4.

12-4-19.2. Placement in inactive registration file by auditor. If the card is not returned to the county auditor within the stated time limit or is undeliverable, the county auditor shall move the voter to an inactive registration file.

Source: SL 1975, ch 120, § 3; SL 1976, ch 105, § 10; SL 1992, ch 107, § 4; SL 1994, ch 107, § 22; SL 2002, ch 40, § 11.

12-4-19.3. Repealed by SL 1994, ch 107, § 24.

12-4-19.4. Cancellation of voter registration. If a voter placed in the inactive registration file does not vote by the second general election following the confirmation mailing, the registration shall be canceled. This determination shall be made between January first and November fifteenth of every odd-numbered year.

Source: SL 1994, ch 107, § 23; SL 2002, ch 40, § 12.

12-4-19.5. Repealed by SL 2002, ch 40, § 13.

12-4-19.6. National change of address notice. The national change of address notice shall be sent by forwarding service requested to each voter in the active registration file who has failed to vote, has not updated the voter's registration information, has not replied to a confirmation mailing at least once during the last preceding four consecutive years, and has had a national change of address within the jurisdiction with the United States Post Office. This process shall be performed by each county auditor from January first to November fifteenth, inclusive, of each odd-numbered year.

Source: SL 2018, ch 76, § 2.

12-4-19.7. Voter registration list maintenance confirmation mailing notice--Contents. The voter registration list maintenance confirmation mailing notice shall be a double postcard stating that the voter's registration may be canceled if the card is not returned. In addition, the card shall state that if the information on the return card is correct, the voter shall sign and return the card by the voter registration deadline of the primary election or the voter's

registration becomes inactive. The card shall also state that if the information on the return card is not correct, the voter shall send the correct information to update the voter's registration or the voter's registration becomes inactive. If the card is returned indicating a new address in another county in South Dakota or another state, the card shall serve as a cancellation authorization. The card shall also give information on reregistering if the voter has moved to another county or state. The card shall give the information about the voter as the information appears in the registration records.

Source: SL 2018, ch 76, § 3.

12-4-20 to 12-4-22. Repealed by SL 1974, ch 118, § 200.

12-4-23. Repealed by SL 1996, ch 95, § 3.

12-4-23.1. Repealed by SL 1976, ch 105, § 84.

12-4-24. Precinct lists for local election--Delivery to voting precincts. The county auditor shall complete and make available to the official charged with the conduct of a local election at least one day preceding the election a precinct registration list and the person in charge of the election shall deliver the list to each of his superintendents of election.

Source: SL 1961, ch 92, § 14; SL 1970, ch 86, § 4; SL 1974, ch 118, § 24; SL 1976, ch 105, § 11; SL 1985, ch 109; SL 1992, ch 107, § 5.

12-4-24.1. Repealed by SL 2012, ch 81, § 5.

12-4-25 to 12-4-28. Repealed by SL 1974, ch 118, § 200.

12-4-29. Repealed by SL 1994, ch 107, § 25.

12-4-30. Repealed by SL 1974, ch 118, § 200.

12-4-31. Repealed by SL 1994, ch 107, § 26.

12-4-32. National Voter Registration Act of 1993. Sections 4 to 8, inclusive, of the National Voter Registration Act of 1993 apply to all elections in South Dakota which require voter registration.

Source: SL 1994, ch 107, § 32.

12-4-33. Chief state election official. The secretary of state is the chief state election official pursuant to section 10 of the National Voter Registration Act of 1993.

Source: SL 1994, ch 107, § 33.

12-4-34. Registered voters referred to in other statutes. If a statute refers to registered voters, it does not include those in the inactive registration file unless specifically included. However, any voter in the inactive registration file may sign a petition.

Source: SL 1994, ch 107, § 34; SL 2002, ch 40, § 14; SL 2010, ch 74, § 9.

12-4-35. Rules for the National Voter Registration Act. The State Board of Elections may promulgate rules pursuant to chapter 1-26 necessary for implementation of the National Voter Registration Act.

Source: SL 1994, ch 107, § 35.

12-4-36. Rebuttable presumption that certain electors not qualified. There is a rebuttable presumption that the signer of a petition filed pursuant to chapter 2-1, 6-16, 7-18A, 9-13, 9-20, 12-6, 12-7, or 13-7 is not a qualified elector if the signer's name fails to appear on the active or inactive voter registration list of the county stated on the petition as the signer's county of registration on the date the petition was signed. This rebuttable presumption may only be overcome by clear and convincing evidence presented by the petition sponsor, circulator, or candidate.

Source: SL 2001, ch 65, § 1; SL 2013, ch 63, § 1.

12-4-37. Statewide voter registration file--County auditors to transmit changes to secretary. The secretary of state shall establish a computerized system for maintaining and utilizing the voter registration file and transmitting voter registration information from each county auditor to the Office of the Secretary of State. Each county auditor shall transmit any changes to the master registration file or the absentee voter log to the secretary of state on a daily basis. The county auditor shall transmit updated information contained in the county voter registration system, including voter registration information and voter election history information, to the Office of the Secretary of State not later than July fifteenth after each primary election and December fifteenth after each general election.

Source: SL 2001, ch 66, § 1; SL 2010, ch 74, § 10; SL 2011, ch 77, § 1.

12-4-38. County auditor's file is official record in event of discrepancy. The statewide voter registration file maintained by the secretary of state shall be considered a duplicate file of the official voter registration records held in each county office. If there is any discrepancy between the statewide voter registration file maintained by the secretary of state and the master registration file maintained by the county auditor, the master registration file maintained by the county auditor is the official file. However, for federal elections the statewide file shall be the official voter registration file. Upon request from the secretary of state, each county auditor shall transmit the county's entire voter file to the state voter registration file.

Source: SL 2001, ch 66, § 2; SL 2003, ch 83, § 9.

12-4-39. Promulgation of rules--Scope. The secretary of state may promulgate rules pursuant to chapter 1-26 concerning:

(1) Procedures for the establishing the statewide voter registration file;

(2) Transmission of the voter registration information from the county to the Office of the Secretary of State;

(3) Procedures for determining duplicate voter registration;

(4) Dissemination of the information from the statewide voter registration file; and

(5) Establishment of fees for information provided from the statewide voter registration file.

Source: SL 2001, ch 66, § 3.

12-4-40. Identification of duplicate voter registration--Notification. The secretary of state may use the statewide voter registration file to identify any duplicate voter registration within the state. If the secretary of state has determined that there is a duplicate voter registration, the secretary of state shall notify the county whose official master registration file contains the oldest duplicate registration and such county shall remove the person from the voter registration file. If the secretary of state has identified a potential duplicate voter registration, the secretary of state shall notify the person registered in the county whose official master registration file contains the oldest potential duplicate registration. The secretary of state shall notify such person in a manner consistent with the provisions of § 12-4-19.1.

Source: SL 2001, ch 66, § 4.

12-4-41. Use of voter registration information--Violation as misdemeanor--Civil penalty. Any information obtained from the statewide voter registration file or any county voter registration file may be used or sold only for election purposes, may not be used for any commercial purpose, and may not be placed for unrestricted access on the internet. For the purpose of this section, the term, commercial purpose, does not include campaign or political polling activities. Any violation of this section is a Class 1 misdemeanor. In addition to any criminal sanctions, the court may impose a civil penalty not to exceed two thousand dollars for each violation. Any civil penalty collected pursuant to this section shall be deposited in the general fund.

Source: SL 2001, ch 66, § 5; SL 2002, ch 72, § 3; SL 2017, ch 68, § 4.

12-4-42 to 12-4-51. Transferred to §§ 12-1-21 to 12-1-30.

12-4-43. Arbitration of complaints under Help America Vote Act--Appointment of arbitrator--Time for resolution. If the State Board of Elections does not resolve the complaint within ninety days of filing, the complainant may ask the circuit court for alternative dispute resolution by appointing an impartial third party to serve as an arbitrator to resolve the dispute. The arbitrator shall resolve the dispute within sixty days.

Source: SL 2003, ch 83, § 17.

12-4-44. Time and place of hearing--Notice to parties. The arbitrator shall appoint a time and place for a hearing and serve each party personally or notify each party by registered or certified mail not less than five days before the hearing.

Source: SL 2003, ch 83, § 18.

12-4-45. Subpoena issued by arbitrator--Service and enforcement. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may administer oaths. Any subpoena shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

Source: SL 2003, ch 83, § 19.

12-4-46. Depositions permitted by arbitrators--Compelling testimony. On application of either party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. Any provision of law compelling a person under subpoena to testify is applicable.

Source: SL 2003, ch 83, § 20.

12-4-47. Evidence presented by parties--Cross-examination. Unless otherwise provided by an agreement, each party is entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

Source: SL 2003, ch 83, § 21.

12-4-48. Adjournment or postponement of hearing--Failure of party to appear. Unless otherwise provided by an agreement, the arbitrator may adjourn the hearing from time to time as necessary and at the request of a party and for good cause. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

Source: SL 2003, ch 83, § 22.

12-4-49. Issuance of resolution--Delivery to parties. The resolution pronouncement shall be in writing and signed by the arbitrator. The arbitrator shall deliver a copy to each party personally or by registered or certified mail.

Source: SL 2003, ch 83, § 23.

12-4-50. Payment of expenses of proceedings. The arbitrator's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of arbitration, shall be paid as provided in the resolution pronouncement.

Source: SL 2003, ch 83, § 24.

12-4-51. Grounds to vacate resolution--New arbitrator. Within ten days of pronouncement, the circuit court may vacate a resolution pronouncement if:

(1) The resolution was procured by corruption, fraud, or other undue means;

(2) There was evident partiality or corruption by the arbitrator or misconduct prejudicing the rights of any party;

(3) The arbitrator exceeded his or her power; or

(4) The arbitrator refused to hear evidence material to the controversy or conducted the hearing as to prejudice substantially the rights of a party.

If the resolution pronouncement is vacated, the circuit court shall appoint a new arbitrator to resolve the dispute in the manner provided in §§ 12-4-42 to 12-4-51, inclusive.

Source: SL 2003, ch 83, § 25.

12-4-52. Payment for registration of voters based on number of voters registered prohibited--Violation as misdemeanor. No person may employ, reward, or compensate any person to register voters based on the number of voters registered. Nothing in this section prohibits any person from hiring a person paid on an hourly or salaried basis to register voters. Any violation of this section is a Class 2 misdemeanor.

Source: SL 2005, ch 91, § 1.

12-4-53. Receipt of payment for registration of voters based on number of voters registered prohibited--Violation as misdemeanor. No person may receive any wages, reward, or compensation for registering voters based on the number of voters registered. Nothing in this section prohibits any person from being employed on an hourly or salaried basis to register voters. Any violation of this section is a Class 2 misdemeanor.

Source: SL 2005, ch 91, § 2.

CHAPTER 12-5 - POLITICAL PARTIES AND PARTY AFFAIRS

12-5-1 Organization and dissolution of political party.
12-5-1.1 Party constitution or bylaws required--Filing with secretary of state.
12-5-1.2 Repealed.
12-5-1.3 Notice to county auditors of party rules affecting elections.
12-5-1.4 Nominating petitions of new party primary candidates.
12-5-1.5 Organization and dissolution of political party without candidate for United States Senate, United States House of Representatives, Governor, or Legislature.
12-5-1.6 Reward prohibited--Violation as misdemeanor.
12-5-2 Precinct officials elected at primary.
12-5-3 12-5-3 to 12-5-3.5 Repealed.
12-5-3.6 Selection of method of allocating national convention vote.
12-5-3.7 Repealed.
12-5-3.8 Certification of candidates or slates for primary--Placement on ballot--Selection process without primary.
12-5-3.9 Certification of candidates or slates by state chairperson--Mandamus to compel certification--Hearing.
12-5-3.10 Repealed.
12-5-3.11 Primary election of national convention delegates and alternates--Grouping of names on nominating petition--Statement of preference.
12-5-3.12 Preference of first nominating petition filed--One slate per candidate--Petitions rejected for noncompliance--Verified notice of disapproval filed by designated candidate removes slate from ballot.
12-5-3.13 Election of all delegates by slate receiving most votes.
12-5-3.14 Notice by candidates or supporters of intention to enter presidential primary.
12-5-3.15 State board to adopt rules.
12-5-3.16 Certification of names of national convention nominees for President and vice-president--Alternate certification.
12-5-3.17 Repealed.
12-5-4 Statement filed by candidates for precinct committee--Time of filing--Contents.
12-5-4.1 Unopposed candidate for precinct committee automatically elected.
12-5-5 Repealed.
12-5-6 Repealed.
12-5-7 Repealed.
12-5-8 Furnishing to precincts of ballots for precinct committee--Form prescribed by state board.
12-5-9 Votes for precinct committee restricted to nominees.
12-5-10 Repealed.
12-5-11 Repealed.
12-5-12 Repealed.
12-5-13 Precinct committeemen elected by plurality at primary--Term of office.
12-5-14 County central committee--Composition--Organization--Certification of party officials.
12-5-15 Vacancies filled by county central committee--Exception.
12-5-16 Repealed.

12-5-17 Biennial state convention--Time and place--Notice to secretary of state.
12-5-18 Voting by delegates to state convention.
12-5-19 Repealed.
12-5-20 Repealed.
12-5-21 Nomination of state candidates not voted on at primary--Presidential electors and national committee members.
12-5-22 Majority required for nomination by convention--Certification to secretary of state.
12-5-23 Repealed.
12-5-24 Repealed.
12-5-25 Nomination of candidates by political party with alternative political status--Primary election.
12-5-26 New party nomination of candidates.

12-5-1. Organization and dissolution of political party. A new political party may be organized and participate in the primary election by filing with the secretary of state not later than the last Tuesday of March at five p.m. prior to the date of the primary election, a written declaration signed by at least one percent of the voters of the state as shown by the total vote cast for Governor at the last preceding gubernatorial election, which declaration shall contain:

(1) The name of the proposed party; and

(2) A brief statement of the principles thereof;

whereupon the party shall, under the party name chosen, have all the rights of a political party whose ticket was on the ballot at the preceding general election. No signature on a declaration is valid if the declaration was signed more than one year prior to filing of the declaration.

A political party loses the right to participate in the primary election for failure to meet the definition of political party as defined in § 12-1-3.

The national and state chairperson of a recognized political party may request in writing, subscribed and sworn to by each chairperson before any officer qualified to administer oaths and take acknowledgments, to no longer be recognized as a political party. The political party shall also comply with the requirements for dissolution pursuant to chapter 12-27.

Source: SDC 1939, § 16.0201; SL 1974, ch 118, § 28; SL 1976, ch 105, § 12; SL 1984, ch 107, § 1; SL 1986, ch 115, § 2; SL 1997, ch 75, § 2; SL 2007, ch 74, § 1; SL 2007, ch 81, § 5; SL 2013, ch 63, § 2; SL 2015, ch 77, § 12 rejected Nov. 8, 2016; SL 2018, ch 74, § 7, eff. Mar. 23, 2018.

12-5-1.1. Party constitution or bylaws required--Filing with secretary of state. A political party shall adopt a Constitution or a set of bylaws to govern its organization and the conduct of its affairs and exercise thereunder any power not inconsistent with laws of this state. The party central committee shall certify to and file with the secretary of state a copy of the document and amendments thereof within thirty days of their approval.

Source: SL 1974, ch 118, § 27.

12-5-1.2. Repealed by SL 2007, ch 74, § 2.

12-5-1.3. Notice to county auditors of party rules affecting elections. It shall be the duty of the secretary of state to promptly notify the county auditor of each county of the effect of any provision of a party Constitution or bylaw which affects an election to be conducted.

Source: SL 1974, ch 118, § 27.

12-5-1.4. Nominating petitions of new party primary candidates. If a political party qualifies for the primary ballot under § 12-5-1, each candidate intending to participate in a primary election shall file a nominating petition pursuant to § 12-6-4. In each primary election following the qualification of a political party and prior to the next gubernatorial election, each:

(1) State and federal candidate for that party shall file a petition bearing signatures of at least two hundred fifty registered voters in that party; and

(2) Legislative and county candidate for that party shall file a petition bearing signatures of at least five registered voters in that party.

Source: SL 1984, ch 107, § 1A; SL 1993, ch 109, § 2; SL 2007, ch 74, § 3; SL 2015, ch 77, § 24 rejected Nov. 8, 2016.

12-5-1.5. Organization and dissolution of political party without candidate for United States Senate, United States House of Representatives, Governor, or Legislature. If a new political party organizing does not have a candidate for United States Senate, United States House of Representatives, Governor, or Legislature, who is nominated at a primary election, the new political party may be organized by filing with the secretary of state not later than July first at five p.m. central time, a written declaration signed by at least one percent of the voters of the state as shown by the total vote cast for Governor at the last preceding gubernatorial election. The declaration shall contain:

(1) The name of the proposed party; and

(2) A brief statement of the principles of the proposed party.

The new political party shall, under the party name chosen, have all the rights of a political party whose ticket was on the ballot at the preceding general election. No signature on a declaration is valid if the declaration was signed more than one year prior to filing of the declaration.

A political party loses the right to participate in the primary election for failure to meet the definition of political party as defined in § 12-1-3.

The national and state chairperson of a recognized political party may request in writing, subscribed and sworn to by each chairperson before any officer qualified to administer oaths and take acknowledgments, to no longer be recognized as a political party. The political party shall also comply with the requirements for dissolution pursuant to chapter 12-27.

Source: SL 2017, ch 69, § 10; SL 2018, ch 74, § 8, eff. Mar. 23, 2018.

12-5-1.6. Reward prohibited--Violation as misdemeanor. No person may employ, reward, or compensate any person to circulate a petition for the organization of a political party based on the number of registered voters who signed the petition. Nothing in this section prohibits any person from employing a petition circulator based on one of the following practices:

(1) Paying an hourly wage or salary;

(2) Establishing either express or implied minimum signature requirements for the petition circulator;

(3) Terminating the petition circulator's employment, if the petition circulator fails to meet certain productivity requirements; and

(4) Paying discretionary bonuses based on reliability, longevity, and productivity.

Any violation of this section is a Class 2 misdemeanor.

Source: SL 2017, ch 12, § 6.

12-5-2. Precinct officials elected at primary. Each political party may elect precinct committeemen and precinct committeewomen at each primary election. If a party chooses to elect precinct committeemen and committeewomen at the primary election pursuant to §§ 12-5-4 to 12-5-13, inclusive, the party shall provide for such election in the party's constitution or bylaws.

Source: SDC 1939, § 16.0209; SL 1941, ch 76; SL 1963, ch 107, § 1; SL 1974, ch 118, § 29; SL 1975, ch 119, § 21; SL 1982, ch 28, § 42; SL 1986, ch 115, § 3; SL 1997, ch 75, § 3; SL 2007, ch 74, § 4.

12-5-3 to 12-5-3.5. Repealed by SL 1977, ch 107, § 10.

12-5-3.6. Selection of method of allocating national convention vote. A state political party, in its Constitution or bylaws, shall determine the method of allocating delegates and alternates to its next national convention.

Source: SL 1973, ch 73, § 2; SL 1974, ch 120, § 1; SDCL § 12-5-3.3; SL 1977, ch 107, § 1; SL 2007, ch 74, § 5.

12-5-3.7. Repealed by SL 2007, ch 74, § 6.

12-5-3.8. Certification of candidates or slates for primary--Placement on ballot--Selection process without primary. If a political party chooses to have a primary for selection of its delegates and alternates to the national convention, the party shall certify the candidate names or the delegate and alternate slates which are to be listed on the primary ballot to the secretary of state by the last Tuesday in March preceding the primary by five p.m. central time. Only candidates or slates certified may be placed on the ballot by the secretary of state and the position of the candidates or slates on the primary ballot shall be chosen by lot by the secretary of state. The certification shall be deemed to be submitted if mailed by registered mail by five p.m. central time on the last Tuesday in March. If a political party does not choose to have a primary selection of its delegates and alternates to the national convention, the party shall define the selection process of its delegates and alternates in the party bylaws.

Source: SL 1976, ch 106, §§ 1, 2; SDCL Supp, § 12-5-3.4; SL 1977, ch 107, § 3; SL 1980, ch 111; SL 1986, ch 115, § 4; SL 1997, ch 75, § 4; SL 2007, ch 74, § 7; SL 2007, ch 81, § 6; SL 2015, ch 77, § 9 rejected Nov. 8, 2016; SL 2017, ch 69, § 1.

12-5-3.9. Certification of candidates or slates by state chairperson--Mandamus to compel certification--Hearing. The state chairperson of the political party shall certify the candidates or slates to the secretary of state. If the state chairperson wrongfully refuses to certify any candidate or slate, the aggrieved candidate or slate of delegates and alternates is entitled to a writ of mandamus against the state chairperson pursuant to chapter 21-29 to compel certification. A hearing upon the writ shall be held within five days of the commencement of the action.

Source: SL 1976, ch 106, § 3; SDCL Supp, § 12-5-3.5; SL 1977, ch 107, § 4; SL 2007, ch 74, § 8.

12-5-3.10. Repealed by SL 2007, ch 74, § 9.

12-5-3.11. Primary election of national convention delegates and alternates--Grouping of names on nominating petition--Statement of preference. If a political party has no prescribed method of selection of slates of delegates and alternates to its national convention, the slates of delegates and alternates to the national convention shall be elected by the primary. Names of candidates for delegates and alternates to the national convention, in number equal to the entire number of the delegates and alternates to be selected, shall be grouped in a slate under the respective designations upon a single nominating petition. The nominating petition shall contain a statement indicating the candidates for delegates collective preference choice for President of the United States, if any, or that the candidates have no preference or are uncommitted. No name of any candidate for delegate or alternate may be filed in more than one slate.

Source: SL 1977, ch 107, § 6; SL 2009, ch 69, § 2.

12-5-3.12. Preference of first nominating petition filed--One slate per candidate--Petitions rejected for noncompliance--Verified notice of disapproval filed by designated candidate removes slate from ballot. Under a petition filed under § 12-5-3.11, the first nominating petition filed indicating a preference choice for any given person for President of the United States shall give the slate listed thereon the exclusive right to have their names appear on the ballot in preference of that person. Only one slate shall appear on the ballot in preference of any one person for President of the United States. Any nominating petition which does not comply with the requirements of law for such petitions shall not be accepted. Petitions shall be checked for such compliance at the time in the order of filing and the first to be found to be in compliance with law shall be accepted for purpose of this section. No slate of delegates or alternates appearing on a nominating petition filed pursuant to this section shall be placed on the ballot if the person designated as presidential candidate in such petition shall file a verified notice of disapproval. This notice must be filed with the secretary of state by such candidate within the time period required for the filing of nominating petitions for the primary.

Source: SL 1977, ch 107, § 7.

12-5-3.13. Election of all delegates by slate receiving most votes. In any election conducted under §§ 12-5-3.11 and 12-5-3.12, the slate that receives the most votes shall elect all of its delegates and alternates on that slate.

Source: SL 1977, ch 107, § 8.

12-5-3.14. Notice by candidates or supporters of intention to enter presidential primary. Any candidate, committee, or group supporting a candidate in any presidential primary, shall, by the last Tuesday in March prior to the presidential primary election, notify the secretary of state of an intention to have the name of the candidate placed on the presidential primary election ballot or submit a slate of candidates or both.

Source: SL 1977, ch 107, § 11; SL 1987, ch 120; SL 1997, ch 75, § 5; SL 2007, ch 81, § 7; SL 2015, ch 77, § 10 rejected Nov. 8, 2016.

12-5-3.15. **State board to adopt rules.** The State Board of Elections may adopt rules pursuant to chapter 1-26 to implement §§ 12-5-3.6 to 12-5-3.14, inclusive.

Source: SL 1977, ch 107, § 9.

12-5-3.16. Certification of names of national convention nominees for President and vice-president--Alternate certification. The chairperson of the national convention of each political party recognized pursuant to § 12-1-3 or 12-5-1 shall certify the names of the convention nominees for President and vice-president of each political party to the secretary of state immediately following the convention. If the national certification is not received or is inconclusive, the names shall be certified by the state chairperson of that party at the request of the secretary of state.

Source: SL 2001, ch 67, § 1.

12-5-3.17. Repealed by SL 2015, ch 76, § 1.

12-5-4. Statement filed by candidates for precinct committee--Time of filing--Contents. A candidate for party precinct committeeman or committeewoman shall file a statement in writing, with the county auditor of the county in which he or she is a candidate, not later than the last Tuesday in March before the primary election. The statement shall state that the candidate:

(1) Is a resident of the precinct;
(2) Is registered as a member of the political party named in the statement;
(3) Is a candidate for precinct committeeman or committeewoman, as the case may be;
(4) Is desirous of serving in that position; and
(5) If elected, will qualify and serve in the office.

The statement, when properly filed, shall operate as a nominating petition for that office.

Source: SL 1929, ch 118, § 7; SL 1937, ch 120, § 2; SDC 1939, § 16.0212; SL 1941, ch 77; SL 1951, ch 90; SL 1957, ch 83, § 2; SL 1959, ch 90; SL 1972, ch 79, § 2; SL 1982, ch 126, § 2; SL 1988, ch 130, § 1; SL 2007, ch 81, § 8; SL 2015, ch 77, § 14 rejected Nov. 8, 2016.

12-5-4.1. Unopposed candidate for precinct committee automatically elected. Any candidate who has filed a statement of candidacy, as required by § 12-5-4, having no opposing candidate shall automatically be elected, and after the canvass of the primary shall be so declared.

Source: SL 1972, ch 79, § 1.

12-5-5 to 12-5-7. Repealed by SL 1972, ch 79, § 6.

12-5-8. Furnishing to precincts of ballots for precinct committee--Form prescribed by state board. At the time of printing the official primary election ballots, the county auditor shall also have printed in like number, and for each political party, separate ballots upon which party voters may vote for precinct committeeman and for precinct committeewoman of their political party. These ballots shall be furnished to any election precinct having a contest for such position at the same time with the other election supplies. The form of these ballots shall be prescribed by the State Board of Elections.

Source: SL 1929, ch 118, § 10; SL 1931, ch 146; SL 1937, ch 120, § 3; SDC 1939, § 16.0216; SL 1965, ch 84; SL 1972, ch 79, § 3; SL 1976, ch 105, § 13.

12-5-9. Votes for precinct committee restricted to nominees. Only candidates nominated pursuant to § 12-5-4 shall be voted upon for such precinct committeeman or committeewoman.

Source: SL 1929, ch 118, § 7; SL 1937, ch 120, § 2; SDC 1939, § 16.0212; SL 1941, ch 77; SL 1951, ch 90; SL 1957, ch 83, § 2; SL 1959, ch 90; SL 1972, ch 79, § 4; SL 1974, ch 118, § 30.

12-5-10. Repealed by SL 1972, ch 79, § 6.

12-5-11, 12-5-12. Repealed by SL 1974, ch 118, § 200.

12-5-13. Precinct committeemen elected by plurality at primary--Term of office. The person receiving the highest number of votes of his or her party, shall be declared elected precinct committeeman and committeewoman respectively, of their party, and shall hold such position for two years, or until his or her successor is elected unless otherwise provided by the party's Constitution or bylaws.

Source: SL 1929, ch 118, § 7; SL 1937, ch 120, § 2; SDC 1939, § 16.0212; SL 1941, ch 77; SL 1951, ch 90; SL 1957, ch 83, § 2; SL 1959, ch 90; SL 1973, ch 72, § 1.

12-5-14. County central committee--Composition--Organization--Certification of party officials. The county central committee of a political party is comprised of precinct

committeemen and precinct committeewomen of the political party; the state committeemen and committeewomen; the county chairperson, vice-chairperson, and secretary-treasurer or secretary and treasurer; and the elected public officers who reside in the county and other officers as designated by the party's constitution or bylaws. A county central committee of a political party shall form the party organization by electing a county chairperson and other officers as determined by the party's constitution or bylaws. The name and mailing address of the county chairperson shall be certified to the county auditor and state party chairperson immediately following the election of the county chairperson or change of the county chairperson. The name and mailing address of the county officer responsible for the records and reports required under chapter 12-27 shall be certified to the secretary of state immediately following the election. The name and mailing address of the state party chairperson shall be certified to the secretary of state immediately following the election or appointment of the state party chairperson.

Source: SDC 1939, § 16.0241; SL 1945, ch 76; SL 1949, ch 73; SL 1963, ch 107, § 6; SL 1973, ch 72, § 2; SL 1976, ch 105, § 14; SL 1980, ch 112; SL 2001, ch 67, § 2; SL 2007, ch 74, § 10; SL 2008, ch 67, § 17; SL 2019, ch 73, § 3.

12-5-15. Vacancies filled by county central committee--Exception. The county central committee may fill vacancies in its membership, except for public officers, in accordance with the party's constitution or bylaws.

Source: SL 1929, ch 118, § 53; SL 1937, ch 120, § 4; SDC 1939, § 16.0241; SL 1945, ch 76; SL 1949, ch 73; SL 1963, ch 107, § 6; SL 2007, ch 74, § 11.

12-5-16. Repealed by SL 2007, ch 74, § 12.

12-5-17. Biennial state conventions--Time and place--Notice to secretary of state. Each political party shall hold a state convention in each even-numbered year for the purposes stated in § 12-5-21. The state central committee of each political party shall determine the time and place of the convention. The chair of the committee shall notify the secretary of state at least fifteen business days prior to the date chosen.

Source: SL 1917, ch 234, § 30; RC 1919, § 7108; SL 1929, ch 118, § 55; SL 1933, ch 100; SL 1937, ch 120, § 5; SDC 1939, § 16.0240; SL 1939, ch 77; SL 1941, ch 78; SL 1951, ch 91; SL 1974, ch 118, § 31; SL 2019, ch 70, § 1.

12-5-18. Voting by delegates to state convention. At the state convention of a political party, each delegate shall vote the number of votes equal to his proportionate representation as to all delegates present from that county bears to the number of votes cast in his county at the last gubernatorial election for his party candidate for Governor.

Source: SL 1917, ch 234, § 30; RC 1919, § 7108; SL 1929, ch 118, § 55; SL 1933, ch 100; SL 1937, ch 120, § 5; SDC 1939, § 16.0240; SL 1939, ch 77; SL 1941, ch 78; SL 1951, ch 91; SL 1974, ch 118, § 32.

12-5-19. Repealed by SL 2007, ch 74, § 13.

12-5-20. Repealed by SL 1985, ch 110, § 2.

12-5-21. Nomination of state candidates not voted on at primary--Presidential electors and national committee members. The state convention shall nominate candidates for lieutenant governor, attorney general, secretary of state, state auditor, state treasurer, commissioner of school and public lands, and public utilities commissioner and in the years when a President of the United States is to be elected, presidential electors and national committeeman and national committeewoman of the party.

Source: SL 1917, ch 234, § 30; RC 1919, § 7108; SL 1929, ch 118, § 55; SL 1933, ch 100; SL 1937, ch 120, § 5; SDC 1939, § 16.0240; SL 1939, ch 77; SL 1941, ch 78; SL 1951, ch 91; SL 1965, ch 86; SL 1974, ch 118, § 35.

12-5-22. Majority required for nomination by convention--Certification to secretary of state. Nominations by a state convention shall be made by a majority vote of the votes cast and shall be certified to the secretary of state by the officers of the convention, within three days of the close of the convention. No certification may be received by the secretary of state later than the second Tuesday in August.

Source: SL 1929, ch 118, § 55; SL 1933, ch 100; SL 1937, ch 120, § 5; SDC 1939, § 16.0240; SL 1939, ch 77; SL 1941, ch 78; SL 1951, ch 91; SL 1965, ch 86; SL 2007, ch 74, § 14.

12-5-23, 12-5-24. Repealed by SL 2007, ch 74, §§ 15, 16.

12-5-25. Nomination of candidates by political party with alternative political status--Primary election. A political party with alternative political status may nominate a candidate for United States Senate, United States House of Representatives, Governor, and any legislative seat by convention, if the nomination is submitted with the proper documentation to the Office of the Secretary of State no later than 5:00 p.m. central time on the second Tuesday in August, of the year of the election.

A candidate registered with a political party with an alternative political status may choose, if allowed by the party bylaws, to participate in a primary election by submitting a candidate petition no later than the last Tuesday of March in accordance with § 12-5-1.4.

Source: SL 2018, ch 74, § 3, eff. Mar. 23, 2018.

12-5-26. New party nomination of candidates. A new political party may nominate a candidate for United States Senate, United States House of Representatives, Governor, and any legislative seat by convention, if the nomination is submitted with the proper documentation to the Office of the Secretary of State no later than 5:00 p.m. central time on the second Tuesday in August, of the year of the election.

Source: SL 2018, ch 74, § 6, eff. Mar. 23, 2018.

CHAPTER 12-6 - PRIMARY ELECTIONS

12-6-1 Offices to which chapter applies.
12-6-2 Third-term gubernatorial nomination prohibited.
12-6-3 Candidacy for more than one office in same election prohibited--Exceptions.
12-6-3.1 Legislative candidates required to reside in district of candidacy.
12-6-3.2 Candidate required to register with party.
12-6-4 Petition required to place candidate's name on primary ballot--Time and place of filing.
12-6-4.1 Earliest time for circulating petitions or certificates.
12-6-4.2 Repealed by SL 1997, ch 75, § 7.
12-6-5 Form of nominating petition prescribed by state board.
12-6-6 Joint petitions for delegate candidates--Individual petitions otherwise required.
12-6-7 Nominating petitions--Several sheets--Signature requirements.
12-6-7.1 Repealed.
12-6-8 Time and manner of signing petition--Declaration of candidate--Verification--Signing for independent or nonpolitical candidate.
12-6-8.1 Withdrawal from primary election--Time and place of filing.
12-6-9 Unopposed candidate automatically nominated--Primary not held if no contest.
12-6-10 Repealed by SL 1973, ch 74, § 14.
12-6-11 Certification to county auditors of nominating petitions filed with secretary of state.
12-6-12 Repealed by SL 1973, ch 74, § 14.
12-6-13 Repealed by SL 1973, ch 74, § 14.
12-6-14 Form of official primary ballot prescribed by state board.
12-6-14.1 Repealed by SL 1996, ch 94, § 2.
12-6-15 Repealed by SL 1973, ch 74, § 14.
12-6-16 Repealed by SL 1973, ch 74, § 14.
12-6-17 Repealed by SL 1973, ch 74, § 14.
12-6-18 Repealed by SL 1972, ch 85, § 4.
12-6-19 12-6-19 to 12-6-25 Repealed by SL 1973, ch 74, § 14.
12-6-26 Qualifications of voters at primary--Party registration requirements.
12-6-26.1 12-6-26.1 to 12-6-49. Repealed by SL 1973, ch 74, § 14.
12-6-50 Nomination by plurality at primary.
12-6-51 Repealed by SL 1985, ch 110, § 3.
12-6-51.1 Percentage of votes required to run for Senate, House of Representatives, or Governor--Runoff election.
12-6-51.2 Repealed by SL 1999, ch 72, § 1.
12-6-51.3 Certification of runoff candidates.
12-6-51.4 Repealed by SL 2008, ch 34, § 10.
12-6-52 Party officials elected by plurality at primary.
12-6-53 Repealed by SL 1973, ch 74, § 14.
12-6-54 Repealed by SL 1973, ch 74, § 14.
12-6-55 Withdrawal by nominee--Time and place of filing.
12-6-56 Party committee--Party candidate vacancies.
12-6-56.1 Rejected by referendum.

12-6-57 Meeting of party committee to fill vacancies--Manner of voting.
12-6-58 Application of vacancy provisions to special congressional elections.
12-6-59 12-6-59 to 12-6-63. Repealed by SL 1973, ch 74, § 14.
12-6-64 Liberal construction of primary election laws.
12-6-65 Defeated candidate--Prohibition.

12-6-1. Offices to which chapter applies. The provisions of this chapter shall apply to the election to party office and for the nominations of political and nonpolitical candidates for public offices except as may be otherwise provided.

Source: SL 1929, ch 118, § 2; SDC 1939, § 16.0208; SL 1947, ch 84; SL 1973, ch 74, § 1.

12-6-2. Third-term gubernatorial nomination prohibited. No person shall be nominated under the provisions of this chapter for election to the office of Governor for a third successive term.

Source: SDC 1939, § 16.0208 as added by SL 1947, ch 84.

12-6-3. Candidacy for more than one office in same election prohibited--Exceptions. No person's name may appear on the primary election ballot as a candidate for nomination to more than one public office in the same election, except that a person may be the candidate for any public office and the office of President of the United States, vice president of the United States, director of a water development district, or director of a consumer power district. A candidate for any such office is not prohibited from seeking election to one or more party offices as may be provided in chapter 12-5. If a candidate secures a nomination at a state party convention, the candidate shall withdraw as a candidate from one of the offices and submit the withdrawal to the secretary of state on or before the date on which the secretary of state receives the state party certification.

Source: SDC 1939, § 16.0215; SL 1973, ch 74, § 2; SL 2002, ch 73, § 3; SL 2015, ch 76, § 3; SL 2019, ch 71, § 1; SL 2019, ch 72, § 1.

12-6-3.1. Legislative candidates required to reside in district of candidacy. Any candidate for office in the State Legislature shall be a resident of the district for which he is a candidate at the time he signs his declaration of candidacy as required by this chapter.

Source: SL 1990, ch 105, § 1.

12-6-3.2. Candidate required to register with party. No person may sign a declaration of candidacy or be nominated as a political candidate for a party unless that person is a registered voter with that party affiliation.

Source: SL 1998, ch 80, § 1.

12-6-4. Petition required to place candidate's name on primary ballot--Time and place of filing. Except as provided by § 12-5-4 and as may be otherwise provided in chapter 12-9, no

candidate for any office to be filled, or nomination to be made, at either or both the primary or general election, other than a presidential election, may have that person's name printed upon the official primary election ballot of that person's party, unless a petition has been filed on that person's behalf after December thirty-first and by the last Tuesday of March at five p.m. local time before the date of the primary election. If the petition is mailed by registered mail by the last Tuesday of March at five p.m. local time before the primary election, the petition shall be considered timely submitted. A nominating petition for national convention delegates and alternates as provided in § 12-5-3.11 shall be filed in accordance with the provisions of this section. Nominating petitions for all party and public offices except legislative and judicial offices shall be filed in the office of the county auditor of the county in which the person is a candidate. Nominating petitions for legislative and judicial office whether elected in one or more counties, and all other party and public offices to be voted on in more than one county shall be filed in the Office of the Secretary of State.

Source: SDC 1939, § 16.0210; SL 1939, ch 75; SL 1957, ch 83, § 1; SL 1961, ch 93, § 1; SL 1971, ch 84; SL 1973, ch 74, § 3; SL 1977, ch 108, § 1; SL 1986, ch 115, § 5; SL 1997, ch 75, § 6; SL 2007, ch 81, § 9; SL 2015, ch 77, § 1 rejected Nov. 8, 2016; SL 2017, ch 69, § 2.

12-6-4.1. Earliest time for circulating petitions or certificates. No petition or certificate of nomination covered by this chapter may be circulated prior to the first day of January of the year in which the election will be held.

Source: SL 1977, ch 108, § 5; SL 2015, ch 77, § 4 rejected Nov. 8, 2016.

12-6-4.2. Repealed by SL 1997, ch 75, § 7.

12-6-5. Form of nominating petition prescribed by state board. The form of the nominating petition shall be prescribed by the State Board of Elections.

Source: SL 1929, ch 118, § 5; SDC 1939, § 16.0210; SL 1939, ch 75; SL 1957, ch 83, § 1; SL 1961, ch 93, § 1; SL 1976, ch 105, § 15.

12-6-6. Joint petitions for delegate candidates--Individual petitions otherwise required. Two or more candidates for delegates to the state convention of the party may be included in one nominating petition.

Source: SL 1929, ch 118, § 4; SL 1931, ch 145; SDC 1939, § 16.0210; SL 1939, ch 75; SL 1957, ch 83, § 1; SL 1961, ch 93, § 1; SL 1973, ch 74, § 4; SL 2021, ch 62, § 1.

12-6-7. Petition composed of several sheets--Signature requirements. A nominating petition may be composed of several sheets, each sheet shall have identical headings printed at the top and shall be a self-contained sheet of paper. The petition for party office or political public office shall be signed by not less than one percent of the voters who voted for that party's gubernatorial candidate at the last gubernatorial election in the county, part of the county, district, or state electing a candidate to fill the office. If the party meets the requirement for alternative political status as defined in § 12-1-3.1, the petition for party

office or political public office shall be signed by not less than one percent of the voters who voted for that party's statewide candidate receiving the highest votes at the last gubernatorial election in the county, part of the county, district, or state electing a candidate to fill the office. If a county uses vote centers and does not print ballots by precinct, signature requirements for both partisan and independent candidates are:

(1) Fifty signatures for a legislative candidate whose district either in whole or in part includes that county;

(2) Thirty signatures for a county candidate;

(3) Fifteen signatures for county commissioner district candidates;

(4) Five signatures for a new party legislative candidate whose district either in whole or in part includes that county;

(5) Five signatures for a new party county candidate; or

(6) Three signatures for a new party county commissioner district candidate.

Source: SL 1929, ch 118, § 4; SL 1931, ch 145; SDC 1939, § 16.0210; SL 1939, ch 75; SL 1957, ch 83, § 1; SL 1961, ch 93, § 1; SL 1973, ch 74, § 5; SL 1976, ch 105, § 16; SL 2015, ch 77, § 5 rejected Nov. 8, 2016; SL 2017, ch 2, § 9; SL 2017, ch 69, § 3; SL 2018, ch 74, § 2, eff. Mar. 23, 2018.

12-6-7.1. Petition for candidate for Legislature, county political public office, or county party office. Notwithstanding the provisions of § 12-6-7 a nominating petition for a candidate for the Legislature, county political public office, and county party office shall be signed by not less than fifty voters or not less than one percent of the voters who cast their vote for the party's gubernatorial candidate, whichever is less. The petition shall designate the senatorial or representative district number and house for which the person is a candidate.

Source: SL 1972, ch 80; SL 1973, ch 74, § 6; SL 1976, ch 105, § 17; SL 2015, ch 77, § 6 rejected Nov. 8, 2016; SL 2019, ch 73, § 1.

12-6-8. Time and manner of signing petition--Declaration of candidate--Verification--Signing for independent or nonpolitical candidate. No person may sign the nominating petition of a candidate before January first in the year in which the election is to be held, nor for whom the person is not entitled to vote, nor for a political candidate of a party of which the person is not a member, nor for more than the number of candidates required to be nominated for the same office. The signer or circulator shall add the signer's place of residence and the date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. A formal declaration of the candidate shall be signed by the candidate before the circulation of petitions. The signed declaration of the candidate shall accompany and be a part of the petition. An original signed declaration shall accompany the group of petitions upon filing. The petition shall be verified under oath by the persons circulating the petition. The verification by the person circulating the petition may not be notarized by the candidate whom the petition is nominating. A nominating petition for any election shall be a self-contained sheet of paper in order to have the candidate's name placed on the ballot. The provisions of this section may not prohibit a person registered with party affiliation from signing either a petition nominating an

independent or a nonpolitical candidate for office if the person has not previously signed a petition for that office to be filled.

Source: SL 1929, ch 118, § 4; SL 1931, ch 145; SDC 1939, § 16.0210; SL 1939, ch 75; SL 1957, ch 83, § 1; SL 1961, ch 93, § 1; SL 1973, ch 74, § 7; SL 1976, ch 105, § 18; SL 1978, ch 97, § 1; SL 1992, ch 110, § 1; SL 2013, ch 63, § 3; SL 2015, ch 77, § 7 rejected Nov. 8, 2016; SL 2017, ch 69, § 4.

12-6-8.1. Withdrawal from primary election--Time and place of filing. Any person may have his or her name withdrawn from the primary election by making a written request under oath. The request shall be filed with the officer with whom the nominating petition was filed pursuant to § 12-6-4, not later than two days after the last Tuesday in March at five p.m. If the request is mailed by registered mail not later than two days after the last Tuesday in March at five p.m., the request is properly filed. No name that is withdrawn pursuant to this section may be printed on the ballots to be used at the election.

Source: SL 1981, ch 121; SL 2007, ch 81, § 10; SL 2011, ch 78, § 1; SL 2015, ch 77, § 13 rejected Nov. 8, 2016.

12-6-9. Unopposed candidate automatically nominated--Primary not held if no contest. A candidate for nomination to an office, or election to a party office, having no opposing candidate within his party, shall automatically become the nominee of his party or elected party official for said office, and his name shall not be printed on the primary election ballot. If there are no opposing candidates for nomination or election of either state or county candidates in any county, no primary election shall be held in that county, and the candidates shall be automatically nominated or elected.

Source: SL 1929, ch 118, § 8; SDC 1939, § 16.0215; SL 1978, ch 98.

12-6-10. Repealed by SL 1973, ch 74, § 14.

12-6-11. Certification to county auditors of nominating petitions filed with secretary of state. It shall be the duty of the secretary of state, as soon as the time for filing nominating petitions in his office has passed, immediately to certify to the several county auditors of the state the names of the persons in whose behalf nominating petitions have been filed in his office as candidates for each political party separately, with the name of the office for which each person is a candidate, and certify the color, style and form of the official primary election ballot of each political party.

Source: SL 1929, ch 118, § 8; SDC 1939, § 16.0215; SL 1973, ch 74, § 8.

12-6-12, 12-6-13. Repealed by SL 1973, ch 74, § 14.

12-6-14. Form of official primary ballot prescribed by state board. The form of the official primary election ballot shall be prescribed by the State Board of Elections.

Source: SL 1929, ch 118, § 9; SDC 1939, § 16.0215; SL 1963, ch 107, § 3; SL 1976, ch 105, § 19.

12-6-14.1. Repealed by SL 1996, ch 94, § 2.

12-6-15 to 12-6-17. Repealed by SL 1973, ch 74, § 14.

12-6-18. Repealed by SL 1972, ch 85, § 4.

12-6-19 to 12-6-25. Repealed by SL 1973, ch 74, § 14.

12-6-26. Qualifications of voters at primary--Party registration requirements. No person may vote a party ballot at any primary election unless the person is registered as a member of that political party in the precinct in which the person seeks to vote. Any political party in its constitution or bylaws may allow for participation in the party's primary elections by any person who is registered to vote with no party affiliation. Any such change to the constitution or bylaws of a political party shall be filed pursuant to § 12-5-1.1 by January first of the year in the which the primary is conducted.

Source: SDC 1939, § 16.0203; SL 1961, ch 92, § 8; SDCL § 12-4-26; SL 1973, ch 74, § 9; SL 1981, ch 13, § 2; SL 1996, ch 97; SL 2009, ch 69, § 3.

12-6-26.1 to 12-6-49. Repealed by SL 1973, ch 74, § 14.

12-6-50. Nomination by plurality at primary. Any candidate for a party nomination to public office, who receives the highest number of votes cast by the voters of his party for the office for which he is a candidate, shall be declared the nominee of his party.

Source: SL 1929, ch 118, § 39; SDC 1939, § 16.0234.

12-6-51. Repealed by SL 1985, ch 110, § 3.

12-6-51.1. Percentage of votes required to run for Senate, House of Representatives, or Governor--Runoff election. If no candidate for United States Senate, United States House of Representatives, or Governor in a race involving three or more candidates receives thirty-five percent of the votes of the candidate's party, a runoff election shall be held ten weeks from the date of the first primary election. At the runoff election the only persons voted for shall be the two candidates receiving the highest number of votes at the first election. However, if there is a tie for second place in the first primary election and there is no tie for first place, all tying second place candidates shall be placed along with the first place candidate on the ballot for the runoff election. The runoff election shall be held at the same polling places, be conducted, returned, and canvassed and the results declared in the same manner as the first election. However, if the runoff election does not have a federal race, the electronic ballot marking system is not required, and hand-counted ballots may be used. The person receiving the highest number of votes at the runoff election is nominated as the candidate for the party.

Source: SL 1985, ch 110, § 1; SL 2008, ch 34, § 8; SL 2010, ch 74, § 11; SL 2013, ch 64, § 1; SL 2017, ch 69, § 5.

12-6-51.2. Repealed by SL 1999, ch 72, § 1.

12-6-51.3. Certification of runoff candidates. Within twenty-four hours after the completion of the canvass, the secretary of state shall certify runoff candidates, listed in the order determined by a drawing of names, to all county auditors.

Source: SL 1985, ch 110, § 1F; SL 1999, ch 72, § 2; SL 2008, ch 34, § 9.

12-6-51.4. Repealed by SL 2008, ch 34, § 10.

12-6-52. Party officials elected by plurality at primary. Any candidate for party precinct committeeman, or committeewoman, or delegate to the state convention, who received the highest number of votes, shall be declared elected to the office for which he is a candidate.

Source: SL 1929, ch 118, § 39; SDC 1939, § 16.0234; SL 1963, ch 107, § 4; SL 1973, ch 73, § 1.

12-6-53, 12-6-54. Repealed by SL 1973, ch 74, § 14.

12-6-55. Withdrawal by nominee--Time and place of filing. Any person nominated to any elective office may cause that person's name to be withdrawn from nomination by request in writing, subscribed and sworn to by that person before any officer qualified to administer oaths and take acknowledgments. The request shall be filed with the officer with whom the nominating petition was filed pursuant to § 12-6-4, not later than the first Tuesday in August at 5:00 p.m. before the next election. No person's name withdrawn under this section may be printed upon the ballots for that office unless the same person is subsequently selected to fill the vacancy in accordance with § 12-6-56.

Source: SL 1897, ch 60, § 12; RPolC 1903, § 1909; SL 1918 (SS), ch 44, § 2; SL 1918 (SS), ch 46, § 4; RC 1919, § 7206; SL 1929, ch 117, § 2; SL 1935, ch 109, § 2; SL 1937, ch 124, § 2; SDC 1939, § 16.0245; SL 1961, ch 95; SL 1971, ch 87, § 5; SL 1973, ch 74, § 11; SL 1978, ch 99, § 1; SL 1979, ch 97, § 1; SL 2019, ch 74, § 1.

12-6-56. Party committee--Party candidate vacancies. If a vacancy occurs by reason of death or withdrawal after a primary election, a party candidate for public office may be chosen if a meeting of the appropriate party central committee is held and the results are certified to the appropriate official within the times prescribed by § 12-8-6.

If the vacancy is a party candidate for presidential elector or statewide office, the vacancy shall be filled by the State Party Central Committee. If the vacancy is a party candidate for public office other than presidential elector or statewide office, the vacancy shall be filled by a vote of county party central committee members in attendance who reside in the affected district.

The certification of the results shall be signed by the person responsible for calling the meeting under § 12-6-57 or the person designated to conduct the meeting under § 12-6-57.

Source: SL 1929, ch 118, § 56; SDC 1939, § 16.0243; SL 1973, ch 74, § 12; SL 1991, ch 119, § 1; SL 2007, ch 75, § 1; SL 2015, ch 77, § 20 rejected Nov. 8, 2016; SL 2019, ch 74, § 2; SL 2021, ch 63, § 1.

12-6-56.1. Rejected by referendum.

12-6-57. Meeting of party committee to fill vacancies--Manner of voting. To fill a vacancy for a party candidate to a:
(1) State office or as a presidential elector, the party State Central Committee chairman shall call a central committee meeting to fill the vacancy, and designate the time and place where the meeting shall be held;
(2) Multi-county legislative district, the party State Central Committee chairman shall call a meeting of affected county party central committee members to fill the vacancy, designate the time and place where the meeting shall be held, designate the person who will conduct the meeting, and notify all affected central committee members of this information;
(3) Single-county legislative district or county office, the county party central committee chairman shall call a meeting of the county party central committee to fill the vacancy and designate the time and place where the meeting shall be held.
Vacancies filled by State Central Committee shall be by unit representation, each county casting the number of votes cast in that county at the last general election for that party's candidate for Governor. All other vacancies shall be filled by a majority vote of the affected committee members present.

Source: SL 1929, ch 118, § 56; SDC 1939, § 16.0243; SL 1968, ch 77; SL 1991, ch 119, § 2; SL 2021, ch 63, § 2.

12-6-58. Application of vacancy provisions to special congressional elections. Sections 12-6-56 and 12-6-57 shall also apply to the selection of candidates to be voted on at any special election to fill congressional vacancies pursuant to chapter 12-11.

Source: SL 1929, ch 118, § 56; SDC 1939, § 16.0243; SL 1968, ch 77; SL 1973, ch 74, § 13.

12-6-59 to 12-6-63. Repealed by SL 1973, ch 74, § 14.

12-6-64. Liberal construction of primary election laws. The laws of this state pertaining to primary elections shall be liberally construed so that the real will of the voters may not be defeated by a mere technicality.

Source: SL 1929, ch 118, § 58; SDC 1939, § 16.0248.

12-6-65. Defeated candidate--Prohibition. Notwithstanding any other provisions, if a candidate has been defeated in a primary election for office in the Legislature, the candidate may not run for that office under the affiliation of a different political party in the same election year as the primary election.

Source: SL 2020, ch 51, § 1.

CHAPTER 12-6A - PRESIDENTIAL PREFERENCE PRIMARIES [REPEALED]

[Repealed by SL 1980, ch 113, §§ 1 to 10]

CHAPTER 12-7 - NOMINATION OF INDEPENDENT CANDIDATES

12-7-1 Certificate of nomination for nonjudicial public office-- Exceptions-- Requirements.
12-7-1.1 Earliest time for circulation of petitions or nominating certificates.
12-7-1.2 Certification of candidate for lieutenant governor.
12-7-2 Repealed.
12-7-3 Repealed.
12-7-4 Repealed.
12-7-5 Primary election candidate prohibited from filing as independent for same office in same year.
12-7-6 Candidates for Legislature required to reside in district of candidacy.
12-7-7 Certificate of nomination for President or Vice President of the United States-- Requirements.
12-7-8 Repealed.

12-7-1. Certificate of nomination for nonjudicial public office--Exceptions--Requirements. Any candidate for nonjudicial public office, except as provided in § 12-7-7, who is not nominated by a primary election may be nominated by filing a certificate of nomination with the secretary of state or county auditor as prescribed by § 12-6-4, after December thirty-first and by the last Tuesday of April at 5:00 p.m. local time before the election. A certificate of nomination shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed by registered mail by the last Tuesday of April at 5:00 p.m. local time before the election, it is timely submitted. The certificate of nomination shall be signed by registered voters within the district or political subdivision in and for which the officers are to be elected. The number of signatures required may not be less than one percent of the total combined vote cast for Governor at the last certified gubernatorial election within the district or political subdivision. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the forms for the certificate of nomination.

Source: SDC 1939, § 16.0501; SL 1973, ch 75, § 1; SL 1975, ch 119, § 17; SL 1975, ch 122, § 1; SL 1976, ch 105, § 20; SL 1977, ch 108, § 2; SL 1977, ch 109, § 1; SL 1982, ch 127; SL 1999, ch 73, § 1; SL 2001, ch 68, § 1; SL 2002, ch 74, § 1; SL 2005, ch 87, § 3; SL 2007, ch 76, § 1; SL 2012, ch 83, § 1; SL 2015, ch 77, § 8 rejected Nov. 8, 2016; SL 2017, ch 2, § 10; SL 2017, ch 69, § 7.

12-7-1.1. Earliest time for circulation of petitions or nominating certificates. No petition or certificate of nomination covered by this chapter may be circulated prior to the first day of January of the year in which the election will be held.

Source: SL 1977, ch 108, § 5.

12-7-1.2. Certification of candidate for lieutenant governor. An independent candidate for Governor shall certify the candidate's selection for lieutenant governor to the secretary of state

with the candidate's nominating petition. The candidate and the candidate's selection for lieutenant governor shall sign the certification before the nominating petitions are circulated. If an independent candidate for lieutenant governor withdraws, no independent candidate for Governor may have the candidate's name printed upon a ballot unless a replacement selection for lieutenant governor is certified to the secretary of state by the second Tuesday in August. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the forms for the certification for lieutenant governor.

Source: SL 2017, ch 69, § 8.

12-7-2 to 12-7-4. Repealed by SL 1973, ch 75, § 2.

12-7-5. Primary election candidate prohibited from filing as independent for same office in same year. No person shall file a certificate of nomination pursuant to § 12-7-1 for an office for which he has been a candidate in the primary election of the same year.

Source: SL 1977, ch 110; SL 1980, ch 114.

12-7-6. Candidates for Legislature required to reside in district of candidacy. Any candidate for office in the State Legislature shall be a resident of the district for which he is a candidate at the time he signs his declaration of candidacy on the certificate of nomination as required by this chapter.

Source: SL 1990, ch 105, § 2.

12-7-7. Certificate of nomination for President or Vice President of the United States--Requirements. Any candidate for President or Vice President of the United States who is not nominated by a primary election may be nominated by filing with the secretary of state, after December thirty-first and by the first Tuesday in August at 5:00 p.m. central time before the election, a certificate of nomination which shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed by registered mail by the first Tuesday in August at 5:00 p.m. central time before the election, it is timely submitted. The number of signatures required may not be less than one percent of the total combined vote cast for Governor at the last certified gubernatorial election within the state. An independent candidate for President shall file a declaration of candidacy and a certification of the candidate's selection for Vice President with the secretary of state with the candidate's nominating petitions. The candidate and the candidate's selection for Vice President shall sign the certification before the nominating petitions are submitted. If an independent candidate for Vice President withdraws pursuant to § 12-6-55, no independent candidate for President shall have the candidate's name printed upon a ballot unless a replacement selection for Vice President is certified to the secretary of state by the second Tuesday in August. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the forms for the certificate of nomination and the certification for Vice President.

Source: SL 2001, ch 68, § 2; SL 2007, ch 75, § 2; SL 2007, ch 76, § 2; SL 2015, ch 77, § 19 rejected Nov. 8, 2016; SL 2017, ch 69, § 9.

12-7-8. Repealed by SL 2015, ch 76, § 2.

CHAPTER 12-8 - CERTIFICATION OF NOMINATIONS

12-8-1 Certification by county board of nominees at primary--Certificate of election of party officials.
12-8-2 Certification by state board of nominees at primary--Certificate of election of party officials.
12-8-3 Repealed.
12-8-4 Repealed.
12-8-5 Repealed.
12-8-6 Time of filing certificates of nomination.
12-8-7 Repealed.
12-8-8 Certification to county auditors of persons nominated for office--Delayed certification of presidential and vice presidential candidates.

12-8-1. Certification by county board of nominees at primary--Certificate of election of party officials. The county canvassing board, as soon as the returns of any primary election are canvassed, as provided in chapter 12-20, shall issue and mail to each person whom the returns show nominated for any county office, a certificate of nomination. The county canvassing board shall certify the names of such nominees to be printed on the official ballot at the succeeding November election. The board shall issue and mail a certificate of election to each person whom the returns show elected as party precinct committeeman or committeewoman, delegate or alternate to the state convention. The certificate shall be duly executed by said county canvassing board under the seal of the county. The county canvassing board shall similarly certify the election of the delegates and alternates to the state convention to the state political parties.

Source: SL 1907, ch 139, § 64; SL 1911, ch 201, § 103; SL 1917, ch 234, § 96; RC 1919, § 7160 (b); SL 1929, ch 118, § 42; SDC 1939, § 16.0236; SL 1963, ch 107, § 5; SL 1979, ch 98, § 1.

12-8-2. Certification by state board of nominees at primary--Certificate of election of party officials. The State Canvassing Board, as soon as the returns of any primary election are canvassed as provided in § 12-20-38, shall issue and mail to each person whom the returns show nominated for any congressional, state, judicial, or legislative office, or nominated pursuant to § 12-6-9 or chapter 12-9, a formal certificate of nomination and shall certify the names of such nominees to be printed upon the official ballot at the succeeding November election under their respective political party designations; and to each person whom the returns show elected to a party position, a formal certificate of election; said certificates to be duly executed by said canvassing board under the great seal of the state.

Source: SL 1907, ch 139, § 62; SL 1911, ch 201, § 102; SL 1917, ch 234, § 96; RC 1919, § 7160 (a); SL 1925, ch 161, § 1; SL 1929, ch 118, § 41; SDC 1939, §§ 16.0236, 16.0306; SDCL, § 12-9-9; SL 1968, ch 143, § 5; SL 1973, ch 76, § 1.

12-8-3 to 12-8-5. Repealed by SL 1973, ch 76, § 6.

12-8-6. Time of filing certificates of nomination. Nominations by party committee to fill vacancies occurring in nominations made in primary elections and certificates of nomination to be filed with the secretary of state and those to be filed with the county auditor shall be filed not later than the second Tuesday in August at five p.m. or mailed by registered mail by that date and time prior to the election.

Source: SL 1897, ch 60, § 8; RPolC 1903, § 1905; SL 1918 (SS), ch 44, § 1; RC 1919, § 7202; SL 1929, ch 117, § 1; SL 1935, ch 109, § 1; SL 1937, ch 124, § 1; SDC 1939, § 16.0502; SDCL § 12-8-3; SL 1971, ch 87, §§ 1, 2; SL 1973, ch 76, § 2; SL 1977, ch 108, § 3; SL 1978, ch 100, § 1; SL 1979, ch 97, § 2; SL 2015, ch 77, § 23 rejected Nov. 8, 2016.

12-8-7. Repealed by SL 1974, ch 118, § 200.

12-8-8. Certification to county auditors of persons nominated for office--Delayed certification of presidential and vice presidential candidates. The secretary of state, not later than the third Tuesday in August at five p.m. before the general election, shall certify to the county auditor of each county within which any voters of this state vote for the officer or officers nominated at the preceding primary, whose certificates of nomination have been filed in the Office of the Secretary of State, or who have been regularly named or petitioned for filling of a vacancy, the name and description of each person so nominated. In years when a President and vice president are nominated and the national party conventions are held at such a late date as to make the foregoing provisions impossible, then, the secretary of state shall make the certification not later than seven days after nominations of such President and vice president.

Source: SL 1897, ch 60, § 9; RPolC 1903, § 1906; SL 1918 (SS), ch 44, § 2; RC 1919, § 7207; SDC 1939, § 16.0246; SL 1955, ch 55, § 1; SL 1971, ch 87, § 3; SL 1977, ch 108, § 4; SL 1978, ch 100, § 2; SL 1979, ch 97, § 3; SL 2007, ch 81, § 11.

CHAPTER 12-9 - JUDICIAL NOMINATIONS AND ELECTIONS

12-9-1	Judicial officers nominated and elected in nonpolitical elections.
12-9-2	Repealed.
12-9-3	Repealed.
12-9-3.1	Individual judicial positions designated by secretary of state.
12-9-4	Filing of nominating petitions--Number of signatures--Form and contents.
12-9-5	Repealed.
12-9-6	Party references prohibited in petitions filed.
12-9-7	Repealed.
12-9-8	Primary not required if no more than two candidates for each position.
12-9-9	Repealed.
12-9-10	Order of listing candidates on ballot--Arrangement by lot--Right to be present.
12-9-11	Repealed.
12-9-12	Preparation of judicial primary ballots--Order of listing candidates.
12-9-13	Form of judicial ballot prescribed by board.
12-9-14	Nomination by highest vote--Number of nominees.
12-9-15	Petitions to fill vacancies after primary.
12-9-16	19-6-16 to 12-9-20 Repealed.
12-9-20(A)	Appendix to Chapter 12-9. Guidelines for Judicial Campaigns [Repealed].
12-9-21	Certain personally identifiable information of judicial officers excluded from public record.

12-9-1. Judicial officers nominated and elected in nonpolitical elections. All candidates for the office of judge of the circuit court, and such other judicial officers as may be required by law to be elected, shall be nominated and voted for at the primary and general elections in the manner provided by this chapter and not otherwise.

Source: SL 1921, ch 224, § 1; SDC 1939, § 16.0301; SL 1974, ch 118, § 36; SL 1981, ch 164, § 1.

12-9-2. Repealed by SL 2013, ch 65, § 1.

12-9-3. Repealed by SL 1973, ch 74, § 14.

12-9-3.1. Individual judicial positions designated by secretary of state. The secretary of state shall designate each individual judicial position to be filled by election. The position that is assigned to an individual judge is assigned also to the judge's successor in office. A candidate for circuit court shall indicate the specific position for which the candidate is running.

Source: SL 1976, ch 107, § 1; SL 1995, ch 82.

12-9-4. Filing of nominating petitions--Number of signatures--Form and contents. Nominating petitions for judicial office filed pursuant to this chapter shall state the judicial position sought, using the designations established pursuant to § 12-9-3.1, which shall be filed

in the Office of the Secretary of State within the time prescribed by § 12-6-4 and shall be signed by not less than fifty registered voters of the district or circuit or other division of court boundaries. To the extent it is consistent with this chapter, § 12-6-8 shall govern such petitions.

Source: SL 1921, ch 224, § 2; SDC 1939, § 16.0302; SL 1943, ch 72; SL 1959, ch 92; SL 1961, ch 96, § 1; SL 1968, ch 143, § 3; SL 1972, ch 83, § 1; SL 1974, ch 118, § 38; SL 1976, ch 105, § 21; SL 1976, ch 107, § 2.

12-9-5. Repealed by SL 1974, ch 118, § 200.

12-9-6. Party references prohibited in petitions filed. In any petition filed by or on behalf of any candidate for nomination to judicial office at any primary election or any attachment thereto no reference shall be made to any party ballot or to the party affiliation of such candidate.

Source: SL 1921, ch 224, § 3; SDC 1939, § 16.0303; SL 1974, ch 118, § 39.

12-9-7. Repealed by SL 1974, ch 118, § 200.

12-9-8. Primary not required if no more than two candidates for each position. When nominating petitions are filed on behalf of candidates not to exceed twice the number of persons for the number of judicial positions to be filled, the names of such persons need not be placed upon the primary ballot but such persons shall be the nominees for such positions.

Source: SL 1921, ch 224, § 4; SL 1925, ch 162, § 1; SDC 1939, § 16.0304; SL 1974, ch 118, § 40; SL 1976, ch 107, § 3.

12-9-9. Repealed by SL 1974, ch 118, § 200.

12-9-10. Order of listing candidates on ballot--Arrangement by lot--Right to be present. The order of names of judicial candidates certified by the secretary of state to each of the county auditors shall be arranged by lot. Any candidate shall have the right to be present or represented when the arrangement is being determined.

Source: SL 1925, ch 161, §§ 1, 2; SDC 1939, §§ 16.0306, 16.0307; SDCL, § 12-9-9; SL 1968, ch 143, § 5; SL 1974, ch 118, § 41; SL 1976, ch 105, § 22.

12-9-11. Repealed by SL 1974, ch 118, § 200.

12-9-12. Preparation of judicial primary ballots--Order of listing candidates. At all primary elections at which candidates for judicial office are to be nominated and a primary is required there shall be prepared and furnished by the several county auditors, separate ballots upon which shall be placed the names of the candidates for such offices, which ballots shall be entitled "nonpolitical judiciary ballot" and shall contain no other designation. The names of all candidates shall be placed thereon without any party designation in the order designated by the secretary of state.

Source: SL 1921, ch 224, § 5; SL 1925, ch 162, § 2; SDC 1939, § 16.0305; SL 1974, ch 118, § 42.

12-9-13. Form of judicial ballot prescribed by board. The form of the nonpolitical judiciary ballot shall be prescribed by the State Board of Elections.

Source: SL 1921, ch 224, § 5; SL 1925, ch 162, § 2; SDC 1939, § 16.0305; SL 1974, ch 118, § 43; repealed SL 1976, ch 107, § 4; re-enacted SL 1976, ch 105, § 23.

12-9-14. Nomination by highest vote--Number of nominees. The nominees shall be those persons constituting twice the number of persons to be elected receiving the highest number of votes in the primary election.

Source: SL 1921, ch 224, § 5; SL 1925, ch 162, § 2; SDC 1939, § 16.0305; SL 1968, ch 143, § 4; SL 1974, ch 118, § 44.

12-9-15. Petitions to fill vacancies after primary. Whenever after nominations have been made under the provisions of this chapter and the number of nominees for a judicial office shall be reduced through death, withdrawal, or disqualification of a nominee or nominees for such office, the registered voters of the district or circuit as the case may be, may, if there is sufficient time for filing a nominating petition pursuant to § 12-8-6, nominate one or more candidates for such judicial office by a petition otherwise complying with § 12-9-4.

Source: SL 1921, ch 224, § 6; SL 1925, ch 162, § 3; SDC 1939, § 16.0308; SL 1968, ch 143, § 7; SL 1974, ch 118, § 45.

12-9-16 to 12-9-20. Repealed by SL 1974, ch 118, § 200.

12-9-21. Certain personally identifiable information of judicial officers excluded from public record. Any personally identifiable information filed pursuant to this chapter with the Office of the Secretary of State by or on behalf of any candidate for the office of judge of the circuit court or a justice of the Supreme Court subject to a retention election is not open to public inspection. For purposes of this section, the term, personally identifiable information, means any home address, home or personal telephone number, or personal email address. The county of residence of the candidate for the office of judge or justice subject to a retention election is a public record.

Source: SL 2022, ch 11, § 5, eff. Feb. 14, 2022.

APPENDIX TO CHAPTER 12-9 [Repealed]

Repealed by SL 2006, ch 274 (Supreme Court Rule 05_13), eff. Jan. 1, 2006.

CHAPTER 12-10 - NOMINATION AND ELECTION OF EDUCATIONAL OFFICERS [REPEALED]

[Repealed by SL 1971, ch 89, § 4; SL 1973, ch 74, § 14; SL 1974, ch 119, § 2]

CHAPTER 12-11 - SPECIAL CONGRESSIONAL ELECTIONS

12-11-1 Special election to fill congressional vacancy--Time of election of representative.
12-11-1.1 Special election to fill congressional vacancy due to extraordinary circumstances.
12-11-2 Filing of election proclamation--Notice to county auditors and political parties--Nominations.
12-11-2.1 Absentee ballots cast by uniformed services or overseas voters in special election to fill congressional vacancy.
12-11-3 Filing of nominations--Certification--Conduct of elections.
12-11-4 Temporary appointment by Governor to fill vacancy in United States Senate.
12-11-5 Special election to fill senate vacancy.
12-11-6 No special election if appointed senator's term expires at normal time.
12-11-7 Vacancy within ninety days of general election--Concurrent elections.
12-11-8 Nominations for specially elected senator--Vacancy near primary election.

12-11-1. Special election to fill congressional vacancy--Time of election of representative. If a vacancy occurs in the office of a senator or representative in the United States Congress it shall be the duty of the Governor within ten days of the occurrence, to issue a proclamation setting the date of and calling for a special election for the purpose of filling such vacancy. If either a primary or general election is to be held within six months, an election to fill a vacancy in the office of representative in the United States Congress shall be held in conjunction with that election, otherwise the election shall be held not less than eighty nor more than ninety days after the vacancy occurs.

Source: SL 1890, ch 84, § 19; RPolC 1903, § 1956; SL 1915, ch 182, § 2; RC 1919, §§ 7214, 7308; SL 1929, ch 117, § 5; SDC 1939, §§ 16.0602, 16.1401; SDCL, § 12-11-2; SL 1974, ch 118, § 46; SL 1979, ch 99, § 5.

12-11-1.1. Special election to fill congressional vacancy due to extraordinary circumstances. If a vacancy occurs in the office of representative in the United States Congress due to extraordinary circumstances as defined in 2 USC Chapter 1 § 8 as of January 1, 2008, the Governor shall immediately issue a proclamation calling and setting the date for a special election to fill the vacancy. The proclamation shall contain the deadline for nomination.

Source: SL 2008, ch 65, § 1.

12-11-2. Filing of election proclamation--Notice to county auditors and political parties--Nominations. The proclamation issued pursuant to § 12-11-1 or 12-11-1.1 shall be filed with the secretary of state who shall, if a special election is called for, notify each county auditor and the chair of each political party recognized pursuant to chapter 12-5 of the date and purpose of the special election. The State Central Committee of each recognized political party may nominate a person to fill the vacancy and any independent candidate filing nominating petitions meeting the requirements of § 12-7-1 may also have his or her name placed on the ballot.

Source: SL 1890, ch 84, § 19; RPolC 1903, § 1956; RC 1919, § 7308; SL 1929, ch 117, § 5; SDC 1939, § 16.1401; SL 1974, ch 118, § 47; SL 2008, ch 65, § 2.

12-11-2.1. Absentee ballots cast by uniformed services or overseas voters in special election to fill congressional vacancy. If the date of the special election conducted pursuant to § 12-11-1.1 requires that absentee ballots cast by absent uniformed services voters or overseas voters arriving after election day be counted as required by 2 USC Chapter 1 § 8 as of January 1, 2008, these absentee ballots shall be processed and counted by the provisional ballot counting board. The provisional ballot counting board shall meet on the deadline established in 2 USC Chapter 1 § 8 as of January 1, 2008, for the return of these absentee ballots. The official county canvass shall be conducted within twenty-four hours after the conclusion of the absentee and provisional ballot count. The official state canvass shall be held within three days after the conclusion of the county canvass.

Source: SL 2008, ch 65, § 3.

12-11-3. Filing of nominations--Certification--Conduct of elections. Each party nomination and independent petition shall be filed with the secretary of state not less than forty-five days preceding any election which is not combined with a primary or general election. If the election is conducted with a primary election, each party nomination and independent petition shall be filed by the last Tuesday in March. Each nomination shall be certified in a like manner as any other nomination for the purpose of a general election. The election shall be conducted, canvassed, and the results certified as in a general election. If the election is conducted with a general election, each party nomination and independent petition shall be filed by the second Tuesday in August.

Source: SL 1890, ch 84, § 23; RPolC 1903, § 1959; RC 1919, § 7311; SDC 1939, § 16.1404; SL 1974, ch 118, § 48; SL 1979, ch 99, § 7; SL 2004, ch 107, § 1, eff. Feb. 25, 2004; SL 2007, ch 81, § 12; SL 2015, ch 77, § 3 rejected Nov. 8, 2016.

12-11-4. Temporary appointment by Governor to fill vacancy in United States Senate. Pursuant to the Seventeenth Amendment to the Constitution of the United States of America, the Governor may fill by temporary appointment, until a special election is held pursuant to this chapter, vacancies in the office of senator in the Senate of the United States.

Source: SL 1979, ch 99, § 1.

12-11-5. Special election to fill senate vacancy. The special election to fill the vacancy of a senator shall be held at the same time as the next general election. The general election laws shall apply unless inconsistent with this chapter.

Source: SL 1979, ch 99, § 2.

12-11-6. No special election if appointed senator's term expires at normal time. No special election, to fill a vacancy, may be held if the term of office of the appointed senator

expires in the month of January immediately following the next general election that would occur after the vacancy.

Source: SL 1979, ch 99, § 3.

12-11-7. Vacancy within ninety days of general election--Concurrent elections. If a vacancy occurs within ninety days of the next general election, the special election to fill the vacancy shall be held concurrently with the general election to be held two years later.

Source: SL 1979, ch 99, § 4.

12-11-8. Nominations for specially elected senator--Vacancy near primary election. Nominations of candidates for the special election for senator shall be conducted pursuant to chapter 12-6. If a vacancy occurs within ninety days of the date of the primary election, or between the primary election and at least ninety days prior to the general election, the provisions of §§ 12-11-2 and 12-11-3 shall apply.

Source: SL 1979, ch 99, § 6.

CHAPTER 12-12 - NOTICE OF ELECTIONS

12-12-1 Notice of offices to be filled--Publication.
12-12-2 Repealed.
12-12-3 Repealed.
12-12-4 Repealed.
12-12-5 Notice of vacancy for an unexpired term--Publication.

12-12-1. Notice of offices to be filled--Publication. The county auditor charged with the conduct of a primary election shall give notice of any office to be filled by nomination or by declaration and the deadline for filing in all official newspapers in the appropriate district, at least once each week for two consecutive weeks, between the fifteenth and thirtieth day of January in an even-numbered year. A local election official charged with the conduct of a local election shall give notice of any office to be filled by nomination or by declaration and the deadline for filing a nominating petition, in all official newspapers in the locality, at least once each week for two consecutive weeks. The last publication in the notice may not be less than ten nor more than fifteen days before the deadline for filing. The provisions of this section apply unless otherwise provided by law specifically governing the election.

The person in charge of the election shall give further notice of each election stating the date and time of the election, and designating each polling place for the election, in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten days before the election. For any runoff election under § 12-6-51.1, one notice shall be published along with a copy of the ballot in each newspaper in the state that publishes on Saturday and Sunday. The secretary of state shall direct the newspapers to publish the ballot and notice on the eleventh or twelfth day after the primary election. The secretary of state shall pay all costs of publication.

Source: SDC 1939, §§ 16.0213, 16.0901; SL 1955, ch 54, §§ 2, 4; SL 1963, ch 107, § 2; SDCL § 12-6-10; SL 1968, ch 75; SL 1971, ch 85; SL 1972, ch 81, §§ 3, 4; SL 1973, ch 77, § 1; SL 1979, ch 100, § 1; SL 1982, ch 28, § 43; SL 1985, ch 110, § 1D; SL 1995, ch 83; SL 1997, ch 79, § 1; SL 2019, ch 73, § 2; SL 2020, ch 44, § 1.

12-12-2 to 12-12-4. Repealed by SL 1973, ch 77, § 2.

12-12-5. Notice of vacancy for an unexpired term--Publication. If a vacancy for an unexpired term is to be filled by an election pursuant to § 3-4-6 and the vacancy occurs after the first notice of filing deadline is published pursuant to § 12-12-1, the county auditor shall give notice of the vacancy to be filled in each official newspaper at least once each week for two consecutive weeks. The first notice of vacancy shall be published in the week following the occurrence of the vacancy. The notice of vacancy shall include the deadline for filing partisan nominating petitions, if not yet passed, and the deadline for filing independent nominating petitions.

Source: SL 2009, ch 69, § 4.

CHAPTER 12-13 - CONSTITUTIONAL AMENDMENTS AND SUBMITTED QUESTIONS

12-13-1	Delivery of proposed questions to county auditors--Attorney general's explanation.
12-13-1.1	Requirements for elections beginning in 2018.
12-13-2	Measures and questions to be sent to official newspapers.
12-13-3	Newspaper publication of submitted questions--Compensation--Suspension of status on failure to publish--Election valid despite refusal to publish.
12-13-4	Lettering and numbering of submitted questions.
12-13-5	12-13-5 to 12-13-8.2. Repealed by SL 1994, ch 108, § 2.
12-13-9	Attorney general's statement regarding constitutional amendment proposed by legislature or referred law.
12-13-9.1	Availability of attorney general's explanation of proposed questions.
12-13-9.2	Action to challenge adequacy of attorney general's statement--Appeal--Time limits.
12-13-10	Repealed by SL 1974, ch 118, § 200.
12-13-11	Materials printed on ballot in lieu of full text--Separate ballot.
12-13-12	12-13-12 to 12-13-15. Repealed by SL 1974, ch 118, § 200.
12-13-16	Publication of false or erroneous information on constitutional amendment or submitted question as misdemeanor.
12-13-17	12-13-17 to 12-13-22. Repealed by SL 1974, ch 118, § 200.
12-13-23	Distribution of public information.
12-13-24	Style, form, and wording of initiative or initiated amendment.
12-13-25	Review and comment--Legislative Research Council--Opinion.
12-13-25.1	Attorney general's statement--Initiated measure--Initiated amendment.
12-13-25.2	Exception to time for director's comments.
12-13-26	Unreviewed initiatives or initiated amendments unacceptable--Uncertified initiated amendments unacceptable.
12-13-26.1	Initiated amendment--Written certification by secretary of state--Resubmission.
12-13-26.2	Action to challenge the secretary of state's decision--Time limits--Promulgation of rules.
12-13-27	Special elections for constitutional amendments--Procedural changes--Reimbursement of costs.
12-13-28	Employment and compensation of petition circulators.

12-13-1. Delivery of proposed questions to county auditors--Attorney general's explanation. The secretary of state, at least twelve weeks prior to the general election, shall deliver to each county auditor a certified copy of each initiated measure, referred law, or proposed amendment to the Constitution to be voted on at the election, together with a statement, title, explanation, and recitation as written pursuant to § 12-13-9 or 12-13-25.1 to be published preceding the text of the initiated measure, referred law, or proposed amendment. The attorney general shall prepare each statement, title, explanation, and recitation.

Source: SL 1913, ch 107, § 11; RC 1919, § 7225; SDC 1939, § 16.1305 as added by SL 1963, ch 114; SL 1974, ch 118, § 51; SL 1979, ch 101; SL 1994, ch 108, § 1; SL 2018, ch 77, § 1.

12-13-1.1. Requirements for elections beginning in 2018. The provisions of §§ 12-13-1, 12-13-9, 12-13-23, and 12-13-25.1 apply to any recitation prepared for an initiated amendment to the Constitution, initiated measure, and referred law certified to appear on a ballot beginning with any election in 2018.

Source: SL 2018, ch 77, § 5.

12-13-2. Measures and questions to be sent to official newspapers. The county auditor shall, on or before the first day of October of each year in which there is a general election, send by electronic transmission or mail to each official newspaper of the county a copy of all measures and questions as certified pursuant to § 12-13-1.

Source: SL 1913, ch 107, § 4; RC 1919, § 7219; SDC 1939, § 16.1305; SL 1957, ch 86; SL 1963, ch 114; SL 1974, ch 118, § 52; SL 1979, ch 100, § 2; SL 1982, ch 28, § 44; SL 2012, ch 18, § 8.

12-13-3. Newspaper publication of submitted questions--Compensation--Suspension of status on failure to publish--Election valid despite refusal to publish. It shall be the duty of each official newspaper of the county to publish once not less than two nor more than four weeks prior to each general election full copies of that material supplied pursuant to § 12-13-2, and for such publication such newspaper shall receive compensation at the legal rate prescribed by law to be paid out of the general fund.

In case any official newspaper shall fail or refuse to make such publication as hereinbefore provided, such newspaper shall thereupon cease to be an official newspaper for the remainder of that year and for the following calendar year, and the board of county commissioners of such county shall appoint some other newspaper of such county as an official newspaper. The refusal of an official newspaper or newspapers to publish shall not invalidate the results of an election on such question.

Source: SL 1913, ch 107, § 5; RC 1919, § 7220; SDC 1939, § 16.1305; SL 1957, ch 86; SL 1963, ch 114; SL 1972, ch 84, § 1; SL 1974, ch 118, § 53.

12-13-4. Lettering and numbering of submitted questions. Beginning with the 2004 general election and each election thereafter, each constitutional amendment shall be consecutively designated by a letter until each letter of the alphabet has been used for purpose of preparing the official ballots and notices. If all the letters have been used, the next constitutional amendment shall be designated at the beginning of the alphabet. Beginning with the 2004 general election and each election thereafter, each initiated measure or referred law shall be consecutively designated by a number for the purpose of preparing the official ballots and notices.

Source: SDC 1939, § 16.1301; SL 1964, ch 61; SL 2003, ch 81, § 1.

12-13-5 to 12-13-8.2. Repealed by SL 1994, ch 108, § 2.

12-13-9. Attorney general's statement regarding constitutional amendment proposed by legislature or referred law. Before the third Tuesday in May, the attorney general shall deliver to the secretary of state an attorney general's statement for each amendment to the Constitution proposed by the Legislature, and any referred law from an odd year. The attorney general's statement for each referred law from an even year shall be delivered to the secretary of state before the second Tuesday in July. The attorney general's statement shall be written by the attorney general and shall consist of a title, an explanation, and a recitation as provided in this section. The title shall be a concise statement of the subject of the proposed amendment to the Constitution or referred law. The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed amendment to the Constitution or referred law. The recitation for each proposed amendment to the Constitution shall state "Vote 'Yes' to adopt the amendment" and "Vote 'No' to leave the Constitution as it is". The recitation for each referred law shall state "Vote 'Yes' to allow the Act of the Legislature to become law" and "Vote 'No' to reject the Act of the Legislature". The attorney general shall include a description of the legal consequences of the proposed amendment to the Constitution or referred law, including the likely exposure of the state to liability if the proposed amendment to the Constitution or referred law is adopted. The explanation may not exceed two hundred words in length. On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed, if applicable, by any cost estimate prepared pursuant to § 2-9-34 or fiscal note prepared pursuant to § 2-9-32 and then followed by the recitation.

Source: SL 1915, ch 181, § 1; RC 1919, § 7216; SL 1921, ch 219; SDC 1939, § 16.1302; SL 1959, ch 99, § 15; SDC Supp 1960, § 16.2215; SDCL §§ 12-13-10, 12-13-12; SL 1971, ch 90, §§ 1, 2; SL 1974, ch 118, § 58; SL 1976, ch 105, § 30; SL 1979, ch 97, § 4; SL 1994, ch 108, § 8; SL 2006, ch 67, § 3; SL 2007, ch 14, § 2; SL 2007, ch 77, § 1; SL 2009, ch 64, § 10, eff. July 1, 2010; SL 2013, ch 101, § 74; SL 2017, ch 16, § 5; SL 2018, ch 77, § 2.

12-13-9.1. Availability of attorney general's explanation of proposed questions. The secretary of state shall, immediately upon delivery from the attorney general, make the attorney general's statement for each proposed amendment to the Constitution, each initiated measure, and each referred law available to any person upon request.

Source: SL 2006, ch 67, § 6; SL 2007, ch 77, § 2.

12-13-9.2. Action to challenge adequacy of attorney general's statement--Appeal--Time limits. If the proponents or opponents of a proposed amendment to the Constitution, initiated measure, or referred measure believe that the attorney general's statement does not satisfy the requirements of § 12-13-9 or § 12-13-25.1, they shall, within seven days of delivery of the statement to the secretary of state, file an action in circuit court challenging the adequacy of the statement. The action takes precedence over other cases in circuit court and a final order shall be filed within fifteen days of the commencement of the action. Any party appealing the circuit court order to the Supreme Court shall file a notice of appeal within five days of the date of the circuit court order.

Source: SL 2007, ch 77, § 3; SL 2009, ch 64, § 4, eff. July 1, 2010.

12-13-10. Repealed by SL 1974, ch 118, § 200.

12-13-11. Materials printed on ballot in lieu of full text--Separate ballot. The title, explanation, recitation, place for voting, and statement as required by this chapter shall be printed on the ballot in lieu of the law, measure, constitutional amendment, or other question to be submitted to a vote of the people. All proposed constitutional amendments to be submitted at an election shall be placed on one ballot and all initiated measures or referred laws upon a separate ballot.

Source: SL 1897, ch 60, § 27; SL 1899, ch 80, § 1; SL 1899, ch 93, § 4; RPolC 1903, §§ 24, 1911; SL 1911, ch 87, § 2; SL 1913, ch 107, § 2; SL 1915, ch 181, §§ 1, 2; RC 1919, §§ 7216, 7217; SL 1921, ch 219; SDC 1939, §§ 16.1302, 16.1303; SDCL, § 12-13-17; SL 1974, ch 118, § 59; SL 1994, ch 108, § 9.

12-13-12 to 12-13-15. Repealed by SL 1974, ch 118, § 200.

12-13-16. Publication of false or erroneous information on constitutional amendment or submitted question as misdemeanor. Any person knowingly printing, publishing, or delivering to any voter of this state a document containing any purported constitutional amendment, question, law, or measure to be submitted to the voters at any election, in which such constitutional amendment, question, law, or measure is misstated, erroneously printed, or by which false or misleading information is given to the voters, is guilty of a Class 2 misdemeanor.

Source: SL 1913, ch 107, § 9; RC 1919, § 7224; SDC 1939, § 16.9923; SL 1982, ch 86, § 83.

12-13-17 to 12-13-22. Repealed by SL 1974, ch 118, § 200.

12-13-23. Distribution of public information. The secretary of state shall distribute public information on any amendment to the Constitution, initiated measure, or referred law submitted to the electors for approval. The secretary of state shall compile the public information by printing a statement in support of the amendment to the Constitution, initiated measure, or referred law written by its proponents, if any can be identified, and a statement against the amendment to the Constitution, initiated measure, or referred law written by its opponents, if any can be identified. No statement written by a proponent or an opponent may exceed three hundred words in length. The secretary of state is not responsible for the contents, objectivity, or accuracy of the statements written by the proponents and opponents. The pamphlet shall also include the attorney general's title, explanation, and a recitation of the effect of a "Yes" or "No" vote as written pursuant to § 12-13-9 or 12-13-25.1; number of pages and sections in the proposed or referred language; and, if applicable, a fiscal note.

Source: SL 1992, ch 111, § 1; SL 2006, ch 67, § 5; SL 2017, ch 2, § 11; SL 2018, ch 77, § 3; SL 2018, ch 80, § 6; SL 2020, ch 45, § 1.

12-13-24. Style, form, and wording of initiative or initiated amendment. Each initiative or initiated amendment to the Constitution shall be written in a clear and coherent manner in the style and form of other legislation. Each initiative or initiated amendment to the Constitution shall be worded so that the effect of the measure is not misleading or likely to cause confusion among voters.

Source: SL 1994, ch 109, § 1.

12-13-25. Review and comment--Legislative Research Council--Opinion. The sponsors of each initiated measure or initiated amendment to the Constitution shall submit a copy of each version of the initiated measure or initiated amendment to the Constitution to the director of the Legislative Research Council for review and comment not more than six months before it may be circulated for signatures under § 2-1-1.1 or 2-1-1.2. The director shall review each version of the submitted initiated measure or initiated amendment to the Constitution to determine if the requirements of § 12-13-24 are satisfied and if the initiated measure or initiated amendment to the Constitution may have any impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions. Unless as otherwise provided under § 12-13-25.2, not more than fifteen workdays following receipt of an initiated measure or initiated amendment to the Constitution, the director shall provide written comments on the initiated measure or initiated amendment to the Constitution to the sponsors of the initiated measure or initiated amendment, the attorney general, and the secretary of state for the purpose of assisting the sponsors in complying with § 12-13-24. The director's written comments under this section shall include assistance regarding the substantive content of the initiated measure or initiated amendment in order to minimize any conflict with existing law and to ensure the measure's or amendment's effective administration. If the sponsors submit an initiated amendment to the Constitution, the director shall provide, with the written comments, a written opinion to the sponsors, the attorney general, and the secretary of state as to whether the initiated amendment embraces only one subject under S.D. Const., Art. XXIII, § 1 and whether it is an amendment under S.D. Const., Art. XXIII, § 1 or a revision under S.D. Const., Art. XXIII, § 2. The sponsors may, but are not required to, amend the initiated measure or initiated amendment to the Constitution to comply with the director's comments.

Source: SL 1994, ch 109, § 2; SL 2007, ch 14, § 3; SL 2009, ch 64, § 1, eff. July 1, 2010; SL 2017, ch 16, § 4; SL 2018, ch 78, § 1; SL 2018, ch 79, § 1; SL 2020, ch 46, § 1; SL 2021, ch 64, § 1, eff. Mar. 18, 2021.

12-13-25.1. Attorney general's statement regarding proposed initiated measure or initiated amendment to Constitution. Following receipt of the written comments of the director of the Legislative Research Council, the sponsors shall submit a copy of the proposed initiated measure or initiated amendment to the Constitution in final form to the attorney general and the director of the Legislative Research Council. The attorney general shall prepare an attorney general's statement that consists of a title and explanation. The title shall be a concise statement of the subject of the proposed initiated measure or initiated amendment to the Constitution. The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed initiated measure or initiated amendment to the Constitution. The attorney general shall include a description of the legal

consequences of the proposed initiated measure or initiated amendment to the Constitution, including the likely exposure of the state to liability if the proposed initiated measure or initiated amendment to the Constitution is adopted. The explanation may not exceed two hundred words in length. The attorney general shall file the title and explanation with the secretary of state and shall provide a copy to the sponsors within sixty days of receipt of the proposed initiated measure or initiated amendment to the Constitution.

If the petition is filed as set forth in §§ 2-1-1.1 or 2-1-1.2, the attorney general shall deliver to the secretary of state before the third Tuesday in May a recitation as provided in this section. The recitation for an initiated amendment to the Constitution shall state "Vote 'Yes' to adopt the amendment" and "Vote 'No' to leave the Constitution as it is". The recitation for an initiated measure shall state "Vote 'Yes' to adopt the initiated measure" and "Vote 'No' to leave South Dakota law as it is". On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed, if applicable, by any fiscal note prepared pursuant to § 2-9-30, and then followed by the recitation.

Source: SL 2009, ch 64, § 2, eff. July 1, 2010; SL 2013, ch 101, § 75; SL 2016, ch 24, § 3; SL 2017, ch 16, § 6; SL 2018, ch 77, § 4; SL 2018, ch 80, § 1.

Effective November 1, 2021

12-13-25.1. Attorney general's statement--Initiated measure--Initiated amendment. Following receipt of the written comments of the director of the Legislative Research Council, the sponsors shall submit a copy of the proposed initiated measure or initiated amendment to the Constitution in final form to the attorney general, the secretary of state, and the director of the Legislative Research Council. The attorney general shall prepare a draft attorney general's statement that consists of a title and explanation. The title shall be a concise statement of the subject of the proposed initiated measure or initiated amendment to the Constitution. The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed initiated measure or initiated amendment to the Constitution. The attorney general shall include a description of the legal consequences of the proposed initiated measure or initiated amendment to the Constitution, including the likely exposure of the state to liability if the proposed initiated measure or initiated amendment to the Constitution is adopted. The explanation may not exceed two hundred words in length. The attorney general shall file the draft statement with the secretary of state, post the draft statement on the attorney general's website, and release a press release announcing a draft statement has been posted for comment within sixty days of receipt of the proposed initiated measure or initiated amendment to the Constitution. The attorney general shall accept comments for ten days from the date the draft statement was filed. The attorney general shall review all comments submitted and revise the statement in response to the comments as deemed necessary.

Once the comment period has expired and any revisions have been completed, the attorney general shall file the final statement with the secretary of state, which shall serve as the attorney general's statement, and shall provide a copy to the sponsors within twenty days of the filing of the draft statement.

If the petition is filed as set forth in §§ 2-1-1.1 or 2-1-1.2, the attorney general shall deliver to the secretary of state before the third Tuesday in May a recitation as provided in this section. The recitation for an initiated amendment to the Constitution shall state "Vote 'Yes' to adopt

the amendment" and "Vote 'No' to leave the Constitution as it is". The recitation for an initiated measure shall state "Vote 'Yes' to adopt the initiated measure" and "Vote 'No' to leave South Dakota law as it is". On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed, if applicable, by any fiscal note prepared pursuant to § 2-9-30, and then followed by the recitation.

Source: SL 2009, ch 64, § 2, eff. July 1, 2010; SL 2013, ch 101, § 75; SL 2016, ch 24, § 3; SL 2017, ch 16, § 6; SL 2018, ch 77, § 4; SL 2018, ch 80, § 1; SL 2021, ch 65, § 1, eff. Nov. 1, 2021.

12-13-25.2. Exception to time for director's comments. If the director of the Legislative Research Council receives any initiated measure or initiated amendment to the Constitution from the first day of December to the day of adjournment sine die of the following legislative session, inclusive, the director shall provide written comments as required pursuant to § 12-13-25 not more than fifteen work days following adjournment sine die of the legislative session.

Source: SL 2018, ch 78, § 2.

12-13-26. Unreviewed initiatives or initiated amendments unacceptable--Uncertified initiated amendments unacceptable. The secretary of state may not accept any initiative or initiated amendment to the Constitution unless such initiative or initiated amendment to the Constitution has been submitted to the director of the Legislative Research Council and the director has reviewed and commented on such initiative or initiated amendment to the Constitution, and unless the attorney general has filed the title and explanation of the initiative or initiated amendment to the Constitution with the secretary of state. The secretary of state may not accept any initiated amendment to the Constitution that is not certified pursuant to § 12-13-26.1.

Source: SL 1994, ch 109, § 3; SL 2009, ch 64, § 3, eff. July 1, 2010; SL 2021, ch 64, § 2, eff. Mar. 18, 2021.

12-13-26.1. Initiated amendment--Written certification by secretary of state--Resubmission. Upon receiving a proposed initiated amendment to the Constitution, the secretary of state shall provide written certification to the sponsors, the attorney general, and the director of the Legislative Research Council that the initiated amendment embraces only one subject and is an amendment to the Constitution under S.D. Const., Art. XXIII, § 1. The secretary of state shall publish on the secretary of state's website notice of this certification not more than fifteen working days following receipt of the initiated amendment to the Constitution.

The secretary of state may not certify the initiated amendment to the Constitution if it embraces more than one subject in violation of S.D. Const., Art. XXIII, § 1. The secretary of state may not certify the initiated amendment to the Constitution if it is a revision under S.D. Const., Art. XXIII, § 2. If the secretary of state determines that the initiated amendment to the Constitution embraces more than one subject or is a revision, the secretary of state shall provide written notice to the sponsors explaining the reason the initiated amendment to the

Constitution is not certified not more than fifteen working days following receipt of the initiated amendment to the Constitution. The sponsors may amend the initiated amendment to the Constitution in accordance with the secretary of state's explanation and resubmit the amended initiated amendment to the Constitution to the director of the Legislative Research Council for review under § 12-13-25.

Source: SL 2021, ch 64, § 3, eff. Mar. 18, 2021.

12-13-26.2. Action to challenge the secretary of state's decision--Time limits--Promulgation of rules. If the secretary of state does not certify an initiated amendment to the Constitution pursuant to § 12-13-26.1, the sponsor may directly appeal the secretary of state's decision to the Supreme Court within fifteen days after receiving notice from the secretary of state.

Any interested party may directly appeal the secretary of state's certification of an initiated amendment to the Constitution pursuant to § 12-13-26.1 to the Supreme Court within fifteen days of the secretary of state publishing notice of certification on the secretary of state's website.

The Supreme Court shall promulgate rules, pursuant to chapter 16-3, defining the procedures for an appeal taken under this section.

Source: SL 2021, ch 64, § 4, eff. Mar. 18, 2021.

12-13-27. Special elections for constitutional amendments--Procedural changes--Reimbursement of costs. Notwithstanding any other provision of law, the Legislature may set a date for a special election for a statewide vote on any constitutional amendment proposed by the Legislature, pursuant to S.D. Const., Art. XXIII, §§ 1 and 3, and may provide in its resolution proposing such constitutional amendment an accompanying procedure, that may alter the time requirements but not the substantive provisions, of this chapter. The state shall reimburse each county for any costs incurred as a result of this section.

Source: SL 2000 (SS), ch 2, § 1.

12-13-28. Employment and compensation of petition circulators. No person may employ, reward, or compensate any person to circulate a petition for an initiated measure, referred law, or proposed amendment to the South Dakota Constitution based on the number of registered voters who signed the petition. Nothing in this section prohibits any person from employing a petition circulator based on one of the following practices:

(1) Paying an hourly wage or salary;

(2) Establishing either express or implied minimum signature requirements for the petition circulator;

(3) Terminating the petition circulator's employment, if the petition circulator fails to meet certain productivity requirements; and

(4) Paying discretionary bonuses based on reliability, longevity, and productivity.

Any violation of this section is a Class 2 misdemeanor.

Source: SL 2007, ch 78, § 1.

CHAPTER 12-14 - PRECINCTS AND POLLING PLACES

12-14-1 Designation of precincts and polling places by county commissioners--Changes--Separate voter lists of special voting districts.
12-14-1.1 Notice to county auditor of boundary change for local election.
12-14-2 Boundaries to be clearly defined in resolution.
12-14-3 Repealed.
12-14-4 Adjustment in size of precincts--Unreasonable waiting time.
12-14-5 12-14-5 to 12-14-8 Repealed.
12-14-9 Location of polling places.
12-14-10 Repealed.
12-14-11 Repealed.
12-14-12 Repealed.
12-14-13 Display of flag at polling places at election.
12-14-14 Sign to identify polling place on election day.
12-14-15 Change in precinct boundary or polling place.
12-14-16 Campaign signs at nonpublicly-owned polling place.
12-14-17 Vote centers

12-14-1. Designation of precincts and polling places by county commissioners--Changes--Separate voter lists of special voting districts. The board of county commissioners shall by resolution provide for election precincts throughout its county and shall designate polling places within such precincts. The board shall establish new election precincts if required by the provisions of this chapter and may by resolution change the boundaries of election precincts already established. The county auditor shall be able to provide separate lists of voters living within the boundaries of each municipality, ward, school district, and any other special voting district.

Source: SDC 1939, § 16.0801; SL 1959, ch 94; SL 1974, ch 118, § 60; SL 1978, ch 101, § 1; SL 2002, ch 40, § 15.

12-14-1.1. Notice to county auditor of boundary change for local election. The official in charge of a local election shall notify the county auditor at least forty-five days before a local election if any external boundary changes have been made for the precinct, ward, or representation area. In even numbered years, the official in charge of a local election shall notify the county auditor at least one hundred days before the primary election and at least one hundred days before the general election if any external boundary changes have been made.

Source: SL 1974, ch 118, § 14; SL 2010, ch 74, § 12; SL 2017, ch 68, § 5.

12-14-2. Boundaries to be clearly defined in resolution. The resolution of the board of county commissioners establishing new precincts or making any change in precincts already established shall clearly set forth and define the boundaries of the election precincts established or altered.

Source: SL 1915, ch 184, § 1; RC 1919, § 7231; SL 1919, ch 186, § 2; SDC 1939, § 16.0801; SL 1959, ch 94; SL 1974, ch 118, § 61.

12-14-3. Repealed by SL 1974, ch 118, § 200.

12-14-4. Adjustment in size of precincts--Unreasonable waiting time. In all precincts the board of county commissioners shall adjust the size of any precinct at which there was unreasonable waiting time imposed upon the voters at the last preceding general election. Under ordinary circumstances, more than thirty minutes waiting time is deemed unreasonable waiting time except at the time when the polls close.

Source: SDC 1939, § 16.0801 (1); SL 1959, ch 94; SL 1968, ch 78; SL 1974, ch 118, § 62; SL 1976, ch 105, § 31; SL 1996, ch 94, § 3.

12-14-5 to 12-14-8. Repealed by SL 1974, ch 118, § 200.

12-14-9. Location of polling places. Polling places shall be selected with reference to the convenience of the voters in the various election precincts, and should be as near the center of the election precincts as practicable but if in their judgment the convenience of the voters will be served thereby or if communication can be thereby made available, the polling place may be located outside the boundaries of the precinct.

Source: SL 1911, ch 146; SL 1913, ch 204, § 1; SL 1915, ch 184, § 1; SL 1918 (SS), ch 47; RC 1919, § 7231; SL 1919, ch 186, § 2; SL 1933, ch 103, § 2; SL 1935, ch 110, § 2; SDC 1939, § 16.0801 (6); SL 1959, ch 94; SL 1967, ch 73; SL 1968, ch 80; SL 1970, ch 89; SL 1974, ch 118, § 63.

12-14-10. Repealed by SL 1974, ch 118, § 200.

12-14-11. Repealed by SL 1996, ch 94, § 4.

12-14-12. Repealed by SL 2008, ch 34, § 11.

12-14-13. Display of flag at polling places at election. The American flag shall be displayed inside or outside of all polling places within this state at each election.

Source: SL 1987, ch 122.

12-14-14. Sign to identify polling place on election day. On election day a sign, with a minimum size of eleven inches by seventeen inches, shall be conspicuously displayed outside of the entrance to any building in which a polling place is located to clearly identify the building as a polling place.

Source: SL 2007, ch 79, § 1.

12-14-15. Change in precinct boundary or polling place. No precinct boundary or polling place may be changed after the publication of the first notice of election is published as provided in § 12-12-1. If a designated polling place is destroyed or becomes otherwise physically unusable as a polling place after the first notice of election is published, the county auditor shall recommend a new polling place to be approved by the board of county commissioners. The approval of the new polling place may be made by the board of county commissioners during a conference call meeting.

Notice of the new polling place shall be conspicuously posted at the old polling place location. The county auditor shall also provide notice through the local print and broadcast media. The notice shall be sufficient to reasonably inform the affected voters of the change in polling place location or the county auditor shall mail a notice, if possible, no later than three days prior to the election, to each registered voter assigned to the affected polling place.

Source: SL 2007, ch 73, § 1.

12-14-16. Campaign signs at nonpublicly-owned polling place. If any nonpublicly-owned building is used as a polling place, the building owner may designate whether campaign signs will be allowed on the building's premises outside the area defined in § 12-18-3 on election day. If campaign signs are allowed, the building owner may not prohibit signs from any particular campaign.

Source: SL 2007, ch 73, § 2.

12-14-17. Vote centers. Notwithstanding any other law, a jurisdiction may conduct an election using vote centers in accordance with this section. The election shall be conducted in accordance with all applicable election laws and rules other than:

(1) The jurisdiction may use vote centers that allow voters in the jurisdiction to vote at any of the vote centers in lieu of establishing precincts and wards for the election;

(2) Any person who is registered to vote and living in the jurisdiction may be appointed as a polling place superintendent or deputy to any of the vote centers;

(3) Secure, encrypted electronic pollbooks shall be used in lieu of paper registration books;

(4) The entire jurisdiction is designated as one voting precinct for the election; and

(5) Any jurisdiction that uses vote centers shall provide a printed paper voter registration list and a printed and bound paper pollbook to each vote center prior to the opening of the polls.

Source: SL 2012, ch 84, § 1, eff. Feb. 23, 2012; SL 2016, ch 77, § 2; SL 2019, ch 75, § 1.

CHAPTER 12-15 - PRECINCT ELECTION OFFICIALS

12-15-1	Appointment by county auditor of precinct election officials--Names submitted by parties.
12-15-1.1	Repealed.
12-15-1.2	Repealed.
12-15-1.3	Precinct assistant--Appointment--Duties.
12-15-2	Precinct superintendent and precinct deputy to be registered voters and residents of precinct.
12-15-2.1	Precinct superintendent and precinct deputy prohibited to serve as poll watchers.
12-15-3	Distribution of precinct officials among parties--Superintendent from majority party--Eligible appointees when list not provided.
12-15-4	Repealed.
12-15-5	Repealed.
12-15-6	Repealed.
12-15-7	Meetings of precinct officials for instruction on laws and duties--Compensation for attendance.
12-15-8	Repealed.
12-15-9	Oath of precinct officials--Entry in pollbook--Violation of oath as misdemeanor.
12-15-10	Replacement of precinct superintendent or precinct deputy failing to take oath or to serve.
12-15-11	Fee paid precinct superintendent and precinct deputy--Mileage for returning pollbooks and ballot boxes.
12-15-12	Repealed.
12-15-13	Certification of fee of precinct superintendent and precinct deputy--Order for payment from treasury.
12-15-14	Counting boards in large paper ballot precincts--Duties.
12-15-14.1	Counting boards in smaller precincts to avoid unreasonable delay.
12-15-14.2	Repealed.
12-15-14.3	Certain relatives of candidates prohibited from serving on election and counting boards.
12-15-15	Repealed.
12-15-16	Repealed.

12-15-1. Appointment by county auditor of precinct election officials--Names submitted by parties. The county auditor shall, not less than twenty days before any election, appoint a precinct superintendent and two precinct deputies who shall constitute the precinct election board and a precinct superintendent and two precinct deputies of the counting board if the board is appointed pursuant to § 12-15-14 or 12-15-14.1 for each of the voting precincts or vote centers of the county. Additional precinct deputies may be appointed in increments of two. The county auditor shall make the appointments from lists of names submitted by the county central committee of each party. If the county auditor fails to receive the list at least forty-five days prior to an election, the county auditor shall make the appointments.

Source: SDC 1939, §§ 16.1001, 16.1005; SL 1961, ch 98; SDCL § 12-18-1; SL 1972, ch 82, § 6; SL 1972, ch 85, § 1; SL 1974, ch 118, § 64; SL 1975, ch 119, § 1; SL 1976, ch 105, § 32; SL 1977, ch 68, § 9; SL 1983, ch 108, § 2; SL 1985, ch 111, § 1; SL 1987, ch 123; SL 1989, ch 129; SL 1993, ch 112, § 1; SL 1993, ch 118, § 1; SL 1999, ch 69, § 3; SL 2012, ch 84, § 2, eff. Feb. 23, 2012.

12-15-1.1, 12-15-1.2. Repealed by SL 1985, ch 111, §§ 3, 4.

12-15-1.3. Precinct assistant--Appointment--Duties. In addition to the precinct election board, the person in charge of the election may appoint a person to be designated as the precinct assistant. The precinct superintendent shall prescribe the duties and conduct of the precinct assistant. The precinct assistant may not perform any of the duties of the precinct superintendent or precinct deputies unless specified by statute. The precinct assistant may assist with setting up the polling place, directing voters to the proper election board, and providing instruction on the use of the electronic ballot marking system.

Source: SL 2006, ch 70, § 5.

12-15-2. Precinct superintendent and deputy to be registered voters and residents of precinct--Vacancy on precinct election board. A precinct superintendent or precinct deputy appointed under § 12-15-1 shall be a registered voter and a resident of the precinct for which the person is appointed. If the person in charge of the election is unable to appoint a sufficient number of members of the precinct election board who meet the requirements under § 12-15-3 by the time prescribed in § 12-15-1, a vacancy may be filled by appointing any registered voter of the county in which the precinct is located.

Source: SDC 1939, § 16.1002; SL 1939, ch 79; SL 1976, ch 105, § 33; SL 1984, ch 108, § 1; SL 1993, ch 112, § 2; SL 1999, ch 69, § 4; SL 2019, ch 75, § 3.

12-15-2.1. Precinct superintendent and precinct deputy prohibited to serve as poll watchers. No person appointed as a precinct superintendent or precinct deputy may serve as a poll watcher at that election.

Source: SL 1984, ch 109, § 1; SL 1999, ch 69, § 5.

12-15-3. Distribution of precinct officials among parties--Superintendent from majority party--Eligible appointees when list not provided. In the appointment of the members of the precinct election board and of the counting board pursuant to this chapter, if three or more parties have candidates on the official ballot, one precinct deputy shall be appointed from each party whose candidate for Governor in the last gubernatorial election had at least fifteen percent of the votes as shown by the precinct returns. If two parties have candidates on such ballots, the members of the precinct election board shall be selected from each party and the party receiving a majority of the votes cast for Governor in the election precinct at the last preceding gubernatorial election shall have a majority of the members of the precinct election board. The precinct superintendent shall belong to the party whose candidate received the most votes for Governor in the last gubernatorial election in that precinct. If a precinct has been

created since the last election, the precinct superintendent shall belong to the party which received the most votes for Governor in the county in the last gubernatorial election. If no list is provided by a party's county central committee pursuant to § 12-15-1, any registered voter who is not affiliated with a party as provided in this section may be chosen as a precinct election board member for the party which did not submit the list within time frame specified in § 12-15-1.

Source: SDC 1939, § 16.1002; SL 1939, ch 79; SL 1975, ch 119, § 2; SL 1976, ch 105, § 34; SL 1993, ch 118, § 2; SL 1999, ch 69, § 6; SL 2000, ch 72, § 1.

12-15-4. Repealed by SL 1975, ch 119, § 22.

12-15-5. Repealed by SL 1993, ch 112, § 3.

12-15-6. Repealed by SL 1974, ch 118, § 200.

12-15-7. Meetings of precinct officials for instruction on laws and duties--Compensation for attendance. Prior to each general or primary election, each county auditor, assisted by the state's attorney, shall call together the superintendents from each of the precincts in the county, and any precinct deputy as the county auditor may deem appropriate, at some convenient time and place and instruct them on the election laws and the duties of the precinct superintendent and precinct deputies. Any person who is called to the meeting and who attends the meeting shall be paid a fee fixed by the board of county commissioners of not less than five dollars for attending the meeting.

Source: SL 1955, ch 59, §§ 1, 2; SDC Supp 1960, § 16.1013; SL 1961, ch 99, § 1; SL 1974, ch 118, § 65; SL 1975, ch 119, § 4; SL 1976, ch 105, § 36; SL 1990, ch 106; SL 1993, ch 118, § 3; SL 1999, ch 69, § 7.

12-15-8. Repealed by SL 1974, ch 118, § 200.

12-15-9. Oath of precinct officials--Entry in pollbook--Violation of oath as misdemeanor. Before performing election day duties, each precinct superintendent, precinct deputy, and precinct assistant of the election and counting boards shall severally take an oath in the following form:

I, A.B., do solemnly swear (or affirm) that I will perform the duties of precinct superintendent (or precinct deputy or precinct assistant) according to law and the best of my ability and that I will studiously endeavor to prevent fraud, deceit, and abuse and that I will act in an impartial manner in conducting the election about to be held.

The members of the precinct election board may administer the oath to each other. The person administering the oaths shall cause an entry thereof to be made and signed by the person and prefixed to the pollbook. A violation of this oath is a Class 1 misdemeanor.

Source: SDC 1939, §§ 16.0221, 16.1004; SDCL, § 12-6-22; SL 1975, ch 119, § 5; SL 1993, ch 118, § 4; SL 1999, ch 69, § 8; SL 2004, ch 108, § 1; SL 2006, ch 70, § 6.

12-15-10. Replacement of precinct superintendent or precinct deputy failing to take oath or to serve. If any person appointed as precinct superintendent or precinct deputy neglects or refuses to be sworn or to act as such, the position of the person shall be filled by the voters of the precinct present at the polling place when it opens, from the different political parties, as provided in this chapter. The person so elected to fill the vacancy is vested with the same power for that election, as if regularly appointed.

Source: SDC 1939, § 16.1007; SL 1974, ch 118, § 66; SL 1975, ch 119, § 6; SL 1976, ch 105, § 37; SL 1993, ch 118, § 5; SL 1999, ch 69, § 9.

12-15-11. Fee paid precinct superintendent and precinct deputy--Mileage for returning pollbooks and ballot boxes. Each precinct superintendent and precinct deputy shall receive a fee to be established annually by resolution of the board of county commissioners at its first regular meeting each year. The person delivering the pollbooks and ballot boxes to the proper authority at the county seat shall receive the county rate for mileage as established pursuant to § 7-7-24, for miles necessarily traveled in going to and returning from making the delivery.

Source: SDC 1939, § 16.1710; SL 1943, ch 74; SL 1947, ch 85, § 1; SL 1955, ch 54, § 6; SL 1959, ch 99, § 17; SDC Supp 1960, § 16.2217; SL 1963, ch 117, § 3; SL 1965, ch 89; SL 1965, ch 92; SL 1967, ch 74; SDCL, §§ 12-15-12, 12-15-16; SL 1968, ch 85; SL 1969, ch 84; SL 1974, ch 118, § 67; SL 1976, ch 105, § 38; SL 1987, ch 124, § 1; SL 1993, ch 118, § 6; SL 1999, ch 69, § 10.

12-15-12. Repealed by SL 1974, ch 118, § 200.

12-15-13. Certification of fee of precinct superintendent and precinct deputy--Order for payment from treasury. The county auditor shall, on the receipt of the returns of any primary, general, or special election make out a certificate stating the fee that each precinct superintendent and precinct deputy is entitled. The county auditor shall submit the certificate to the board of county commissioners at its next session. The board shall order the fee to be paid out of the county treasury.

Source: SDC 1939, § 16.1710; SL 1943, ch 74; SL 1947, ch 85, § 1; SL 1955, ch 54, § 6; SL 1976, ch 105, § 39; SL 1987, ch 124, § 2; SL 1993, ch 118, § 7; SL 1999, ch 69, § 11.

12-15-14. Counting boards in large paper ballot precincts--Duties. In each election precinct in which the number of ballots to be voted on paper ballots, including absentee ballots, has in prior general elections exceeded three hundred voters, the auditor shall appoint a precinct counting board to be composed of five precinct deputies, one of whom shall be superintendent, who shall count the ballots cast in the general election under the direction of the superintendent of the counting board.

Source: SL 1963, ch 117, §§ 1, 2; SDCL, § 12-15-15; SL 1970, ch 90; SL 1972, ch 86; SL 1974, ch 118, § 68; SL 1975, ch 119, § 7; SL 1976, ch 105, § 40; SL 1993, ch 118, § 8; SL 1999, ch 69, § 12.

12-15-14.1. Counting boards in smaller precincts to avoid unreasonable delay. Notwithstanding § 12-15-14, the county auditor may appoint counting boards in those precincts where the number of ballots to be voted on paper ballots, including absentee ballots, has in prior elections unreasonably delayed the completion of the ballot count even though the total number of ballots cast in prior elections did not exceed three hundred voters.

Source: SL 1975, ch 119, § 8; SL 1976, ch 105, § 41; SL 1993, ch 118, § 9.

12-15-14.2. Repealed by SL 1996, ch 94, § 5.

12-15-14.3. Certain relatives of candidates prohibited from serving on election and counting boards. No person may serve on an election or counting board who is a candidate or related by blood or marriage within the second degree to a candidate who is on the ballot in that precinct.

Source: SL 1991, ch 120; SL 1993, ch 118, § 11.

12-15-15, 12-15-16. Repealed by SL 1974, ch 118, § 200.

CHAPTER 12-16 - BALLOTS AND ELECTION SUPPLIES

12-16-1	Printed ballots to be provided--Candidates listed--Sample ballots--Challenge--Submitted questions.
12-16-1.1	Automatic election of unopposed candidate--Certificate of election.
12-16-1.2	Repealed by SL 1997, ch 80, § 1.
12-16-2	Paper and printing specifications--Columns for parties and independent candidates--Automatic tabulating systems.
12-16-2.1	Colors for ballots.
12-16-3	Repealed by SL 1984, ch 107, § 1B.
12-16-3.1	Order of party columns.
12-16-4	Repealed by SL 1976, ch 105, § 84.
12-16-5	Order of offices placed on ballot.
12-16-6	Presidential and vice-presidential candidates listed--Single square to vote for electors.
12-16-7	Number stated where more than one to be chosen--More than one independent candidate.
12-16-8	Order of listing candidates for same office in same column.
12-16-9	Form for official ballot at general election.
12-16-10	Election of two or more candidates to same office--Official ballot.
12-16-10.1	Candidacy for more than one office prohibited--Exception.
12-16-11	Separate nonpolitical judiciary ballot.
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12-16-35 Listing of candidates and submitted questions on tally sheets.
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12-16-39 Tally sheets for candidates and submitted questions.
12-16-40 12-16-40. Repealed by SL 1976, ch 105, § 84.
12-16-41 Tally lists govern over certificate.

12-16-1. Printed ballots to be provided--Candidates listed--Sample ballots--Challenge--Submitted questions.

The county auditor shall provide printed ballots for each election in which the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a primary election shall contain the name of each candidate who has filed for nomination and is approved. The printed ballots for the election of officers shall contain the name of each candidate whose nomination has been certified or filed with the county auditor in the manner provided by law unless the candidate is deemed elected by having no opposition. The names of the candidates shall appear on the ballot exactly as listed in the declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed on paper of a different color from the official ballot but in the same form. The sample ballots and official ballots shall be printed and in the possession of the county auditor not later than forty-eight days prior to a primary or general election. However, if there is a challenge pursuant to § 12-1-13 or 12-1-16, official ballots may not be printed until the challenge has been resolved or until sixty days prior to the primary or general election, whichever occurs first. The county auditor shall also prepare the necessary ballots if any question is required to be submitted to the voters of the county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to 12-16-11, inclusive.

Source: SL 1897, ch 60, § 13; SL 1901, ch 119, § 1; RPolC 1903, §§ 1886, 1892; SL 1909, ch 144; SL 1913, ch 198; SL 1915, ch 186, § 1; RC 1919, §§ 7236, 7241; SL 1925, ch 160; SL 1935, ch 107, § 2; SDC 1939, §§ 16.1101, 16.1105(4); SL 1944 (SS), ch 2, § 4; SL 1953, ch 75, § 3; SL 1955, ch 55, § 2; SL 1957, ch 84, § 2; SL 1959, ch 95; SDC Supp 1960, § 16.0613; SL 1963, ch 112; SL 1965, ch 88; SDCL § 12-19-26; SL 1971, ch 87, § 4; SL 1972, ch 82, § 4; SL 1974, ch 118, § 69; SL 1979, ch 97, § 5; SL 1981, ch 124; SL 1985, ch 112, § 1; SL 1987, ch 125; SL 2010, ch 74, § 13; SL 2011, ch 79, § 1; SL 2013, ch 66, § 1; SL 2021, ch 66, § 1.

12-16-1.1. Automatic election of unopposed candidate--Certificate of election. Any candidate who has been duly nominated to an elective office except State Legislature, political or nonpolitical, having no opposing candidate at the general election shall automatically be elected and the county auditor or secretary of state, as the case may be, shall, following the official canvass, issue a certificate of election to such candidate and his name shall not be printed on the general election ballot.

Source: SL 1971, ch 82, § 1; SL 1979, ch 98, § 3.

12-16-1.2. Repealed by SL 1997, ch 80, § 1.

12-16-2. Paper and printing specifications--Columns for parties and independent candidates--Automatic tabulating systems. All official ballots shall be printed on good quality bond paper, in black ink, and in the English language. The names of candidates for each office shall be printed in large type under the designation of the party for which the nomination is made, so that all the names of candidates for each party are in separate columns, the names of candidates for each office are directly opposite each other, and the names of all independent candidates occupy a separate column under the heading, independent candidates. In precincts using automatic tabulating systems, the ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order or arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. No individual race or ballot question may be divided between pages. One ballot card may be used for recording a voter's vote on all races and measures.

Source: SDC 1939, § 16.1105 (1); SL 1974, ch 118, § 70; SL 1977, ch 109, § 2; SL 1994, ch 110, § 1; SL 1997, ch 81, § 1; SL 2007, ch 76, § 3.

12-16-2.1. Colors for ballots. The State Board of Elections shall, by rule adopted pursuant to chapter 1-26, establish the color for sample and official ballots and of ballots to be voted in all elections so as to differentiate between the political, nonpolitical, party, and ballot question ballots. In primary elections, a separate ballot label booklet, marking device, and voting booth shall be used for each political party holding a primary.

Source: SL 1929, ch 118, § 12; SDC 1939, § 16.0218; SL 1961, ch 93, § 2; SDCL, § 12-6-15; SL 1971, ch 91; SL 1974, ch 118, § 71; SL 1993, ch 118, § 12; SL 1994, ch 110, § 2.

12-16-3. Repealed by SL 1984, ch 107, § 1B.

12-16-3.1. Order of party columns. If more than one political party qualifies for the general election, the position of each party's candidates on the ballot shall be determined by drawing of lots by the secretary of state at the same time and in the same manner as prescribed for candidates in § 12-16-8. Representatives of the parties may be present when the arrangement is determined. On paper ballots, the first party name drawn shall be placed in the left-hand column, the second party name drawn shall be placed in the next column, and each succeeding party name drawn shall be placed on the ballot in the order drawn. On direct recording electronic screens, on electronic ballot marking system screens, and on optical scan ballots, the candidate names shall appear in the order in which their party name was drawn.

Source: SL 1984, ch 107, § 2; SL 1994, ch 110, § 3; SL 1997, ch 81, § 2; SL 2005, ch 92, § 1.

12-16-4. Repealed by SL 1976, ch 105, § 84.

12-16-5. Order of offices placed on ballot. The names of the candidates shall be placed upon the ballot in the following order: presidential electors, if any, United States Senator, if any, Representatives in Congress, state officials, legislative, and county candidates.

Source: SL 1925, ch 160; SL 1929, ch 116, § 1; SDC 1939, § 16.1105 (3).

12-16-6. Presidential and vice-presidential candidates listed--Single square to vote for electors. The group of presidential electors in each column shall be preceded by the surnames of the respective candidates for President and vice president for whom they are pledged; as for instance, "* Coolidge and Dawes electors," "* Davis and Bryan electors," etc., which shall be printed conspicuously and be preceded by a square as above indicated.

Source: SL 1925, ch 160; SDC 1939, § 16.1105 (2); SL 1964, ch 60, § 1; SL 1976, ch 105, § 43.

12-16-7. Number stated where more than one to be chosen--More than one independent candidate. If more than one candidate is to be nominated or elected to the same office the ballot shall so state, as for instance, "For state senator, any two to be elected." In the independent column if there is more than one candidate for a single office the ballot shall so state, as for instance, "For United States Senator, one to be elected."

Source: SL 1925, ch 160; SDC 1939, § 16.1105 (2); SL 1964, ch 60, § 1; SL 1974, ch 118, § 72.

12-16-8. Order of listing candidates for same office in same column. If there is more than one candidate seeking nomination or election for the same office in any column, the names of candidates for that office shall be arranged by lot, under the supervision of the election official in whose office the candidates' nominations were filed. Each candidate has the right to be present or represented when the arrangement is being determined.

Source: SDC 1939, § 16.1105 (1); SL 1974, ch 118, § 73; SL 1999, ch 74, § 1.

12-16-9. Form for official ballot at general election. The form of the official general election ballot shall be prescribed by the State Board of Elections in accordance with other provisions of the law.

Source: SL 1925, ch 160; SL 1929, ch 116, § 2; SDC 1939, § 16.1105 (5); SL 1964, ch 60, § 2; SL 1974, ch 118, § 74; SL 1976, ch 105, § 44.

12-16-10. Election of two or more candidates to same office--Official ballot. If two or more members of the State House of Representatives or the county commission are to be elected at large from a county, that portion of the official ballot shall also be prescribed, in accordance with § 12-16-8, by the State Board of Elections.

Source: SDC 1939, § 16.1105 as added by SL 1964, ch 60, § 2; SL 1972, ch 87; SL 1976, ch 105, § 45; SL 1985, ch 112, § 2.

12-16-10.1. Candidacy for more than one office prohibited--Exception. No person's name may appear on the general election ballot as a candidate for election to more than one public office except for the office of President of the United States or vice president of the United States.

Source: SL 2019, ch 72, § 2.

12-16-11. Separate nonpolitical judiciary ballot. At each general election when judicial officers are elected, there shall be a separate ballot entitled "nonpolitical judiciary ballot" which shall be prescribed by the State Board of Elections.

Source: SL 1921, ch 224, § 7; SDC 1939, § 16.1105 (6); SL 1971, ch 92, § 1; SL 1974, ch 118, § 75; SL 1976, ch 105, § 46.

12-16-12, 12-16-13. Repealed by SL 1974, ch 118, § 200.

12-16-14. Affidavit for correction of errors in ballot--Circuit court order--Patent errors corrected without order. Whenever it shall appear by affidavit that an error has occurred in the publication of the names or descriptions of the candidates nominated for office or in the printing of any sample or official ballots, the judge of the circuit court, upon application of any voter, shall by an order require the county auditor or other officer charged with the duty of preparing ballots to correct such error or to show cause at such time and place as under the circumstances he may deem necessary why such error should not be corrected. The county auditor or such other officer shall, upon his own motion, correct without delay any patent error in ballots which he may discover or which shall be brought to his attention.

Source: SL 1897, ch 60, § 16; RPolC 1903, § 1889; RC 1919, § 7238; SDC 1939, § 16.1102; SL 1974, ch 118, § 76.

12-16-15. Posting of sample ballots. The county auditor shall post sample ballots in a manner that can be plainly seen and read by the public.

Source: SDC 1939, §§ 16.1101, 16.1304; SL 1959, ch 96; SL 1963, ch 112; SDCL, § 12-13-13; SL 1974, ch 118, § 77; SL 1997, ch 79, § 2.

12-16-16. Publication of facsimile ballots--Time for publication. The county auditor shall publish, in each official newspaper of the county, facsimiles of the official ballots of each election in which the voters of the entire county participate. The facsimile shall be published at least once in each official newspaper within the two calendar weeks prior to each election.

Source: SDC 1939, § 16.1101 as added by SL 1963, ch 112; SDCL § 12-13-14; SL 1972, ch 82, § 5; SL 1974, ch 118, § 78; SL 1979, ch 100, § 3; SL 1982, ch 28, § 45; SL 1982, ch 126, § 3; SL 1991, ch 121, § 1; SL 1997, ch 79, § 3; SL 2003, ch 43, § 2; SL 2006, ch 69, § 1; SL 2019, ch 76, § 1.

12-16-16.1. Publication of facsimile ballots by counties using same legal newspaper. If two or more counties use the same legal newspaper and use the same type of ballot, that portion of the ballot which each county votes on in common may have its facsimile published once. If a portion of the ballot is not voted on in common, a facsimile of that portion of the ballot may be published simultaneously but separate from the common portion of the ballot and shall contain a description of who will vote on that portion of the ballot.

Source: SL 1991, ch 121, § 2.

12-16-16.2. Publication of facsimile ballots--Compensation of newspapers. This section applies when a facsimile ballot is published. The newspaper shall be compensated for publication of the facsimile ballot at the same rate as the general display rate or the qualifying contract rate, whichever is less, for the newspaper. The published facsimile may be reduced in size proportionately up to fifty percent but in no case may the ballot wording be in a type less than eight point. If a portion of a candidate ballot is not voted on in the entire county, a facsimile of that portion of the ballot may be published simultaneously but separate from the candidate ballot and shall contain a description of who will vote on that portion of the ballot. If at least fifty percent of a ballot is blank, the blank portion does not need to be printed.

Source: SL 2006, ch 69, § 2.

12-16-17. Number of official and sample ballots provided to precincts--Reserve supply retained and delivered on request--Samples or photocopies used in emergency. The county auditor shall provide official and sample ballots to each precinct in the county. The quantity provided for a primary election shall be at least ten percent more than the number of votes cast for the gubernatorial candidate of the respective parties in the preceding gubernatorial primary election. The quantity provided for a general election shall be at least ten percent more than the number of votes cast for all candidates for Governor as shown by the returns of the last preceding gubernatorial election. The county auditor shall also provide and retain in that office an ample supply of all official ballots, and if at any time before or during an election, an additional supply for any precinct shall be requested by the precinct superintendent, the county auditor shall immediately cause to be delivered, to the precinct superintendent, a supply of extra official ballots. If the supply of official ballots has been completely exhausted, the county auditor may make emergency substitution by delivering or authorizing the use of sample ballots or photocopies of the official ballot. The election board shall account for any sample ballots or photocopies authorized to be used.

Source: SDC 1939, §§ 16.0218, 16.1101; SL 1959, ch 91; SL 1959, ch 95; SL 1961, ch 93, § 2; SL 1963, ch 112; SDCL, § 12-6-17; SL 1972, ch 82, §§ 1, 5; SL 1974, ch 118, § 79; SL 1976, ch 105, § 47; SL 1999, ch 69, § 13.

12-16-18. Delivery of ballots to precinct superintendents--Packaging and marking--Receipts. The county auditor shall, not later than the opening of the polls on the day of the election, cause to be delivered to the superintendent of election of each precinct the proper number of ballots provided for the use of the voters of such precinct at such election. The same shall be delivered in sealed packages, with marks on the outside of each package clearly

stating the polling place for which it is intended, together with the number of ballots enclosed. Receipts for ballots, showing the number delivered, shall be given by the superintendent of election, which receipts shall at once be forwarded to the county auditor.

Source: SL 1897, ch 60, § 17; RPolC 1903, § 1890; RC 1919, § 7239; SL 1929, ch 118, § 25; SL 1931, ch 143, § 1; SDC 1939, §§ 16.0219, 16.1103; SL 1961, ch 100; SDCL, § 12-6-20; SL 1972, ch 82, § 2; SL 1974, ch 118, § 80.

12-16-19. Delivery of ballots and supplies at instruction meeting--Sheriff to receive in absence of precinct superintendent or precinct deputy. The ballots, together with all other election supplies may be delivered to the precinct superintendent or precinct deputy for each precinct at the time the precinct superintendent and precinct deputies are called together to receive instructions pursuant to § 12-15-7. If any precinct superintendent or precinct deputy from that precinct is not present to receive instructions, the ballots, election supplies, and the ballot boxes for the precinct shall be delivered to the sheriff for delivery to the precinct superintendent.

Source: SDC 1939, § 16.1103; SL 1961, ch 100; SL 1974, ch 118, § 81; SL 1999, ch 69, § 14.

12-16-20. Delivery of unbroken package to election board--Receipts. The precinct superintendent or precinct deputy receiving the package of ballots shall at the opening of the polls on election day cause the same to be delivered with the seal unbroken to the election board of the election precinct. The precinct superintendent or precinct deputy shall receive a receipt from a member of the precinct board and shall return the receipt to the county auditor with the election returns.

Source: SDC 1939, § 16.1103; SL 1961, ch 100; SL 1999, ch 69, § 15.

12-16-21. Replacement of ballots lost, stolen, or not delivered--Additional ballots. In case the ballots to be furnished to any precinct are, for any reason, not duly delivered or received, or if the delivery has been exhausted, destroyed, or stolen, the precinct superintendent shall immediately procure from the county auditor replacement ballots.

Source: SDC 1939, § 16.1104; SL 1974, ch 118, § 82; SL 1999, ch 69, § 16.

12-16-22. Repealed by SL 1974, ch 118, § 200.

12-16-23. Voting rights notices and instructions. The county auditor shall cause to be printed, in large type on cards in the English language, voting rights notices and instructions for the guidance of voters in preparing their ballots in the form as prescribed by the State Board of Elections and deliver the cards with the ballots in sufficient numbers to meet the requirements of § 12-16-25.

Source: SL 1897, ch 60, § 34; RPolC 1903, § 1894; RC 1919, § 7243; SDC 1939, § 16.1107; SL 1974, ch 118, § 83; SL 2011, ch 80, § 1.

12-16-24. Repealed by SL 1974, ch 118, § 200.

12-16-25. Posting of instruction cards and posters in polling place. A member of the precinct election board may post no less than one of the instruction cards in each booth or compartment provided for the voting of ballots and not less than two of the instruction posters elsewhere in and about the polling place upon the day of election.

Source: SDC 1939, § 16.1107; SL 1999, ch 69, § 17; SL 2006, ch 28, § 2.

12-16-26. Construction of ballot boxes--Openings. Ballot boxes shall be so constructed to preclude the removal of any material therefrom except by means of an opening which may be secured in the closed position by means of a metal seal which will preclude opening of the box without the destruction of the seal; materials used in the construction of ballot boxes shall be such that they will prevent tampering with or mutilation of ballots within them. There shall be a second opening in each such ballot box, at the top when the box is upright, not larger than is sufficient to admit a single closed ballot to be inserted therein at one time.

Source: SL 1963, ch 118; SL 1963, ch 119; SDCL, § 12-16-27; SL 1974, ch 118, § 84.

12-16-27. Repealed by SL 1974, ch 118, § 200.

12-16-28. Pollbooks--Voter registration lists. The person in charge of an election shall provide paper ballot precincts with a pollbook in the form prescribed by the State Board of Elections for each election precinct for the purposes of § 12-18-5. If any jurisdiction uses electronic pollbooks, but does not use vote centers, the person in charge of the election shall provide a printed paper voter registration list and a printed and bound paper pollbook to each precinct prior to the opening of the polls.

Source: PolC 1877, ch 27, § 46; CL 1887, § 1485; RPolC 1903, § 1895; RC 1919, § 7244; SL 1931, ch 143, § 2; SDC 1939, § 16.1108; SL 1974, ch 118, § 85; SL 1993, ch 113, § 1; SL 2019, ch 75, § 2.

12-16-29. Repealed by SL 1974, ch 118, § 200.

12-16-30. Official stamp for ballots--Delivery of stamp and supplies. Before opening the polls the county auditor or officer charged with the conduct of a local election shall deliver to the precinct superintendent of each precinct within the county, for use at the polling place of the precinct, a rubber stamp. The stamp shall contain the words, official ballot, the name or number of the election precinct, the name of the jurisdiction holding the election, and the date of the election. The date may be omitted if it is pre-printed on all ballots for the election. The stamp and other supplies for the election shall be delivered and receipted for by a member of the precinct election board in the manner and at the time as provided in this chapter for the delivery and receipt of packages of ballots.

Source: SDC 1939, § 16.1106; SL 1974, ch 118, § 86; SL 1998, ch 82, § 1; SL 1999, ch 69, § 18.

12-16-31. Repealed by SL 1974, ch 118, § 200.

12-16-32. Separate tally sheets provided. A separate tally sheet shall be provided for computing the votes for candidates of each political party, for independent candidates, and for judicial offices, and for all constitutional amendments, referred laws and initiated measures submitted to the voters at such elections as they appear on separate ballots.

Source: SDC 1939, § 16.1109 as added by SL 1961, ch 101, § 1; SL 1974, ch 118, § 87.

12-16-33. Repealed by SL 1974, ch 118, § 200.

12-16-34. Rules and columns on tally sheets. The tally sheets in the area for tallying votes cast shall be ruled by horizontal and perpendicular lines so as to form squares of suitable size to contain five tally marks each, four of which may be upright and the fifth crossing the same at an oblique angle, every fifth perpendicular line in the ruling to be red, so that five squares for tally marks are contained between each two red lines. In a perpendicular column at the left margin of each tally sheet, there shall be left sufficient space so that there may be printed or written in ink in plain and legible manner the names of all candidates and all questions submitted to the voters at the election, in the same order that they are arranged upon the official ballots used in such election. At the extreme right margin of the tally sheet there shall be a perpendicular column labeled as follows: "Total Votes."

Source: SDC 1939, § 16.1109; SL 1961, ch 101, § 1; SL 1997, ch 81, § 3.

12-16-35. Listing of candidates and submitted questions on tally sheets. The names of candidates and all questions submitted to the voters shall be listed in the perpendicular column at the left of the tally sheet as required by § 12-16-34.

Source: SDC 1939, § 16.1109 as added by SL 1961, ch 101, § 1.

12-16-36. Space for tally marks and vote totals on tally sheets. There shall be at the right of each name or question in one or two horizontal lines a sufficient number of squares for the tally marks as provided in § 12-16-34, on the tally sheets for each precinct, to contain the tally marks for one-third more votes than were cast in the precinct at the last preceding general election, not exceeding six hundred in any case. There shall be sufficient spaces at the right of the squares on the tally sheet so that a member of the precinct election board may write out the total number of votes tallied for the candidate or question.

Source: SDC 1939, § 16.1109; SL 1961, ch 101, § 1; SL 1997, ch 81, § 4; SL 1999, ch 69, § 19.

12-16-37. Space for tallying votes on submitted questions. There shall be sufficient spaces at the right of the squares on each tally sheet used for questions submitted to the voters to tally in full the total number of votes tallied for each question voted upon.

Source: SL 1893, ch 82, § 1; RPolC 1903, § 1896; RC 1919, § 7245; SDC 1939, § 16.1109; SL 1961, ch 101, § 1.

12-16-38. Tallying and marking of votes--Entry of total votes. After the tallying and marking in the tally sheet of the votes for each candidate, the number of votes so tallied for each candidate shall be counted, and the numerical result shall be placed in the column opposite the candidate's name.

Source: SDC 1939, § 16.1109 as added by SL 1961, ch 101, § 1; SL 1997, ch 81, § 5.

12-16-39. Tally sheets for candidates and submitted questions. The tally sheets for candidates for public office and submitted questions shall be prescribed by the State Board of Elections.

Source: SL 1893, ch 82, § 3; RPolC 1903, § 1898; RC 1919, § 7246; SDC 1939, § 16.1109; SL 1961, ch 101, § 1; SL 1976, ch 105, § 48.

12-16-40. Repealed by SL 1976, ch 105, § 84.

12-16-41. Tally lists govern over certificate. In any case in which the certificate of the members of the precinct election board as to the number of votes cast for any candidate or in favor of or against any question submitted to the voters may not agree with the votes as shown by the tally list, the canvassing board to which the returns are made shall take as correct the number of votes shown by the tally list rather than the certificate.

Source: SDC 1939, § 16.1109; SL 1961, ch 101, § 1; SL 1974, ch 118, § 88; SL 1999, ch 69, § 20.

CHAPTER 12-17 - VOTING MACHINES [REPEALED]

12-17-1 to 12-17-19 Repealed.

12-17-1 to 12-17-4. Repealed by SL 1996, ch 94, §§ 6 to 9.

12-17-5. Repealed by SL 1974, ch 118, § 200.

12-17-6 to 12-17-19. Repealed by SL 1996, ch 94, §§ 10 to 24.

CHAPTER 12-17A - ELECTRONIC VOTING SYSTEMS [REPEALED]

[Repealed by SL 1994, ch. 110, § 22]

CHAPTER 12-17B - AUTOMATIC TABULATING SYSTEMS

12-17B-1 Definition of terms.
12-17B-2 Requirements for automatic tabulating, electronic ballot marking, and election voting equipment systems--Approval of changes or modifications.
12-17B-2.1 Repealed.
12-17B-3 Authority of governing body to adopt, experiment with or abandon system.
12-17B-4 Contract by political subdivision with county for use of system.
12-17B-5 Testing system before election--Public notice.
12-17B-6 Sufficient amount of equipment and supplies required.
12-17B-6.1 Electronic ballot marking system required where candidate for federal office on ballot.
12-17B-7 Voting instructions--Manner of giving instructions.
12-17B-8 Repealed.
12-17B-9 Transporting sealed ballot box.
12-17B-10 Direction of proceedings at counting location--Open to public.
12-17B-11 Equal party representation amongst persons employed to receive, process or tabulate ballots--Submission of employee list--Oath required.
12-17B-12 Test of system repeated prior to counting ballots.
12-17B-13 Procedure for tabulating votes--Results as unofficial returns--Certification by board.
12-17B-13.1 Operation of automatic tabulating equipment--Return of ballots--Out-stacking of ballots.
12-17B-14 Duplicate ballots substituted for rejected ballots.
12-17B-15 Sealing and storing tabulated ballots and program board.
12-17B-16 Recount procedures.
12-17B-17 Promulgation of rules.

12-17B-1. Definition of terms. Terms used in this chapter mean:

(1) "Automatic tabulating equipment," the apparatus necessary to automatically examine and count votes as designated on ballots or entered directly into a computer by means of a touch screen or other data entry device and data processing machines which can be used for counting these votes and tabulating results;

(2) "Ballot," paper ballots containing the names of candidates and statements of measures to be voted on;

(3) "Counting location," any location selected by the person in charge of the election for the counting of votes cast in an election. A counting location shall be within the territorial jurisdiction of such person unless there is no suitable tabulating equipment available within the jurisdiction. However, in any event, all counting locations shall be within this state;

(4) "Electronic ballot marking system," any electronic device which marks votes on a ballot;

(5) "Optical scan," a procedure in which votes are tabulated by means of examining marks made in voting response locations on the ballots with an optical mark reader (OMR);

(6) "Resolution board," a board at an automatic tabulating location comprised of a representative from each political party having a candidate on the ballot and whose candidate on the county-wide ballot at the last general election received at least fifteen percent of the votes. The county auditor may request additional board members balanced evenly by party. If the resolution board consists of more than one member from each party, the party shall designate which member of the party shall serve as co-leader of the resolution board. The co-leaders shall ensure that each board member is conducting resolution board duties uniformly and in accordance with applicable statutes and administrative rules. The board shall determine the disposition of those ballots which cannot be properly counted by the tabulating equipment and observe the activities at the counting location on behalf of the board member's respective party affiliation. In strictly nonpartisan elections, the resolution board shall be comprised of two persons who are not employees of the jurisdiction conducting the election and shall be appointed by the person in charge of the election.

Source: SL 1994, ch 110, § 5; SL 2002, ch 75, § 1; SL 2005, ch 92, § 2; SL 2008, ch 34, § 12; SL 2018, ch 81, § 1, eff. Feb. 5, 2018.

12-17B-2. Requirements for automatic tabulating, electronic ballot marking, and election voting equipment systems--Approval of changes or modifications. Any automatic tabulating or electronic ballot marking system used in an election shall enable the voter to cast a vote for all offices and on all measures on which the voter is entitled to vote. No automatic tabulating, electronic ballot marking, or election voting equipment system may be connected to the internet. No ballot marking device may save or tabulate votes marked on any system. Each system shall fulfill the requirements for election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state. No system may be approved unless the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.

Source: SL 1994, ch 110, § 6; SL 2005, ch 92, § 3; SL 2018, ch 81, § 2, eff. Feb. 5, 2018.

12-17B-2.1. Repealed by SL 2018, ch 81, § 3, eff. Feb. 5, 2018.

12-17B-3. Authority of governing body to adopt, experiment with or abandon system. Any governing body having supervision of elections within any political subdivision may adopt, experiment with, or abandon any automatic tabulating or electronic ballot marking system approved for use by the State Board of Elections. Any governing body may use the system in all or some of the precincts within its jurisdiction or in combination with any other type of voting system approved for use by the State Board of Elections.

Source: SL 1994, ch 110, § 7; SL 2005, ch 92, § 4; SL 2018, ch 81, § 4, eff. Feb. 5, 2018.

12-17B-4. Contract by political subdivision with county for use of system. The governing body of a political subdivision may contract with any county for the use of an automatic tabulating or electronic ballot marking system for elections within the political subdivision.

Source: SL 1994, ch 110, § 8; SL 2005, ch 92, § 5; SL 2018, ch 81, § 5, eff. Feb. 5, 2018.

12-17B-5. Testing system before election--Public notice. Not more than ten days prior to an election, the person in charge of the election shall conduct a test of the automatic tabulating equipment to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the test shall be given at least forty-eight hours prior to the test by publication once in the official newspaper of the election jurisdiction. The test shall be open to the public. If any error is detected, the cause of the error shall be determined and corrected and an errorless count shall be made before the automatic tabulating equipment is approved.

Source: SL 1994, ch 110, § 9.

12-17B-6. Sufficient amount of equipment and supplies required. The person in charge of the election shall provide a sufficient number of voting equipment and supplies to accommodate the voters and avoid unreasonable waiting times for casting ballots.

Source: SL 1994, ch 110, § 10; SL 2005, ch 92, § 6.

12-17B-6.1. Electronic ballot marking system required where candidate for federal office on ballot. If a candidate for federal office appears on the ballot at a polling place, such polling place is required to have an electronic ballot marking system present.

Source: SL 2006, ch 70, § 1.

12-17B-7. Voting instructions--Manner of giving instructions. Before entering the voting booth, any voter may request instruction in the proper procedure for marking the ballot to ensure that the tabulating equipment is able to read the vote cast. No instructions may be given to the voter while in the voting booth. However, any voter using an electronic ballot marking system may request instruction in the proper operation of the system at any time. No precinct

official or person assisting a voter may in any manner request, suggest, or seek to persuade or induce any voter to cast a vote for any particular ticket, candidate, or measure to be voted on. All instructions shall be given in such a manner that it may be observed by other persons in the polling place.

Source: SL 1994, ch 110, § 11; SL 2004, ch 108, § 2; SL 2006, ch 70, § 2.

12-17B-8. Repealed by SL 2005, ch 92, § 7.

12-17B-9. Transporting sealed ballot box. Upon completion of the voting and after sealing the ballot box, two of the members of the precinct election board, of different major political parties, shall, by the most direct route, transport the box to the central counting location designated by the person in charge of the election or the ballots may be transported to the counting location by a sheriff's deputy and two deputy county auditors, one of each major political party, or by two deputy county auditors, one of each major political party.

Source: SL 1994, ch 110, § 13; SL 1999, ch 69, § 21.

12-17B-10. Direction of proceedings at counting location--Open to public. All proceedings at the counting location shall be under the direction of the person in charge of the election and shall conform to the requirements of the voting system. The proceedings shall be open to the public. No person, who is not employed or authorized for the purpose, may touch any ballot, ballot box, or equipment used in the return of the ballots to the counting location or the tabulation process.

Source: SL 1994, ch 110, § 14.

12-17B-11. Equal party representation amongst persons employed to receive, process or tabulate ballots--Submission of employee list--Oath required. Except for any specially trained technicians representing the equipment vendor and required for the operation of the automatic tabulating equipment, there shall be equal representation from each political party having a candidate on the ballot and whose candidate on the county-wide ballot at the last general election received at least fifteen percent of the votes amongst those employed or authorized to receive, process, or tabulate the ballots. The proposed list of employees shall be submitted to each county party chairperson at least thirty days prior to the election. Each person shall, prior to discharging any duties, take and subscribe to an oath as prescribed by the State Board of Elections.

Source: SL 1994, ch 110, § 15; SL 2007, ch 75, § 3.

12-17B-12. Test of system repeated prior to counting ballots. The test required by § 12-17B-5 shall be repeated immediately before the start of the official count of the ballots.

Source: SL 1994, ch 110, § 16.

12-17B-13. Procedure for tabulating votes--Results as unofficial returns--Certification by board. The procedure for tabulating the votes by the automatic tabulating equipment shall be under the direction of the person in charge of the election, and shall conform to the specifications and requirements of the automatic tabulating equipment. The results printed by the automatic tabulating equipment shall constitute the immediate unofficial returns. These returns shall be open to the public. The final returns printed by the automatic tabulating equipment shall be presented to the canvassing board for review and certification as the official returns.

Source: SL 1994, ch 110, § 17.

12-17B-13.1. Operation of automatic tabulating equipment--Return of ballots--Out-stacking of ballots. If automatic tabulating equipment is located at a polling place for processing ballots while the polls are open, the equipment may not be operated in a manner which returns an over-voted or partially under-voted ballot to the voter. The equipment shall be operated in a manner which returns any ballot that appears to the tabulating equipment to be blank or has any possible mark which the tabulating equipment cannot determine. If the ballot is returned to the voter, the voter may choose to remark the ballot, obtain a new ballot, or resubmit the ballot.

Any central count automatic tabulating equipment shall contain the capability to out-stack ballots and shall be operated in a manner to out-stack any ballot which appears to the tabulating equipment to be blank or has any possible mark which the tabulating equipment cannot determine. If the ballot contains any such mark, the resolution board shall examine the mark and make a determination of any individual vote according to the rules promulgated pursuant to chapter 1-26 by the state board of elections. The resolution board shall make a duplicate ballot as prescribed in § 12-17B-14 which shall be counted by the automatic tabulating equipment.

Source: SL 2002, ch 75, § 3; SL 2008, ch 34, § 13.

12-17B-14. Duplicate ballots substituted for rejected ballots. The resolution board shall determine the disposition of those ballots which cannot be properly counted by the tabulating equipment. A true duplicate copy shall be made of any ballot in question and substituted for the rejected ballot. All duplicate ballots shall be clearly labeled "duplicate," shall bear a serial number which shall be registered on the rejected ballot, and shall be counted in lieu of the rejected ballot. The resolution board may observe the activities at the counting location on behalf of their respective political party.

Source: SL 1994, ch 110, § 18.

12-17B-15. Sealing and storing tabulated ballots and program board. After the tabulating procedure is completed, the ballots shall be placed in boxes and resealed. Any program board which may be used in the automatic tabulating equipment shall be removed and stored similarly to the ballots.

Source: SL 1994, ch 110, § 19.

12-17B-16. Recount procedures. Automatic tabulating equipment shall be tested prior to a recount or election contest as provided in § 12-17B-5, and then the official ballots shall be recounted. The new returns printed by the automatic tabulating equipment shall be certified by the recount board as the official returns for the election. They shall be signed and sealed by the person in charge of the election and made public.

Source: SL 1994, ch 110, § 20.

12-17B-17. **Promulgation of rules.** The State Board of Elections may promulgate rules pursuant to chapter 1-26 concerning:

(1) The criteria and procedure for approving voting systems pursuant to this chapter;

(2) Notices and forms;

(3) Test procedures; and

(4) The arrangement and conduct of voting, absentee voting, tabulating, preparing returns, and recounts.

Source: SL 1994, ch 110, § 21.

CHAPTER 12-18 - ARRANGEMENTS AND CONDUCT OF VOTING

12-18-1 Preparation for voting--Booths, electronic ballot marking system, and supplies to be provided--Private voting required.
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12-18-2 Repealed.
12-18-3 Electioneering, offices, distracting communications devices, and signature gathering prohibited near polling place--Violation as misdemeanor.
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12-18-4 Examination and sealing of ballot box before opening of polls--Closed until counting of vote.
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12-18-5 Poll lists maintained by member of precinct election board.
12-18-5.1 Repealed.
12-18-5.2 Repealed.
12-18-6 Repealed.
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12-18-6.3 Verification of identity--Provisional ballot if identity not verified.
12-18-7 Repealed.
12-18-7.1 Registered persons entitled to vote--Voting on acknowledgment notice--Verification with auditor--Emergency voting card.
12-18-7.2 Voting without acknowledgment notice on verification by auditor--Emergency voting card.
12-18-7.3 Repealed.
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12-18-18 Repealed.
12-18-19 Repealed.
12-18-20 Repealed.
12-18-21 Repealed.
12-18-21.1 Repealed.
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12-18-23 Return to member of precinct election board of unmarked ballot.
12-18-24 Replacement of spoiled ballots--Marking and preservation.
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12-18-26 Repealed.
12-18-27 Marked ballot not to be publicized--Immediate deposit in ballot box.
12-18-28 Deposit of folded ballot in ballot box.
12-18-29 12-18-29 to 12-18-31. Repealed.
12-18-32 Packaging and return of unused ballots--Record accounting for ballots.
12-18-33 Comparison of ballot accounting with record of number sent to precinct--Notice and correction of discrepancies.
12-18-34 Repealed.
12-18-35 12-18-35 to 12-18-38. Repealed.
12-18-39 Provisional ballot--Eligibility.
12-18-40 Use of provisional ballot.
12-18-41 Repealed.

12-18-1. Preparation for voting--Booths, electronic ballot marking system, and supplies to be provided--Private voting required. The superintendent of the election precinct is responsible for having the polling place ready to accommodate the voters in the precinct by the time the polls open. The booths, electronic ballot marking system, and supplies which enable the voter to complete the voter's ballot shall be provided by the person in charge of the election. If a voter chooses to use a sip and puff device or an A/B switch device with the electronic ballot marking system, the voter shall provide such device. All voting at the polling place shall be in private voting booths or compartments and, except as provided in § 12-18-25, shall be screened from observation.

Source: SDC 1939, § 16.1005; SL 1972, ch 82, § 6; SL 1974, ch 118, § 102; SL 1976, ch 105, § 51; SL 1985, ch 113; SL 1996, ch 94, § 25; SL 2006, ch 70, § 3.

12-18-1.1. Verification of blank ballots received. Before the opening of the polls the members of the precinct election board shall count and verify against the receipt given the ballots delivered to the precinct for the purposes of the election.

Source: SL 1974, ch 118, § 104; SL 1999, ch 69, § 22.

12-18-1.2. Specific duties of precinct superintendent. The precinct superintendent shall have charge of the conduct at the polling place and supervise the precinct deputies. The precinct superintendent shall issue instructions and assign the duties to each person for maintaining the registration lists and the pollbook and issuing and receiving the official ballots. The duties for each person may be interchanged or rotated during the course of the day.

Source: SDC 1939, §§ 16.0223, 16.1006; SDCL, §§ 12-6-25, 12-18-12; SL 1972, ch 82, § 7; SL 1974, ch 118, § 106; SL 1989, ch 130; SL 1994, ch 107, § 27; SL 1999, ch 69, § 23.

12-18-1.3. Repealed by SL 2005, ch 92, § 8.

12-18-1.4. Attendance by election officials during voting and counting. At all times after the polls are opened the precinct election officials shall remain at the polling place with the ballot boxes until the polls are closed and they have completed their duties.

Source: SL 1974, ch 118, § 105; SL 1975, ch 123; SL 1975, ch 119, § 10; SL 1993, ch 118, § 14; SL 1996, ch 94, § 27.

12-18-1.5. Attendance until polls closed by precinct superintendent and precinct deputies in precincts with counting boards--Attendance by board members during counting. In those precincts where counting boards have been appointed, the precinct superintendent and precinct deputies shall remain at the place of election at all times after the polls are opened until the polls are closed, the election supplies are turned over to the counting board and the certificate and receipt required by § 12-20-1 have been signed. At this time, the counting board shall assume its duties and the election board is excused. The members of the counting board shall remain at the place of vote counting at all times from the time the counting board assumes the duties until the completion of the vote count and execution of the returns on the election.

Source: SDCL, § 12-18-1.4 as added by SL 1975, ch 119, § 10; SL 1976, ch 105, § 52; SL 1993, ch 118, § 15; SL 1999, ch 69, § 25.

12-18-2. Repealed by SL 1974, ch 118, § 200.

12-18-3. Electioneering, offices, distracting communications devices, and signature gathering prohibited near polling place--Violation as misdemeanor. Except for sample ballots and materials and supplies necessary for the conduct of the election, no person may, in any polling place or within or on any building in which a polling place is located or within one hundred feet from any entrance leading into a polling place, maintain a campaign office or public address system, or use any communication or photographic device in a manner which repeatedly distracts, interrupts, or intimidates any voter or election worker, or display campaign posters, signs, or other campaign materials or by any like means solicit any votes for or against any person or political party or position on a question submitted or which may be submitted. No person may engage in any practice which interferes with the voter's free access

to the polls or disrupts the administration of the polling place, or conduct any petition signature gathering, on the day of an election, within one hundred feet of a polling place. For the purposes of this section, the term, polling place, means a designated place voters may go to vote on the day of the election or go to vote absentee. A violation of this section is a Class 2 misdemeanor.

Source: SL 1897, ch 60, § 39; RPolC 1903, § 1923; RC 1919, § 7273; SL 1921, ch 222, § 1; SDC 1939, §§ 16.1209, 16.9920; SL 1974, ch 118, § 103; SL 1982, ch 86, § 84; SL 1985, ch 114; SL 2008, ch 34, § 14; SL 2009, ch 69, § 5; SL 2014, ch 71, § 1.

12-18-3.1. Simulated elections--Access to polling place--Impartiality required--Notice to county auditor. Minors voting in a simulated election and persons supervising or working in a simulated election in which minors vote shall be allowed in a polling place. All activities associated with a simulated election are subject to the provisions of § 12-18-3, and all such activities shall be conducted in an objective, impartial, and nonpartisan manner that does not promote one candidate, party, or position over another. Any such activity shall afford any legally qualified candidate for any public office the opportunity to participate in the activity equal to the opportunity afforded to any other candidate for that office. A ballot used in a simulated election held pursuant to this section shall be labeled in such a manner as to easily distinguish such ballot. No results from a simulated election for minors may be released prior to the close of the polls. The superintendent of the election board shall exercise authority over all election and simulated election related activities at the polling place. Anyone conducting a simulated election for minors at a polling place shall notify the county auditor in that county at least thirty days prior to the election. If approved by the county commissioners, a county may participate in a simulated election pursuant to this section.

Source: SL 1992, ch 114; SL 1999, ch 75, § 1.

12-18-4. Examination and sealing of ballot box before opening of polls--Closed until counting of vote. Before opening the polls each ballot box shall be carefully examined by the members of the precinct election board and everything in each ballot box shall be removed. Each ballot box shall then be sealed and may not be opened during the election except for vote counting as provided for in chapter 12-20.

Source: SDC 1939, § 16.1011; SL 1976, ch 105, § 53; SL 1993, ch 118, § 16; SL 1999, ch 69, § 26.

12-18-4.1. Preparation for voting Test ballots - Custody of key activating system. Before any poll is opened, each electronic ballot marking system shall be prepared for voting. The precinct superintendent shall test the system by using the system to mark at least two ballots. The test ballots shall be provided by the person in charge of the election and clearly marked with words, Test Ballot. If the system does not properly mark the test ballots, the precinct superintendent shall work on the system until a successful test is conducted. The precinct superintendent shall maintain custody of the key to activate the system at all times.

Source: SL 2006, ch 70, § 4.

12-18-5. Poll lists maintained by member of precinct election board. A member of the precinct election board belonging to a political party which is not the same as the political party of the member of the precinct election board who has the registration list shall keep a poll list in paper or electronic format which contains in numerical order the names of all persons voting at the election and the type of ballot voted.

Source: SDC 1939, § 16.1008; SL 1974, ch 118, § 109; SL 1993, ch 113, § 10; SL 1996, ch 94, § 28; SL 1999, ch 69, § 27; SL 2009, ch 69, § 6.

12-18-5.1. Repealed by SL 1996, ch 94, § 29.

12-18-5.2. Repealed by SL 1993, ch 113, § 11.

12-18-6. Repealed by SL 1969, ch 83, § 5.

12-18-6.1. Voters required to provide identification before voting. When the voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either:

(1) A South Dakota driver's license or nondriver identification card;

(2) A passport or an identification card, including a picture, issued by an agency of the United States government;

(3) A tribal identification card, including a picture; or

(4) A current student identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or technical school, located within the State of South Dakota.

Source: SL 2003, ch 82, § 1; SL 2004, ch 108, § 3; SL 2006, ch 71, § 1.

12-18-6.2. Affidavit in lieu of personal identification. If a voter is not able to present a form of personal identification as required by § 12-18-6.1, the voter may complete an affidavit in lieu of the personal identification. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the form of the affidavit. The affidavit shall require the voter to provide his or her name and address. The voter shall sign the affidavit under penalty of perjury.

Source: SL 2003, ch 82, § 2.

12-18-6.3. Verification of identity--Provisional ballot if identity not verified. The person making an application for ballots shall announce his or her name and present his or her personal identification. A member of the precinct election board shall then verify that the picture on the personal identification presented under § 12-18-6.1 matches such person and that the name on the personal identification appears on the voter registration list pursuant to § 12-18-7.1. If the member cannot determine from the personal identification presented that the person making an application for ballots is the person listed on the voter registration list, the member may consider other forms of identification, personal knowledge and an

explanation from the person making an application for ballots to match that person's name to a name on the registration list. If identity cannot be proven to the satisfaction of the member of the precinct election board or if the person making an application for ballots is challenged on the basis of identity by a member or a poll watcher, the person may vote a provisional ballot.

Source: SL 2003, ch 82, § 7.

12-18-7. Repealed by SL 1969, ch 83, § 5.

12-18-7.1. Registered persons entitled to vote--Voting on acknowledgment notice--Verification with auditor--Emergency voting card. Any person whose name appears on the precinct registration list may vote at that election. However, if a person's name does not appear on the registration list, but the person does present an acknowledgment notice, the person shall be permitted to vote if one of the members of the precinct election board communicates with the office of the county auditor and confirms that the person's name was erroneously omitted from the list. If it is not possible to communicate with the office of county auditor, the person may vote after executing an emergency voting card pursuant to § 12-18-7.2.

Source: SL 1961, ch 92, § 21 as enacted by SL 1969, ch 83, § 5; SL 1970, ch 86, § 5; SL 1974, ch 118, § 110; SL 1990, ch 107; SL 1994, ch 107, § 28; SL 1999, ch 69, § 28.

12-18-7.2. Voting without acknowledgment notice on verification by auditor--Emergency voting card. If any person attempting to vote in any election claims to be registered or any person attempting to vote in any election claims to be in the inactive registration file but does not possess an acknowledgment notice and the person's name does not appear in the registration list of the precinct, the person may vote if one of the members of the precinct election board first confirms by telephone or other means with the county auditor or a deputy auditor that the name was erroneously omitted from the list, and an emergency voting card, in duplicate, in the form prescribed by the State Board of Elections is signed by the applicant and each member of the precinct election board. The original emergency voting card shall be retained by the precinct superintendent as part of the precinct superintendent's permanent records, and the duplicate shall be given to the voter. In a primary election, the party affiliation of any voter using the emergency voting procedure of this section shall be designated on the emergency voting card.

Source: SL 1961, ch 92, § 21 as enacted by SL 1969, ch 83, § 5; SL 1970, ch 86, § 9; SL 1974, ch 118, § 111; SL 1976, ch 105, § 54; SL 1994, ch 107, § 30; SL 1999, ch 69, § 29; SL 2002, ch 40, § 16.

12-18-7.3. Repealed by SL 1976, ch 105, § 84.

12-18-7.4. Affirmation of voter's address. Any person whose name appears on the inactive registration list in the possession of the precinct superintendent may vote in any election following completion of an affirmation of the person's address in this state. If the voter has

moved to a new address within the state, this affirmation shall serve as a new registration. The affirmation shall be prescribed by the State Board of Elections.

Source: SL 1994, ch 107, § 29.

12-18-8. Repealed by SL 1974, ch 118, § 200.

12-18-8.1. Number of poll watchers set by state board--Rules. The State Board of Elections shall promulgate rules pursuant to chapter 1-26 setting the number of poll watchers which are allowed in each polling place.

Source: SL 1975, ch 124, § 2; SL 1998, ch 78, § 2.

12-18-9. Observation of voting and counting--Poll watchers' positions and accommodations. Any person, except a candidate who is on the ballot being voted on at that polling place, may be present at any polling place for the purpose of observing the voting process. Any person may be present to observe the counting process. A candidate who is on the ballot being voted on at a polling place may only be present to cast the candidate's vote during voting hours. A number of poll watchers shall be permitted for each candidate at a primary election or political party and independent candidate at a general election pursuant to § 12-18-8.1. Each polling place shall be arranged in a manner that permits each poll watcher to be positioned in a location where the poll watcher can plainly see and hear what is done within the polling place.

Source: SL 1897, ch 60, § 32; RPolC 1903, § 1921; RC 1919, § 7271; SDC 1939, § 16.1207; SL 1972, ch 85, § 3; SL 1974, ch 118, § 113; SL 1975, ch 124, § 1; SL 2004, ch 108, § 4.

12-18-9.1. Poll watchers and waiting voters not to see into booths--Interference with official actions--Violation as misdemeanor. The superintendent of elections may order poll watchers and voters waiting to vote to position themselves where the poll watchers and voters cannot see into voting booths, read identifying numbers on photo identification cards, or interfere with voters in the act of voting or with the official actions of the election board. A violation of such an order is a Class 2 misdemeanor.

Source: SL 1972, ch 85, § 2; SL 1974, ch 118, § 114; SL 1976, ch 105, § 55; SL 1982, ch 86, § 85; SL 1996, ch 94, § 30; SL 2008, ch 34, § 15.

12-18-9.2. Removal of unauthorized material and disobedient persons--Arrest authorized. Each election officer and all law enforcement officers shall remove materials in violation of § 12-18-3 and disobedient persons in violation of § 12-18-9.1 and arrest any person so interfering with the conduct of the election.

Source: SL 1897, ch 60, § 39; RPolC 1903, § 1923; RC 1919, § 7273; SL 1921, ch 222, § 1; SDC 1939, §§ 16.1209, 16.9920; SDCL, §§ 12-18-3, 12-18-9.1; SL 1972, ch 85, § 2; SL 1974, ch 118, § 115; SL 1982, ch 86, § 86.

12-18-10. Grounds for challenge of applicant to vote--Determination by judges--Notation on registration list. If a person makes an application for ballots, or if an absentee ballot has been cast, the person's right to vote at that poll and election may be challenged only as to the person's identity as the person registered whom the person claims to be or on grounds that within fifteen days preceding the election the person has been convicted of a felony or declared by proper authority to be mentally incompetent. The proceedings shall be conducted before the precinct superintendent and precinct deputies who shall determine from the evidence presented whether or not the person is permitted to vote and the members of the precinct election board shall indicate beside the name on the registration list the ground stated and the result of the precinct election board's decision.

Source: SDC 1939, § 16.1207; SL 1974, ch 118, § 116; SL 1999, ch 69, § 30.

12-18-11. Repealed by SL 1974, ch 118, § 200.

12-18-12. Stamping of ballot before delivery to voter. Before delivering a ballot to any voter the member of the precinct election board in charge of the ballots shall stamp on the ballot the official stamp provided for that purpose as follows:

(1) On a hand-counted ballot, on the back and near the top of the ballot; and

(2) On an optical scan ballot, the location indicated by the person in charge of the election.

Source: SDC 1939, § 16.1006; SL 1972, ch 82, § 7; SL 1974, ch 118, § 117; SL 1999, ch 69, § 31; SL 2008, ch 34, § 16.

12-18-13. Use of unauthorized ballot prohibited. No voter may receive or vote a ballot from any other person than the precinct superintendent or precinct deputy in charge of the ballots, nor may any person other than the precinct superintendent or precinct deputy deliver a ballot to the voter.

Source: SDC 1939, § 16.1209; SL 1974, ch 118, § 118; SL 1999, ch 69, § 32.

12-18-14. Entry of voting booth or machine by voter. On receipt of his ballot or delivery to him of his voter's consecutive number, the voter shall forthwith and without leaving the polling place retire alone to one of the booths or voting machines provided to cast his vote.

Source: SL 1897, ch 60, § 25; SL 1899, ch 81, § 1; RPolC 1903, § 1914; SL 1913, ch 198, § 2; SL 1915, ch 186, § 2; RC 1919, § 7264; SDC 1939, § 16.1203; SL 1974, ch 118, § 119.

12-18-15. Voting without delay--Maximum time in booth or machine--Reentry prohibited. The person voting shall cast his vote without delay. No voter may occupy a voting booth or voting machine already occupied by another, nor occupy a voting booth or machine for more than ten minutes. No voter, other than an election officer, may reenter the enclosed space during any election.

Source: SL 1897, ch 60, § 32; RPolC 1903, § 1921; RC 1919, § 7271; SDC 1939, § 16.1202; SL 1974, ch 118, § 120; SL 1993, ch 115.

12-18-16. Marking of paper ballot--Form of mark. If a paper ballot is used, the voter may use a pencil or pen to mark the voter's ballot and the voter may mark the ballot with either a cross (x) or check mark (.).

Source: SDC 1939, §§ 16,1105 (4), 16.1302; SL 1957, ch 84, §§ 2, 3; SDC Supp 1960, § 16.0224-1; SDCL, §§ 12-13-19, 12-18-19; SL 1974, ch 118, § 121; SL 2002, ch 76, § 1.

12-18-16.1. Marking of optical scan ballot. If an optical scan ballot is used, the voter may use a pencil or other marking instrument provided to mark the voter's choice on the ballot.

Source: SL 2002, ch 76, § 2.

12-18-16.2. Repealed by SL 2005, ch 92, § 9.

12-18-17. Repealed by SL 1976, ch 105, § 84.

12-18-18. Repealed by SL 1997, ch 81, § 6.

12-18-19. Repealed by SL 1974, ch 118, § 200.

12-18-20, 12-18-21. Repealed by SL 1997, ch 81, §§ 7, 8.

12-18-21.1. Repealed by SL 2002, ch 76, § 4.

12-18-22. Repealed by SL 2000, ch 73, § 1.

12-18-23. Return to member of precinct election board of unmarked ballot. Each voter who does not vote a ballot delivered to the voter by a member of the precinct election board in charge of the ballots shall, before leaving the polling place, return the ballot to the member of the precinct election board in charge of the ballot box.

Source: SDC 1939, § 16.1209; SL 1974, ch 118, § 126; SL 1999, ch 69, § 33.

12-18-24. Replacement of spoiled ballots--Marking and preservation. If any voter spoils a ballot, the voter may obtain another ballot, and so on, successively, not to exceed three ballots in all, upon returning to a member of the precinct election board the spoiled ballot. In obtaining a ballot to replace a spoiled one, the name of the voter shall be given and the number of the spoiled ballot. The number shall be noted opposite of the voter's name as spoiled. The ballots that are returned shall be canceled by writing the words, spoiled and replaced, across the face of the ballot and each spoiled ballot shall be placed in a separate envelope identifying the spoiled ballots as such and stating the number of spoiled ballots for accounting purposes.

Source: SDC 1939, § 16.1208; SL 1974, ch 118, § 127; SL 1999, ch 69, § 34.

12-18-25. Assistance of disabled or illiterate voter by person of his choice. Any voter who by reason of physical disability or illiteracy is unable to read or mark a ballot may receive the assistance of any person whom such voter may select.

Source: SL 1897, ch 60, §§ 28, 30; RPolC 1903, §§ 1917, 1919; RC 1919, §§ 7267, 7268; SDC 1939, § 16.1204; SL 1939, ch 81; SL 1959, ch 99, § 10; SDC Supp 1960, § 16.2210; SDCL, § 12-18-37; SL 1974, ch 118, § 128; SL 1976, ch 105, § 59; SL 1983, ch 111; SL 1995, ch 84.

12-18-26. Repealed by SL 1979, ch 104.

12-18-27. Marked ballot not to be publicized--Immediate deposit in ballot box. No person may publicize an official ballot after it is marked to any person in such a way as to reveal the contents of the official ballot, or the name of any candidate for whom the person has marked a vote. No person may solicit a voter to show the voter's official ballot. Immediately after marking the official ballot the voter shall deposit the official ballot in the ballot box, if necessary, leaving the official stamp exposed.

Source: SDC 1939, § 16.1209; SL 1974, ch 118, § 130; SL 1976, ch 105, § 60; SL 1999, ch 69, § 35; SL 2017, ch 2, § 4.

12-18-28. Deposit of folded ballot in ballot box. When a ballot is ready for deposit in the ballot box, the member of the precinct election board in charge of the ballot box, without opening the ballot or permitting it to be opened or examined except to ascertain that the ballot is a single ballot, shall deposit the ballot in the ballot box. The voter may place the voter's voted ballot in the ballot box to insure the privacy of the voter's vote after showing the official stamp on the ballot to the member of the precinct election board in charge of the ballot box.

Source: SDC 1939, §§ 16.1012, 16.1206, 16.9918; SDCL, § 12-18-30; SL 1974, ch 118, § 131; SL 1999, ch 69, § 36.

12-18-29 to 12-18-31. Repealed by SL 1974, ch 118, § 200.

12-18-32. Packaging and return of unused ballots--Record accounting for ballots. All ballots which have not been distributed to voters, excluding those marked "spoiled and replaced" separately enclosed, together with a record of ballots stating the number of ballots voted, the number of ballots spoiled and replaced, and the number of ballots not delivered to voters, shall be placed in a parcel separate from the ballot box and returned to the auditor along with the ballot boxes.

Source: SL 1897, ch 60, § 33; RPolC 1903, § 1922; RC 1919, § 7272; SDC 1939, § 16.1208; SL 1974, ch 118, § 132.

12-18-33. Comparison of ballot accounting with record of number sent to precinct--Notice and correction of discrepancies. The county auditor, on receipt of the unused,

defective, or spoiled ballots, and the statement mentioned in § 12-18-32, shall carefully compare the same with the record in his office of the number of ballots sent to such election precinct. If the same are not accounted for in the statement before mentioned, he shall at once notify the person sending the same, who shall, with such county auditor, recount the unused, defective, and spoiled ballots and correct, if possible, such errors, if any there be, in such count or statement.

Source: SL 1897, ch 60, § 33; RPolC 1903, § 1922; RC 1919, § 7272; SDC 1939, § 16.1208.

12-18-34. Repealed by SL 1969, ch 83, § 5.

12-18-35 to 12-18-38. Repealed by SL 1974, ch 118, § 200.

12-18-39. Provisional ballot--Eligibility. If any person is not authorized to vote pursuant to § 12-18-7.2, is successfully challenged under § 12-18-10, or is otherwise denied the ability to vote and the person maintains that he or she is currently registered to vote in that precinct, the person may cast a ballot which shall be called a provisional ballot. A member of the precinct election board shall notify any person who is denied the ability to vote that the person may cast a provisional ballot.

Source: SL 2003, ch 83, § 1.

12-18-40. Use of provisional ballot. Before giving a person a provisional ballot, the person shall complete an affirmation. The person's name shall be written in the pollbook along with a designation that the person has cast a provisional ballot. The person shall be given the ballot appropriate to the precinct in which the person is claiming to be registered, along with a provisional ballot envelope. After the person votes, the person shall seal the ballot in the provisional ballot envelope and complete the statement on the envelope. The envelope shall then be placed in the ballot box. The provisional ballot and provisional ballot envelope shall be prescribed by the State Board of Elections.

Source: SL 2003, ch 83, § 2.

12-18-41. Repealed by SL 2016, ch 77, § 3.

CHAPTER 12-19 - ABSENTEE VOTING

12-19-1	Absentee ballot--Persons entitled to vote.
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12-19-36 Repealed by SL 1974, ch 118, § 200.
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12-19-54 Payment for assisting voters based on number of voters assisted prohibited--Violation as misdemeanor.
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12-19-1. Absentee ballot--Persons entitled to vote. A registered voter who is not otherwise disqualified by law from voting in the election may vote by absentee ballot.

Source: SDC 1939, § 16.0606; SL 1944 (SS), ch 2, § 1; SL 1953, ch 75, § 1; SL 1957, ch 85, § 1; SDC Supp 1960, § 16.0610; SL 1963, ch 110, § 1; SL 1967, ch 72; SDCL, §§ 12-19-15 to 12-19-17; SL 1972, ch 90, § 1; SL 1974, ch 118, § 133; SL 1980, ch 115, § 1; SL 1983, ch 112; SL 1993, ch 116, § 1; SL 2003, ch 82, § 6.

12-19-1.1. Affirmation of address by voter in inactive registration file. A voter in the inactive registration file meeting the criteria in § 12-19-1 may vote absentee by completing the affirmation required in § 12-18-7.4.

Source: SL 1994, ch 107, § 31; SL 2002, ch 40, § 17.

12-19-1.2. Time for absentee voting. Absentee voting shall begin neither earlier nor later than forty-six days prior to the election including any voter identified as being covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1).

Source: SL 2013, ch 66, § 2.

12-19-2. Application for absentee ballot--Contents--Address to which ballot sent--Stamping date of receipt--Delivery. 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, signed by the applicant, and shall contain the applicant's voter registration address. The application or request shall contain an oath verifying the validity of the information in the application or request. The oath shall be administered by a notary public or other officer authorized by this state to administer an oath or administered by an out-of-state notary public. 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 pursuant to § 12-20-31. However, the voter's identification card is not available for public inspection. The application or request may be used to obtain an absentee ballot for all elections in that calendar year conducted by the jurisdiction receiving the application or request if so indicated. 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.

Source: SDC 1939, § 16.0606; SL 1944 (SS), ch 2, § 3; SL 1957, ch 85, §§ 2, 3; SDC Supp 1960, §§ 16.0611, 16.0612; SL 1963, ch 110, § 1; SL 1964, ch 59; SL 1967, ch 72; SDCL §§ 12-19-22, 12-19-24, 12-19-25; SL 1974, ch 118, § 134; SL 1976, ch 105, § 61; SL 1976, ch 108, § 10; SL 1980, ch 115, § 2; SL 1983, ch 113; SL 1984, ch 111; SL 1988, ch 132; SL 1992, ch 115, § 1; SL 1993, ch 116, § 2; SL 2002, ch 40, § 18; SL 2003, ch 82, § 3; SL 2003, ch 83, § 14; SL 2004, ch 109, § 1; SL 2006, ch 72, § 1; SL 2010, ch 74, § 14; SL 2014, ch 72, § 1, eff. Feb. 19, 2014; SL 2017, ch 2, § 5.

12-19-2.1. Application in person or by authorized messenger--Delivery of ballot to messenger or by mail. At anytime prior to an election, a voter may apply in person at the office of and to the person in charge of the election for an absentee ballot during regular office hours up to 5:00 p.m. on the day before the election. If the voter applies in person, the voter shall complete a combined absentee ballot application/return envelope and show the person in charge of the election the voter's identification card as required in § 12-18-6.1 or complete the affidavit as provided in § 12-18-6.2.

In the event of confinement because of sickness or disability, a qualified voter may apply pursuant to the provisions of § 12-19-2 in writing and obtain an absentee ballot by authorized messenger so designated over the signature of the voter. The person in charge of the election may deliver to the authorized messenger a ballot to be delivered to the qualified voter. Any application for a ballot by authorized messenger must be received by the person in charge of the election before 3:00 p.m. the day of the election. If the application designating an authorized messenger also indicates a request for an absentee ballot for any future election,

such absentee ballot shall be mailed to the address provided on the application. If no address is provided, the ballot shall be mailed to the person's voter registration address.

Source: SL 1980, ch 115, § 3; SL 1983, ch 114; SL 2003, ch 82, § 4; SL 2005, ch 93, § 1; SL 2006, ch 72, § 3; SL 2012, ch 85, § 1; SL 2013, ch 66, § 3.

12-19-2.2. Authorized messenger for more than one voter. If a person is an authorized messenger for more than one voter, he must notify the person in charge of the election of all voters for whom he is a messenger.

Source: SL 1980, ch 115, § 4.

12-19-2.3. Uniformed and Overseas Citizens Absentee Voting Act--Application or request for absentee ballot. Any voter identified as being covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2011, may submit an application or request for an absentee ballot by facsimile or emailed image to the person in charge of the election. The secretary of state may authorize a person in charge of an election to accept an application or request for absentee ballot pursuant to this section through the system provided by the Office of the Secretary of State.

Source: SL 2005, ch 93, § 3; SL 2011, ch 82, § 1.

12-19-2.4. Multiple applications or requests for ballots and multiple ballots--Application. If any voter who had previously filed an application or request for an absentee ballot submits another application or request for the same election with an updated address, the county auditor shall send an absentee ballot to the new address. If any voter who had previously filed an application or request for absentee ballot appears at the county auditor's office, the voter may complete another application and be allowed to vote an absentee ballot. If any voter who filed an application or request for absentee ballot notifies the county auditor that the voter never received that ballot, the voter may request that another ballot be sent to the same address. The provisions of this section only apply to a person who has not voted or returned an absentee ballot.

Source: SL 2005, ch 93, § 2.

12-19-2.5. Form of application for absentee ballot and combined application/return envelope. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, to prescribe the absentee application form and a combined absentee ballot application/return envelope for absentee voting in the office of the person in charge of the election. The application may be made by letter or upon any form containing the required information or upon any form prescribed by the State Board of Elections or the postcard form referred to in § 12-4-8.1, executed by any person authorized in accordance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)(42 U.S.C. § 1973ff) as of January 1, 2006.

Source: SL 2006, ch 72, § 2.

12-19-2.6. Preference and selection of ballot style for independent in primary election. If an absentee voter in a primary election is registered as an independent and is eligible to vote more than one ballot style pursuant to § 12-6-26, the voter may specify the voter's ballot style preference on the absentee ballot application. If no ballot style is designated, the absentee voter shall be provided a nonpolitical ballot.

If an absentee voter in a primary election is registered as an independent and is only eligible to vote one ballot style, the absentee voter shall be provided that ballot style. If more than one party allows independent voters to be eligible to vote in a primary election and no nonpolitical ballot is available and the absentee voter does not designate the ballot style to be received, no ballot may be provided to the absentee voter.

Source: SL 2010, ch 75, § 1, eff. Mar. 23, 2010.

12-19-3. Forwarding of ballot to voter--Instructions and return envelope. Upon receiving an application for absentee ballots, the person in charge of an election shall, within forty-eight hours, or if ballots are not then on hand, then within forty-eight hours after receipt of the ballots, after confirming from the master registration file that the applicant is registered as a voter pursuant to chapter 12-4, enclose one of each of the official ballots, a set of instructions on absentee balloting, and an unsealed return envelope. All of the enclosures shall be sealed in an envelope addressed to the applicant at the place stated in the application. If a registration form is received simultaneous with an absentee ballot request and prior to the registration deadline, the absentee ballot provided shall be based on the submitted registration form.

Source: SDC 1939, § 16.0606; SL 1963, ch 110, § 1; SL 1964, ch 59; SL 1967, ch 72; SL 1974, ch 118, § 135; SL 1976, ch 105, § 62; SL 1998, ch 78, § 3; SL 2002, ch 40, § 19; SL 2007, ch 75, § 4.

12-19-4. Voter's statement on return envelope--Federal service voting forms. The return envelope for the absent voter's ballot shall have printed on the reverse thereof a statement to be signed by the voter. The State Board of Elections shall prescribe the forms for the return envelope, ballots, instructions to the voter, and such certification to accommodate the federal service voter under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)(42 U.S.C. § 1973cc-1).

Source: SL 1944 (SS), ch 2, § 4; SL 1953, ch 75, § 3; SL 1955, ch 55, § 2; SL 1957, ch 85, § 4; SDC Supp 1960, § 16.0613; SDC 1939, § 16.0607 as added by SL 1965, ch 87; SL 1965, ch 88; SDCL, § 12-19-27; SL 1971, ch 93, § 1; SL 1974, ch 118, § 136; SL 1992, ch 115, § 2; SL 1993, ch 116, § 3.

12-19-5. Mailing of ballot and enclosures to voter--Free air mail for federal service voters. The envelope containing the enclosures, if not delivered to the voter personally by the person in charge of the election or the authorized messenger filing the voter's request for an absentee ballot, shall, except for federal service voters, be mailed by first class mail to the address of the applicant stated in his application, with postage prepaid thereon. Both the return envelope and the envelope for transmitting the enclosures to federal service voters shall meet the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)(42

U.S.C. § 1973) and shall be transmitted by air mail, free of United States postage, including air mail.

Source: SL 1913, ch 200, § 1; SL 1917, ch 233, § 1; RC 1919, § 7226; SL 1919, ch 189; SL 1925, ch 159, § 1; SDC 1939, § 16.0606; SL 1944 (SS), ch 2, § 4; SL 1953, ch 75, § 3; SL 1955, ch 55, § 2; SL 1957, ch 85, § 4; SDC Supp 1960, § 16.0613; SL 1963, ch 110, § 1; SL 1964, ch 59; SL 1965, ch 88; SL 1967, ch 72; SDCL, § 12-19-27; SL 1974, ch 118, § 137; SL 1976, ch 105, § 63; SL 1979, ch 105, § 1; SL 1980, ch 115, § 5; SL 1993, ch 116, § 4.

12-19-6. Repealed by SL 1970, ch 91, § 4.

12-19-7. Marking and folding ballot--Officer before whom marked--Mailing or delivering ballot. A voter voting an absentee ballot shall mark it and fold it without revealing the marks to any other person. The voter shall place the voted ballots in the return envelope provided and seal the envelope. The voter shall sign the statement on the return envelope. The voter shall either mail the ballot, deliver it in person or have it delivered to the person in charge of the election.

Source: SL 1913, ch 200, § 2; SL 1917, ch 233, § 2; SL 1918 (SS), ch 45; RC 1919, § 7227; SL 1925, ch 159, § 2; SL 1929, ch 114, § 1; SDC 1939, § 16.0607; SL 1944 (SS), ch 2, § 5; SL 1953, ch 75, § 4; SL 1957, ch 85, § 5; SDC Supp 1960, § 16.0614; SL 1963, ch 110, § 2; SDCL, § 12-19-29; SL 1972, ch 90, § 2; SL 1974, ch 118, § 138; SL 1976, ch 105, § 64; SL 1983, ch 115; SL 1985, ch 115; SL 1992, ch 115, § 3.

12-19-7.1. Candidates and election officials not to serve as authorized messenger. No person who is a candidate for any elective office, except for political party offices described in § 12-5-2 or county auditor or such deputy, at the election for which the ballot or ballots are to be voted, may serve as an authorized messenger.

Source: SL 1972, ch 90, § 5; SL 1976, ch 105, § 65; SL 1992, ch 115, § 4.

12-19-7.2. Display of campaign material by messenger as misdemeanor. No authorized messenger may, in the presence of the voter at or before the time of voting, display campaign posters, signs, or other campaign materials or by any like means solicit any votes for or against any person, political party, or position on a question submitted. A violation of this section is a Class 2 misdemeanor.

Source: SL 1984, ch 112; SL 1992, ch 115, § 5.

12-19-8. Repealed by SL 1971, ch 93, § 2.

12-19-9. Delivery of absentee ballot--Personal delivery when transmission time insufficient--Receipt. An authorized messenger shall deliver the absentee ballot to the person in charge of the election unless there is not sufficient time for the person in charge of the election to transmit the absentee ballot to the voter's home precinct. In that instance, the authorized messenger shall personally deliver the absentee ballot to the precinct

superintendent of the voter's home precinct. If the authorized messenger requests a receipt when returning the absentee ballot, the person in charge of the election shall provide the authorized messenger a receipt.

Source: SL 1913, ch 200, § 2; SL 1917, ch 233, § 2; SL 1918 (SS), ch 45; RC 1919, § 7227; SL 1925, ch 159, § 2; SL 1929, ch 114, § 1; SDC 1939, § 16.0607; SL 1963, ch 110, § 2; SL 1970, ch 91, § 1; SL 1972, ch 90, § 3; SL 1974, ch 118, § 139; SL 1976, ch 105, § 66; SL 1979, ch 105, § 2; SL 1980, ch 115, § 6; SL 1983, ch 116, § 1; SL 1992, ch 115, § 6; SL 2006, ch 72, § 4.

12-19-9.1. Nursing facility, assisted living center, or hospital having multiple absentee ballot requests. If there is any nursing facility, assisted living center, or hospital, as defined in § 34-12-1.1, within any county from which there might reasonably be expected to be five or more absentee applications, the county auditor shall notify the person in charge of that facility and the chair of the county central committee of each party and any other person who has filed a request to be notified of the date and time at which representatives of the auditor's office will be present to assist the residents of that facility to vote, utilizing the absentee procedure. Any political party, independent candidate, and nonpolitical candidate may assign a person to accompany the auditor's representatives. At the date and time announced, the auditor's representative shall deliver ballots to and assist all persons at that facility who desire such assistance and who have applied for absentee ballots. This section applies only to a general election.

If a person in charge of an election conducts absentee voting at a nursing facility, assisted living center, or hospital as defined in § 34-12-1.1, the voter shall complete a combined absentee ballot application/return envelope and the identification and affidavit requirements provided in § 12-19-2.1 are waived.

Source: SL 1972, ch 89; SL 1981, ch 125; SL 1997, ch 82, § 1; SL 2003, ch 82, § 5; SL 2006, ch 72, § 5; SL 2017, ch 2, § 6.

12-19-9.2. Marking and return of ballot on death of voter before opening of polls. Whenever, prior to the casting of absentee ballots, it is made to appear by due proof to the county auditor or election board that any voter who has marked and forwarded an absentee ballot has died prior to the opening of the polls on the date of the election, the ballot of the voter shall be returned in the unsealed return envelope with the evidence of death attached and the envelope marked "Unopened by reason of death of voter" to the officer in charge of the conduct of the election. The casting of any such ballot shall not invalidate the election.

Source: SL 1974, ch 118, § 142.

12-19-10. Preservation and delivery of ballot to precinct superintendent--Comparison of statement and application--Deposit in ballot box--Unopened ballots--Unauthorized examination as misdemeanor. Upon receipt of the sealed return envelope containing the voted ballots, the person in charge of the election shall keep it in a safe place without opening the envelope or breaking the seal thereof and shall, except as provided by § 12-19-42, deliver it to the precinct superintendent of election of the voter's home precinct. The person in charge

of the election shall have the absentee ballots delivered with the election supplies, or if received later, then prior to the close of the polls. If the election board is not otherwise engaged in official duties, or if there are absentee ballots not processed when the polls close, immediately thereafter, the board shall carefully compare the statement on the reverse side of the official return envelope with the written application received from the officer in charge of the election without opening or breaking the seal of the return envelope. If the ballot is contained in a combined absentee ballot application/return envelope, the comparison of the statement and the application shall be omitted. The board shall enter the voter's name on the election pollbook and mark the registration list if:

(1) The ballots received were voted by the voter whose name appears on the statement;

(2) The voter is registered in such precinct and has not previously voted in that precinct at the election; and

(3) The written application and statement were both signed by the voter.

The board shall then open the envelope without opening, unfolding or examining the ballots the envelope may contain, stamp the ballots with the official stamp, and deposit the ballots with the other ballots cast at the election. If the board determines that an absentee ballot envelope cannot be opened because the envelope does not meet the requirements for opening, the reason shall be written on the envelope, signed by a member of the board, and the envelope placed in a larger envelope for unopened absentee ballots. No person may, prior to the counting of the votes, open, unfold or examine any ballot, or make any communication to any person concerning the markings or contents of the ballot. A violation of the preceding sentence is a Class 2 misdemeanor.

Source: SL 1913, ch 200, § 3; RC 1919, § 7228; SL 1925, ch 159, § 3; SL 1929, ch 114, § 2; SDC 1939, § 16.0608; SL 1941, ch 80; SL 1944 (SS), ch 2, § 7; SL 1953, ch 75, § 5; SL 1957, ch 85, § 6; SDC Supp 1960, § 16.0616; SL 1963, ch 110, §§ 3, 4; SDCL § 12-19-31; SL 1970, ch 91, § 2; SL 1972, ch 90, § 4; SL 1974, ch 118, § 140; SL 1976, ch 105, § 67; SL 1982, ch 86, § 87; SL 1992, ch 115, § 7; SL 1993, ch 118, § 17; SL 2006, ch 72, § 6; SL 2010, ch 74, § 15.

12-19-10.1. County auditor validation of absentee ballot signatures. If a county uses an absentee ballot precinct at the building where the county auditor is located to process absentee ballots on election day for a federal, state, or county election, the county has the option to validate the absentee ballot signatures in the county auditor's office. The county auditor shall follow the provisions of § 12-19-10 except for the following:

(1) The county auditor, at anytime during the absentee voting timeframe, shall carefully compare the statement on the reverse side of the official return envelope with the written application without opening or breaking the seal of the return envelope; and

(2) If the county auditor determines that both signatures match:

(a) The application for absentee ballot does not need to be sent to the absentee precinct board; and

(b) The county auditor shall initial the envelope after the determination that signatures do match.

Source: SL 2018, ch 82, § 1.

12-19-11. Preservation and return of application and return envelope. The written application and official return envelope shall be preserved by the election officers and returned by them to the proper office together with the other election returns.

Source: SL 1913, ch 200, § 3; RC 1919, § 7228; SL 1925, ch 159, § 3; SL 1929, ch 114, § 2; SDC 1939, § 16.1608; SL 1941, ch 80; SL 1963, ch 110, § 3; SL 1970, ch 91, § 3.

12-19-12. Delivery of absentee ballot to polling place after close of polls. If an absentee ballot is delivered to a polling place after the polls are closed, the absentee ballot may not be counted or opened.

Source: SDC 1939, § 16.0608 as added by SL 1941, ch 80; SL 1963, ch 110, § 3; SL 1974, ch 118, § 141; SL 1999, ch 69, § 37; SL 2010, ch 74, § 16.

12-19-13. Repealed by SL 1996, ch 94, § 31.

12-19-14. Unlawful disposition of ballot or ballot link as misdemeanor. Any voter who, having procured an official ballot or ballots or Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) ballot link as provided in §§ 12-19-1 to 12-19-12, inclusive, intentionally disposes of a ballot in any manner other than as provided in such sections or provides the UOCAVA ballot link to any other person is guilty of a Class 2 misdemeanor. The UOCAVA ballot link is the internet URL for accessing an electronically provided absentee ballot.

Source: SL 1913, ch 200, § 5; RC 1919, § 7230; SDC 1939, § 16.9911; SL 1974, ch 118, § 143; SL 1982, ch 86, § 88; SL 2010, ch 74, § 17.

12-19-15 to 12-19-22. Repealed by SL 1974, ch 118, § 200.

12-19-23. Repealed by SL 1971, ch 87, § 6.

12-19-24 to 12-19-31. Repealed by SL 1974, ch 118, § 200.

12-19-32. Ballot not invalidated by federal censorship. The exercise of the right of censorship by the federal authorities upon the marked ballot while same is in transit in the mail, shall not invalidate the ballot or be cause for its rejection.

Source: SL 1944 (SS), ch 2, § 8; SDC Supp 1960, § 16.0617.

12-19-33. Failure to deliver or tampering with ballot as felony. Any person who, having procured an official ballot or ballots for another, intentionally fails to deliver the ballots to the voter or who intentionally fails to deliver the return envelope with ballots contained therein to the proper officer, or who tampers with the envelope or ballots is guilty of a Class 6 felony.

Source: SL 1944 (SS), ch 2, § 12; SDC Supp 1960, § 16.9929; SL 1974, ch 118, § 144; SL 1982, ch 86, § 89; SL 1983, ch 116, § 2.

12-19-34. Informalities do not invalidate election--Liberal construction. No mere informality in the matter of carrying out or executing the provisions of this chapter shall invalidate the election or authorize the rejection of the returns thereof, and the provisions of this chapter shall be liberally construed for the purposes herein expressed or intended.

Source: SL 1944 (SS), ch 2, § 8; SDC Supp 1960, § 16.0617; SL 1974, ch 118, § 145.

12-19-35, 12-19-36. Repealed by SL 1974, ch 118, § 200.

12-19-37. Absentee ballot precincts--Creation--Absentee ballot counting board. Any county may create a special precinct to be known as an absentee ballot precinct. If the county creates an absentee ballot precinct, all absentee ballots cast at any election shall be counted in such precinct. However, if a paper ballot precinct has ten or fewer absentee ballots cast at the time the polls open on election day, the absentee ballots in that precinct shall be counted at the polling place. The election board of the absentee ballot precinct is the absentee ballot counting board. There may be only one absentee ballot counting board at any time in a county.

Source: SL 1976, ch 108, § 1; SL 1985, ch 116.

12-19-38. Appointment of absentee ballot counting board--Number of members. The county auditor shall appoint the absentee ballot counting board in the manner prescribed in chapter 12-15, except that the number of election officials on the absentee ballot counting board shall be sufficient to complete the counting of ballots within a reasonable time.

Source: SL 1976, ch 108, § 2.

12-19-39. Oath of board members--Compensation. Each election official of the absentee ballot counting board shall take the oath required by § 12-15-9 and shall be paid as provided by § 12-15-11.

Source: SL 1976, ch 108, § 3.

12-19-40. Repealed by SL 1982, ch 130.

12-19-41. Powers and duties of absentee ballot counting board. Except as otherwise provided in §§ 12-19-37 to 12-19-52, inclusive, the absentee ballot counting board's powers and duties shall be the same as provided in chapters 12-19 and 12-20 for precinct election officials in regular precinct polling places, except that the board shall receive and count all absentee ballots for all precincts in the county upon receipt thereof from the person in charge of the election.

Source: SL 1976, ch 108, § 6.

12-19-42. Envelope containing voted ballots kept closed--Delivery to county board. Upon receipt of the sealed return envelope containing the voted ballots, the person in charge of the

election shall keep it in a safe place without opening the envelope or breaking the seal thereof. The person in charge of the election shall cause to be delivered to the absentee ballot counting board, the absentee ballot, or ballots with the election supplies, or if later received, then prior to the close of the polls.

Source: SL 1976, ch 108, § 12.

12-19-43. Review--Sorting--Processing--Absentee Ballots.

The county auditor shall direct the board to meet on election day prior to the closing of the polls for the sole purpose of reviewing the absentee voters' affidavits appearing on the sealed ballot envelopes, if in the auditor's judgment this procedure shall be necessary due to the number of absentee ballots received. The absentee ballots shall be opened, stamped, and placed in the ballot box or processed by an automatic tabulating machine, but under no circumstances shall the ballots be manually counted nor any vote totals printed or displayed by any tabulating machine prior to the closing of the polls. If ballots are processed by an automatic tabulating machine prior to the closing of the polls, the resolution board shall be present and notification of such processing shall be provided to each county party chairperson at least ten days before the election.

Source: SL 1976, ch 108, § 4; SL 1977, ch 113; SL 2005, ch 93, § 6; SL 2021, ch 67, § 1.

12-19-44. Counting process open. The room occupied by the absentee ballot counting board shall be open to any person for the purpose of observing the counting process.

Source: SL 1976, ch 108, § 5.

12-19-45. Record of applicants' names, addresses, and voting precincts--Delivery to counting board--Record of authorized messengers. The person in charge of the election shall preserve a record of the name, post office address, and voting precinct of each applicant for absentee ballots and shall personally deliver the same to the Absentee Ballot Counting Board. The person in charge of the election shall keep a record of the name of the authorized messenger requesting an absentee ballot to be delivered to another voter.

Source: SL 1976, ch 108, § 10; SL 1979, ch 105, § 3; SL 1980, ch 115, § 7.

12-19-46. Commencement of count when polls close--Place. The Absentee Ballot Counting Board shall commence counting the absentee voters' ballots immediately upon close of the polls at a central place designated by the county auditor.

Source: SL 1976, ch 108, § 4.

12-19-47. Processing of absentee ballots. The absentee ballot counting board, during the time prescribed in § 12-19-46, shall process each absentee ballot as required by § 12-19-10.

Source: SL 1976, ch 108, § 12; SL 1982, ch 86, § 90; SL 1992, ch 115, § 8; SL 1993, ch 118, § 19; SL 2006, ch 72, § 7; SL 2010, ch 74, § 18.

12-19-48. Delivery of absentee ballot after polls are closed. If an absentee ballot is delivered to an absentee ballot counting board after the polls are closed the absentee ballot may not be counted or opened.

Source: SL 1976, ch 108, § 13; SL 1999, ch 69, § 38; SL 2010, ch 74, § 19.

12-19-49. Death of absentee voter prior to opening of polls--Ballot returned to person in charge--Election not invalidated by casting of ballot. If, prior to the casting of absentee ballots, the person in charge of the election or absentee ballot counting board shall have sufficient cause to believe that any voter who has marked and forwarded an absentee ballot has died prior to the opening of the polls on the date of the election, the ballot of the voter shall be returned in the sealed return envelope with the evidence of death attached and the envelope marked "Unopened by reason of death of voter" to the person in charge of the election. The casting of any such ballot, however, shall not invalidate the election.

Source: SL 1976, ch 108, § 11.

12-19-50. Forms for recording tally--Special pollbook--Tally added to home precinct totals. The tally shall be recorded on forms prescribed by the State Board of Elections. A special pollbook shall also be prescribed by the State Board of Elections. Except as provided by § 12-19-52, the tally shall be recorded according to the precincts in which the voters are registered and then added to those individual precinct totals.

Source: SL 1976, ch 108, §§ 4, 9; SL 1993, ch 113, § 12.

12-19-51. Repealed by SL 1996, ch 94, § 32.

12-19-52. Electronic voting systems. In those counties which have adopted an electronic voting system, counting shall be as prescribed in chapter 12-17B.

Source: SL 1976, ch 108, § 8.

12-19-53. Contracting for services of county auditor from another county. If a county contracts for the services of a county auditor from another county, that county auditor shall make absentee ballots available in the contracting county if the contracting county requests that absentee ballots be provided. The contracting county shall reimburse the county auditor for the costs incurred pursuant to this section.

Source: SL 1992, ch 115, § 9.

12-19-54. Payment for assisting voters based on number of voters assisted prohibited--Violation as misdemeanor. No person may employ, reward, or compensate any person to assist voters based on the number of voters assisted. Nothing in this section prohibits any person from hiring a person paid on an hourly or salaried basis to assist voters. Any violation of this section is a Class 2 misdemeanor.

Source: SL 2005, ch 91, § 3.

12-19-55. Receipt of payment for assisting voters based on number of voters assisted prohibited--Violation as misdemeanor. No person may receive any wages, reward, or compensation for assisting voters based on the number of voters assisted. Nothing in this section prohibits any person from being employed on an hourly or salaried basis to assist voters. Any violation of this section is a Class 2 misdemeanor.

Source: SL 2005, ch 91, § 4.

CHAPTER 12-19A - SPECIAL VOTING RIGHTS [REPEALED]

[Repealed by SL 1972, ch 76, § 24; SL 1974, ch 118, § 200; SL 1975, ch 119, § 22]

CHAPTER 12-20 - RETURN AND CANVASS OF VOTES

12-20-1	Delivery of supplies to counting board--Certificate of transmittal and receipt--Commencement of count--Continuation without adjournment--Comparison and correction of poll lists--Penalty.
12-20-2	Opening of ballot box--Sorting and counting of unopened ballots--Ballots folded together.
12-20-2.1	Return of provisional ballot envelopes and unopened absentee ballots.
12-20-3	Drawing of excess ballots.
12-20-4	Repealed by SL 1974, ch 118, § 200.
12-20-5	Count of votes for candidates--Scrutiny of ballots by precinct deputies--Decisions on disputed ballots.
12-20-5.1	Determination of validity of provisional ballots.
12-20-6	Unstamped ballots not counted.
12-20-7	Ballot not counted when voter's choice indeterminable--Promulgation of rules defining standards.
12-20-8	Precinct superintendent and precinct deputies to record intention of voter.
12-20-9	Repealed by SL 1976, ch 105, § 84.
12-20-10	Blank list for unofficial return of precinct vote for candidates and submitted questions--Return envelope.
12-20-11	Entry of precinct vote on unofficial return list--Return with election returns.
12-20-12	Repealed by SL 1974, ch 118, § 200.
12-20-13	Tabulation and public release of unofficial returns--Entry into central election reporting system.
12-20-13.1	Means of counting provisional ballots--Appointment of officials.
12-20-13.2	Counting provisional ballots--Certification.
12-20-13.3	Counting provisional ballots--Alternate time.
12-20-13.4	Counting provisional ballots--Notice.
12-20-14	Repealed by SL 1981, ch 126, § 1.
12-20-15	State messenger to secure delinquent returns--Expenses deducted from county auditor's salary.
12-20-16	Repealed by SL 1996, ch 94, § 33.
12-20-17	Returns not disclosed until all polls in state closed.
12-20-18	Entry of candidates' votes in precinct pollbooks.
12-20-19	Repealed by SL 1974, ch 118, § 200.
12-20-20	Sealing of ballot boxes after deposit of counted ballots--Violation as misdemeanor.
12-20-21	Return of ballot boxes, returns, records and supplies to officer in charge--Tampering prohibited--Violation as felony.
12-20-21.1	Circumstances requiring report of official returns by telephone.
12-20-21.2	Write-in votes not to be counted--Other votes on ballot.
12-20-22	12-20-22 to 12-20-27. Repealed by SL 1974, ch 118, § 200.
12-20-28	Repealed by SL 1999, ch 69, § 48.
12-20-29	Repealed by SL 1974, ch 118, § 200.
12-20-30	Repealed by SL 1974, ch 118, § 200.

12-20-31	Destruction of ballots and pollbooks--Period for which held--Pending recount or contest.
12-20-32	Preservation of ballot boxes and pollbooks--Delivery of pollbooks to county canvassing board--Violation as felony.
12-20-33	Repealed by SL 1974, ch 118, § 200.
12-20-34	Repealed by SL 1982, ch 86, § 94.
12-20-35	Returns not refused for irregularity--Certificate issued to candidate with most votes.
12-20-36	Time for canvass of vote--Governing board as canvassing board--Representatives for absent board members.
12-20-37	Secretary of state to provide guidance and direction in making returns.
12-20-38	Abstracts of precinct returns prepared by Board of Canvassers--Certification--Deposit.
12-20-38.1	Certified copy of official county canvass furnished to secretary of state--Permanent record.
12-20-39	Election by plurality.
12-20-40	Certificate of election delivered by county auditor to persons elected to local office.
12-20-41	12-20-41 to 12-20-45. Repealed by SL 1974, ch 118, § 200.
12-20-46	Composition of State Canvassing Board--Candidate disqualified from participation.
12-20-47	Time of convening of state canvassers--Adjournment to obtain late returns.
12-20-48	Abstract by state canvassers of county returns--Signature and seal--Recording and filing of abstracts.
12-20-48.1	National convention slates and votes--Certification.
12-20-49	Certificate of election issued for federal, state or legislative office.
12-20-50	Repealed by SL 1973, ch 76, § 6.
12-20-51	Disputes decided by majority of state canvassers--Irregularities disregarded.
12-20-52	Rules and regulations for counting and canvass of vote.

12-20-1. Delivery of supplies to counting board--Certificate of transmittal and receipt--Commencement of count--Continuation without adjournment--Comparison and correction of poll lists--Penalty. As soon as the polls are closed, the precinct superintendent and precinct deputies shall audit the ballot count as prescribed in §§ 12-20-2 and 12-20-3. The precinct superintendent and precinct deputies shall then immediately deliver the ballot boxes, registration book, pollbook, and other election supplies, including voided and unused ballots, to the counting board, if appointed, and sign a certificate of transmittal and receipt as prescribed by the State Board of Elections. The members of the precinct election board or the counting board, if appointed, shall then immediately proceed to count publicly, in the presence of all persons desiring to attend the count, the votes received at the polls, and continue without leaving the site of the count until the count is completed. A person charged with implementing this section may not delay the counting of ballots other than to authorize short recesses for the health and wellbeing of those employed to implement this section. In counting the votes, the members of the precinct election board or counting board shall use the tally sheets provided.

Source: SDC 1939, § 16.1701; SL 1975, ch 119, § 11; SL 1976, ch 105, § 68; SL 1993, ch 113, § 13; SL 1993, ch 118, § 20; SL 1999, ch 69, § 39; SL 2002, ch 76; § 7; SL 2021, ch 68, § 1.

12-20-2. Opening of ballot box--Sorting and counting of unopened ballots--Ballots folded together. The box shall be opened and the ballots taken out, sorted so that all ballots on certain candidacies and issues are separately identified, and counted by the members of the precinct election board unopened, except to ascertain if each ballot is single. If two or more ballots are found folded together and present the appearance of a single ballot, the ballots shall be laid aside until the count of ballots is completed. Upon the comparison of the count with the pollbook and registration list, or in machine precincts, with the number of return envelopes from absentee voters, and the appearance of the ballots, if a majority of the members of the precinct election board are of the opinion that the ballots folded together were voted by one voter, the ballot shall be endorsed, duplicate ballot of one voter not counted. If the ballot count does not agree with the number of votes in the pollbook, a comparison of the voters in the pollbook and the registration list shall be made and the correction of any mistakes shall be made.

Source: SDC 1939, § 16.1701; SL 1974, ch 118, § 150; SL 1978, ch 102, § 1; SL 1993, ch 113, § 14; SL 1999, ch 69, § 40.

12-20-2.1. Return of provisional ballot envelopes and unopened absentee ballots. If the ballot box is opened for ballot counting at the precinct, each provisional ballot envelope and each unopened absentee ballot shall be removed, placed, and sealed in the provisional or unopened absentee ballot return envelope and returned to the person in charge of the election with the other election supplies.

Source: SL 2003, ch 83, § 3; SL 2010, ch 74, § 20.

12-20-3. Drawing of excess ballots. Following the comparison of the pollbook and registration list in § 12-20-2, if the ballots in the box exceed the number of names in the pollbook, the ballots shall be replaced in the box, after any of the ballots folded together are canceled, and one of the precinct deputies shall publicly draw therefrom as many ballots, unopened, as equal to the excess.

Source: SDC 1939, § 16.1701; SL 1993, ch 113, § 15; SL 1999, ch 69, § 41.

12-20-4. Repealed by SL 1974, ch 118, § 200.

12-20-5. Count of votes for candidates--Scrutiny of ballots by precinct deputies--Decisions on disputed ballots. The votes for the several candidates shall be counted in the order in which the candidates occur upon the ballots. At least two precinct deputies, of opposite political parties, shall scrutinize each ballot with the precinct superintendent acting to break any tie vote of the two precinct deputies ruling on a ballot. As the vote is announced two precinct deputies shall make the mark required on the tally sheets.

Source: SDC 1939, § 16.1702; SL 1959, ch 97; SL 1974, ch 118, § 151; SL 1976, ch 105, § 69; SL 1993, ch 118, § 21; SL 1997, ch 81, § 9; SL 1999, ch 69, § 42.

12-20-5.1. Determination of validity of provisional ballots. Prior to the official canvass, the person in charge of the election shall determine if the person voting by provisional ballot was legally qualified to vote in the precinct in which the provisional ballot was cast. In making this determination, the person in charge of the election shall consider the information provided on the affirmation and diligently investigate the voter registration status of the person. If there is no evidence that a voter registration form had been completed by the person showing a residence address in that precinct and returned to an official voter registration site prior to the deadline to register to vote for the election, the provisional ballot is invalid.

Source: SL 2003, ch 83, § 4.

12-20-6. Unstamped ballots not counted. In the counting of the votes any ballot which is not endorsed as provided in § 12-18-12 by the official stamp shall be void and may not be counted.

Source: SL 1897, ch 60, § 35; RPolC 1903, § 1929; RC 1919, § 7278; SDC 1939, § 16.1703; SL 1993, ch 118, § 22.

12-20-7. Ballot not counted when voter's choice indeterminable--Promulgation of rules defining standards. Any ballot or part of a ballot from which it is impossible to determine the voter's choice by using standards defined by the State Board of Elections shall be void and may not be counted. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, defining standards for determining voter intent.

Source: SDC 1939, § 16.1703; SL 1974, ch 118, § 152; SL 2002, ch 76, § 6; SL 2010, ch 74, § 21.

12-20-8. Precinct superintendent and precinct deputies to record intention of voter. The precinct superintendent and precinct deputies, in counting the votes, shall endeavor to record the intention of the voter. The precinct superintendent and precinct deputies shall then hold the intention of the voter to be to vote for the candidate or candidates before whose name the voter has placed a mark.

Source: SDC 1939, § 16.1205; SL 1974, ch 118, § 153; SL 1976, ch 105, § 70; SL 1997, ch 81, § 10; SL 1999, ch 69, § 43.

12-20-9. Repealed by SL 1976, ch 105, § 84.

12-20-10. Blank list for unofficial return of precinct vote for candidates and submitted questions--Return envelope. There shall be furnished by the officer in charge of the election to each voting precinct, for each election, a blank list which shall have space after each candidate's name and after each measure, law, or amendment to be voted upon at such election, in which to enter the number of votes cast in the precinct for each candidate, measure, law, or

amendment, together with an envelope addressed to the officer in charge of the election and labeled in plain letters, "Immediate--Unofficial Return--Do not put this in ballot box."

Source: SL 1911, ch 258, § 1; RC 1919, § 7303; SDC 1939, § 16.1723; SL 1974, ch 118, § 154.

12-20-11. Entry of precinct vote on unofficial return list--Return with election returns. When the vote count is complete, the members of the precinct election board shall enter upon the blank list the true number of votes cast in the precinct for each person, measure, law, or amendment which appears upon the official ballot, and shall enclose the completed list in the envelope described in § 12-20-10. The precinct superintendent or precinct deputy chosen to deliver the election returns to the officer in charge of the election shall return the completed list separate from any other envelopes or wrappers returned at the time the election returns are delivered.

Source: SDC 1939, § 16.1723; SL 1974, ch 118, § 155; SL 1993, ch 118, § 23; SL 1999, ch 69, § 44.

12-20-12. Repealed by SL 1974, ch 118, § 200.

12-20-13. Tabulation and public release of unofficial returns--Entry into central election reporting system. Except as provided in § 12-20-17, the county auditor shall tabulate election returns as rapidly as received and make the result available for the information of the public, but such returns are not the official returns. The county auditor shall enter the information into the central election reporting system by using any computer located in a county office which is properly configured and linked to the central state computer immediately following the tabulation of each precinct.

Source: SDC 1939, § 16.1723; SL 1978, ch 103; SL 1990, ch 108; SL 2003, ch 84, § 1.

12-20-13.1. Means of counting provisional ballots--Appointment of officials. The person in charge of the election shall decide if the provisional ballots are to be counted by hand or by automated tabulating equipment. If a decision is made to count the ballots by hand, a provisional ballot counting board shall be appointed as provided in § 12-15-1. If the provisional ballots are to be counted by automated tabulating equipment, a resolution board and tabulation machine operators shall be appointed as provided in chapter 12-17B.

Source: SL 2003, ch 83, § 5; SL 2006, ch 28, § 3.

12-20-13.2. Counting provisional ballots--Certification. The provisional ballot counting board or resolution board and tabulation machine operators shall convene one hour prior to the convening of the canvassing board. The provisional ballots, which the person in charge of the election has determined are not invalid according to § 12-20-5.1, shall be counted. Upon completion of the count, the provisional ballot counting board or resolution board shall complete a certification of provisional ballot count and give the certification to the canvassing board. The certification form shall be prescribed by the State Board of Elections.

Source: SL 2003, ch 83, § 6.

12-20-13.3. Counting provisional ballots--Alternate time. The person in charge of the election may establish an alternative time prior to the official canvass for provisional ballot counting provided that notice of the time and location is given to the county party chairperson of each political party for primary, secondary, and general elections and to each candidate for any other election.

Source: SL 2003, ch 83, § 7; SL 2006, ch 28, § 4.

12-20-13.4. Counting provisional ballots--Notice. Within ten days after the official county canvass each person voting by provisional ballot shall be sent by the person in charge of the election a notice advising whether the provisional ballot was counted. The notice shall be prescribed by the State Board of Elections.

Source: SL 2003, ch 83, § 8.

12-20-14. Repealed by SL 1981, ch 126, § 1.

12-20-15. State messenger to secure delinquent returns--Expenses deducted from county auditor's salary. If any county auditor fails to perform the duties required of him by § 12-20-38.1, the secretary of state shall send a messenger to the county auditor to secure such returns. All expenses for such service shall be paid by the county of which such auditor is an officer upon the filing of a certificate from the secretary of state as to the amount of such expenses, and the amount so paid shall be deducted from the next monthly salary of the county auditor of such county.

Source: SL 1890, ch 84, § 4; SL 1891, ch 60, § 1; RPolC 1903, § 1946; RC 1919, §§ 7293, 7307; SDC 1939, §§ 16.1714, 16.1724; SDCL, § 12-20-44; SL 1974, ch 118, § 156; SL 1993, ch 118, § 24.

12-20-16. Repealed by SL 1996, ch 94, § 33.

12-20-17. Returns not disclosed until all polls in state closed. No public disclosure of the returns of state and federal elections in any primary or general election is permitted until each precinct polling place in the state is closed. This provision applies to each precinct polling place within the state.

Source: SL 1959, ch 99, § 20; SDC Supp 1960, § 16.2220; SL 1981, ch 119, § 2; SL 2000, ch 71, § 2.

12-20-18. Entry of candidates' votes in precinct pollbooks. After the votes have been counted, the members of the precinct election board shall set down in the pollbook and duplicate tally sheet on forms therein prescribed by the State Board of Elections the name of

each person voted for, the office for which the person received votes, and the number of votes each person received, the number of votes each person received shall be expressed at length.

Source: SDC 1939, § 16.1704; SL 1974, ch 118, § 158; SL 1993, ch 113, § 16; SL 1993, ch 118, § 26; SL 1999, ch 69, § 45.

12-20-19. Repealed by SL 1974, ch 118, § 200.

12-20-20. Sealing of ballot boxes after deposit of counted ballots--Violation as misdemeanor. The counted ballots shall be sorted in the manner provided in 12-20-2 and wrapped, sealed, and deposited in the ballot box. The precinct superintendent and precinct deputies, after the counting of ballots and deposit of the ballots counted in the ballot box, shall properly seal, with seals furnished pursuant to § 12-16-26, any ballot box opening and the place where the clasp and box connect, and each place where a ballot box may be opened before turning the ballot box over to the person deputed to deliver it. A violation of this section is a Class 1 misdemeanor.

Source: SDC 1939, § 16.1706; SL 1974, ch 118, § 159; SL 1979, ch 106, § 1; SL 1982, ch 86, § 91; SL 1999, ch 69, § 46.

12-20-21. Return of ballot boxes, returns, records and supplies to officer in charge--Tampering prohibited--Violation as felony. The sealed ballot box, together with the pollbook and duplicate tally sheet, registration lists, and the envelope containing the unofficial returns and all supplies and returns required, shall be returned by the precinct superintendent or a precinct deputy designated by the precinct superintendent, to the officer in charge of the election immediately after completion of the vote count. No person may deface, destroy, or tamper with the ballot box, envelope, pollbook, duplicate tally sheet, or registration lists or remove any seals. A violation of this section is a Class 6 felony.

Source: SDC 1939, §§ 16.0206, 16.0230, 16.0706, 16.1707, 16.1708, 16.9925; SL 1961, ch 92, §§ 10, 23; SL 1963, ch 109, §§ 1 to 3; SDCL, §§ 12-4-27, 12-6-44, 12-20-22 to 12-20-24, 12-20-26; SL 1974, ch 118, § 160; SL 1982, ch 86, § 92; SL 1993, ch 113, § 17; SL 1993, ch 118, § 27; SL 1999, ch 69, § 47.

12-20-21.1. Circumstances requiring report of official returns by telephone. Notwithstanding the provisions of § 12-20-21, if the person in charge of the election determines that the roads are impassable between a polling place and the office of the person in charge of the election, the superintendent shall report unofficial election returns by telephone to the person in charge of the election immediately following completion of the vote count. The superintendent shall return the sealed ballot box together with the pollbooks, registration lists, the envelope containing the unofficial returns, and all supplies to the person in charge of the election as soon as possible but no later than noon on the day following the election.

Source: SL 1993, ch 117.

12-20-21.2. Write-in votes not to be counted--Other votes on ballot. If a name is written on a ballot in an attempt to cast a write-in-vote, the write-in vote may not be counted. However, all other votes for which the voter's intent may be determined shall be counted.

Source: SL 2002, ch 76, § 5.

12-20-22 to 12-20-27. Repealed by SL 1974, ch 118, § 200.

12-20-28. Repealed by SL 1999, ch 69, § 48.

12-20-29, 12-20-30. Repealed by SL 1974, ch 118, § 200.

12-20-31. Destruction of ballots and pollbooks--Period for which held--Pending recount or contest. The officer in charge of an election may destroy voted ballots and pollbooks from a nonfederal election sixty days following the election at which such ballots were voted. However, they may not be destroyed if any recount or contest of such election is pending. The officer in charge of an election may destroy voted ballots, pollbooks and all other election material relating to a federal election twenty-two months after the election at which the ballots were voted. For the purpose of this section, a federal election is any election to nominate or elect persons to the United States Congress or other national elected position, including national issues or questions. If a ballot is used for a federal election and a state or local election, the ballots and all other election material shall be maintained for twenty-two months. All federal election material may be removed from the ballot box if it is maintained in such a manner as to guarantee the safety and integrity of such material.

Source: PolC 1877, ch 27, § 29; SL 1881, ch 74, § 2; CL 1887, § 1468; RPolC 1903, § 1931; SL 1915, ch 185, § 1; RC 1919, § 7280; SDC 1939, § 16.1708; SL 1963, ch 109, § 2; SL 1963, ch 120; SL 1965, ch 96; SDCL, § 12-20-30; SL 1974, ch 118, § 162; SL 1986, ch 121.

12-20-32. Preservation of ballot boxes and pollbooks--Delivery of pollbooks to county canvassing board--Violation as felony. The county auditor shall keep the ballot boxes and pollbooks in the same condition as when received, until the meeting of the county canvassing board, when he shall deliver the pollbooks to such board. A violation of this section is a Class 6 felony.

Source: SL 1899, ch 83, § 4; RPolC 1903, § 1938; SL 1915, ch 185, § 2; RC 1919, § 7287; SDC 1939, § 16.1709; SDCL, § 12-20-33; SL 1974, ch 118, § 163; SL 1982, ch 86, § 93.

12-20-33. Repealed by SL 1974, ch 118, § 200.

12-20-34. Repealed by SL 1982, ch 86, § 94.

12-20-35. Returns not refused for irregularity--Certificate issued to candidate with most votes. No election returns shall be refused by any officer for the reason that the same may be returned or delivered to him in any other than the manner directed in this chapter, nor shall he refuse to include any returns in his estimate of votes for any informality in holding an election

or making returns thereof; but all returns shall be received and the votes canvassed by such officer, and a certificate given to the person or persons who may by such returns have the greatest number of votes.

Source: PolC 1877, ch 27, § 41; CL 1887, § 1480; RPolC 1903, § 1934; RC 1919, § 7283; SDC 1939, § 16.1711; SL 1974, ch 118, § 165.

12-20-36. Time for canvass of vote--Governing board as canvassing board--Representatives for absent board members. Within six calendar days after the close of any election, the officer in charge of the election, with the assistance of a majority of the governing board as the canvassing board, shall make the canvass of votes. Each member of the governing board may name and have on file with the officer in charge of the election a person to represent the member at the official canvass in the event of the member's absence for cause.

Source: SDC 1939, § 16.1712; SL 1964, ch 62; SL 1971, ch 86, § 2; SL 1974, ch 118, § 166; SL 1985, ch 110, § 1A; SL 1986, ch 120; SL 1999, ch 72, § 3; SL 2006, ch 28, § 5.

12-20-37. Secretary of state to provide guidance and direction in making returns. The secretary of state shall provide for the guidance and direction of the county auditor in making the returns according to law.

Source: SDC 1939, § 16.1722; SL 1974, ch 118, § 167; SL 1981, ch 126, § 2; SL 2003, ch 84, § 2; SL 2012, ch 81, § 4.

12-20-38. Abstracts of precinct returns prepared by Board of Canvassers--Certification--Deposit. The Board of Canvassers for both primary and general elections shall at the time provided by § 12-20-36 proceed to open the returns from the various voting precincts in the county and make abstracts of the votes cast for each of the candidates and each of the issues. Each of the abstracts of the votes made shall be signed and certified by the canvassers, under the seal of the county auditor, and be deposited in the office of the auditor.

Source: SL 1890, ch 84, § 2; RPolC 1903, § 1941; RC 1919, § 7290; SDC 1939, § 16.1712; SL 1971, ch 92, § 2; SL 1974, ch 118, § 168; SL 1981, ch 126, § 3.

12-20-38.1. Certified copy of official county canvass furnished to secretary of state--Permanent record. The county auditor shall immediately transmit by mail, fax, or electronic means to the secretary of state a certified copy of the official county canvass of votes prepared pursuant to § 12-20-38 which shall be used for the official state canvass. The certified copy shall bear a visible county seal. If the copy is faxed or sent by electronic means, the original certified copy shall also be mailed or hand delivered to the secretary of state. The certified copies shall be microfilmed to become permanent records of the State of South Dakota and be kept by the secretary of state.

Source: SDC 1939, §§ 16.0232, 16.1713; SDCL, §§ 12-6-47, 12-20-41; SL 1968, ch 143, § 2; SL 1971, ch 94; SL 1974, ch 118, § 169; SL 1981, ch 126, § 4; SL 2003, ch 84, § 3.

12-20-39. Election by plurality. Except when otherwise specially provided in all elections for the choice of any officer, the person receiving the highest number of votes for any office shall be deemed to have been elected to that office.

Source: PolC 1877, ch 27, § 43; CL 1887, § 1482; RPolC 1903, § 1865; RC 1919, § 7212; SDC 1939, § 16.0603.

12-20-40. Certificate of election delivered by county auditor to persons elected to local office. It shall be the duty of the county auditor to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers, respectively, and to deliver such certificate to the person entitled to it.

Source: SL 1890, ch 84, § 2; RPolC 1903, § 1941; RC 1919, § 7290; SDC 1939, § 16.1712; SL 1973, ch 76, § 3.

12-20-41 to 12-20-45. Repealed by SL 1974, ch 118, § 200.

12-20-46. Composition of State Canvassing Board--Candidate disqualified from participation. The Governor, or his designee, the Chief Justice of the Supreme Court, or his designee, and the secretary of state, in the presence of the attorney general shall constitute a board of canvassers to canvass the returns of the votes for representatives in Congress, United States Senators, and for electors of President and vice president of the United States and all state officers, members of the State Legislature, constitutional amendments, initiated measures, and referred laws, but no member thereof shall take part in canvassing the votes for any office for which he is a candidate.

Source: SL 1890, ch 84, §§ 3, 6; RPolC 1903, §§ 1948, 1951; RC 1919, §§ 7295, 7298; SL 1929, ch 117, § 3; SDC 1939, §§ 16.1716, 16.1720; SDCL, § 12-20-50; SL 1973, ch 76, § 5; SL 1981, ch 127.

12-20-47. Time of convening of state canvassers--Adjournment to obtain late returns. Within seven days after the day of election, the Board of State Canvassers shall open and examine the returns from each county. However, if the returns from each county have not been received, the board may adjourn, not exceeding ten days, for the purpose of obtaining the returns from each county. The board shall proceed with the canvass after the returns have been received from each county.

Source: SDC 1939, § 16.1717; SL 1971; ch 86, § 3; SL 1985, ch 110, § 1B; SL 1999, ch 72, § 4.

12-20-48. Abstract by state canvassers of county returns--Signature and seal--Recording and filing of abstracts. The Board of State Canvassers shall make an abstract stating the number of votes cast for each of such officers, the names of all persons voted for, for what office they respectively received the votes, and the number of votes each received, in words at length, and stating whom they declare to be elected to each office, which abstract shall be

signed by the canvassers in their official capacity and as state canvassers, and have the great seal of the state affixed.

The secretary of state shall record such abstracts in a book to be kept by him for recording the result of state elections, called the "election book," and also file such abstracts.

Source: SL 1890, ch 84, §§ 8, 9; RPolC 1903, §§ 1950, 1952; RC 1919, §§ 7297, 7299; SDC 1939, § 16.1718.

12-20-48.1. National convention slates and votes--Certification. Upon the completion of the state canvass of the results of the primary election for delegates and alternates to the national convention, the State Canvassing Board shall certify to the state chairman of each political party the slates (groups of delegates and alternates) entered in the primary for each political party and the number of votes in the primary for each slate.

Source: SL 1973, ch 73, § 2; SL 1974, ch 120, § 2; SL 1979, ch 98, § 2; SL 2021, ch 69, § 1.

12-20-49. Certificate of election issued for federal, state or legislative office. A certificate of election, signed by the Governor, attested by the secretary of state, with the great seal of the state affixed, shall be issued to each person elected to a federal or state office, or a member of the State Legislature. The secretary of state shall forward to the appropriate federal officer certified copies of the certificates as may be required.

Source: SL 1890, ch 84, §§ 3, 10; RPolC 1903, §§ 1951, 1953; RC 1919, §§ 7298, 7300; SL 1929, ch 117, § 4; SDC 1939, §§ 16.1719, 16.1720; SDCL, § 12-20-50; SL 1973, ch 76, § 4.

12-20-50. Repealed by SL 1973, ch 76, § 6.

12-20-51. Disputes decided by majority of state canvassers--Irregularities disregarded. A majority of the members of the State Canvassing Board shall decide all matters of dispute, and it shall be their duty to disregard all technicalities and misspelling, the use of initial letters or abbreviations of the names of candidates, if it can be ascertained from the returns for whom the votes were intended.

Source: SL 1890, ch 84, § 11; RPolC 1903, § 1954; RC 1919, § 7301; SL 1937, ch 119, § 2; SDC 1939, § 16.1721.

12-20-52. Rules and regulations for counting and canvass of vote. The State Board of Elections may, by rule, in accordance with chapter 1-26, promulgate rules and regulations to clarify the procedure by which ballots are counted and canvassed in all elections.

Source: SL 1976, ch 105, § 81.

CHAPTER 12-21 - RECOUNTS

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12-21-1. Purpose of chapter--Liberal construction. The intent of the provisions of this chapter is to procure a speedy and correct determination of the true and actual count of all ballots cast at an election, which ballots are valid on their face, and all provisions of this chapter shall be liberally construed to that end.

Source: SDC 1939, § 16.1801.

12-21-2. Composition and appointment of county recount board--Oath to act in good faith and with impartiality. The county recount board of each county which conducts a recount authorized by this chapter shall consist of a recount referee and two voters of the county to be appointed by the presiding judge of the circuit court for that county, and shall provide for representation of the two political parties with the largest party registration in that county. The recount referee shall be a duly qualified member of the bar of the State of South Dakota and a member of the political party which polled the largest number of votes for Governor in the county in the last gubernatorial election. Prior to serving, each member of the recount board shall take an oath that the member will act in good faith and with impartiality. The state board of elections shall prescribe the oath to be taken.

Source: SDC 1939, § 16.1808; SL 1955, ch 58; SL 1959, ch 98; SL 1969, ch 82, § 1; SL 1974, ch 118, § 170; SL 1983, ch 117; SL 1989, ch 132; SL 2002, ch 77, § 1; SL 2008, ch 34, § 17.

12-21-3. Notice of appointment and time and place of recount--Notice to candidates. The judge shall immediately give notice to the members of the recount board of their appointment to such board, and the time and the place of the recount as prescribed in § 12-21-20, and, immediately after such appointment, he shall notify all candidates for public office subject to recount of the names of the recount referee and the additional members of the recount board, and the time and place of the recount.

Source: SDC 1939, § 16.1808 as added by SL 1959, ch 98; SL 1969, ch 82, § 2; SL 1974, ch 118, § 171.

12-21-4. Compensation of recount referee and appointed members of board. The recount referee shall receive compensation in the same amount as court appointed counsel and the other two members so appointed to the recount board shall each receive compensation in the amount of twenty-five dollars per day or in an amount equal to the state minimum hourly wage, whichever is the greatest.

Source: SDC 1939, § 16.1808 as added by SL 1955, ch 58; SL 1959, ch 98; SL 1969, ch 82, § 3; SL 2008, ch 66, § 1.

12-21-4.1. Mileage allowance for recount board members. The members of the recount board shall receive mileage for the miles traveled each day of the recount from their points of residence in an amount equal to that set by the State Board of Finance for state employees; provided however, that this provision shall not apply to the first ten miles traveled each day.

Source: SDC 1939, § 16.1808 as added by SL 1969, ch 82, § 3; SL 1974, ch 118, § 172.

12-21-5. Repealed by SL 1982, ch 28, § 46.

12-21-6. Application of chapter. Except in school and municipal elections and as provided in § 12-21-18, the provisions of this chapter apply to the recount of ballots cast in any election conducted. The provisions of §§ 12-21-47 to 12-21-61, inclusive, apply to all elections.

Source: SDC 1939, § 16.1801; SL 1974, ch 118, § 174; SL 1982, ch 134, § 5; SL 1984, ch 55, § 1; SL 2006, ch 28, § 6.

12-21-6.1. Code of regulations to govern recounts. The State Board of Elections may by rule, in accordance with chapter 1-26, adopt a code of regulations to govern the conduct of recounts.

Source: SL 1976, ch 105, § 82.

12-21-7. Conditions under which recount made. Such recount shall be made under any of the conditions described in §§ 12-21-8 to 12-21-15, inclusive.

Source: SDC 1939, § 16.1803.

12-21-8. Precinct recount on petition by voters of precinct. When within ten days after an election any three registered voters of a precinct file with the officer in charge of the election a petition, duly verified by them, setting forth that they believe that the official returns from such precinct as to a specified candidate or as to a specified referred or submitted question are erroneous, the votes of such precinct as to the office or position specified or as to the question specified shall be recounted.

Source: SDC 1939, § 16.1803 (1); SL 1974, ch 118, § 175.

12-21-9. Extended time for filing additional precinct recount petitions. When as to any candidate or any submitted or referred question a petition or petitions are filed under § 12-21-8 as to any particular precinct or precincts within a county, similar petitions as to the same question or candidate may be filed within three days thereafter as to another precinct or precincts within the county, even though the specified period of ten days from the election expires within such three days. But such three-day extension shall only apply as from the filing of the first petition as to any such candidate or any such question.

Source: SDC 1939, § 16.1803 (1).

12-21-10. Complete recount on candidate's petition in close local election. A candidate for any office, position, or nomination which is voted upon only by the voters of one county or part thereof may ask for a recount of the official returns if such candidate is defeated, according to the official returns, by a margin not exceeding two percent of the total vote cast for all candidates for such office, position, or nomination. Any candidate for nonlegislative office shall file a verified petition with the county auditor within three days after the election returns have been canvassed by the official county canvass. Any candidate for legislative office shall file a verified petition with the county auditor within three days after the election returns have been canvassed by the official state canvass. The petition shall state that the

candidate believes a recount will change the result of the election and that all of the votes cast for the office, position, or nomination should be recounted. A recount shall then be conducted.

Source: SDC 1939, § 16.1803 (2); SL 1982, ch 134, § 4; SL 1988, ch 133; SL 1989, ch 30, § 35; SL 1999, ch 72, § 5.

12-21-11. Complete recount on candidate's petition in close election in joint legislative district. If any legislative district comprises more than one county, any candidate for election to or nomination for the Legislature who, according to the official returns, has been defeated by a margin not exceeding two percent of the total vote cast for all candidates for such office may, within three days after completion of the official canvass of the returns, file a petition as set forth in § 12-21-10 with the county auditor of each county. Each county auditor shall then conduct a recount.

Notwithstanding § 12-21-20, if the recount is for a legislative district comprising more than one county and the candidate expresses to the county auditor in writing to be present at each county's recount, the board shall convene at the time and date determined by mutual agreement between the county auditor and candidate. All such recounts shall be completed within fourteen days following the filing of the petition.

Source: SDC 1939, § 16.1803 (3); SL 1999, ch 72, § 6; SL 2017, ch 70, § 1.

12-21-11.1. Notice to secretary of state of petition filed with county auditor. Whenever a petition for recount is filed with the county auditor for an election which has been canvassed by the State Board of Canvassers, the county auditor shall notify the secretary of state of the petition for recount.

Source: SL 1981, ch 128.

12-21-12. Candidate's petition for recount in close state or district election--Notice to county auditors. If any candidate for an office, position, or nomination other than the Legislature is voted upon in more than one county, and has been defeated according to the official returns by a margin which does not exceed one-fourth of one percent of the total vote cast for all candidates for such office, position, or nomination, the candidate may within three days after completion of the official canvass by the State Board of Canvassers file a petition with the secretary of state setting forth that the candidate believes a recount will change the result and that all of the votes cast for the office, position, or nomination should be recounted. The secretary of state shall, by registered or certified mail, notify each county auditor that has precincts included in the petition. Each county auditor shall then conduct a recount.

Source: SDC 1939, § 16.1803 (4); SL 1999, ch 72, § 7.

12-21-13. Computation of total vote where two or more candidates elected to same office. When in any election a voter may vote for two or more candidates for the same office, such as members of the Legislature, the total vote cast for all candidates for such office shall for the purposes of §§ 12-21-10 to 12-21-12, inclusive, be deemed to be two times the average

number of votes cast for the candidates officially declared nominated or elected as shown by the official returns.

Source: SDC 1939, § 16.1805.

12-21-14. Voters' petition for recount on question submitted to entire state--Form of petition--Notice to county auditors. Whenever any referred or submitted question is voted upon throughout the state and is determined according to the official canvass by a margin of not exceeding one-fourth of one percent of the total vote cast for and against on such question, there may be filed with the secretary of state within ten days after the completion of the official canvass by the State Board of Canvassers a petition signed by not less than one thousand registered voters of the state, and representing at least five counties of the state, setting forth that petitioners believe a recount will change the result and praying that such recount shall be had in all the precincts involved. Such petition may consist of different petitions bound together and signed and verified substantially as provided by law with regard to petitions to invoke the referendum. Upon the filing of such petition, the secretary of state shall forthwith by registered or certified mail notify each county auditor whose county voted upon the question and such recount shall then be conducted in all of the precincts in each of such counties.

Source: SDC 1939, § 16.1803 (5); SL 1974, ch 118, § 176.

12-21-15. Petition for recount in close presidential election--Time of filing--Notice to county auditors. Whenever according to the official returns as publicly announced and compiled, although not yet officially canvassed, it fairly appears that one group of candidates for presidential electors has been elected over another group of such candidates by a margin not exceeding one-fourth of one percent of the total of votes cast for both such groups, the chairman of the state central committee of the political party which nominated either of such groups, or any two or more candidates of either such group, may file with the secretary of state at any time after the election and prior to the canvass by the State Board of Canvassers, a petition setting forth that in the opinion of the petitioner or petitioners all votes cast for presidential electors should be recounted. Upon the filing of such petition, the secretary of state shall forthwith by registered or certified mail notify each county auditor in the state thereof, and such recount shall then be conducted in all of the precincts in all of such counties.

Source: SDC 1939, § 16.1803 (6).

12-21-16. Tie vote certified by canvassing board--Automatic recount. Whenever by reason of a tie vote found to exist upon the canvass of the original official returns, it is impossible to declare who has been elected or nominated to an office or position, it shall thereupon be the duty of the official board making such canvass to certify said vote to the county auditor where the election involved is confined to or within the limits of a county, and to the secretary of state as to all other elections. Thereupon such county auditor or such secretary of state, as the case may be, shall proceed exactly as if a petition had been duly filed under §§ 12-21-7 to 12-21-15, inclusive, requiring a recount to be made of all votes involved, and such recount shall proceed accordingly. This section shall not apply to school and township elections.

Source: SDC 1939, § 16.1804.

12-21-17. Repealed by SL 1985, ch 110, § 4.

12-21-18. Chapter not applicable where runoff election required. The provisions of this chapter shall not apply to any election which must be followed by a second or runoff election by reason of no majority choice, according to the official returns.

Source: SDC 1939, § 16.1802 (2).

12-21-19. Joint petition by defeated candidates. In any case where a voter may vote for two or more persons for the same office, nomination, or position, such as members of the Legislature, delegates to a convention, or presidential electors, and more than one defeated candidate desires such recount, such candidates may at their option file joint instead of individual petitions under this chapter.

Source: SDC 1939, § 16.1807.

12-21-20. Notice to circuit judge of recount petition--Appointment and convening of recount board. The county auditor, immediately on the due filing of any petition for a recount or upon receipt from the secretary of state of notice of such filing with the secretary of state, shall notify in writing, with the seal of the auditor's office, the presiding judge of the circuit court for the auditor's county. The presiding judge shall appoint a board, pursuant to § 12-21-2, for each county in the circuit in which a recount is to be conducted. The presiding judge may appoint the board anytime within thirty days prior to a primary or general election or upon the filing of the petition for recount. The board shall then convene in the office of the county auditor on the second Monday at nine a.m. following the filing of the petition. However, if the second Monday is a legal holiday, the board shall convene at nine a.m. of the day following. The county auditor shall provide the recount board with laws, rules, and forms to use in conducting the recount. The board shall then proceed with the recount.

Source: SDC 1939, § 16.1809; SL 1967, ch 75; SL 1968, ch 143, § 8; SL 1974, ch 118, § 177; SL 1983, ch 118; SL 1989, ch 133; SL 2000, ch 73, § 3; SL 2002, ch 77, § 2.

12-21-20.1. Appointment of additional recount board. If the presiding circuit court judge in consultation with the county auditor determines that a single recount board in a county is unlikely to complete the recount in five working days, the presiding judge may appoint more than one recount board for that county. The presiding judge shall determine which precincts each recount board shall be appointed to recount.

Source: SL 2003, ch 85, § 1.

12-21-21. Adjournment by board to another place. Any county recount board, after convening at the time and place provided by this chapter, may adjourn its proceedings to any other more convenient public place at the county seat.

Source: SDC 1939, § 16.1832; SL 1974, ch 118, § 178; SL 2002, ch 77, § 3.

12-21-22. Adjournment to permit combining separate recounts of same ballots. Whenever a county recount board is required to make two or more different recounts of the same ballots, such board may, by written order, filed as a public record in the office of the county auditor, adjourn any recount, other than a recount of votes for presidential electors, so that all such recounts may be at the same time.

Source: SDC 1939, § 16.1833.

12-21-23. Majority vote of county recount board--Quorum. All questions arising on such recount shall be determined by majority vote of such board, and at least two members of such board shall be present at all times. When only two members are present, the presence of the third member may be required for the purpose of determining any disputed question on which the two members present are unable to agree.

Source: SDC 1939, § 16.1810.

12-21-24. Materials to be provided to recount board--Determination as to whether ballot countable. The county auditor shall provide the pollbooks, automatic tabulating system election night print outs, sealed ballot boxes, any provisional ballots which were determined countable pursuant to § 12-20-13.2, any uncounted provisional ballots, and any unopened absentee ballot envelopes to the recount board. The recount board is authorized to make a determination whether any provisional ballots or absentee ballots which were determined not to be countable, shall be counted, and those votes shall be added to the recount tally.

Source: SDC 1939, § 16.1810; SL 2010, ch 74, § 22.

12-21-25. Recount to proceed expeditiously. The recount shall proceed as expeditiously as reasonably possible until completed.

Source: SDC 1939, § 16.1810.

12-21-26. Candidates' right to witness recount--Witnesses to recount on submitted question. Each candidate for any office, nomination, or position involved in any such recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots. If the recount is upon a referred or submitted question, any registered voter of the state favoring either side as to such question may be present and represent such side, and if more than one person favoring such side is present, they shall designate one of their number to represent such side, who shall have full opportunity to witness the opening of all ballot boxes and the recount of all ballots.

Source: SDC 1939, § 16.1810; SL 1974, ch 118, § 179.

12-21-27. Segregation and identification of disputed ballots. If any such candidate or any such representative, protests the ruling of such board as to any ballot, such ballot shall be

adequately identified by the board as an exhibit and segregated by the board as a disputed ballot.

Source: SDC 1939, § 16.1810; SL 1974, ch 118, § 180.

12-21-28. Identification of ballots disputed in two or more recounts--Substitution of memorandum describing ballot. When upon consolidated recounts as described by § 12-21-22 it becomes necessary, under the provisions of this chapter, to identify and segregate the same ballot as disputed in two or more such recounts, such board shall determine and designate the recount as to which such ballot shall be segregated and sealed, but shall also identify it as an exhibit as to each of the other recounts, and in the sealed envelope in which disputed ballots are segregated in each of the other recounts, shall substitute in lieu of such ballot a memorandum briefly describing such ballot as to the question which is raised with reference thereto, how it has been identified as an exhibit, and the identification of the envelope in which it is sealed.

Source: SDC 1939, § 16.1833.

12-21-29. Opening of segregated ballot for purpose of different recount--Identification and substitution of memorandum if disputed--Resealing. When in any recount, ballots have, in a previous recount, been identified and sealed as disputed but are still in the custody of the county auditor, the circuit court for the county shall, upon application to the county auditor, order the opening of such sealed envelopes solely for the purposes of the recount, and such envelopes may then be opened by such board in the presence of all persons entitled to appear at such recount and the ballots in such envelopes recounted. If it becomes necessary to identify any such ballot as disputed, it shall be marked as an exhibit, and in the sealed envelope in which disputed ballots are segregated in the pending recount, such board shall substitute in lieu of such ballot a memorandum briefly describing such ballot as to the question that is raised with reference thereto, how it has been identified as an exhibit and the identification of the envelope in which it was sealed in the previous recount. After such ballots have been recounted, they shall be resealed in the same identical envelope from which they were taken.

Source: SDC 1939, § 16.1833.

12-21-30. Opening of segregated ballots involved in previous judicial proceedings--Court order to preserve rights. When any such sealed ballots have been certified to any court in judicial proceedings, the court which has custody thereof shall, on application of such board or any person interested in a pending recount, make such order as may be necessary to permit a recount of such ballots, and to preserve the rights of all persons interested with regard to all questions and to safeguard the rights of the parties in the pending proceeding.

Source: SDC 1939, § 16.1833; SL 1974, ch 118, § 181.

12-21-31. Return and resealing of undisputed ballots--Certification of disputed ballots. At the conclusion of the recount of each precinct the undisputed ballots shall be

returned to the ballot box and resealed, and the disputed ballots, if any, shall be certified pursuant to § 12-21-33.

Source: SDC 1939, § 16.1810; SL 1974, ch 118, § 182.

12-21-32. Certification of recount result--Contents and execution--Transmittal to secretary of state. Upon the conclusion of the recount of all ballots to be recounted the county recount board shall certify the result. The certificate shall be signed by at least two members of the board, attested under seal by the county auditor. The certificate shall set forth in substance the proceedings of the board and appearances of any candidates or representatives, shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made as to the office, nomination, position, or question involved, and the correct vote of such precinct as to the office, nomination, position, or question as determined by the board through the recount. The certificate shall be made in duplicate, and either the original or duplicate original shall be transmitted to the secretary of state by mail in any recount affecting a certificate to be issued by the secretary of state.

Source: SDC 1939, § 16.1811; SL 1974, ch 118, § 183; SL 2008, ch 34, § 18.

12-21-33. Sealing and certification of disputed ballots. Disputed ballots shall be securely sealed in a separate envelope for each precinct. The county recount board shall also make a separate and distinct certificate, signed by at least two members of such board and attested by the county auditor under seal, setting forth the number of such disputed ballots as to each precinct, and adequately identifying the envelope in which the same are sealed.

Source: SDC 1939, § 16.1812; SL 1974, ch 118, § 184.

12-21-34. Filing and preservation of certificates. The certificate as to the result of the recount and the certificate as to disputed ballots shall be filed and preserved by the county auditor as public records.

Source: SDC 1939, §§ 16.1812, 16.1813; SDCL, § 12-21-33; SL 1974, ch 118, § 185; SL 2002, ch 77, § 4.

12-21-35. Certification of recount result to canvassing board--Recount result in lieu of official returns. Whenever a recount is completed by the county recount board prior to the official canvass of the vote as to the office, position, nomination, or question, involved in such recount, the county recount board shall forthwith upon such completion, certify the result directly to the official, board, or tribunal making such canvass, and the result determined on such recount shall be included in the official canvass in lieu of the result as determined by the official returns as to all precincts involved in the recount.

Source: SDC 1939, § 16.1831.

12-21-36. Recanvass and corrected abstract of votes in local election. In the case of a recount as to any local election, it shall be the duty of the county recount board forthwith to

recanvass the official returns as corrected by the certificate showing the result of the recount, and to make a new and corrected abstract of the votes cast as to such office, nomination, position, or question, which corrected abstract shall be signed by at least two members of said board and filed as a public record in the office of the county auditor and a certified copy of the certificate shall be transmitted to the officer in charge of that election.

Source: SDC 1939, § 16.1815; SL 1974, ch 118, § 186.

12-21-37. New certificate of election or nomination to local office when result changed by recount. If such corrected abstract by the county recount board shows no change in the result as previously found on the official returns, no further action shall be taken. But if there is a change in such result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated as the case may be, which certificate shall be signed by at least two members of such board, and shall set forth the nomination or election of such person as to such office or position.

Source: SDC 1939, § 16.1815; SL 1974, ch 118, § 187.

12-21-38. Repealed by SL 1974, ch 118, § 200.

12-21-39. Reconvening of state canvassers after recount--Recanvass and corrected abstract. The secretary of state shall file all certificates involved in the recount as to any office, nomination, position, or question that have been received from the county recount boards. The secretary of state shall fix a time and place as early as reasonably possible for reconvening the State Board of Canvassers and shall notify the members of the State Board of Canvassers. The State Board of Canvassers shall reconvene at the time and place so designated and recanvass the official returns as to the office, nomination, or position, as corrected by the certificates. The State Board of Canvassers shall make a new and corrected abstract of the votes cast and declare the person elected or nominated as the case may be or the determination of any question. The corrected abstract shall be signed by the members of the State Board of Canvassers in their official capacities and shall have the great seal of the state affixed. The corrected abstract shall be filed by the secretary of state.

Source: SDC 1939, § 16.1814; SL 2002, ch 77, § 5.

12-21-40. New certificate of election or nomination on change of result by corrected abstract of state returns. If such corrected abstract by the State Board of Canvassers shows no change in the result previously found on the official returns, no further action shall be taken. If there is a change in such result, a new certificate of election or nomination shall be issued in the same manner and by the same authority as the certificate of election or nomination previously issued to each candidate found to have been elected or nominated as the case may be. Such certificate shall set forth the fact of the nomination or election of such person to such office or position, and that the certificate supersedes the certificate previously issued, which shall be adequately identified.

Source: SDC 1939, § 16.1814.

12-21-41. Original certificate of nomination or election superseded by certificate issued after recount--Rights of holder. Any certificate of nomination or election issued under the provisions of this chapter shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued which shall be adequately identified which is inconsistent with such new certificate, and the holder of any certificate of nomination or election issued under this chapter shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had.

Source: SDC 1939, § 16.1816; SL 1974, ch 118, § 188.

12-21-42. Original determination on submitted question superseded by determination after recount. The determination, as provided in this chapter, of a corrected and changed result upon a recount as to any referred or submitted question shall have the effect of superseding and rendering null and void the result as found upon the original canvass.

Source: SDC 1939, § 16.1816.

12-21-43. Tie vote after recount determined by lot--Issuance of certificate. When a tie vote between candidates is found to exist on the basis of any such recount, and by reason of such tie vote it cannot be determined who has been nominated or elected, it shall be the duty of the authority charged by law with the responsibility of issuing the certificate of election or nomination to fix a time and place for the drawing of lots by such candidates involved in such tie vote, giving reasonable notice of such time and place to each of such candidates. Each such candidate may appear at the time and place designated either in person or by a representative, whereupon in the presence of such authority charged with the responsibility of issuing the certificate of nomination or election, the candidate or candidates entitled to the certificate or certificates of nomination or election shall be determined by drawing of lots in the manner directed by such authority, and the certificate or certificates of nomination or election shall be issued accordingly.

Source: SL 1890, ch 84, §§ 17, 26; SL 1893, ch 81, § 6; RPolC 1903, §§ 1942, 1943, 1970; RC 1919, § 7317; SL 1937, ch 119, § 1; SDC 1939, § 16.1817.

12-21-44. Second recount prohibited--Exception. Whenever the ballots cast in any precinct have been recounted as to any office, nomination, petition, or question, such ballots shall not thereafter, except as specifically provided in § 12-21-45, be recounted as to the same office, nomination, position, or question.

Source: SDC 1939, § 16.1830; SL 1974, ch 118, § 189.

12-21-45. Court order for second recount--Grounds--Time of filing petition. At any time while any recount is pending before a county recount board, the circuit court for such county, on petition of any interested person, and upon due notice to such board, if satisfied that such

board has acted fraudulently or arbitrarily and in disregard of law, and in such a way as likely to reach an unfair result, may order any ballots already recounted to be recounted a second time. Such petition, however, must be filed prior to final certification of the recount, and to give opportunity for hearing and decision, the court may enjoin such certification for a period not exceeding three days.

Source: SDC 1939, § 16.1830.

12-21-46. Court removal and replacement of recount board member not acting in good faith. When satisfied on any such petition that the conduct of such board, or any member thereof, has been fraudulent, or deliberately and willfully in disregard of law, and not in good faith, the court may remove such member or members guilty of such conduct and appoint in the place of such member or members removed any registered voter or voters of the county who shall thereupon assume the duties and responsibilities of such removed member or members for the purpose of such recount.

Source: SDC 1939, § 16.1830; SL 1974, ch 118, § 190.

12-21-47. Persons entitled to certiorari for review of recount--Time of filing of petition. Whenever any candidate is aggrieved by the final determination made as a result of any recount, he may have the proceedings of such recount board reviewed upon certiorari as provided by this chapter. Such review may also be obtained as to any submitted or referred question by any voter who was entitled to vote thereon, but only with the approval of the court in which such review is asked, or of a judge of such court, which approval must be endorsed upon the petition before it is filed. The petition for the writ must be filed within five days after the filing of the recount certificate with the secretary of state or county auditor.

Source: SDC 1939, § 16.1818; SL 1941, ch 81.

12-21-48. Original jurisdiction of certiorari proceedings. Original jurisdiction of such certiorari proceeding shall be as follows:

(1) Where the same involves a submitted or referred question voted upon in more than one county, or the nomination or election of presidential electors, United States senator, representative in Congress, member of the Legislature, or any state or judicial officer, in the Supreme Court;

(2) In all other cases in a circuit court of a county which includes the locality where the election or some part thereof was conducted.

Source: SDC 1939, § 16.1819; SL 1982, ch 28, § 10.

12-21-49. Form and contents of petition for certiorari. The petition for the writ, if involving a nomination or election as to any office or position, shall denominate the candidate seeking the review as plaintiff, and shall name the candidate or candidates declared elected as defendants. If the petition seeks a review as to a determination of any submitted or referred question, it shall be entitled: "In the matter of petition for writ of certiorari as to determination of election on (specifying the question submitted or referred)." In any case the petition shall

concisely set forth the nature of the election involved, the result thereof as pronounced by the official returns, the basis for and proceedings had upon the recount, the respects in which any county recount board, or other authority, is claimed to have exceeded its jurisdiction, and a brief summarized statement of the particulars in which it is claimed any county recount board, or other authority, has misapplied the law in the determination of questions concerning disputed ballots.

Source: SDC 1939, § 16.1820.

12-21-50. Issuance of writ of certiorari--Officials to whom addressed--Contents. If the court concludes that the facts set forth in the petition, if true, are sufficient to justify the issuance of the writ, the same shall be issued. It shall be addressed to each county recount board, and to each other authority which the plaintiff claims to have exceeded its jurisdiction, including misapplication of the law in determination of questions concerning disputed ballots, and shall command each such board or authority at or before a time specified to certify to the court all its records and proceedings with reference to such matter. If questions as to validity of any disputed ballots are involved, the writ shall command the county auditor having custody thereof to return at the time designated the sealed envelopes containing the disputed ballots in question.

Source: SDC 1939, § 16.1821.

12-21-51. Service of writ of certiorari--Persons on whom served. Such writ shall forthwith be served personally, or by registered or certified mail, on each county auditor as to any county where the county recount board or such auditor is claimed to have exceeded jurisdiction, and in the same manner upon the secretary of state in case the secretary of state, or the State Board of Canvassers, is claimed to have exceeded jurisdiction. Only one writ need be issued, and shall be sufficient irrespective of the number of officials, boards, or tribunals from which certification of records or proceedings may be required. The writ and petition shall also be served forthwith upon all defendants named in case the proceeding involves election or nomination to any office or position, and upon the attorney general, in case the proceeding involves a submitted or referred question voted upon in more than one county. In any case where the proceeding involves the vote upon a submitted or referred question within a single county, the court shall in the writ direct additional service of the writ and petition on such officer or officers, or person or persons, whom the court believes might be interested in resisting the relief asked.

Source: SDC 1939, § 16.1821.

12-21-52. Intervention in certiorari involving submitted question. In any such proceeding involving a submitted or referred question, the court may upon good cause shown, either ex parte or otherwise, permit any officer or person desiring to be heard to intervene, either as a party plaintiff or party defendant.

Source: SDC 1939, § 16.1822.

12-21-53. Answer to petition for certiorari--Joint or several answer. On or before the return day of the writ, the defendant must serve and file his answer to the petition, and if there

are several defendants, they may answer jointly or severally, at their option. In the case of a proceeding involving a vote on a referred or submitted question, any officer or person, on whom the writ is served, may interpose an answer, or several such officers or persons may unite in a single answer.

Source: SDC 1939, § 16.1823.

12-21-54. Defenses set forth in answer to certiorari--New allegations--Petition for additional writ. All defenses, either of fact or of law, must be set forth in the answer and no other pleading in response to the petition shall be permitted. Such answer may also allege matters showing error by any county recount board or boards, or other official, tribunal, or authority not covered by such petition, and pray for an additional writ for certification of additional proceedings and records relative thereto, in which event such additional writ may be granted in the same manner, and with the same procedure and effect as the original writ.

Source: SDC 1939, § 16.1823.

12-21-55. Insufficient certification--Further certification required. When any certification is insufficient to show adequately the proceedings had, the court may by order require further certification of records and proceedings.

Source: SDC 1939, § 16.1825.

12-21-56. Hearing on certiorari--Conference to narrow issues. Upon the returns made as required by the writ, the court shall hear the parties, and if further hearing is deemed necessary to determine the case, the court may make such order as deemed advisable fixing such further procedure as may be conducive to expeditious and just determination of the proceeding, including a requirement for a conference of all parties appearing and their attorneys designed to narrow the issues inasmuch as reasonably possible through eliminating questions as to ballots, when such questions are not seriously urged, and the offsetting against each other of ballots which are marked for opposing candidates involved, or on opposite sides of the question, and which present identical issues as to validity, and through segregation of ballots remaining disputed into classes or groups where different classes or groups of ballots present identical questions.

Source: SDC 1939, § 16.1824.

12-21-57. Scope of review on certiorari--Correction of errors. In such proceedings the court may review completely all of the proceedings had relative to such recount as shown by such certifications, and correct any errors made in the determination of questions as to validity of ballots, and in computation of returns, and any errors which may be manifest from such certifications.

Source: SDC 1939, § 16.1826.

12-21-58. Procedure as in other cases of certiorari. Except as otherwise specifically provided and so far as applicable the practice and procedure shall be the same as in other cases of review on certiorari.

Source: SDC 1939, § 16.1827.

12-21-59. Judgment on certiorari. The judgment rendered by the court shall be such as the court deems required by the law as applied to the facts disclosed by the record presented, and shall pronounce what the court deems the correct result of the election involved as shown by the record.

Source: SDC 1939, § 16.1828.

12-21-60. Right of appeal to Supreme Court from judgment on certiorari. As to any such judgment of a circuit court any party to the proceeding aggrieved thereby may appeal to the Supreme Court in the manner provided by § 12-21-61. For the purposes of this section, any person or official who has been permitted to appear in the proceeding shall be deemed a party thereto.

Source: SDC 1939, § 16.1829.

12-21-61. Procedure on appeal to Supreme Court--Provisions to secure speedy determination. Such appeals shall be taken and perfected in the same manner as appeals from other judgments, except:

(1) Such appeal must be taken within twenty days of the entry of such judgment;

(2) Forthwith upon such appeal the entire record shall be certified by the clerk of the circuit court and transmitted to the clerk of the Supreme Court;

(3) A stay of proceedings shall be within the discretion of the circuit court, subject to review by the Supreme Court, and shall be granted only upon adequate bond with sufficient security for payment to the respondent of all damages of any kind whatever resulting from the delay, and the court shall determine the terms of the bond so as adequately to protect the respondent from such damage;

(4) The Supreme Court may on its own motion, or on motion of any party, make such order as it deems advisable to bring about a speedy determination of the appeal, including shortening of the time for filing briefs, dispensing with printing briefs, or dispensing entirely with briefs; and assigning date for oral argument.

Source: SDC 1939, § 16.1829.

CHAPTER 12-22 - CONTESTS

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12-22-1. "Contest" defined. "Contest," as used in §§ 12-22-1 to 12-22-28, inclusive, shall mean a legal proceeding, other than a recount, instituted to challenge the determination of any election under the provisions of this title, or any municipal, school, or township election.

Source: SDC 1939, § 16.1901.

12-22-2. Candidate's right to institute contest--Legislative contests excepted. A contest may be instituted by any candidate for a public office, other than a candidate for the Legislature. A legislative contest shall be instituted as provided in § 12-22-26.

Source: SDC 1939, § 16.1902 (1); SL 2010, ch 74, § 23.

12-22-3. Right to institute contest on submitted question--Judge's permission required. Such contest may be instituted by any registered voter who was entitled to vote on a referred or submitted question, but in such case such contest may be instituted only with the permission of a judge of the court in which such contest is instituted, endorsed upon the complaint before the same is filed.

Source: SDC 1939, § 16.1902 (2); SL 1974, ch 118, § 191.

12-22-4. Electoral candidates' and party chairman's right to institute contest of presidential election. Such contest may be instituted, in the case of a presidential elector, by any one or more of a group of candidates for election as such electors, or by the chairman of the State Central Committee of any political party, which had on the ballot candidates duly nominated for such position.

Source: SDC 1939, § 16.1902 (3).

12-22-5. Time of commencement of contest--Commencement after recount. Any such contest, except as to the election of presidential electors, shall not be commenced until after the official canvass of the returns as to the office, nomination, position, or question involved; and must be commenced within ten days thereafter, except that where upon a recount there is a determination that is contrary to the result as pronounced on the official returns, such contest may be started within five days after such pronouncement of such result of such recount.

Source: SDC 1939, § 16.1903.

12-22-6. Time of commencement of contest of presidential election. Any such contest as to the election of presidential electors shall not be instituted at any time after the expiration of the time limit prescribed by § 12-22-5. In case any person or persons entitled to institute such

contest as to presidential electors, claim that for any reason returns from any precinct or precincts should be eliminated in the determination of the result, or that any ballots should be eliminated, such contest may be instituted at any time after the election and prior to the expiration of such time limit.

Source: SDC 1939, § 16.1904.

12-22-7. Original jurisdiction of contests. Original jurisdiction over such contests shall be as follows:

(1) As to contests involving state offices, or judicial officers in the Supreme Court;

(2) As to all other contests, in the circuit court of a county which includes the locality where the election or some part thereof was conducted.

Source: SDC 1939, § 16.1905; SL 1974, ch 118, § 192.

12-22-8. Summons and complaint to commence contest. Such contest shall be deemed commenced upon the filing with the clerk of the court of a summons and complaint, which complaint shall be duly verified, and set forth a concise statement of the facts on which the contest is based. The summons shall be in the same form as the summons in a civil action, except that the time for answer shall be specified as within ten days after the service, unless the court shorten such time, as provided by § 12-22-10, in which event the time fixed by the court shall be specified.

Source: SDC 1939, § 16.1906.

12-22-9. Service of summons and complaint--Time of serving. Forthwith upon the filing of the summons and complaint, the same shall be served on the defendant or defendants, or on such other persons as may be required by §§ 12-22-11 to 12-22-15, inclusive. If such filing is within the time prescribed by §§ 12-22-5 and 12-22-6, such service may be made after expiration of such time, if made as soon as reasonably possible.

Source: SDC 1939, § 16.1906.

12-22-10. Court orders to expedite proceedings. Whenever it shall appear that substantial rights may be lost or impaired by delay, the court may, at any time after the contest is commenced, upon application of any party, and upon reasonable notice to the other party or parties, make such order or orders as the court deems necessary to bring about the expeditious and just determination of the contest, including the shortening of the time for answer, the time, manner, and method of taking depositions, reference to a referee or referees, including power to appoint different referees for different purposes, and directing that when feasible the taking of evidence on depositions or before referees may proceed simultaneously, safeguarding the right of each party to be represented, if he so desires, in all such proceedings.

Source: SDC 1939, § 16.1907.

12-22-11. Joinder of parties in commencement of contest--Denomination of plaintiffs and defendants. When two or more persons are entitled to commence any such contest, any one of them may institute it, or two or more may join. The person or persons instituting any such contest involving an election or nomination to any office or position shall be denominated plaintiff or plaintiffs. The person or persons who at the time of starting such contest are officially declared elected or nominated to such office or position shall be named defendant or defendants.

Source: SDC 1939, § 16.1910.

12-22-12. Intervention by other candidates--Assertion of right to nomination or office. Any other person who was a candidate for such office or nomination may be permitted at any time to intervene, but shall not be permitted to assert any right to such nomination or office unless such intervention is within the time in which he might have started a contest.

Source: SDC 1939, § 16.1910.

12-22-13. Designation of defendants in contest of presidential election. In case of commencement of a contest involving presidential electors, prior to the official canvass, the plaintiff or plaintiffs must in good faith designate as defendants all candidates for such electors as shall have received a sufficient number of votes so there is a reasonable chance of their election.

Source: SDC 1939, § 16.1910.

12-22-14. Title of proceeding on submitted question. In the case of a contest as to a submitted or referred question, the proceeding shall be entitled: "In the matter of election contest as to ____ (naming the question involved)."

Source: SDC 1939, § 16.1910.

12-22-15. Service of summons and complaint in contest on submitted question--Intervention. In a contest as to a submitted or referred question voted upon in more than one county, the summons and complaint must be served on the attorney general. In other cases involving a submitted or referred question, the court shall, upon filing the complaint, direct by order the service upon such persons or officials as the court believes might be interested in resisting the relief sought. Any person on whom such complaint is served may answer the complaint, and shall thereafter be deemed a party. After commencement of a contest involving a submitted or referred question, any voter who was entitled to vote on such question may be permitted to intervene as a party plaintiff or defendant.

Source: SDC 1939, § 16.1910.

12-22-16. Answer to present all defenses--Admission of matters not denied--Affirmative defense. No pleading to the complaint, other than an answer, shall be permitted, and all defenses of fact or law must be presented in such answer. Any matters alleged in the complaint

and not denied shall be deemed admitted, but the court may, in its discretion, require that such admitted matters be nevertheless shown by competent evidence. The answer may also set forth matter in the nature of an affirmative defense.

Source: SDC 1939, § 16.1908.

12-22-17. Hearing on contest--Default judgment prohibited. After answer has been interposed or after time for answer has expired, and when no answer is interposed, the court on application of any party, and on five days' notice to all other parties, unless the court for cause shall shorten such time, shall conduct a hearing on which a date for trial shall be fixed, which date shall be as early as reasonably possible, and the procedure to be followed determined, with full power in the court to provide for any and all of the matters specified in § 12-22-10. No judgment shall be entered by default, and if no answer is interposed, the court shall nevertheless proceed to determine the relevant and material facts.

Source: SDC 1939, § 16.1914.

12-22-18. Court to proceed expeditiously--Designation of judge and relief from other duties. The court shall proceed as expeditiously as reasonably possible, and the Chief Justice of the Supreme Court may, upon the application of the judge of any circuit court, before which such a contest is pending, or upon the application of any party, make an order designating any judge of any circuit court of the state to hear such contest, and relieving such judge of his other official duties pending the final determination of the contest.

Source: SDC 1939, § 16.1915; SL 1974, ch 118, § 193.

12-22-19. Official returns or recount conclusive as to accuracy of count--Other issues determined in contest. In such proceeding the accuracy of the count of the ballots as established by the official returns or as corrected by a recount, if a recount has been had under chapter 12-21, or as ultimately determined upon certiorari proceedings if such certiorari proceedings have been had, shall be accepted as conclusive, the intent hereof being that the remedies provided by chapter 12-21 for determination of the accuracy of the count shall be deemed exclusive as to such accuracy. There may, however, be determined in such contest all other questions relevant or material to the ultimate question of whether the official determination of the result of the election is correct.

Source: SDC 1939, § 16.1911.

12-22-20. Certiorari to review recount as alternative remedy--Consolidation of proceedings. Whenever any person entitled to commence certiorari proceedings to review any recount under chapter 12-21 also desires to institute a contest under §§ 12-22-1 to 12-22-28, inclusive, he may resort to both remedies, and such remedies shall be deemed consistent and concurrent. The court may, in such a case, order the consolidation of such proceedings.

Source: SDC 1939, § 16.1912.

12-22-21. Judgment withheld while recount or certiorari pending--Judgment declaring election result. When any recount is pending under chapter 12-21, or when there are pending certiorari proceedings to review such recount, judgment shall not be entered until the result of such recount is finally determined. The judgment finally entered shall declare the result of the election.

Source: SDC 1939, § 16.1915.

12-22-22. Supreme Court order directing consolidation of contests involving same office or question--Duty of judges and attorneys to notify Supreme Court. Whenever it shall come to the attention of the Supreme Court that two or more contests are pending involving nomination or election to the same office or position, or the same submitted or referred question, the court may, on its own motion, or on the motion of any interested person and on reasonable notice to the parties, make an order, under its power of supervision of lower courts, directing that such proceedings be consolidated, and designating the circuit court in which further proceedings are to be had, with such provisions as the court considers necessary to safeguard the rights of the parties. It shall be the duty of any attorney appearing in any such case, upon learning of the pendency of any such other proceedings, to call the same to the attention of the Supreme Court. Any circuit judge before whom any such case is pending, upon learning of the pendency of any such other case, shall proceed no further, but shall at once notify the Supreme Court of the situation.

Source: SDC 1939, § 16.1913.

12-22-23. Conflicting circuit court decisions on same submitted question--Appeal determinative--Direction to attorney general to prosecute appeal. In any instances where two or more such contests involve the same submitted or referred question, and where judgments are rendered by different circuit courts with conflicting results, and an appeal is taken in any such case, the appeal shall be determinative of any other such case in which no such appeal is taken, and in case no appeal is taken in any such case, where the determinations in circuit courts are conflicting, within the time provided by law, the time for appeal shall be deemed extended in all of such cases, and the Supreme Court may, at any time, direct that the attorney general prosecute an appeal in some one of such cases.

Source: SDC 1939, § 16.1913.

12-22-24. Procedure as in other civil proceedings. Except as otherwise specifically provided, and so far as applicable, the procedure shall be the same as in other civil proceedings.

Source: SDC 1939, § 16.1909.

12-22-25. Right of appeal to Supreme Court--Expediting proceedings in Supreme Court--Combining with appeal from certiorari to review recount. An appeal may be taken from the judgment of the circuit court the same as in other civil proceedings, but within the time, and subject to the same conditions, as specified in subdivisions 12-21-61(1), (2), (3), and (4),

relating to appeals in certiorari proceedings to review recounts. An appeal from a judgment rendered under the provisions of §§ 12-22-1 to 12-22-28, inclusive, and an appeal from a judgment in such certiorari proceeding, may be combined into one appeal, and if taken separately may be consolidated by order of the Supreme Court.

Source: SDC 1939, § 16.1916.

12-22-26. Notice of intention to institute legislative contest--Time for service--Answer. Any person who intends to contest the election of any person to either branch of the Legislature may within ten days after the official canvass of the votes, or within five days after final determination of a recount, if a recount has been had, give written notice to such other person of such contest, specifying the grounds of such contest. The person on whom such notice is served may within ten days after such service, serve on the person giving such notice an answer, admitting or denying the grounds alleged, and shall be deemed to admit any grounds not denied.

Source: SDC 1939, § 16.1917.

12-22-27. Depositions in legislative contest--Filing with secretary of state. At any time after the service of the notice of such contest, the person serving the same may proceed to take depositions as hereinafter provided, and the person to whom a notice is given may proceed to take such depositions as soon as he serves his answer. Such depositions shall be taken with the same notice and under the same procedure and subject to the same conditions, so far as applicable, as depositions in a civil action, and shall be returned by the officer taking the same to the secretary of state, and filed in the Office of the Secretary of State, who shall be authorized to open the same at the instance of either party, his attorney, or agent.

Source: SDC 1939, § 16.1918.

12-22-28. Public funds not used for legislative contest. No payment shall be made or authorized by the Legislature out of its contingent fund or from public funds to either party to a contested election, for expenses incurred in prosecuting or defending any contest.

Source: PolC 1877, ch 47, § 22; CL 1887, § 1523; RPolC 1903, § 2022; RC 1919, § 7364; SDC 1939, § 16.1919.

12-22-29. Candidate's right to contest primary election--Filing of complaint--Circuit court jurisdiction. Any candidate for nomination to any elective office, or for election to any party position, whose name appears on the official primary election ballot of any political party may contest the primary election as to the office or position for which he was a candidate for nomination or election, by filing with the clerk of the circuit court for the county in which his nominating petition was filed, a complaint in writing within ten days after the returns have been canvassed by the county canvassing board or boards, setting forth the grounds of his contest, which complaint shall be verified by the complainant. The complainant shall give security for all costs. Authority and jurisdiction are hereby vested in the circuit court to hear and determine such contests.

Source: SL 1937, ch 123; SDC 1939, § 16.0239.

12-22-30. Notation of filing of complaint in primary contest--Date of hearing--Apparently successful candidate as defendant. When a complaint has been filed it shall forthwith be presented to the judge of the circuit court in which it is filed, who shall note thereon the day of presentation and also the day and place where he will hear the same, which shall be not later than ten days thereafter. The candidate who appears upon the face of the returns to have been elected, or to whom a certificate of nomination has been issued, shall be named as defendant.

Source: SL 1937, ch 123; SDC 1939, § 16.0239.

12-22-31. Service of order fixing hearing date on primary contest--Answer. When the court has fixed the day for hearing the complaint, an order fixing such hearing shall be personally served upon the defendant, in the same manner as is provided for the service of a summons in a civil action. The defendant must answer on or before the day of hearing.

Source: SL 1937, ch 123; SDC 1939, § 16.0239.

12-22-32. Hearing of primary contest in or out of term--Preference in order of hearing. The cause may be heard and determined by the court in term time, or by the judge thereof in vacation, and shall have preference in order of hearing to all other cases.

Source: SL 1937, ch 123; SDC 1939, § 16.0239.

12-22-33. Dismissal of insufficient complaint--Hearing of evidence--Entry of orders and decisions. If, in the opinion of the court, the grounds alleged for the contest are insufficient, the complaint shall be dismissed. If the grounds are sufficient, the court shall proceed in a summary manner and may hear evidence, examine the returns, recount the ballots, and enter such orders and decisions as the facts and the law may require.

Source: SL 1937, ch 123; SDC 1939, § 16.0239.

12-22-34. Elections to which primary contest law applies. The judgment of the court shall be final, and the provisions of §§ 12-22-29 to 12-22-35, inclusive, shall, so far as applicable, apply to contests of nominations and elections by primary election.

Source: SL 1937, ch 123; SDC 1939, § 16.0239.

12-22-35. **Supreme Court jurisdiction of primary contests for state office.** Where the nominating petitions have been filed with the secretary of state, a contest affecting such candidates shall be brought in and determined by the Supreme Court in the same manner.

Source: SL 1937, ch 123; SDC 1939, § 16.0239.

CHAPTER 12-23 - ELECTIONS IN UNORGANIZED COUNTIES [REPEALED]

[Repealed by SL 1974, ch 118, § 200; SL 1982, ch 28, § 47]

CHAPTER 12-24 - PRESIDENTIAL ELECTORS

12-24-1 Elector's notice to Governor of readiness to perform duties--Certificate of names presented to electors.
12-24-2 Replacement of elector failing to appear.
12-24-3 Notice to and powers of elector chosen to fill vacancy.
12-24-4 Time and place of performance of constitutional duties by electors.
12-24-5 Compensation and mileage of electors.

12-24-1. Elector's notice to Governor of readiness to perform duties--Certificate of names presented to electors. Each elector of President and vice president of the United States shall, before the hour of eleven o'clock in the morning of the day fixed by the act of Congress to elect a President and vice president, give notice to the Governor that he is at the seat of government and ready at the proper time to perform the duties of an elector; and the Governor shall forthwith deliver to the electors present a certificate of all the names of the electors.

Source: SL 1890, ch 84, § 13; RPolC 1903, § 1961; RC 1919, § 7325; SDC 1939, § 16.1602; SL 1968, ch 81.

12-24-2. Replacement of elector failing to appear. If any elector named in the Governor's certificate fails to appear before nine o'clock in the morning of the day of election of President and vice president as aforesaid, the electors there present shall immediately proceed to elect by ballot, in the presence of the Governor, a person to fill such vacancy. If more than one person voted for to fill such vacancy shall have the highest and an equal number of votes, the Governor, in the presence of the electors attending, shall decide by lot which of such persons shall be elected.

Source: SL 1890, ch 84, §§ 13, 14; RPolC 1903, §§ 1961, 1962; RC 1919, § 7325; SDC 1939, § 16.1602.

12-24-3. Notice to and powers of elector chosen to fill vacancy. Immediately after such choice is made, the name of the person so chosen shall forthwith be certified to the Governor by the electors making such choice; and the Governor shall cause notice to be immediately given, in writing, to the elector chosen to fill such vacancy; and the person so chosen shall be an elector and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined upon him as an elector by the Constitution and laws of the United States and of this state.

Source: SL 1890, ch 84, § 15; RPolC 1903, § 1963; RC 1919, § 7326; SDC 1939, § 16.1603.

12-24-4. Time and place of performance of constitutional duties by electors. The electors of President and vice president shall, at twelve noon on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this state and then and there perform the duties enjoined upon them by the Constitution and laws of the United States.

Source: SL 1890, ch 84, § 12; RPolC 1903, § 1960; RC 1919, § 7324; SDC 1939, § 16.1601.

12-24-5. Compensation and mileage of electors. The electors shall receive the same compensation per diem and the same mileage as members of the Legislature.

Source: SL 1890, ch 84, § 16; RPolC 1903, § 1964; RC 1919, § 7327; SDC 1939, § 16.1604.

CHAPTER 12-25 - CANDIDATES' FINANCIAL INTEREST STATEMENTS

12-25-1 to 12-25-2	Repealed.
12-25-3, 12-25-4	Repealed.
12-25-4.1	Repealed.
12-25-5, 12-25-6	Repealed.
12-25-6.1, 12-25-6.2	Repealed.
12-25-7 to 12-25-7.4	Repealed.
12-25-8	Repealed.
12-25-8.1, 12-25-8.2	Repealed.
12-25-9 to 12-25-11	Repealed.
12-25-12 to 12-25-13.1	Repealed.
12-25-13.2	Repealed.
12-25-13.3 to 12-25-14	Repealed.
12-25-14.1	Repealed.
12-25-14.2	Repealed.
12-25-15	Repealed.
12-25-16, 12-25-17	Repealed.
12-25-18	Repealed.
12-25-18.1	Repealed.
12-25-19	Repealed.
12-25-19.1 to 12-25-19.3	Repealed.
12-25-20	Repealed.
12-25-21, 12-25-22	Repealed.
12-25-23	Repealed.
12-25-24 to 12-25-26	Repealed.
12-25-27	Definitions.
12-25-28	Statements by candidates for state or federal office subject to primary--Violation as petty offense or misdemeanor.
12-25-29	Statements by convention nominees for state office--Violation as petty offense or misdemeanor.
12-25-29.1	Statements by convention nominees of party with alternative political status--Violation as petty offense or misdemeanor.
12-25-30	Statements by candidates for local office--Violation as petty offense or misdemeanor.
12-25-31	Forms for financial statements--Value not required--Verification--Open to public.
12-25-31.1	Certain personally identifiable information of judicial officers excluded from public record.
12-25-32	Repealed.
12-25-33	No filing fee for required statements.
12-25-34	Information from reports or statements--Sale or use for solicitation or commercial purpose prohibited--Misdemeanor.

12-25-1 to 12-25-2. Repealed by SL 2007, ch 80, § 43.

12-25-3, 12-25-4. Repealed by SL 1975, ch 125, § 25.

12-25-4.1. Repealed by SL 2007, ch 80, § 43.

12-25-5, 12-25-6. Repealed by SL 1975, ch 125, § 25.

12-25-6.1, 12-25-6.2. Repealed by SL 2007, ch 80, § 43.

12-25-7 to 12-25-7.4. Repealed by SL 1976, ch 109, § 8.

12-25-8. Repealed by SL 1982, ch 86, § 99.

12-25-8.1, 12-25-8.2. Repealed by SL 1976, ch 109, § 8.

12-25-9 to 12-25-11. Repealed by SL 1975, ch 125, § 25.

12-25-12 to 12-25-13.1. Repealed by SL 2007, ch 80, § 43.

12-25-13.2. Repealed by SL 1979, ch 108, § 1.

12-25-13.3 to 12-25-14. Repealed by SL 2007, ch 80, § 43.

12-25-14.1. Repealed by SL 1975, ch 125, § 25.

12-25-14.2. Repealed by SL 1989, ch 135, § 2.

12-25-15. Repealed by SL 1982, ch 86, § 103.

12-25-16, 12-25-17. Repealed by SL 1975, ch 125, § 25.

12-25-18. Repealed by SL 2007, ch 80, § 43.

12-25-18.1. Repealed by SL 1989, ch 135, § 3.

12-25-19. Repealed by SL 1976, ch 109, § 8.

12-25-19.1 to 12-25-19.3. Repealed by SL 2007, ch 80, § 43.

12-25-20. Repealed by SL 1975, ch 125, § 25.

12-25-21, 12-25-22. Repealed by SL 2007, ch 80, § 43.

12-25-23. Repealed by SL 1982, ch 86, § 106.

12-25-24 to 12-25-26. Repealed by SL 2007, ch 80, § 43.

12-25-27. Definitions. Terms as used in this chapter mean:

(1) "Any member of the individual's immediate family," a spouse or minor children living at home;

(2) "Close economic interest," any enterprise that, in the calendar year preceding the filing of any statement of financial interest under this chapter, contributes more than ten percent of or more than two thousand dollars to the gross income of the family, including the individual required to file the statement and any member of the individual's immediate family. The term also includes any enterprise in which the individual or any member of the individual's immediate family controls more than ten percent of the capital or stock;

(3) "Enterprise," any business or economic relationship;

(4) "Statement of financial interest," a description of the type of financial activity and the nature of the association with any enterprise as defined in this section.

Source: SL 1974, ch 121, § 1; SL 2017, ch 23, § 6.

12-25-28. Statements by candidates for state or federal office subject to primary--Violation as petty offense or misdemeanor. Any candidate for the United States Senate, the United States House of Representatives, Governor, circuit court judge, or the Legislature shall file a statement of financial interest with the secretary of state not more than fifteen days after filing the candidate's nominating petitions. Any Supreme Court justice shall file a statement of financial interest with the secretary of state not more than fifteen days following notice to the secretary of state of the justice's intention to place the justice's name on the retention ballot. A violation of this section is a petty offense. Any intentional violation of this section is a Class 2 misdemeanor.

Source: SL 1974, ch 121, § 2; SL 1975, ch 125, § 22; SL 1979, ch 108, § 5; SL 1982, ch 86, § 107; SL 1984, ch 113; SL 2017, ch 23, § 3.

12-25-29. Statements by convention nominees for state office--Violation as petty offense or misdemeanor. Any candidate for lieutenant governor, state treasurer, attorney general, secretary of state, state auditor, public utilities commissioner, or commissioner of school and public lands shall file a statement of financial interest with the secretary of state not more than fifteen days after the candidate's nomination is certified. A violation of this section is a petty offense. Any intentional violation of this section is a Class 2 misdemeanor.

Source: SL 1974, ch 121, § 3; SL 1975, ch 125, § 23; SL 1979, ch 108, § 6; SL 1982, ch 86, § 108; SL 2017, ch 23, § 4.

12-25-29.1. Statements by convention nominees of party with alternative political status--Violation as petty offense or misdemeanor. Any candidate for United States Senate, United States House of Representatives, Governor, lieutenant governor, state treasurer, attorney general, secretary of state, state auditor, public utilities commissioner, commissioner of school and public lands, or state legislator who has been nominated at the convention of a party with alternative political status shall file a statement of financial interest with the secretary of state

not more than fifteen days after the candidate's nomination is certified. A violation of this section is a petty offense. Any intentional violation of this section is a Class 2 misdemeanor.

Source: SL 2019, ch 73, § 4.

12-25-30. Statements by candidates for local office--Violation as petty offense or misdemeanor. Any candidate for county commissioner, school board member in a school district with a total enrollment of more than two thousand students, or commissioner, council member, or mayor in any first class municipality, shall file a statement of financial interest with the office at which the candidate's nominating petitions are filed not more than fifteen days after filing the candidate's nominating petitions or, if otherwise nominated, not more than fifteen days after the candidate's nomination is certified. Any violation of this section is a petty offense. An intentional violation of this section is a Class 2 misdemeanor.

Source: SL 1974, ch 121, § 4; SL 1977, ch 68, § 12; SL 1982, ch 86, § 109; SL 1992, ch 60, § 2; SL 1995, ch 85; SL 2017, ch 23, § 5.

12-25-31. Forms for financial statements--Value not required--Verification--Open to public. The secretary of state shall prescribe and provide forms for the reporting of close economic interest. The value of a close economic interest need not be reported. Each individual filing a statement of financial interest shall subscribe to an oath or affirmation verifying the contents of such statement. All statements of financial interest shall be open to public inspection, except pursuant to § 12-25-31.1.

Source: SL 1974, ch 121, §§ 8 to 10; SL 1975, ch 125, § 24; SL 1979, ch 108, § 7; SL 2022, ch 11, § 6, eff. Feb. 14, 2022.

12-25-31.1 Certain personally identifiable information of judicial officers excluded from public record. Any personally identifiable information contained in a statement of financial interest filed pursuant to this chapter by a candidate for circuit court judge or Supreme Court justice subject to a retention election is not open to public inspection. For purposes of this section, the term, personally identifiable information, means any home address, home or personal telephone number, or personal email address. The county of residence for the candidate for the office of judge or justice subject to a retention election is a public record.

Source: SL 2022, ch 11, § 7, eff. Feb. 14, 2022.

12-25-32. Repealed by SL 1982, ch 86, § 110.

12-25-33. No filing fee for required statements. No filing fee may be charged for any report required by this chapter.

Source: SL 1980, ch 116.

12-25-34. Information from reports or statements--Sale or use for solicitation or commercial purpose prohibited--Misdemeanor. Any information copied, or otherwise obtained, from any report or statement, or copy, reproduction, or publication thereof, filed

with the secretary of state under this chapter, shall not be sold or utilized by any person for the purpose of soliciting contributions, or any commercial purpose. For purposes of this section, "any commercial purpose" does not include the sale of newspapers, magazines, books, or other similar communications, the principal purpose of which is not to communicate lists or other information obtained from a report filed in accordance with this chapter.

Any violation of this section shall be a Class 2 misdemeanor.

Source: SL 1980, ch 117, § 1.

CHAPTER 12-25A - STATE ETHICS COMMISSION [REPEALED]

[Repealed by SL 1979, ch 108, § 9]

CHAPTER 12-26 - OFFENSES AGAINST THE ELECTIVE FRANCHISE

12-26-1 Elections to which chapter applies.
12-26-2 Repealed.
12-26-3 False representation to procure registration or acceptance of vote as misdemeanor--Failure to deny false statement as misrepresentation.
12-26-4 Voting or offer to vote by unqualified person as misdemeanor.
12-26-5 Repealed.
12-26-6 Repealed.
12-26-7 Impersonation of registered voter as felony.
12-26-8 Voting more than once at any election as felony.
12-26-9 Good faith defense to prosecution for illegal voting.
12-26-10 Threats or intimidation to prevent public assembly of electors as misdemeanor--Hindering attendance at meeting.
12-26-11 Disturbance of public meeting of voters as misdemeanor.
12-26-12 Persecution, threats, or intimidation to influence vote as misdemeanor--Obstruction of voter on way to polls.
12-26-13 Unlawful influence of employees' political activities or voting as misdemeanor--Forfeiture of corporate charter.
12-26-14 Use of public relief, loans, or grants to influence political activity or vote as misdemeanor.
12-26-15 Bribery of voter as misdemeanor--Acts constituting bribery.
12-26-16 Acceptance of bribe by voter as misdemeanor--Acts constituting acceptance of bribe.
12-26-17 Bribery or acceptance of bribe as infamous crime--Forfeiture of office.
12-26-18 Repealed.
12-26-19 Betting with intent to procure challenge as misdemeanor.
12-26-20 Repealed.
12-26-21 Disobedience of precinct superintendent or precinct deputy as misdemeanor.
12-26-22 Disturbance of election proceedings as misdemeanor.
12-26-23 Tampering with ballots, ballot box, or poll list as felony.
12-26-23.1 Tampering with automatic ballot counting devices, direct recording electronic voting machines, and electronic ballot marking systems as felony.
12-26-24 Exclusion by precinct superintendent or precinct deputy of lawful vote as misdemeanor.
12-26-25 False count or return by election official as misdemeanor--Defacement or concealment of statement or certificate.
12-26-26 Repealed.
12-26-27 Bribery of election official as misdemeanor.
12-26-28 Offenses relating to election on submitted question.
12-26-29 Prevention of unlawful election not prohibited.
12-26-30 Irregularities in proceedings not a defense.
12-26-31 Offender as witness against another--Compelling testimony--Immunity from prosecution.

12-26-1. Elections to which chapter applies. The word "election" as used in this chapter includes any election held in this state for the purpose of enabling the voters to nominate or elect any United States, state, or local officer, or to vote upon any question submitted to them.

Source: PenC 1877, § 90; CL 1887, § 6290; RPenC 1903, § 95; RC 1919, § 3679; SDC 1939, § 13.0901; SL 1974, ch 118, § 197.

12-26-2. Repealed by SL 1974, ch 118, § 200.

12-26-3. False representation to procure registration or acceptance of vote as misdemeanor--Failure to deny false statement as misrepresentation. Any person who, at the time of requesting his name to be registered as a voter, or who at the time of offering his vote at any election, knowingly makes any false statement or employs any false representation to procure his name to be registered or his vote to be received, is guilty of a Class 2 misdemeanor. A false statement or representation made or used in the presence and to the knowledge of a person requesting his name to be registered, or offering his vote, is to be deemed made by himself if it appears that it was made or used in support of his claim to be registered or to vote, that he knew it to be false and that he allowed it to pass uncontradicted.

Source: PenC 1877, §§ 72, 73; CL 1887, §§ 6272, 6273; RPenC 1903, §§ 77, 78; RC 1919, §§ 3664, 3665; SDC 1939, § 13.0907; SL 1982, ch 86, § 111.

12-26-4. Voting or offer to vote by unqualified person as misdemeanor. Any person knowing himself not to be a qualified voter who votes or offers to vote at any election is guilty of a Class 2 misdemeanor.

Source: PenC 1877, § 65; CL 1887, § 6264; RPenC 1903, § 69; RC 1919, § 3658; SDC 1939, § 13.0908; SL 1982, ch 86, § 112.

12-26-5. Repealed by SL 1982, ch 86, § 113.

12-26-6. Repealed by SL 1974, ch 118, § 200.

12-26-7. Impersonation of registered voter as felony. A person who impersonates a registered voter and, as such, offers to vote at any election, is guilty of a Class 5 felony.

Source: PenC 1877, § 71; CL 1887, § 6271; RPolC 1903, § 2034; RPenC 1903, § 76; RC 1919, § 3663; SDC 1939, § 13.0906; SL 1973, ch 79, § 2; SL 1982, ch 86, § 114.

12-26-8. Voting more than once at any election as felony. A person who votes more than once at any election or who offers to vote after having once voted, either in the same or in another election precinct in South Dakota or elsewhere, is guilty of a Class 6 felony.

Source: PenC 1877, § 64; CL 1887, § 6263; RPenC 1903, § 68; RC 1919, § 3657; SDC 1939, § 13.0911; SL 1982, ch 86, § 115; SL 2004, ch 105, § 2.

12-26-9. Good faith defense to prosecution for illegal voting. Upon any prosecution for procuring, offering, or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed upon good reason that the vote complained of was a lawful one; and the jury may take such facts into consideration in determining whether the acts complained of were knowingly done or not.

Source: PenC 1877, § 94; CL 1887, § 6294; RPenC 1903, § 99; RC 1919, § 3683; SDC 1939, § 13.0912.

12-26-10. Threats or intimidation to prevent public assembly of electors as misdemeanor--Hindering attendance at meeting. A person who by threats, intimidation, or unlawful force or violence, intentionally hinders or prevents voters from assembling in a public meeting for considering of public questions, or who hinders or prevents any individual voter from attending any such meeting, is guilty of a Class 2 misdemeanor.

Source: PenC 1877, §§ 75, 76; CL 1887, §§ 6275, 6276; RPenC 1903, §§ 80, 81; RC 1919, §§ 3667, 3668; SDC 1939, § 13.0915; SL 1982, ch 86, § 116.

12-26-11. Disturbance of public meeting of voters as misdemeanor. A person who intentionally disturbs or breaks up any public meeting of voters lawfully being held for the purpose of considering public questions is guilty of a Class 2 misdemeanor.

Source: PenC 1877, § 74; CL 1887, § 6274; RPenC 1903, § 79; RC 1919, § 3666; SDC 1939, § 13.0916; SL 1982, ch 86, § 117.

12-26-12. Persecution, threats, or intimidation to influence vote as misdemeanor--Obstruction of voter on way to polls. A person who directly or indirectly, intentionally, by force or violence, or by unlawful arrest, or by any abduction, duress, damage, harm, or loss, or by any forcible or fraudulent contrivance, or by threats to do or employ any of them, or by threats of bringing civil suit or criminal prosecution, withdrawal of customs or dealing in business or trade, or enforcing payment of debts, or by any kind of injury or threat of injury inflicted or to be inflicted on any voter or person to influence any voter, and attempted, done, or threatened, or caused to be attempted, done, or threatened by any person in his own behalf or in behalf of any other person or question voted upon or to be voted upon at any election, for the purpose of preventing, causing, or intimidating a voter to vote or refrain from voting for or against any person or question, or who does or causes to be done any of such things because of a voter having voted or refrained from voting on any such matter, or who intentionally and without lawful authority obstructs, hinders, or delays a voter on his way to any poll where an election is to be held, is guilty of a Class 2 misdemeanor.

Source: PenC 1877, §§ 63, 77, 78; CL 1887, §§ 6262, 6277, 6278; SL 1891, ch 58, §§ 4, 7; RPenC 1903, §§ 61, 64, 67, 82, 83; RC 1919, §§ 3652, 3655, 3656, 3669, 3670; SDC 1939, § 13.0913; SL 1982, ch 86, § 118.

12-26-13. Unlawful influence of employees' political activities or voting as misdemeanor--Forfeiture of corporate charter. It is a Class 2 misdemeanor for any employer in paying his

employees the salary or wages due them, to enclose their pay in "pay envelopes" upon which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees.

It is a Class 2 misdemeanor for any employer, within ninety days of a general election, to put up or otherwise exhibit in his factory, mill, workshop, or other establishment or place where his employees may be working, any handbill or placard containing any threat, notice, or information that in case any particular tickets or candidate shall be elected, work in his place or establishment will cease in whole or in part, or that his establishment will be closed, or the wages of his workmen will be reduced, or other threats, express or implied, intended or calculated to influence the political opinion or the actions of his employees in voting.

Any corporation violating this section shall, upon proof thereof, forfeit its charter.

Source: SL 1891, ch 58, § 5; RPenC 1903, § 62; RC 1919, § 3653; SDC 1939, § 13.0914; SL 1982, ch 86, § 119.

12-26-14. Use of public relief, loans, or grants to influence political activity or vote as misdemeanor. It is a Class 1 misdemeanor for any person, directly or indirectly, to promise or threaten to grant or withhold or to cause to be granted or withheld, any public relief, assistance loans, or grants for the purpose or with the intention of controlling or influencing the political affiliations, party registration, support or vote at any election, of any person so promised or threatened.

The terms "public relief" and "assistance" include all forms of direct public relief and also all forms of indirect relief such as employment on any public works or project. The terms "loans" and "grants" include all forms of financial assistance granted by the federal government or any of its agencies and also by this state or any of its political subdivisions.

Source: SL 1939, ch 240, §§ 1, 2, 4; SDC Supp 1960, § 13.0930; SL 1982, ch 86, § 120.

12-26-15. Bribery of voter as misdemeanor--Acts constituting bribery. It is a Class 2 misdemeanor for any person, directly or indirectly, by the person or through any other person:

(1) To pay, lend, contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration, to or for any voter or to or for any other person, to induce the voter to vote or refrain from voting at any election or to induce any voter to vote or refrain from voting at any election for any particular person or to induce the voter to go to the polls or remain away from the polls at any election, or on account of the voter having voted, refrained from voting or having voted or refrained from voting for any particular person, or having gone to the polls or remained away from the polls at any election;

(2) To give, offer, or promise any office, place, or employment, or to promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person in order to induce the voter to vote or refrain from voting at any election for any particular person;

(3) To make any gift, loan, or promise, offer, procurement, or agreement as aforesaid to, for, or with any person in order to induce the person to procure or endeavor to procure the election of any person, or the vote of any voter at any election;

(4) To procure or engage, promise, or endeavor to procure, in consequence of any gift, loan, offer, promise, procurement, or agreement, the election of any person or the vote of any voter at any election;

(5) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same or any part thereof shall be used in bribery at any election, or to knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;

(6) To pay, lend, contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration, to or for any voter or to or for any other person, to sign any nominating, referendum, initiated measure, or initiated constitutional amendment petition;

(7) To give, offer, or promise any office, place, or employment, or to promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person in order to sign any nominating, referendum, initiated measure, or initiated constitutional amendment petition; or

(8) To make any gift, loan, or promise, offer, procurement, or agreement as aforesaid to, for, or with any person in order to sign any nominating, referendum, initiated measure, or initiated constitutional amendment petition.

Source: SL 1891, ch 58, § 1; RPenC 1903, § 56; RC 1919, § 3648; SDC 1939, § 13.0920; SL 1982, ch 86, § 121; SL 2013, ch 63, § 4.

12-26-16. Acceptance of bribe by voter as misdemeanor--Acts constituting acceptance of bribe. It is a Class 2 misdemeanor for any person, directly or indirectly, by himself or through any other person:

(1) To receive, agree, or contract for, before or during any election, any money, gift, loan, or other valuable consideration, offer, place, or employment for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls at any such election;

(2) To receive any money or other valuable thing during or after an election, for himself or any other person for having voted or refrained from voting at such election, or on account of himself or any other person having voted or refrained from voting for any particular person at such election, or on account of himself or any other person having gone to the polls or remained away from the polls at such election, or on account of having induced any other person to vote or refrain from voting, for any particular person at such election.

Source: SL 1891, ch 58, § 2; RPenC 1903, § 57; RC 1919, § 3649; SDC 1939, § 13.0921; SL 1982, ch 86, § 122.

12-26-17. Bribery or acceptance of bribe as infamous crime--Forfeiture of office. Any person committing the offense of bribery of voters or receiving a bribe as specified in §§ 12-26-15 and 12-26-16 is guilty of an infamous crime, and any person convicted thereof shall, in addition to the criminal punishment, forfeit any office to which he may have been elected at the election at which such offense was committed.

Source: SL 1891, ch 58, § 7; RPenC 1903, § 64; RC 1919, § 3655; SDC 1939, § 13.0922; SL 1976, ch 105, § 75; SL 1982, ch 86, § 123.

12-26-18. Repealed by SL 1976, ch 105, § 84.

12-26-19. Betting with intent to procure challenge as misdemeanor. Any person who shall directly or indirectly make a bet with a voter depending upon the result of any election, with the intent thereby to procure the challenge of such voter or to prevent his voting at an election, is guilty of a Class 2 misdemeanor.

Source: SL 1891, ch 58, § 3; RPenC 1903, § 58; RC 1919, § 3650; SDC 1939, § 13.0918; SL 1982, ch 86, § 124.

12-26-20. Repealed by SL 1976, ch 105, § 84.

12-26-21. Disobedience of precinct superintendent or precinct deputy as misdemeanor. A person who intentionally disobeys a lawful command of a precinct superintendent or precinct deputy of any election, given in the execution of the person's duty as such at an election, is guilty of a Class 2 misdemeanor.

Source: SDC 1939, § 13.0923; SL 1982, ch 86, § 125; SL 1999, ch 69, § 49.

12-26-22. Disturbance of election proceedings as misdemeanor. No person may cause any disturbance or breach of the peace, or engage in disorderly conduct in violation of § 22-18-35, or use threats of violence, whereby an election is impeded or hindered, or whereby the lawful proceedings of the precinct superintendent or precinct deputies, ballot counters, or canvassers of an election, in the discharge of the person's duty, are interfered with. A violation of this section is a Class 2 misdemeanor.

Source: SDC 1939, § 13.0924; SL 1982, ch 86, § 126; SL 1993, ch 118, § 29; SL 1999, ch 69, § 50.

12-26-23. Tampering with ballots, ballot box, or poll list as felony. A person who intentionally breaks, destroys, steals, or conceals any ballot box or any poll list used or intended to be used at any election, or who, before the ballots have been counted or canvassed, or during the time within which a contest or recount may be instituted or is pending and undisposed of, shall intentionally deface, change, injure, destroy, steal, or conceal any ballot or ballots which have been voted and deposited in any ballot box at an election, is guilty of a Class 6 felony.

Source: PenC 1877, § 83; CL 1887, § 6283; RPenC 1903, § 88; RC 1919, § 3675; SL 1923, ch 179; SDC 1939, § 13.0925; SL 1982, ch 86, § 127.

12-26-23.1. Tampering with automatic ballot counting devices, direct recording electronic voting machines, and electronic ballot marking systems as felony. No person may intentionally program or alter an automatic ballot counting device, direct recording electronic voting machine, or electronic ballot marking system to erroneously mark, record, or

count voted ballots or to render an erroneous total. A violation of this section is a Class 5 felony.

Source: SL 1989, ch 136; SL 2005, ch 92, § 10.

12-26-24. Exclusion by precinct superintendent or precinct deputy of lawful vote as misdemeanor. A precinct superintendent or precinct deputy who intentionally excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at the election, is guilty of a Class 2 misdemeanor.

Source: SDC 1939, § 13.0926; SL 1974, ch 118, § 198; SL 1982, ch 86, § 128; SL 1999, ch 69, § 51.

12-26-25. False count or return by election official as misdemeanor--Defacement or concealment of statement or certificate. No precinct superintendent, precinct deputy, member of any counting board, member of any board of canvassers, messenger, or other officer authorized to take part in or perform any duty in relation to any count, canvass, or official statement of the votes cast at any election, may intentionally make any false count or canvass of the votes, or make, sign, publish, or deliver any false return of the election, knowing it to be false. No such person may intentionally deface, destroy, or conceal any statement or certificate entrusted to the person's care. A violation of this section is a Class 2 misdemeanor.

Source: SDC 1939, § 13.0927; SL 1982, ch 86, § 129; SL 1993, ch 118, § 30; SL 1999, ch 69, § 52.

12-26-26. Repealed by SL 1974, ch 118, § 200.

12-26-27. Bribery of election official as misdemeanor. A person who gives or offers a bribe to any precinct superintendent, precinct deputy, canvasser, or other officer of an election as a consideration for doing or omitting to do any act in violation of the person's official duty in relation to such election, is guilty of a Class 2 misdemeanor.

Source: SDC 1939, § 13.0929; SL 1982, ch 86, § 130; SL 1999, ch 69, § 53.

12-26-28. Offenses relating to election on submitted question. Every act which by the provisions of this chapter is made criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to voters to be decided by votes cast at an election.

Source: PenC 1877, § 93; CL 1887, § 6293; RPenC 1903, § 98; RC 1919, § 3682; SDC 1939, § 13.0901.

12-26-29. Prevention of unlawful election not prohibited. Nothing in this chapter shall be construed to authorize the punishment of any person who, by authority of law, may interfere to

prevent or regulate an election which has been unlawfully noticed or convened, or is being, or is about to be, unlawfully conducted.

Source: PenC 1877, § 92; CL 1887, § 6292; RPenC 1903, § 97; RC 1919, § 3681; SDC 1939, § 13.0902.

12-26-30. Irregularities in proceedings not a defense. Irregularities or defects in the mode of noticing, convening, holding, or conducting an election authorized by law, form no defense to a prosecution for a violation of the provisions of this chapter.

Source: PenC 1877, § 91; CL 1887, § 6291; RPenC 1903, § 96; RC 1919, § 3680; SDC 1939, § 13.0903.

12-26-31. Offender as witness against another--Compelling testimony--Immunity from prosecution. A person offending against any provision of this title is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation, in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, and he shall not thereafter be liable to prosecution or punishment for the offense with reference to which his testimony was given.

Source: SL 1891, ch 58, § 6; RPenC 1903, § 63; RC 1919, § 3654; SDC 1939, § 13.0904; SL 1939, ch 240, § 3; SDC Supp 1960, § 13.0930; SL 1974, ch 118, § 199.

CHAPTER 12-27 - CAMPAIGN FINANCE REQUIREMENTS

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

(1) "Ballot question," any referendum, initiative, proposed constitutional amendment, or other measure submitted to voters at any election;

(2) "Ballot question committee," a person or entity that raises, collects, or disburses contributions:

(a) As a proponent for the placement of one or more ballot questions on the ballot;

(b) As an opponent to the placement of one or more ballot questions on the ballot; or

(c) For the adoption or defeat of one or more ballot questions.

A ballot question committee is not a person or political committee that makes a contribution to a ballot question committee. A ballot question committee is not an entity that makes a contribution to a ballot question committee from treasury funds;

(3) "Candidate campaign committee," any committee organized by a candidate to receive contributions and make expenditures for the candidate. Only one candidate campaign committee may be organized for each candidate and only one statewide candidate campaign committee may be organized for each candidate. A candidate may, simultaneously, have both a legislative campaign committee and a statewide campaign committee;

(4) "Candidate," any person who seeks nomination for or election to public office. A person is a candidate if the person raises, collects, or disburses contributions in excess of five hundred dollars; has authorized the solicitation of contributions or the making of expenditures; has been certified as a candidate by a political party; has created a candidate campaign committee for the purpose of obtaining public office; or has taken all actions required by state law to qualify for nomination for or election to public office;

(5) "Clearly identified," the appearance of the name, nickname, a photograph or a drawing of a candidate or public office holder, or the unambiguous reference to the identity of a candidate or public office holder;

(6) "Contribution," any gift, advance, distribution, deposit, or payment of money or any other valuable consideration, or any contract, promise or agreement to do so; any discount or rebate not available to the general public; any forgiveness of indebtedness or payment of indebtedness by another person; or any use of services or property without full payment or that is provided by any person or political committee whose primary business is to provide services or property, made for the purpose of influencing:

(a) The nomination, election, or re-election of any person to public office; or

(b) The placement of a ballot question on the ballot or the adoption or defeat of any ballot question submitted.

The term does not include services provided by a person as a volunteer for or on behalf of any candidate or political committee including the free or discounted use of a person's residence. Nor does the term include the purchase of any item of value or service from any political committee. The purchase price of the item may not exceed the fair market value and may not include an intent to contribute beyond the item's value. A contribution does not include administration and solicitation of a contribution for a political action committee established by an entity or its associated expenses, nor the use of an entity's real or personal property located on its business premises for such purposes. A contribution does not include nominal use of a candidate's real or personal property or nominal use of resources available at a candidate's primary place of business;

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

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

(9) "Expressly advocate," any communication that:

(a) In context has no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, or public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question using explicit words of advocacy of election or defeat such as: vote, re-elect, support, cast your ballot for, reject, and defeat; or

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

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

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

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

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

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

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

(14) "Loan," a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or part;

(14A) "Mailing address," includes street or PO Box, city, state, and zip code;

(15) "Entity," any organized or unorganized association, business corporation, limited liability company, nonprofit corporation, limited liability partnership, limited liability limited partnership, limited partnership, partnership, cooperative, trust except for a trust account representing or containing only a contributor's personal funds, a business trust, association, club, labor union, or collective bargaining organization; any local, state, or national organization to which a labor organization pays membership or per capita fees, based upon its affiliation and membership; any trade or professional association that receives its funds from membership dues or service fees, whether organized inside or outside the state; any other entity of any kind, except a natural person that is, has been, or could be recognized by law; or any group of persons acting in concert that is not defined as a political committee in this chapter except, an entity is not a candidate, a public office holder, or a political committee;

(16) "Person," a natural person;

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

(a) Person who makes a contribution to a political committee; or

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

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

(19) "Political party," any state or county political party qualified to participate in a primary or general election, including any auxiliary organization of such political party;

(19A) "Auxiliary organization," any organization designated as an auxiliary organization in the political party's bylaws or constitution except any auxiliary organization that only accepts contributions to support volunteer activities of the organization and does not make monetary contributions or contribute donated goods or services or any independent communication expenditures to any political committee except a political party;

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

(21) "Treasurer," the treasurer is the person who is designated as and has agreed to serve as the person responsible for each required filing that a committee is required to make under this title;

(22) "Treasury funds," funds of an entity not raised or collected from any other source for the purpose of influencing a ballot question;

(23) "Volunteer," any person who provides services free of charge.

Source: SL 2007, ch 80, § 1; SL 2008, ch 67, § 1; SL 2009, ch 67, § 3; SL 2010, ch 76, §§ 1, 4, 5, eff. Mar. 25, 2010; SL 2017, ch 222 (Initiated Measure 22), § 4, eff. Nov. 16, 2016; SL 2017, ch 72, § 3, eff. Feb. 2, 2017; SL 2017, ch 71, § 1; SL 2018, ch 83, § 1; SL 2018, ch 84, §§ 1, 2.

12-27-2. Political committee chair and treasurer required--Violation as misdemeanor. A political committee shall have and continually maintain a chair and a treasurer. One person

may serve as chair, candidate, treasurer, or any combination thereof. A treasurer may be responsible for any monetary penalty assessed pursuant to this chapter. No political committee may receive or make contributions or pay expenses while the office of treasurer is vacant. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 2; SL 2008, ch 67, § 2; SL 2017, ch 71, § 2; SL 2018, ch 84, § 3.

12-27-3. Statements of organization to be filed for political action committee, candidate campaign committee, and ballot question committee--Violation as misdemeanor. A statement of organization shall be filed as follows:

(1) The treasurer for a political action committee shall file a statement of organization with the secretary of state not later than fifteen days after the date upon which the committee made contributions, received contributions, or paid expenses in excess of five hundred dollars. However, if such activity falls within thirty days of any statewide election, the statement of organization shall be filed within forty-eight hours;

(2) A candidate shall file a statement of organization for a candidate campaign committee with the secretary of state not later than fifteen days after becoming a candidate pursuant to this chapter; and

(3) If the treasurer for a ballot question committee does not file a statement of organization pursuant to chapter 2-1, the treasurer shall file a statement of organization with the secretary of state not later than fifteen days after the date which the committee made contributions, received contributions, or paid expenses in excess of five hundred dollars. However, if such activity falls within thirty days of any statewide election, the statement of organization shall be filed within forty-eight hours.

Any statement of organization may be filed electronically pursuant to § 12-27-41. A political committee that regularly files a campaign finance disclosure statement with another state or the Federal Election Commission or a report of contributions and expenditures with the Internal Revenue Service is not required to file a statement of organization. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 3; SL 2008, ch 67, § 3; SL 2010, ch 76, § 2, eff. Mar. 25, 2010; SL 2012, ch 18, § 9; SL 2013, ch 67, § 4; SL 2017, ch 71, § 3; SL 2018, ch 84, § 4.

12-27-4, 12-27-5. Repealed by SL 2017, ch 71, §§ 4, 5.

12-27-6. Contents of statement of organization. The statement of organization shall include:

(1) The name, mailing address, and street address if different than the mailing address, and telephone number of the committee;

(2) The name, mailing address, and street address if different than the mailing address, and telephone number of the chair and the treasurer of the committee;

(3) A statement of the type of political committee that has been or is being organized;

(4) In the case of a candidate campaign committee, the name of the candidate, the name of the candidate's committee, office the candidate is seeking, mailing address, and the street address if different than the mailing address; and

(5) In the case of a political action committee or ballot question committee, a concise statement of its purpose and goals, and the full name, mailing address, and the street address if different than the mailing address of the entity with which the committee is connected or affiliated, or if the committee is not connected or affiliated with any one entity, the trade, profession, or primary interest of the committee.

The statement shall be signed by the candidate and treasurer for a candidate campaign committee and by the chair and treasurer for other political committees and filed pursuant to § 12-27-41. A political committee continues to exist until a termination statement is filed pursuant to §§ 12-27-25 and 12-27-26.

The treasurer of a political committee shall file an updated statement of organization not later than fifteen days after any change in the information contained on the most recently filed statement of organization.

Any correspondence regarding reporting deadlines, delinquent reports, administrative penalties, and administrative hearings may only be sent to the treasurer listed on the most current statement of organization on file.

Source: SL 2007, ch 80, § 6; SL 2008, ch 67, § 4; SL 2013, ch 67, § 5; SL 2016, ch 78, § 1; SL 2017, ch 71, § 6.

12-27-7. Limits on contributions to statewide candidate or candidate's campaign committee--Violation as misdemeanor. A statewide candidate or the candidate's campaign committee may accept contributions during any calendar year as follows:

(1) Not to exceed four thousand dollars from a person, unless the person is the candidate or a member of the candidate's immediate family, in which case contributions may be made without limit;

(2) Not to exceed four thousand dollars from an entity;

(3) Without limit from a political action committee;

(4) Without limit from a political party; and

(5) Without limit from a candidate campaign committee.

Any contribution from a ballot question committee is prohibited. Any contribution from a person who is an unemancipated minor shall be deducted from the total contribution permitted under this section by the unemancipated minor's custodial parent or parents. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 7; SL 2017, ch 222 (Initiated Measure 22), § 5, eff. Nov. 16, 2016; SL 2017, ch 72, § 4, eff. Feb. 2, 2017; SL 2017, ch 71, § 7; SL 2018, ch 85, § 1; SL 2019, ch 77, § 1.

12-27-8. Limits on contributions to legislative or county candidate or candidate's campaign committee--Violation as misdemeanor. A legislative or county candidate or the candidate's campaign committee may accept contributions during any calendar year as follows:

(1) Not to exceed one thousand dollars from a person, unless the person is the candidate or a member of the candidate's immediate family, in which case contributions may be made without limit;
(2) Not to exceed one thousand dollars from an entity;
(3) Without limit from a political action committee;
(4) Without limit from a political party; and
(5) Without limit from a candidate campaign committee.

Any contribution from a ballot question committee is prohibited. Any contribution from a person who is an unemancipated minor shall be deducted from the total contribution permitted under this section by the unemancipated minor's custodial parent or parents. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 8; SL 2017, ch 222 (Initiated Measure 22), § 6, eff. Nov. 16, 2016; SL 2017, ch 72, § 5, eff. Feb. 2, 2017; SL 2017, ch 71, § 8; SL 2018, ch 85, § 2; SL 2019, ch 77, § 2.

12-27-9. Limits on contributions to political action committee--Violation as misdemeanor. A political action committee may accept contributions during any calendar year as follows:
(1) Not to exceed ten thousand dollars from a person;
(2) Not to exceed ten thousand dollars from an entity;
(3) Without limit from a political action committee;
(4) Without limit from a political party;
(5) Without limit from a candidate campaign committee; and
(6) Not to exceed ten thousand dollars from a ballot question committee.

Any contribution from a person who is an unemancipated minor shall be deducted from the total contribution permitted under this section by the unemancipated minor's custodial parent or parents. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 9; SL 2011, ch 83, § 1; SL 2017, ch 222 (Initiated Measure 22), § 7, eff. Nov. 16, 2016; SL 2017, ch 72, § 6, eff. Feb. 2, 2017; SL 2017, ch 71, § 9; SL 2018, ch 85, § 3; SL 2019, ch 77, § 3.

12-27-10. Limits on contributions to political party--Violation as misdemeanor. A political party may accept contributions during any calendar year as follows:
(1) Not to exceed ten thousand dollars from a person;
(2) Not to exceed ten thousand dollars from an entity;
(3) Without limit from a political action committee;
(4) Without limit from a political party; and
(5) Without limit from a candidate campaign committee.

Any contribution from a ballot question committee is prohibited. Any contribution from a person who is an unemancipated minor shall be deducted from the total contribution permitted under this section by the unemancipated minor's custodial parent or parents. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 10; SL 2017, ch 222 (Initiated Measure 22), § 8, eff. Nov. 16, 2016; SL 2017, ch 72, § 7, eff. Feb. 2, 2017; SL 2017, ch 71, § 10; SL 2018, ch 85, § 4; SL 2019, ch 77, § 4.

12-27-10.1 to 12-27-10.3. Repealed by SL 2017, ch 72, §§ 8 to 10, eff. Feb. 2, 2017.

12-27-10.4. Affiliated entities sharing single contribution limit. All political action committees established, financed, maintained, or controlled by the same person or entity, including any parent, subsidiary, branch, division, department, or local unit of the person or entity, are affiliated and share a single contribution limit under § 12-27-9, both with respect to contributions made and contributions received.

Source: SL 2018, ch 86, § 1, eff. Jan. 1, 2019; SL 2019, ch 78, § 1.

12-27-11. Required information about contributors--Contributions from unknown source to be donated to charitable entity--Violation as misdemeanor. No person, entity, candidate, or political committee may give or accept a contribution unless the name, mailing address, city and state of the contributor is made known to the person, entity, candidate, or political committee receiving the contribution. In addition to any other information to be made known under this section, the name of the custodial parent or parents of an unemancipated minor who makes a contribution shall be made known. Any contribution, money, or other thing of value received by a candidate or political committee from an unknown source shall be donated to a nonprofit charitable entity. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 11; SL 2017, ch 222 (Initiated Measure 22), § 12, eff. Nov. 16, 2016; SL 2017, ch 72, § 11, eff. Feb. 2, 2017; SL 2017, ch 71, § 11; SL 2019, ch 77, § 5.

12-27-12. Disguised contributions prohibited--Misdemeanor. No person or entity may make a contribution in the name of another person or entity, make a contribution disguised as a gift, make a contribution in a fictitious name, make a contribution on behalf of another person or entity, or knowingly permit another to use that person's or entity's name to make a contribution. No candidate may knowingly accept a contribution disguised as a gift. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 12; SL 2008, ch 67, § 5; SL 2017, ch 222 (Initiated Measure 22), § 13, eff. Nov. 16, 2016; SL 2017, ch 72, § 12, eff. Feb. 2, 2017; SL 2017, ch 71, § 12.

12-27-13. Property purchased with contributions to be property of political committee. Equipment, supplies, and materials purchased with contributions are property of the political committee and are not property of the candidate or any other person.

Source: SL 2007, ch 80, § 13; SL 2017, ch 222 (Initiated Measure 22), § 14, eff. Nov. 16, 2016; SL 2017, ch 72, § 13, eff. Feb. 2, 2017; SL 2017, ch 71, § 13.

12-27-14. Report of property sale by political committee--Violation as misdemeanor. The sale of any property by a political committee shall be reported in the campaign finance disclosure statement. A violation of this section is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 14; SL 2018, ch 84, § 5.

12-27-15. Political communications to contain certain language--Exceptions--Violation as misdemeanor. Any printed material or communication made, purchased, paid for, or authorized by a candidate or political committee that disseminates information concerning a candidate, public office holder, ballot question, or political party shall prominently display or clearly speak the statement: "Paid for by (name of candidate or political committee)." This section does not apply to buttons, balloons, pins, pens, matchbooks, clothing, or similar small items upon which the inclusion of the statement would be impracticable. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 15; SL 2017, ch 222 (Initiated Measure 22), § 15, eff. Nov. 16, 2016; SL 2017, ch 72, § 14, eff. Feb. 2, 2017; SL 2017, ch 71, § 14.

12-27-16. Statements and disclaimers regarding independent communication expenditures--No control by candidate or political committee--Violation as misdemeanor. The following apply to independent communication expenditures by persons and entities related to communications concerning candidates, public office holders, ballot questions, or political parties who are not controlled by, coordinated with, requested by, or made upon consultation with that candidate, political committee, or agent of a candidate or political committee:

(1) Any person or entity that makes a payment or promise of payment totaling more than one hundred dollars, including donated goods or services for an independent communication expenditure that concerns a candidate, public office holder, ballot question, or political party shall append to or include in each communication a disclaimer that clearly and forthrightly:

(a) Identifies the person or entity making the independent communication expenditure for that communication;

(b) States the mailing address and website address, if applicable, of the person or entity; and

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

A violation of this subdivision is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor;

(2) Any person or entity making a payment or promise of payment of more than one hundred dollars, including donated goods and services, for a communication described in

subdivision (1) shall file an independent communication expenditure statement within forty-eight hours of the time that the communication is disseminated, broadcast, or otherwise published;

(3) The independent communication expenditure statements required by this section shall:

(a) Identify the person or entity making the expenditure;

(i) Including mailing address, city, and state of a person; or

(ii) If an entity, the mailing address, city, and state, and website address if applicable; and

(iii) Identify any expenditures made for communications described in subdivision (1) during the current calendar year but not yet reported on a prior statement, the name of each candidate, public office holder, ballot question, or political party mentioned or identified in each communication, the amount spent on each communication, and a description of the content of each communication; and

(b) For an entity, the independent communication expenditure statement shall also include the name and title of the person filing the report, the name of its chief executive, if any, and the name of the person who authorized the expenditures on behalf of the entity;

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

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

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

(a) Any news article, editorial endorsement, opinion or commentary writing, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate or political committee;

(b) Any editorial endorsement or opinion aired by a broadcast facility not owned or controlled by a candidate or political committee;

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

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

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

Source: SL 2007, ch 80, § 16; SL 2010, ch 76, § 6, eff. Mar. 25, 2010; SL 2013, ch 67, § 1; SL 2017, ch 222 (Initiated Measure 22), § 16, eff. Nov. 16, 2016; SL 2017, ch 72, § 15, eff. Feb. 2, 2017; SL 2017, ch 71, § 15.

12-27-16.1. Statements and disclaimers regarding independent communication expenditures--Control by candidate or political committee--Violation as misdemeanor. Any political committee, entity, or person that makes a communication clearly identifying a candidate, public office holder, ballot question, or political committee, other than an independent communication expenditure that is not controlled by, coordinated with, requested by, or made upon consultation with that candidate, political committee, or agent of a candidate or political committee, shall append to or include in each communication a disclaimer that:

(1) Identifies the political committee, entity, or person making the communication; and

(2) States the address or website address, if applicable, of the political committee, entity, or person.

If the communication is an independent expenditure made by a person or entity, then the disclaimer shall include the following: "This communication is independently funded and not made in consultation with any candidate, political party, or political committee." If the independent expenditure is undertaken by an entity not including a candidate, public office holder, political party, or political committee, then the following notation must also be included: "Top Five Contributors," including a listing of the names of the five persons making the largest contributions to an entity during the twelve months preceding that communication. Any person or entity making a communication under this section has the same reporting requirements as § 12-27-16. Any political committee making a communication under this section shall include each communication as an expenditure on the campaign finance disclosure report.

A violation of this section is a Class 2 misdemeanor. Any subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2017, ch 72, § 17, eff. Feb. 2, 2017; SL 2017, ch 71, § 17.

12-27-17, 12-27-17.1. Repealed by SL 2017, ch 222 (Initiated Measure 22), §§ 17, 18, eff. Nov. 16, 2016.

12-27-18. Independent communication expenditures--Violation as misdemeanor. An entity may make independent communication expenditures regarding the placement of one or more ballot questions on the ballot or the adoption or defeat of one or more ballot questions. Any entity making expenditures, equal to or exceeding fifty percent of the entity's annual gross income, for the adoption or defeat of one or more ballot measures is a ballot question committee. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 18; SL 2009, ch 65, § 1; SL 2010, ch 76, § 8, eff. Mar. 25, 2010; SL 2011, ch 83, § 2; SL 2017, ch 71, § 18; SL 2018, ch 83, § 2; SL 2018, ch 85, § 5.

12-27-18.1. Acceptance of contributions by ballot question committee. A ballot question committee may accept unlimited contributions from a:

(1) Person;

(2) Entity that complies with § 12-27-19;
(3) Political action committee;
(4) Political party;
(5) Candidate campaign committee; and
(6) Ballot question committee.

Source: SL 2008, ch 67, § 16; SL 2017, ch 71, § 19; SL 2018, ch 85, § 6.

12-27-18.2. Contributions to ballot question committee from nonresidents and certain entities prohibited--Civil penalty. 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.

Source: SL 2019, ch 237 (Initiated Measure 24), § 1, approved Nov. 6, 2018.

12-27-19. Statements required for entity to make contribution to ballot question committee--Disclosure of information by committee--Violation as misdemeanor. Before making a contribution to a ballot question committee pursuant to § 12-27-18, an entity shall provide to the ballot question committee the following:

(1) The name or fictitious name of the entity;
(2) The mailing address of the entity's office;
(3) The name and mailing address of each owner or each director and officer of the entity;
(4) The committee name the contribution was given to, the date, and the amount of the contribution; and
(5) The name and mailing address of the person authorizing the contribution.

These requirements do not apply to any donated goods or services.

Before contributing more than ten thousand dollars in the aggregate to a ballot question committee pursuant to § 12-27-18, an entity shall provide to the ballot question committee a sworn written statement made by the president and treasurer of the entity declaring and affirming, under the penalty of perjury, the following:

(1) The name and street address of every person who owns ten percent or more of the entity, has provided ten percent or more of the entity's gross receipts, including capital contributions, in the current or preceding year, or has provided ten percent or more of the funds being contributed to the ballot question committee; and
(2) That no part of the contribution was raised or collected by the entity for the purpose of influencing the ballot question.

A ballot question committee shall disclose in its applicable campaign financial disclosure statement or supplement statement all information received from any entity pursuant to this section. No ballot question committee may accept any contribution from any entity not preceded or accompanied by the statements required by this section. Except as provided by § 22-29-1, violation of this section is a Class 2 misdemeanor. A subsequent offense within a

calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 19; SL 2009, ch 66, § 1; SL 2017, ch 71, § 20; SL 2018, ch 87, § 1.

12-27-20. Expenditure of public funds to influence election outcome prohibited. The state, an agency of the state, and the governing body of any county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question. This section may not be construed to limit the freedom of speech of any officer or employee of the state or any political subdivision who is speaking in the officer's or employee's personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question.

Source: SL 2007, ch 80, § 20; SL 2017, ch 222 (Initiated Measure 22), § 19, eff. Nov. 16, 2016; SL 2017, ch 72, § 18, eff. Feb. 2, 2017.

12-27-21. Contributions from public entities--Prohibition--Violation as misdemeanor. No candidate or political committee may accept any contribution from any state, state agency, political subdivision of the state, foreign government, federal agency, or the federal government. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 21; SL 2008, ch 68, § 1; SL 2017, ch 222 (Initiated Measure 22), § 20, eff. Nov. 16, 2016; SL 2017, ch 72, § 19, eff. Feb. 2, 2017; SL 2017, ch 71, § 21; SL 2020, ch 47, § 1.

12-27-21.1. Time for submission of statements--Violation as misdemeanor. Each statement referred to § 12-27-22 shall be signed and submitted by the treasurer of the political committee. The statement shall be received by the secretary of state and submitted by 5:00 p.m. central time on the following dates:

(1) Pre-primary report: fifteen days prior to the primary election, for the reporting period commencing with the last report submitted up through and including twenty days prior to the election date;

(2) Pre-general report: fifteen days prior to the general election, for the reporting period commencing with the last report submitted up through and including twenty days prior to the election date;

(3) Amendments: submitted pursuant to § 12-27-27;

(4) Supplemental report: submitted pursuant to § 12-27-28;

(5) Year-end report: by the last Friday in January each year, for the reporting period commencing with the last report submitted up through and including December thirty-first of each year; and

(6) Termination report: at any time as stated in § 12-27-25. Pre-primary, pre-general, amendments, supplemental, year-end, and termination reports shall cover the

contributions and expenditures since the last report submitted. All required filings under this chapter shall be submitted using the forms as provided by the secretary of state.

A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2017, ch 71, § 23; SL 2018, ch 84, § 6.

12-27-22. Persons and entities required to submit campaign finance disclosure statements--Violation as misdemeanor. A campaign finance disclosure statement shall be submitted to the secretary of state. The treasurer of each:

(1) Candidate or candidate campaign committee for any statewide office shall file a pre-primary, pre-general, year-end, and, if applicable, supplemental report and amendments in even numbered years. In odd numbered years shall file a year-end and, if applicable, amendments. A termination report may be submitted at any time;

(2) All candidates running for a legislative or county office with a recognized political party shall file a pre-primary report if there is any primary race for that particular office in the legislative district or county, and all candidates or candidate campaign committees for a legislative or county office shall file a pre-general, year-end and, if applicable, supplemental report and amendments in even numbered years. A termination report may be submitted at any time;

(3) Statewide political action committee shall file a pre-primary, pre-general, year-end, and, if applicable, supplemental report and amendments in even numbered years. In odd numbered years shall file a year-end or, if applicable, amendments. A termination report may be submitted at any time;

(4) Statewide political party shall file a pre-primary, pre-general, year-end and, if applicable, supplemental report and amendments in even numbered years. In odd numbered years shall file a year-end or amendments, if applicable. A termination report may be submitted at any time. A political party that loses its status as a qualified party shall file a termination statement by 5:00 p.m. central time the last Friday in January following the calendar year in which qualified party status was lost;

(5) County political party and auxiliary organization shall file a pre-general and, if applicable, supplemental report and amendments in even numbered years. A termination report may be submitted at any time; and

(6) Statewide ballot question committee shall file a pre-primary, pre-general, year-end and, if applicable, supplemental report and amendments in even numbered years. In odd numbered years shall file a year-end and, if applicable, amendments. A termination report may be submitted at any time. If a statewide ballot question committee does not list any activity on the next required campaign finance report submitted to the secretary of state, that committee has until the next reporting period to report activity. If that committee does not have any activity to report by the next reporting period, the committee shall submit a termination report by that reporting period deadline.

A campaign finance disclosure statement shall be submitted to the secretary of state by the treasurer of each committee who shall file the following financial disclosure reports in accordance with the time frames stated in this chapter: pre-primary, pre-general, year-end, amendment, supplemental, and a termination when a committee is terminating its existence.

A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 22; SL 2008, ch 67, § 6; SL 2009, ch 67, § 1; SL 2010, ch 76, § 3, eff. Mar. 25, 2010; SL 2011, ch 84, § 1; SL 2012, ch 18, § 10; SL 2015, ch 78, § 1; SL 2015, ch 79, § 1; SL 2016, ch 78, § 2; SL 2017, ch 222 (Initiated Measure 22), § 21; SL 2017, ch 72, § 20, eff. Feb. 2, 2017; SL 2017, ch 71, § 22; SL 2018, ch 83, § 3; SL 2019, ch 79, § 1.

12-27-22.1. Circumstances under which campaign finance disclosure report not required. No campaign finance disclosure report is required to be submitted by a political committee that regularly submits a campaign finance disclosure report with another state or the Federal Election Commission or a report of contributions and expenditures with the Internal Revenue Service.

Source: SL 2016, ch 78, § 3; SL 2017, ch 71, § 24.

12-27-22.2. Reports only include contributions and expenditures related to this state. If a political committee treasurer is required to file a report with the secretary of state, the report may only include contributions and expenditures related to this state.

Source: SL 2017, ch 71, § 25.

12-27-23. Repealed by SL 2018, ch 84, § 7.

12-27-24. Contents of campaign finance disclosure report. A campaign finance disclosure report shall include the following information:

(1) The political committee name, mailing address, telephone number, and, if applicable, e-mail address;

(2) Name, mailing address, telephone number, and, if applicable, an e-mail address, if any of the political committee's treasurer;

(3) The type of campaign report (pre-primary, pre-general, year-end, amendment, supplement, or termination);

(4) For any ballot question committee, the ballot question name and whether the committee supports or opposes the ballot question;

(5) The balance of cash and cash equivalents on hand at the beginning of the reporting period;

(6) The total amount of all contributions received during the reporting period;

(7) The total amount of any donated good or service received during the reporting period;

(8) The total of refunds, rebates, interest, or other income not previously identified during the reporting period;

(9) The total of expenditures made during the reporting period;

(10) The cash balance on hand as of the close of the reporting period;

(11) All contributions of one hundred dollars or less shall either be aggregated and reported as a lump sum or the contributions shall be listed individually;

(12) The name, mailing address, city, and state of each person making a contribution of more than one hundred dollars in the aggregate during any calendar year and the amount of the contribution. Any contribution from an entity after July 1, 2017, or political committee shall be itemized. Any contribution from a federal political committee or political committee organized outside this state shall also include the name and website address of the filing office where campaign finance disclosure reports are regularly filed for the committee. If any information required by the section is unknown to the political committee, the political committee may not deposit the contribution;

(13) Any donated good or service contribution shall contain the same information as for any monetary contribution, and shall also include a description of the donated good or service contribution;

(14) Any monetary or donated good or service contribution made by a political committee to any political committee or nonprofit charitable entity shall be itemized;

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

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

(17) Each loan received shall be reported in the same manner as a contribution;

(18) Each loan repayment shall be reported in the same manner as an expenditure;

(19) Any expenditure made during the reporting period shall be categorized as disbursements and itemized by expense categories. A miscellaneous expense category is prohibited. Any contribution made by the political committee that is not in exchange for any item of value or service shall be itemized;

(20) The amount of any independent communication expenditure from a political committee made during the reporting period, and lists the name of the candidate, public office holder, or ballot question related to the independent communication expenditure and a description of the independent communication expenditure;

(21) A ballot question committee shall provide the information contained in any statement provided pursuant to § 12-27-19; and

(22) A certification that the contents of the statement are true and correct signed by the treasurer of the political committee.

Source: SL 2007, ch 80, § 24; SL 2016, ch 78, § 4; SL 2017, ch 222 (Initiated Measure 22), § 22; SL 2017, ch 72, § 21, eff. Feb. 2, 2017; SL 2017, ch 71, § 26; SL 2018, ch 88, § 1, eff. Feb. 5, 2018; SL 2018, ch 84, § 8.

12-27-24.1. Repealed by SL 2017, ch 72, § 22, eff. Feb. 2, 2017.

12-27-25. Termination report. The last campaign finance report filed shall be a termination report. The termination report shall be filed by the treasurer within thirty days following disposition of all funds and property and the payment of all obligations. If a termination pursuant to § 12-27-29.2 occurs, this section does not apply.

Source: SL 2007, ch 80, § 25; SL 2008, ch 67, § 8; SL 2017, ch 71, § 28.

12-27-26. Requirements for dissolution of political committee. A political committee may not dissolve until the political committee has settled all of its debts, disposed of all of its assets, and filed a termination statement.

Source: SL 2007, ch 80, § 26.

12-27-27. Conditions requiring filing of amended statement or report--Time for filing--Violation as misdemeanor--Civil penalty. Any treasurer or other person filing a statement or report pursuant to this chapter, shall file an amended statement or report within seven days of discovering any omission, inaccuracy, or other change necessary to make the statement or report accurate. A person responsible for filing a statement or report pursuant to this chapter, who willfully fails to report a material change or correction, is guilty of a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor. A person responsible for filing a statement or report pursuant to this chapter, who willfully fails to file an amendment pursuant to this section is subject to the administrative penalty in § 12-27-29.1 beginning on the first day following the seventh day after the candidate, treasurer, or other person is notified of the omission, inaccuracy, or other change necessary to make the statement or report accurate.

Source: SL 2007, ch 80, § 27; SL 2008, ch 67, § 9; SL 2017, ch 71, § 29.

12-27-28. Conditions requiring filing of supplemental report--Time for filing--Violation as misdemeanor. If any political committee required to file a campaign finance disclosure report pursuant to this chapter receives a contribution of five hundred dollars or more within the twenty days immediately prior to an election for which a campaign finance disclosure report may be filed, a supplemental report shall be filed. The report shall state the name and mailing address of the contributor and the amount and date of the contribution, and information contained in any report provided under § 12-27-19, if applicable. The report shall be filed by the treasurer within forty-eight hours of the receipt of the contribution. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 28; SL 2008, ch 67, § 12; SL 2017, ch 71, § 30.

12-27-29. Records required to be kept by treasurer of political committee--Violation as misdemeanor. The treasurer of a political committee shall maintain and preserve detailed and accurate records of the following:

(1) Each contribution received by the political committee. Any contribution of one hundred dollars or less shall be noted on the political committee's books and a running total of each contributor shall be maintained;

(2) Each donated good or service contribution received by the political committee. Upon request of the treasurer, any person making a donated good or service contribution shall provide all necessary information to the treasurer, including the value of the contribution;

(3) In the case of a ballot question committee, the information required by § 12-27-19 for any entity contribution;

(4) Each loan received or made by the political committee;

(5) Each refund, rebate, interest, or other income received by the political committee;

(6) All receipts, invoices, bills, canceled checks, or other proofs of payment, with an explanation of each, for each expenditure;

(7) The name and address of any financial institution where an account or depository for the political committee is maintained including the account number.

The treasurer shall maintain and preserve the records for a period of seven years or three years past the date of filing the termination statement for the election for which the contribution or expenditure was made, whichever is earlier. A violation of this section is a Class 2 misdemeanor. Any subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 29; SL 2017, ch 71, § 31; SL 2018, ch 84, § 9.

12-27-29.1. Civil penalty for failure to timely file statement, amendment, or correction. In addition to any other penalty or relief provided under this chapter, the secretary of state, may impose a civil penalty for the failure to timely file any statement, amendment, or correction required to be filed by this chapter. The civil penalty is two hundred dollars for each violation. If any violation is made by a county political party or auxiliary organization, the civil penalty is fifty dollars for each violation. Any civil penalty collected pursuant to this section shall be deposited into the state general fund.

Source: SL 2008, ch 67, § 10; SL 2009, ch 67, § 2; SL 2017, ch 222 (Initiated Measure 22), § 24, eff. Nov. 16, 2016; SL 2017, ch 72, § 23, eff. Feb. 2, 2017; SL 2017, ch 71, § 32.

12-27-29.2. Order assessing penalty--Contents--Appeal--Termination of committee. Any civil penalty imposed pursuant to § 12-27-29.1 shall be assessed against the violator by an order of the secretary of state. The order shall state the date and facts of each violation addressed under the penalty assessed and the citations to the provisions of each law alleged to be violated. The secretary of state shall serve the order and assessment by certified mail. The order shall contain a statement that the violator may appeal the order within thirty days after receipt of the order by filing a written request for a contested case hearing with the Office of Hearing Examiners. If no contested case hearing is requested within sixty days of service by certified mail, a civil penalty constitutes a judgment and may be executed by delivery of a true and correct copy certified by the secretary of state in the manner provided for the execution of money judgments provided in chapter 15-18.

An appeal from the Office of Hearing Examiners to circuit court may be taken by the parties to the appeal and intervenors before the Office of Hearing Examiners. The appeal shall be taken and conducted pursuant to the provisions of chapter 1-26. The venue of the appeal shall be in Hughes County.

If the secretary of state does not receive the payment of the penalty and the delinquent report within thirty-five days of the date of the order, the secretary of state may terminate that committee. If a committee is terminated, the secretary of state shall mail a termination letter to the last address on record for the treasurer.

Source: SL 2008, ch 67, § 11; SL 2016, ch 78, § 5; SL 2017, ch 71, § 33; SL 2020, ch 48, § 1.

12-27-29.3. Prohibition of certification as candidate for failure to pay penalties or file required documents. No candidate who is listed on a statement of organization for a candidate campaign committee pursuant to §§ 12-27-3 and 12-27-6 may be certified as a candidate for office unless the treasurer of the candidate campaign committee for which the candidate is listed has:

(1) Filed all statements, documents, and information required under this title; or

(2) Paid each civil penalty assessed pursuant to § 12-27-29.1, or any other penalty imposed pursuant to this chapter against the candidate or the treasurer.

Source: SL 2013, ch 68, § 1; SL 2017, ch 71, § 34.

12-27-29.4. Repeated failure to perform duty--Additional penalty--Referral for prosecution. In addition to any penalty that may be imposed on a person pursuant to § 12-27-29.1, if the secretary of state finds that any person has failed to perform any duty imposed on that person by this chapter, that person may be assessed an additional penalty not to exceed two hundred fifty dollars. The secretary of state may refer repeated violations of any duty required under this chapter for prosecution by a state's attorney or the attorney general.

Source: SL 2017, ch 73, § 1.

12-27-29.5. Candidate jointly and severally responsible with treasurer for penalty--Decertification. If a candidate is not the treasurer of the candidate's campaign committee, the penalty of a candidate being decertified, pursuant to this chapter, remains. Notwithstanding any other provisions of law, a candidate is jointly and severally responsible with the treasurer of the candidate's campaign committee for each monetary fine and penalty imposed by this chapter.

Source: SL 2017, ch 71, § 27.

12-27-30. Civil penalty for failure to timely file statement, amendment, or correction with county, township, municipality, school district, or special purpose district. Notwithstanding the provisions of § 12-25-33, the failure to timely file any statement, amendment, or correction with any county, township, municipality, school district, or special purpose district covered by this chapter pursuant to § 12-27-39 or covered by local ordinance or resolution subjects the treasurer responsible for filing to a civil penalty of fifty dollars per day for each day that the statement remains delinquent. The civil penalty shall be in addition to any criminal sanctions and shall be paid to the county, township, municipality, school district, or special purpose district and deposited in its general fund.

Source: SL 2007, ch 80, § 30; SL 2008, ch 67, § 13.

12-27-31. Forms to be adopted by secretary of state--Oath or affirmation. The secretary of state shall adopt forms for statements of organization and campaign finance disclosure statements. Each person filing a statement of organization or campaign finance disclosure

statement shall subscribe to an oath or affirmation verifying that the contents of the statement are true and correct to the best of the knowledge and belief of the signer.

Source: SL 2007, ch 80, § 31.

12-27-32. Preservation and destruction of statements in public records. The secretary of state shall endorse the date of the filing on each statement filed pursuant to this chapter, and shall preserve the statement electronically among the public records of the office. However, the statement may be destroyed if the Records Destruction Board, acting pursuant to § 1-27-19, declares the records to have no further administrative, legal, fiscal, research, or historical value.

Source: SL 2007, ch 80, § 32; SL 2017, ch 71, § 35.

12-27-33. Sale and certain uses of information in statements or reports prohibited--Misdemeanor. No information copied, or otherwise obtained, from any statement or report, or copy, reproduction, or publication thereof, filed with the secretary of state, county auditor, or other person in charge of conducting the election under this chapter may be sold or utilized by any person for any commercial purpose or for the purpose of soliciting contributions. Any violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 33; SL 2017, ch 71, § 36.

12-27-34. Intentionally false or misleading statements prohibited--Felony. Any person who intentionally makes any false, fraudulent, or misleading statement or entry in any statement of organization, campaign finance disclosure statement, other statement, or amendment filed pursuant to this chapter is guilty of a Class 5 felony.

Source: SL 2007, ch 80, § 34.

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

Source: SL 2007, ch 80, § 35; SL 2008, ch 67, § 14; SL 2017, ch 222 (Initiated Measure 22), § 25, eff. Nov. 16, 2016; SL 2017, ch 72, § 24, eff. Feb. 2, 2017; SL 2017, ch 71, § 37; SL 2018, ch 84, § 10.

12-27-36. Access to records by attorney general--Violation as misdemeanor. The attorney general may, for the purpose of enforcing the provisions of this chapter, inspect or examine

any political committee records required to be maintained by this chapter. Any person having charge, control, or possession of political committee records who neglects or refuses the attorney general reasonable access to any records required to be maintained by this chapter that are necessary to enforce the provisions of this chapter is guilty of a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.

Source: SL 2007, ch 80, § 36; SL 2017, ch 222 (Initiated Measure 22), § 26, eff. Nov. 16, 2016; SL 2017, ch 72, § 25, eff. Feb. 2, 2017; SL 2017, ch 71, § 38.

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

Source: SL 2007, ch 80, § 37; SL 2017, ch 222 (Initiated Measure 22), § 27, eff. Nov. 16, 2016; SL 2017, ch 72, § 26, eff. Feb. 2, 2017.

12-27-38. Candidate may not be certified or to forfeit office for felony violation. If any candidate is proved in a contest of an election to have violated any provision of this chapter punishable by a felony, the candidate may not be certified for election or the candidate shall forfeit his or her office. The office shall be declared vacant and shall be filled in the manner provided by law for filling vacancies occasioned by death or resignation.

Source: SL 2007, ch 80, § 38; SL 2018, ch 84, § 11.

12-27-39. Application of campaign finance requirements. The provisions of this chapter apply to each statewide office, legislative office, statewide ballot question, county offices and ballot questions in counties with population greater than ten thousand according to the most recent Federal census, ballot questions in first class municipalities, and school district offices and ballot questions in school districts with more than two thousand average daily membership. Any municipal or school district election covered by this chapter shall conform to the contribution limits applicable to legislative offices. This chapter does not apply to the unified judicial system, nor does this chapter apply to any township or special purpose district offices or ballot questions or elections for municipal offices. However, the governing body of any county, township, municipality, school district, or special purpose district not otherwise covered by this chapter may adopt an ordinance or resolution to make the provisions of this chapter, with or without amendments, applicable to county, township, municipal, school district, or special purpose district elections.

Source: SL 2007, ch 80, § 39; SL 2012, ch 86, § 1; SL 2016, ch 79, § 1; SL 2017, ch 71, § 39.

12-27-40. Investigation and prosecution of violations by state's attorney--Civil actions. The state's attorney shall investigate any violation of the provisions of this chapter relating to elections for county and school district office or county, municipal, or school district ballot questions, and prosecute any violation thereof. In lieu of bringing a criminal action, the state's attorney may elect to file a civil action for any violation of this chapter. In a civil action, in addition to other relief, the court may impose a civil penalty in an amount not

to exceed one thousand dollars for each violation. Any civil penalty recovered shall be paid to the county general fund if the violation arose out of a county office or ballot question, municipal general fund if the violation arose out of a municipal ballot question, or the school district general fund if the violation arose out of a school district office or ballot question. A civil enforcement action for a violation of the chapter concerning a municipal ballot question may, with the consent of the state's attorney, be brought by the municipality's attorney. A civil enforcement action for a violation of the chapter concerning a school district office or ballot question may, with the consent of the state's attorney, be brought by the school district's attorney. A civil action brought under this section shall be commenced in the county where filings under the chapter are required, in the county where the person resides, or in the county where the organization, political party, or political committee has its principal office.

Source: SL 2007, ch 80, § 40; SL 2008, ch 67, § 15; SL 2012, ch 86, § 2.

12-27-41. Filing by electronic transmission. Any statement required to be filed under this chapter may be filed by electronic transmission in accordance with the methods approved by the secretary of state. To be timely filed, any statement received by electronic transmission shall be legible and readable when received by the means it was delivered.

Source: SL 2007, ch 80, § 41; SL 2012, ch 18, § 12; SL 2017, ch 222 (Initiated Measure 22), § 28; SL 2017, ch 72, § 27, eff. Feb. 2, 2017.

12-27-41.1. Repealed by SL 2017, ch 72, § 28, eff. Feb. 2, 2017.

12-27-42. Place of filing. Any statement, form, or filing required by this chapter shall be filed with the secretary of state in the case of a statewide office or legislative office election. Any statement, form, or filing required by this chapter shall be filed with the county auditor in the case of a county office election, with the municipal finance officer or clerk in the case of a municipal ballot question election, with the school business manager in the case of a school district office election, or with the person in charge of the election in the case of other political subdivisions or special purpose districts.

Source: SL 2007, ch 80, § 42; SL 2012, ch 86, § 3; SL 2016, ch 78, § 6.

12-27-42.1. Repealed by SL 2017, ch 72, § 29, eff. Feb. 2, 2017.

12-27-43. Action for civil penalty for certain violations. The attorney general may bring an action for a civil penalty against any person, political committee, political party, or organization that violates § 12-27-16 or 12-27-17, in addition to any other penalties provided by law. The civil penalty may not exceed two thousand dollars for each violation.

Source: SL 2007, ch 80, § 44.

12-27-44. Repealed by SL 2009, ch 68, § 1.

12-27-45. Additional standards adopted by political subdivision. Nothing is this chapter prevents any political subdivision from adopting additional standards or requirements relating to campaign finance for elections held under the political subdivision's own jurisdiction that are more stringent than the provisions of this title.

Source: SL 2012, ch 86, § 4.

12-27-46. Repealed by SL 2017, ch 72, § 30, eff. Feb. 2, 2017.

12-27-47. Affidavit alleging violation of campaign finance requirements--Contested case--Referral for investigation. Any person may file with the secretary of state a sworn affidavit alleging a violation of the campaign finance requirements under this chapter. A sworn affidavit alleging any misconduct, breach of statutory duty, or malfeasance shall be signed and sworn to by the affiant, fully state any fact on which the affiant relied and identify any source of factual information. If the sworn affidavit has sufficiently substantiated facts that lead the secretary of state to believe there is probable cause that a requirement under this chapter has been violated, the secretary of state may commence the contested case procedure pursuant to chapter 1-26 to remedy the violation or impose a civil penalty. The secretary of state may refer the complaint to the Division of Criminal Investigation for an investigation pursuant to chapter 23-3 and shall notify the subject of the affidavit of the referral by certified mail.

Source: SL 2017, ch 73, § 2.

12-27-47.1. Report of certain campaign finance violations to secretary of state--Investigation--Civil penalty. Any resident of South Dakota may report a violation of § 12-27-12, 12-27-16(1), 12-27-18.2, 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.

Source: SL 2019, ch 237 (Initiated Measure 24), § 2, eff. July 1, 2019.

12-27-48. False allegation of misconduct as misdemeanor. Any person who knowingly makes a false allegation pursuant to § 12-27-47, 23-3-72, or 23-3-73 is guilty of a Class 2 misdemeanor.

Source: SL 2017, ch 73, § 7; SL 2018, ch 84, § 12.

12-27-49. Effect of secretary of state's filing or refusing to file document. The Office of the Secretary of State's duty to file a document under this chapter is ministerial. If the Office of the Secretary of State files or refuses to file a document, it does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct.

Source: SL 2017, ch 71, § 40.

12-27-50. Limitation on uses for contributions received by candidate campaign committee. Contributions received by a candidate campaign committee may only be used for:

(1) A purpose related to a candidate's campaign;

(2) Expenses incident to being a public official or former public official; or

(3) Donations to any other candidate, political committee, or nonprofit charitable organization.

Source: SL 2017, ch 71, § 41.

12-27-51. Period to cure campaign finance violation. Prior to bringing a charge against any person who is subject to a Class 2 misdemeanor under this chapter, the agent of the state who is bringing the charge shall provide the person with a period, not in excess of seven days, during which the person may cure the violation.

Source: SL 2019, ch 80, § 1.

CHAPTER 12-28 - GOVERNMENT ACCOUNTABILITY AND ANTI-CORRUPTION [REPEALED]

12-28-1 to 12-28-37 Repealed.

CHAPTER 13-7 - SCHOOL DISTRICT ELECTIONS

13-7-1	Repealed.
13-7-2	Repealed.
13-7-3	Public offices incompatible with board membership.
13-7-4	Registration of voters--Notice of registration.
13-7-4.1	Repealed.
13-7-4.2	Registration and residence required to vote in school election--Residence defined--Challenge--Contest of election.
13-7-5	Publication of notice of vacancies on school board--Newly created school districts.
13-7-6	Filing of candidate's nominating petition--Formal declaration of candidacy--Contents, circulation, and verification of nominating petition (Effective until approval of amendment by SL 2015, ch 77 to be submitted to the voters at the November 8, 2016 election).
13-7-6	Candidate's nominating petition--Formal declaration of candidacy (Effective upon approval of amendment by SL 2015, ch 77 to be submitted to the voters at the November 8, 2016 election).
13-7-6.1	Option to adopt campaign finance law.
13-7-6.2	Candidate's nominating petition in newly created school district.
13-7-7	Withdrawal by candidate for board membership.
13-7-8	Publication of notice of election--Contents--Facsimile of ballot.
13-7-8.1	Notice of special election.
13-7-9	Election not held if no contest or question--Certificates of election.
13-7-9.1	Death or withdrawal of candidate resulting in no contest.
13-7-9.5	Repealed.
13-7-9.6	Repealed.
13-7-10	Date and hours of annual school elections--Procedure for absentee voting, voter registration, and counting ballots.
13-7-10.1	Joint school district and municipal elections authorized--Date--Sharing costs and responsibilities.
13-7-10.2	Notices and nomination procedure for certain joint elections.
13-7-10.3	Joint school board and primary elections.
13-7-10.4	Notices and nomination procedure for joint board and primary elections.
13-7-11	Voting precincts and polling places.
13-7-12	Precinct superintendents and precinct deputies of school elections--Compensation.
13-7-13	Ballots and election supplies--Form and content of ballots--Absentee ballots.
13-7-14	Absentee voting in school elections.
13-7-15	Repealed.
13-7-16	Repealed.
13-7-17	Certification of school district election returns--Preservation of ballots and ballot boxes.
13-7-18	Canvass of election results--Certificates of election--Certification of results.
13-7-19	Repealed.
13-7-19.1	Tie vote--Recount procedure--Resolution by lot.

13-7-19.2 Close margin in school board election--Request for recount--Recount board established.
13-7-19.3 Close margin in school election--Petition for recount--Appointment of recount board--Production of ballot boxes--Disputes.
13-7-19.4 Compensation of recount board.
13-7-20 Repealed.
13-7-21 to 13-7-26 Repealed.
13-7-27 Definitions.
13-7-28 Repealed.
13-7-29 Repealed.
13-7-30 Information regarding school elections to be provided in school board minutes.
13-7-31 Time for providing election information.

13-7-1, 13-7-2. Repealed by SL 1973, ch 69, § 4

13-7-3. Public offices incompatible with board membership. No elective county, municipal, or state officer or the holder of any other office, the duties of which are incompatible or inconsistent with the duties of a school board member, shall be eligible for such membership.

Source: SL 1955, ch 41, ch 9, § 9; SDC Supp 1960, § 15.2309; SL 1975, ch 128, § 30.

13-7-4. Registration of voters--Notice of registration. Registration to vote and notice of registration in school district elections shall be as provided in chapter 12-4.

Source: SL 1955, ch 41, ch 9, § 15; SL 1957, ch 65; SDC Supp 1960, § 15.2315; SL 1961, ch 92, § 24; SL 1975, ch 119, § 18; SL 1975, ch 128, § 31.

13-7-4.1. Repealed by SL 1995, ch 87, § 20

13-7-4.2. Registration and residence required to vote in school election--Residence defined--Challenge--Contest of election. No person may vote at any school election unless the person is registered to vote pursuant to chapter 12-4 and resides in the school district at the time of the election. For the purposes of this section, a person resides in the school district if the person actually lives in the school district for at least thirty days each year, is a full-time postsecondary education student who resided in the school district immediately prior to leaving for the postsecondary education, or is on active duty as a member of the armed forces whose home of record is within the school district. A voter's qualification as a resident may be challenged in the manner provided in § 12-18-10. No election may be contested on the grounds that any nonresident was allowed to vote if the nonresident was not challenged in the manner provided in § 12-18-10.

Source: SL 1998, ch 45, § 2; SL 2001, ch 43, § 2; SL 2002, ch 46, § 2.

13-7-5. Publication of notice of vacancies on school board--Newly created school districts. Between the fifteenth day and the thirtieth day of the month three months preceding

the election, except in the case of the joint election as provided in § 13-7-10.1, the business manager of each school district shall publish once each week for two consecutive weeks in the official newspaper, a notice setting forth the vacancies which will occur by termination of the terms of the elective or appointive school board members. However, if the vacancies set forth in the notice exist within a new school board of a newly created school district entity pursuant to § 13-6-62, the county auditor of the county having jurisdiction over the election shall publish the notice once each week for two consecutive weeks at least one month preceding the election. The notice shall also state the time and place where nominating petitions for school board membership may be filed for the vacancies.

Source: SDC 1939, § 15.2509; SL 1949, ch 70; SL 1951, ch 63, § 1; SL 1955, ch 41, ch 9, § 11; SL 1955, ch 44; SL 1957, ch 64, § 3; SDC Supp 1960, § 15.2311; SL 1968, ch 47, § 2; SL 1975, ch 128, § 32; SL 1976, ch 117, § 1; SL 1979, ch 113, § 1; SL 1985, ch 119, § 1; SL 1995, ch 90, § 3; SL 2004, ch 75, § 6; SL 2007, ch 89, § 1, eff. Feb. 15, 2007.

13-7-6. Filing of candidate's nominating petition--Formal declaration of candidacy--Contents, circulation, and verification of nominating petition. No candidate for elective school board membership may be nominated unless such person is a resident voter of the school district and unless a nominating petition has been filed on such person's behalf with the business manager of the school district. The nominating petition shall be filed no later than five p.m. on the Friday thirty-nine days before the date of the election. The petition is considered filed if it is mailed by registered mail by five p.m. on the Friday thirty-nine days before the election. A formal declaration of a candidate shall be signed by the candidate before the circulation of the petition. The petition shall be signed by not less than twenty voters of the school district or if the school district is divided into school board representation areas, the petition shall be signed by not less than twenty voters who reside within the school board representation area. No petition may be circulated until ten weeks prior to the election. There shall be added by either the signer or the circulator the signer's place of residence and date of signing. The petition shall be verified under oath by the person circulating it. The filing of the nominating petition shall constitute nomination and will entitle the candidate to have the candidate's name placed on the ballot for the term the candidate specifies on the petition only upon verification signed by the business manager that the nominating petition contains the minimum number of signatures and that the candidate is a resident voter.

Source: SDC 1939, § 15.2510; SL 1947, ch 67; SL 1955, ch 41, ch 9, § 10; SL 1957, ch 64, § 2; SL 1959, ch 64; SDC Supp 1960, § 15.2310; SL 1968, ch 47, § 1; SL 1975, ch 128, § 33; SL 1979, ch 113, § 2; SL 1981, ch 129, § 1; SL 1985, ch 119, § 2; SL 1995, ch 90, § 2; SL 1996, ch 103, § 1; SL 2004, ch 75, § 7; SL 2007, ch 89, § 2, eff. Feb. 15, 2007; SL 2009, ch 69, § 11; SL 2010, ch 74, § 24; SL 2015, ch 77, § 16 rejected Nov. 8, 2016.

13-7-6.1. Option to adopt campaign finance law. The school district governing body may, by ordinance or resolution, adopt the provisions of chapter 12-27.

Source: SL 1988, ch 60, § 2; SL 2008, ch 67, § 22.

13-7-6.2. Candidate's nominating petition in newly created school district. If the nominating petition is from a candidate for a vacancy on a new school board within a newly created school district entity pursuant to § 13-6-62, the nominating petition shall be circulated no more than sixty days prior to the date of the election and filed no later than thirty days prior to the date of the election.

Source: SL 2010, ch 74, § 25.

13-7-7. Withdrawal by candidate for board membership. Any person who has filed a nominating petition pursuant to § 13-7-6 may withdraw from nomination by request in writing signed by the person and properly acknowledged and filed with the election official of the school district by five p.m. on the deadline day for filing nominating petitions. No name withdrawn may be printed on the ballots to be used.

Source: SDC 1939, § 15.2510; SL 1947, ch 67; SL 1955, ch 41, ch 9, § 10; SL 1957, ch 64, § 2; SL 1959, ch 64; SDC Supp 1960, § 15.2310; SL 1968, ch 47, § 1; SL 1975, ch 128, § 34; SL 1979, ch 113, § 3; SL 1981, ch 129, § 2; SL 1985, ch 119, § 3; SL 1995, ch 90, § 4; SL 1996, ch 60, § 5.

13-7-8. Publication of notice of election--Contents--Facsimile of ballot. The business manager of the school district shall publish in the official newspaper notices of an election once each week for two consecutive weeks with the first publication not less than ten days before the election. The notice shall state the date of the coming school election, the vacancies to be filled with terms of each, the candidates who have filed for these vacancies, questions, if any, to be submitted at the election, and the location of polling places. A facsimile of the official ballot shall be published in the calendar week prior to each election.

Source: SDC 1939, § 15.2511; SL 1955, ch 41, ch 9, § 13; SL 1957, ch 64, § 5; SDC Supp 1960, § 15.2313; SL 1975, ch 128, § 35; SL 1979, ch 113, § 4; SL 1985, ch 119, § 4; SL 2003, ch 43, § 3.

13-7-8.1. Notice of special election. When a special election is held to decide an issue, the business manager of the school district shall publish notices as provided in § 13-7-8.

Source: SL 1985, ch 119, § 8.

13-7-9. Election not held if no contest or question--Certificates of election. In school districts if only one nominating petition is filed for each board vacancy to be filled and if there are no other questions to be submitted to the voters, there shall be no election and the notices and publication provided in § 13-7-8 will not be necessary, but the business manager shall issue certificates of election to the nominees in the same manner as to successful candidates after election.

Source: SDC 1939, § 15.2509; SL 1951, ch 63, § 1; SL 1955, ch 41, ch 9, § 13; SL 1955, ch 44; SL 1957, ch 64, § 5; SDC Supp 1960, § 15.2313; SL 1975, ch 128, § 36; SL 1979, ch 113, § 5.

13-7-9.1. Death or withdrawal of candidate resulting in no contest. If death or withdrawal of a candidate or candidates at any time prior to forty-eight hours preceding the opening of the polls in any school district election occasions that there is no contest on the ballot, that ballot need not be voted and if it constitutes the only ballot to be voted upon, then the election may be canceled by the officer responsible for its conduct and the unopposed candidate issued certificate of election as though duly elected.

Source: SL 1971, ch 95.

13-7-9.5, 13-7-9.6. Repealed by SL 1999, ch 78, §§ 1, 2

13-7-10. Date and hours of annual school elections--Procedure for absentee voting, voter registration, and counting ballots. The annual election for school districts shall be held between the second Tuesday in April and the third Tuesday in June between the hours of seven a.m. and seven p.m. of the day of the election. The school board shall select the date of the election by resolution no later than the first regular meeting after January first of each year. Voter registration, absentee voting, and procedures used in counting ballots shall be in accordance with Title 12 except as specifically provided in chapter 13-7.

Source: SDC 1939, §§ 15.2309, 15.2509; SL 1945, ch 55, § 1; SL 1951, ch 63, § 1; SL 1955, ch 41, ch 9, § 12; SL 1955, ch 44; SL 1957, ch 64, § 4; SL 1959, ch 65, § 1; SDC Supp 1960, § 15.2312; SL 1975, ch 128, § 37; SL 1985, ch 119, § 5; SL 1995, ch 90, § 1; SL 1997, ch 85, § 1; SL 1999, ch 39, § 2; SL 2002, ch 45, § 4.

13-7-10.1. Joint school district and municipal elections authorized--Date--Sharing costs and responsibilities. The members of the governing body of a school district may choose to hold a general school district election in conjunction with a regular municipal election. The combined election is subject to approval by the governing body of the municipality. The combined election shall be held on the regular date set for either the school district election or the general municipal election. Expenses of a combined election shall be shared in a manner agreed upon by the governing bodies of the municipality and the school district. All other governmental responsibilities associated with holding elections under the provisions of chapters 9-13 and 13-7 shall be shared as agreed upon by the governing bodies.

Source: SL 1981, ch 66, § 2; SL 1985, ch 119, § 6.

13-7-10.2. Notices and nomination procedure for certain joint elections. If the joint election provided for in § 13-7-10.1 is held on the second Tuesday in April, no candidate for elective school board membership may be nominated unless the candidate is a resident voter of the school district and unless a nominating petition has been filed on the candidate's behalf with the business manager of the school district no later than the last Friday in February at five p.m. prior to the date of the election. If the petition is mailed by registered mail by the last Friday in February at five p.m. before the election, it shall be considered filed. A formal declaration of a candidate shall be signed by the candidate before the circulation of the petition. The petition shall be signed by not less than twenty voters of the school district. No petition may be circulated until the last Friday in January before the election. There shall be added by either the signer or the circulator the signer's place of residence and date of signing.

The petition shall be verified under oath by the person circulating the petition. The filing of the nominating petition shall constitute nomination and will entitle the candidate to have the candidate's name placed on the ballot for the term the candidate specifies on the petition only upon verification signed by the business manager that the nominating petition contains the minimum number of signatures and that the candidate is a resident voter.

Publication of the notice of the election provided for in § 13-7-10.1 shall be in accordance with § 13-7-8.

Source: SL 1985, ch 119, § 9; SL 1986, ch 67, § 6; SL 2004, ch 75, § 8; SL 2015, ch 77, § 17 rejected Nov. 8, 2016.

13-7-10.3. Joint school board and primary elections. Any other provision of this chapter notwithstanding, the school board may choose to hold the school board election in conjunction with the regular June primary election. The combined election is subject to approval by the county commissions of the counties in which the school district is located. Expenses of a combined election shall be shared in a manner agreed upon by the school board and the county commissions involved. All other governmental responsibilities associated with holding elections under the provisions of chapter 13-7 and Title 12 shall be shared as agreed upon by the governing bodies. The school election official shall certify to the appropriate county auditor the candidate names and ballot language to be voted on by the first Thursday after the last Tuesday in March.

Source: SL 1996, ch 60, § 4; SL 2004, ch 75, § 9; SL 2007, ch 81, § 13.

13-7-10.4. Notices and nomination procedure for joint board and primary elections. For any school board election held on the first Tuesday after the first Monday in June, the deadlines in this section apply. The school's election official shall publish the notice provided in § 13-7-5 between February fifteenth and March first. No nominating petition may be circulated for signatures until March first. Nominating petitions shall be filed under the provisions of § 13-7-6 by the last Tuesday in March.

Source: SL 2004, ch 75, § 11; SL 2005, ch 87, § 5; SL 2007, ch 81, § 14.

13-7-11. Voting precincts and polling places. The number and place of voting precincts shall be determined by the school board.

Source: SDC 1939, § 15.2513; SL 1955, ch 41, ch 9, § 15; SL 1957, ch 65; SDC Supp 1960, § 15.2315; SL 1975, ch 128, § 38.

13-7-12. Precinct superintendents and precinct deputies of school elections--Compensation. Each voting precinct shall be presided over by an election board consisting of a minimum of two precinct deputies and one precinct superintendent appointed by the school board. Members of school boards may serve on election boards.

Each precinct superintendent and precinct deputy other than members of school boards shall receive compensation as shall be fixed by the school board and paid from the district treasury.

Source: SDC 1939, §§ 15.2309, 15.2513; SL 1945, ch 55, § 1; SL 1955, ch 41, ch 9, § 15; SL 1957, ch 65; SDC Supp 1960, § 15.2315; SL 1975, ch 128, § 39; SL 1999, ch 69, § 54.

13-7-13. Ballots and election supplies--Form and content of ballots--Absentee ballots. The business manager of the school district shall provide proper ballots, pollbooks, voting booths, and necessary supplies as required by law to the proper election officials on election day. The ballots shall be as prescribed by the State Board of Elections. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. No party affiliation may appear on the ballot and the names of the candidates for the respective vacancies shall be printed on the ballot. Each candidate's position on the ballot shall be chosen by lot by the business manager and each candidate may be present or represented when the position on the ballot is being determined. The ballots for school elections shall be available for absentee voting no later than fifteen days prior to election day.

Source: SDC 1939, § 15.2512; SL 1955, ch 41, ch 9, § 14; SL 1957, ch 64, § 6; SDC Supp 1960, § 15.2314; SL 1975, ch 128, § 40; SL 1979, ch 113, § 6; SL 1995, ch 91; SL 2004, ch 75, § 10; SL 2008, ch 34, § 19; SL 2016, ch 43, § 4.

13-7-14. Absentee voting in school elections. Absentee voting shall be permitted in school district elections, including school district bond elections and shall be conducted pursuant to chapter 12-19. The school board, with the approval of the county auditor and board of county commissioners, may permit absentee ballots to be voted at the county auditor's office in the county of jurisdiction.

Source: SL 1955, ch 41, ch 9, § 15; SL 1957, ch 65; SDC Supp 1960, § 15.2315; SL 1975, ch 128, § 41; SL 1995, ch 92, § 1; SL 2012, ch 85, § 2.

13-7-15, 13-7-16. Repealed by SL 1973, ch 86, § 20

13-7-17. Certification of school district election returns--Preservation of ballots and ballot boxes. The returns from a school district election shall be certified by the election board in each polling place, and the ballots, properly sealed in ballot boxes, together with the pollbooks, shall be placed in the custody of the school district's business manager, who shall keep such boxes inviolate for at least sixty days after the canvass of the returns.

Source: SDC 1939, § 15.2514; SL 1955, ch 41, ch 9, § 16; SL 1957, ch 64, § 7; SDC Supp 1960, § 15.2316; SL 1975, ch 128, § 42.

13-7-18. Canvass of election results--Certificates of election--Certification of results. The pollbooks shall be opened and the election results shall be canvassed by the school board at the next meeting and certificates of election shall be issued by the business manager of the district to each successful candidate and election results shall be certified to the county auditor of each county in which the school district is located.

Source: SDC 1939, § 15.2514; SL 1955, ch 41, ch 9, § 16; SL 1957, ch 64, § 7; SDC Supp 1960, § 15.2316; SL 1975, ch 128, § 43; SL 2003, ch 84, § 4.

13-7-19. Repealed by SL 1981, ch 130, § 1

13-7-19.1. Tie vote--Recount procedure--Resolution by lot. If a tie vote exists after the canvass of the original official returns, the school board making the canvass shall certify the vote to the business manager. The business manager shall then notify the candidates that if no request for recount is made in writing to the business manager within five days, the winner shall be determined by drawing of lots. If no recount request is made or a tie vote between candidates is found to exist on the basis of such recount, the business manager shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the candidates involved in the tie vote. Drawing of lots shall be in the manner directed by the business manager and the certificate of election shall be issued to the candidate winning in the drawing of lots.

Source: SL 1981, ch 130, § 2; SL 1995, ch 44, § 4.

13-7-19.2. Close margin in school board election--Request for recount--Recount board established. If any candidate for the school board is defeated by a margin not exceeding two percent of the total votes cast for all candidates for the office, the candidate may, within five days after completion of the official canvass, file with the business manager of the school district a written request for a recount. Upon receipt of a recount request, the business manager shall set the time and place for a recount. A recount board shall be established consisting of one person chosen by each candidate declared elected and by each candidate who is eligible to request a recount. If this board consists of an even number of persons, one additional recount board member shall be appointed by the business manager who shall be mutually agreeable to each candidate involved in the recount. The person having custody of the ballot boxes containing the ballots to be recounted shall produce the ballot boxes before the recount board. All questions arising on the recount shall be determined by majority vote of the recount board. The recount shall proceed as expeditiously as reasonably possible until completed.

Source: SL 1982, ch 134, § 1; SL 1995, ch 44, § 5; SL 1999, ch 78, § 3.

13-7-19.3. Close margin in school election--Petition for recount--Appointment of recount board--Production of ballot boxes--Disputes. A recount shall be conducted if, within five days after completion of the official canvass of a school district regular or special election at which a question is approved or disapproved by a margin not exceeding two percent of the total votes cast in the election, any three registered voters of the school district file a petition duly verified by such voters, setting forth that they believe a recount will change the outcome. A recount board shall be appointed by the business manager who shall appoint one person on each side of the question and one person who shall be mutually agreed upon by the other two appointed. The person having custody of the ballot boxes containing the ballots to be recounted shall produce the ballot boxes before the recount board. Any question arising on the

recount shall be determined by majority vote of the recount board. The recount shall proceed as expeditiously as reasonably possible until completed.

Source: SL 1982, ch 134, § 2; SL 2002, ch 77, § 6.

13-7-19.4. Compensation of recount board. In school district election recounts there shall be paid out of the general fund of the school district to the members of the recount board compensation set by the school board, to be not less than the minimum wage established by § 60-11-3.

Source: SL 1982, ch 134, § 3.

13-7-20. Repealed by SL 1973, ch 67, § 4

13-7-21 to 13-7-26. Repealed by SL 1973, ch 86, § 20

13-7-27. Definitions. The terms "election," "candidate," "election officials," "elector," "voter," and "registration officials" when used in a school district election or petition are defined in § 12-1-3.

Source: SL 1985, ch 119, § 10.

13-7-28, 13-7-29. Repealed by SL 2010, ch 80, § 3, eff. Jan. 1, 2012.

13-7-30. Information regarding school elections to be provided in school board minutes. For the most recent annual school election conducted in each school district as provided in § 13-7-10, each school board shall provide in the school board minutes the following information:

(1) The number of registered voters of the school district on the date voter registration closes;

(2) The number of registered voters of the school district who voted in the election;

(3) The percentage of registered voters of the school district who voted in the election; and

(4) If the election was held in conjunction with a regular municipal election as provided in § 13-7-10.1 or with the regular June primary as provided in § 13-7-10.3.

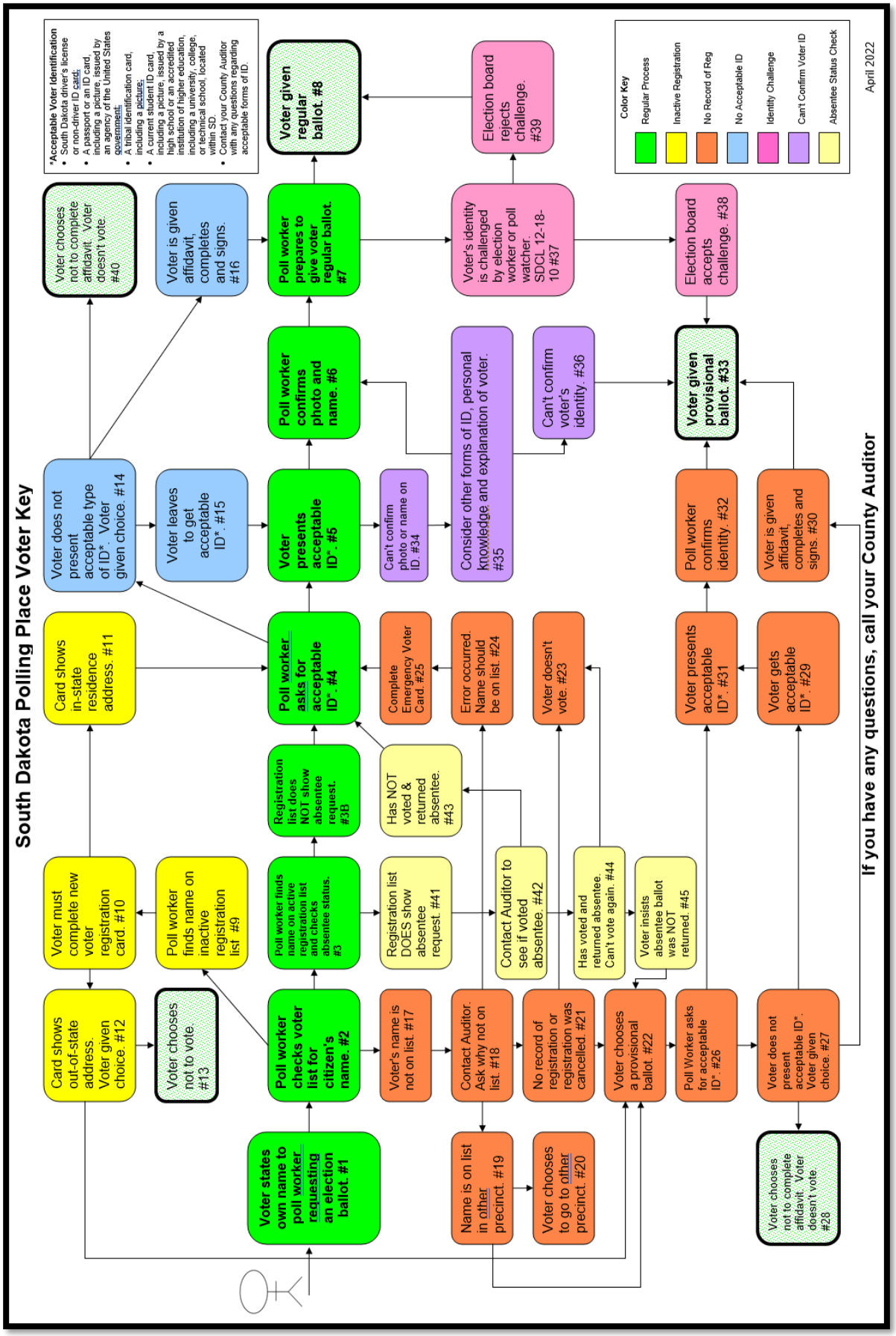
If the annual election was not conducted because there was neither a contested vacancy on the school board nor any question submitted to the voters, the school board shall provide that information in the school board minutes.

Source: SL 2018, ch 91, § 1.

13-7-31. Time for providing election information. The school election information required in § 13-7-30 shall be provided within sixty days of the official canvass.

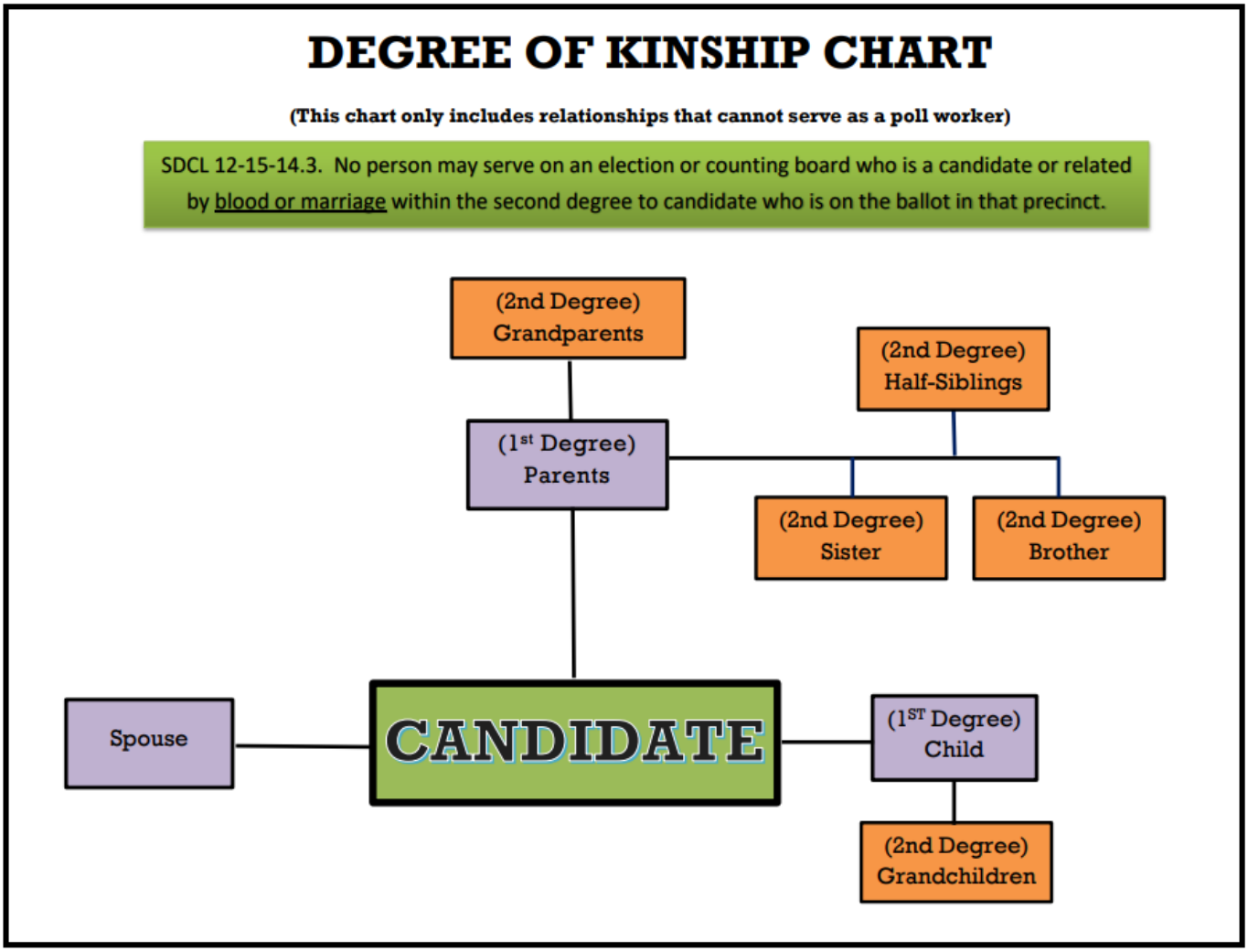
Source: SL 2018, ch 91, § 2.

Polling Place Voter Key



South Dakota Polling Place Voter Key

Box Number	Code Cite	Suggested Response
1	12-18-6.3	"Your name, please."
2, 3 and 3B	12-18-7.1	
4	12-18-6.3	"Do you have a photo ID?"
5	12-18-6.1	Check to see if the ID is on this list of acceptable IDs. (1) A South Dakota driver's license or nondriver identification card; (2) A passport or an identification card, including a picture, issued by an agency of the United States government; (3) A tribal identification card, including a picture; or (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or technical school, located within the State of South Dakota.
6	12-18-6.3	Check to see that the photo matches the voter and that the name on the ID matches the name on the voter registration list.
7	12-18-12	Stamp ballot and hand to voter.
8	12-18-14	"Thank you for voting today!"
9	12-18-7.4	"Your name is on the inactive voter registration list."
10	12-18-7.4	"Because you are on the inactive registration list, you must complete a new voter registration card before voting. Here is that card to complete."
11	12-18-7.4	"Thank you for completing your voter registration card."
12	12-18-7.4	"You have provided an out-of-state residence address. You will not be able to cast a regular ballot. You may choose to not vote or you may cast a provisional ballot. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can verify that your name should not be on the inactive list. Your provisional ballot may not be secret. It is your choice whether to vote."
13		
14		"Because you are not able to present an acceptable photo ID, you now have an option. You may leave the polling place to retrieve an acceptable ID or you may sign this personal identification affidavit."
15		
16	12-18-6.2	Observe voter complete affidavit. Be sure that it is fully completed and legible.
17	12-18-7.1 12-18-7.2	"I'm sorry, your name does not appear on the voter registration list. I will contact the county auditor to determine if you are registered at some other location or been mistakenly left off this list. Please wait while I make that call."
18	12-18-7.2	Auditor will tell you how to proceed with this voter.
19		"You are registered to vote in precinct 'X'. That polling place is located at _____. You may go to that polling place and cast a regular ballot which will be counted **or** if you are willing to swear that you registered to vote in this precinct you may cast a provisional ballot at this precinct. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can find your voter registration card for this precinct. Your provisional ballot may not be secret. It is your choice which ballot to vote."
20		
21	12-18-7.2	"The auditor has no record of your being registered to vote or your registration was cancelled because _____. You may choose to not vote **or** if you are willing to swear that you registered to vote and should remain registered to vote in this precinct, you may cast a provisional ballot at this precinct. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can verify your registration in this precinct. Your provisional ballot may not be secret. It is your choice whether to vote."

22	12-18-39	
23		
24	12-18-7.2	"An error has been made and your name should have been on the voter registration list."
25	12-18-7.2	"Please complete this emergency voting card and you will be able to vote."
26	12-18-6.3	"Do you have a photo ID?"
27	12-18-6.2	"Because you are not able to present an acceptable photo ID, you now have an option. You may leave the polling place to retrieve an acceptable ID **or** you may sign this personal identification affidavit **or** you may choose to not vote."
28	12-18-6.2	
29		
30	12-18-6.2	"Please complete this personal identification affidavit." Observe voter complete affidavit. Be sure that it is fully completed and legible.
31	12-18-6.1	Check to see if the ID is on the list of acceptable IDs.
32	12-18-6.3	Check to see that the photo matches the voter and that the name on the ID matches the name on the voter registration list.
33	12-18-39	Have voter complete the provisional ballot envelope and provide the voter with the "Notice to Provisional Voter."
34	12-18-6.3	"The ID you have presented does not appear to be you and/or the name on the ID does not match the name on the voter registration list."
35	12-18-6.3	"You may explain why the photo and/or name does not match and you may present other forms of identification to assist us in confirming your identity."
36	12-18-6.3	"Based on the identification you have presented and your explanation of why this identification does not appear to be you, you will not be allowed to cast a regular ballot. You may, however, cast a provisional ballot. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can later verify your identity. Your provisional ballot may not be secret. It is your choice whether to vote."
37	12-18-10	Election worker or poll watcher challenges the voter as to the voter's identity not being who they claim or that the voter has been convicted of a felony or declared mentally incompetent in the last 15 days. The challenger would present whatever evidence they have to the election board to support their claim that the person is ineligible to vote. "Your identity (or other cause) has been challenged. What explanation or evidence can you provide to rebut this challenge and prove your identity."
38	12-18-10	"By majority vote, this election board has determined that the challenge is accepted and that you are not who you claim to be. You may, however, cast a provisional ballot. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can later verify your identity. Your provisional ballot may not be secret. It is your choice whether to vote."
39	12-18-10	"By majority vote, this election board has rejected the challenge. You may vote."
40		
41		"The registration list shows you have voted absentee."
42		"I will contact the county auditor to determine if your absentee ballot has been voted and returned."
43		"Your absentee ballot has not been returned. You may vote in person today."
44	12-26-8	"Your absentee ballot has been voted and returned. You may not vote a second time."
45	12-18-39	"If you insist that you have not voted and returned your absentee ballot, you may choose to vote a provisional ballot. It is a crime to vote an absentee ballot and then vote a provisional ballot. The provisional ballot will be kept separate from the regular ballots and will only be counted if the auditor can later verify that you have not voted an absentee ballot. Your provisional ballot may not be secret."

Degree of Kinship Chart