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SOUTH DAKOTA
LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

June 16, 2017

Mr. Drey Samuelson
1711 S. Phillips Ave.
Sioux Falls, SD 57105

Dear Mr. Samuelson:

Pursuant to SDCL 12-13-25, this office is required to review each initiated measure, this office is required by SDCL 12-13-24 to determine if each initiated measure is "written in a clear and coherent manner in the style and form of other legislation" and that it is "worded so that the effect of the measure is not misleading or likely to cause confusion among voters." You are under no obligation to accept any of the suggestions contained in this letter, but please keep in mind the legal standards established in SDCL 12-13-24.

The proposed initiated measure has provisions that concern two subjects that address the conduct of elections by mail and provides for automatic voter registration. Each subject could easily be separated from the other and the combination of the subjects may not comply with the single subject requirement in S.D. Const. Art. III, § 21. Our suggestion is that the measure should be separated into two measures and our form and style comments reflect that separation. If you move forward with both subjects in one measure, you need to take care in the drafting of any cross references that may only refer to certain sections of the Act.

It appears that proposed laws were borrowed from another state and minimal effort was made to revise the document to the form and style used by the State of South Dakota. If you are borrowing language from other states, it is requested that you follow the form and style for draft legislation used in this state. The drafting manual may be found on the website for the Legislative Research Council. If you need assistance in locating the manual, please contact our office. You could also review bills introduced in previous sessions to provide examples for form and style.

Short titles are discouraged in the drafting of legislation. A short title is only used in drafting of uniform state laws to indicate that courts in other states may have already construed the provisions. Findings should provide the foundation of facts to support the legislation and the statement of purpose, if any, should be short and concise. The proposed findings and declaration of purpose appear to provide a list of reasons on why the sponsors support the proposed measure and the outcome that is hoped to be achieved with its passage. We recommend that you delete both sections.

It is inappropriate for you to prepare catchlines or assign chapter or section numbers for codification. The catchlines are prepared by the publisher in cooperation with the Code Counsel and the Code Counsel is responsible for the codification of laws enacted by the Legislature and passed by the people. The body of the bill should be divided into sections of convenient length and facilitate reference to a provision. Each distinctive proposition should be in a separate section.

The terms, "county auditor" and "person in charge of the election", at times appear to be used interchangeably. Occasionally, the term "county clerk" is used. The terms, "ballot" and "official ballot", are also used interchangeably, please use the term "ballot". The consistent use of terms is imperative in the construction of legislation. Inconsistent use of terms may lead to confusion and unintended consequences.

There are several proposed sections that mirror the current laws pertaining to elections. Section 13 corresponds to the provisions found in SDCL 12-18-25. Also, SDCL chapter 12-19 provides for an authorized messenger and establishes certain procedures and qualifications for the messenger. SDCL chapter 12-19 also provides the current procedure for absentee voting. The proposed measure does not revise or repeal those laws. If this measure is approved by the people, the Legislature would have to enact legislation to address the provisions that may duplicate or conflict.

Please review the definitions and procedures provided in Title 12. SDCL 12-1-3 defines an elector to be a person who is qualified to register as a voter whether or not the person is registered and a voter is a person who is duly registered to vote or one who is performing the act of voting. The draft often used the term "elector", and correct term is "voter". Any deviation from the usage of those terms as currently defined requires a substantial rewrite of Title 12.

The second part of the initiated measure concerns automatic voter registration which establishes procedures for registering voters when a person is obtaining or renewing a driver license. The sections for this subject refer to this program being administered by the Department of Motor Vehicles. There is no Department of Motor Vehicles in state government. There is a Division of Motor Vehicles that is in the Department of Revenue, however, that division does not manage the driver license program for the state. The Department of Public Safety (DPS) administers the driver license program and pursuant to SDCL 12-4-6 the department already assists South Dakota residents with voter registration.

There are several offices and agencies authorized to assist with voter registration pursuant to SDCL 12-4-2. The second paragraph of that section reads: "*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.*"

The State of South Dakota has complied with the provisions of the REAL ID Act which means the Department of Public Safety has an established system for collecting information and maintaining the data that parallels some of the proposed provisions in the initiated measure. You may want to avoid any provisions that may duplicate or conflict with the current data systems established under the department.

The initiated measure requires the Secretary of State to implement certain provisions in conjunction with the State Board of Elections. You need to delegate to one or the other the duty to implement the specified provisions and promulgate rules, if any. Also, some of the adjectives used in various provisions do not add clarity and may raise several questions. This includes phrases such as: "*enhanced standards and procedures to safeguard*" and "*the highest level of physical security.*"

It has been determined during this review that this initiated measure requires a prison or jail population cost estimate. As the sponsor of the initiated measure you should submit a request for a cost estimate to the Legislative Research Council at the time your initiated measure is filed with the Attorney General.
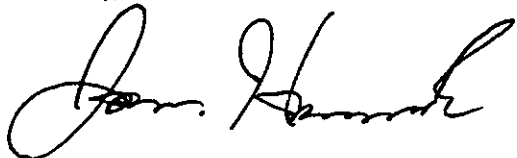
Attached is a copy of your proposed initiated measure with all our suggested style and form changes.
This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its statutory sufficiency. It

does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated measure, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposals.

Sincerely,

Jason Hancock
Director

JH:FB
Enclosure
cc/enc: The Honorable Shantel Krebs, Secretary of State
        The Honorable Marty Jackley, Attorney General

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

Registration Act

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA

~~Text:~~

Short titles are inconsistent with the practice of codification in south Dakota. Short titles are discouraged.

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

Delete

A declaration of purpose is strongly discouraged.

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

Delete

~~Section 3. SDCL Title 12 is amended by adding the following as Chapter 29, entitled "Conducting Elections by Mail."~~

~~12-29-1. Authorization and procedure for conducting elections by mail.~~

- *Codification of legislation is the responsibility of the Code Counsel.*
- *Catchlines are prepared by the publisher and Code counsel and should not be included in any bill draft or initiated measure.*

Section 1. ~~(1) With express authorization from the~~ The board of county commissioners ~~or by an affirmative vote of the citizens of a county,~~ may, by resolution, require the county auditor ~~may~~ to conduct all primary, special, and general elections entirely by mail ballot, ~~according to the process specified in subsection(s) (4) through (12) of this section.~~ The board of county commissioners ~~must~~ shall give notice to the county auditor at least ninety days ~~notice~~ before the first election to be conducted entirely by mail ballot. If the board of county commissioners ~~and the county auditor~~ decide to return to a polling place election environment, the board of county commissioners ~~must~~ shall give notice to the county auditor at least one hundred eighty days ~~notice~~ before the first election to be conducted using polling places. Any ~~Authorization~~ Authorization ~~under~~ made pursuant to this section ~~shall apply to all~~ applies to each primary, special, and general elections conducted by the county auditor.

Section 2. ~~(2)~~ The county auditor may designate any precinct ~~having fewer~~ that has less than two hundred ~~active~~ registered voters at the time ~~of closing of~~ voter registration is closed as a mail ballot precinct.

Authorization from the board of county commissioners is not required to designate a precinct as a mail ballot precinct ~~under this subsection~~ pursuant to this section. A mail ballot precinct ~~is defined as~~ means a precinct in which ~~all~~ each registered voters ~~will~~ shall receive a ballot ~~prior to every~~ by mail before each election ~~as per the process set out in subsection(s) (4) through (12) of this section.~~ ~~by mail.~~

Section 3. ~~(3) Upon~~ After making a determination under ~~subsection(s) (1) or (2) of this section that all future~~ sections 1 and 2 of this Act that each elections or mail ballot precinct in the county shall be conducted entirely by mail, the county auditor shall notify each registered voter by mail that ~~for all future primaries and elections~~ the voting ~~will~~ shall be by mail ballot ~~only~~. If the board of county commissioners ~~and county auditor determine under subsection (1) of this section,~~ determine pursuant to section 1 of this Act, or ~~if~~ the county auditor ~~determines under subsection (2) of this section,~~ determines pursuant to section 2 of this Act make a determination to return to a polling place election environment, the auditor shall notify each registered voter by mail of this decision and the county auditor ~~and~~ shall provide the address of the polling place to be used.

Section 4.   ~~this section~~

(4) ~~(a)~~ Except as provided in ~~paragraphs (b) and (c) of this subsection~~, the person in charge of the

~~a~~

election shall mail by nonforwardable mail ~~an official~~ ballot with a return identification envelope

more than twenty days preceding

and a secrecy envelope not ~~sooner than the 20th day before the date of~~ an election and not ~~later~~

less than fourteen days preceding   *voter*

~~than the 14th day before the date of~~ the election, to each ~~active elector~~ of the election precinct ~~as~~.

The person in charge of the election shall use the registration list as

~~of the 21st day before the date of the election.~~ *updated twenty-one days preceding the election,*

any voter

(b) If the person in charge of the election determines that ~~an active elector~~ of the election

precinct ~~as of the 21st day before the date of the election~~ does not receive daily mail service from

the United States Postal Service, the person in charge of the election shall mail by

a

nonforwardable mail ~~an official~~ ballot with a return identification envelope and a secrecy

voter not more than twenty days preceding

envelope to the ~~elector not sooner than the 20th day before the date of~~ an election and not ~~later~~

less than eighteen days preceding the

~~than the 18th day before the date of the~~ election.

If the ballot is   an   any voter who is not in the

(c) ~~In the case of ballots to be~~ mailed to addresses outside this state to ~~electors who are not~~

military or overseas ~~electors~~, the person in charge of the election may mail the ballots not ~~sooner~~.

more than twenty-nine days preceding   A voter

~~than the 29th day before the date of~~ the election. ~~An elector~~ who wishes to receive a ballot at a

shall

temporary address that is outside of the state ~~must~~ apply to the person in charge of the election

not less than fifty days preceding   *shall provide*

~~no later than the 50th day before~~ an election. The application ~~must state~~ the applicant's voter

registration address, the temporary out-of-state address, and an oath verifying the validity of the

information contained in the application. The oath does not need to be administered by a notary

voter's personal identification   *shall*

public. A copy of the ~~elector's voter identification card~~ as required by ~~SDCL~~ § 12-18-6.1 ~~must~~

accompany the application.

Section 5.   *any voter*

(5) For ~~each elector~~ who updates a voter registration after the voter registration deadline, the

person in charge of the election shall make the ~~official~~ ballot, the return identification envelope,

and the secrecy envelope available either by mail or at the ~~precinct superintendent's~~ office ^of the person in charge of the election^ or

another place designated by the person in charge of the election. ~~An elector~~ ^The voter^ to whom this

subsection applies ~~must~~ ^shall^ request a ballot from the person in charge of the election.

Section 6. ~~the~~

~~(6) Both the~~ outside envelope and the return envelope for ballot^s^ shall contain the following ^a identification^

warning: ANY PERSON WHO FORGES ANOTHER VOTER'S SIGNATURE, OR BY USE

OF FORCE OR OTHER MEANS, UNDULY INFLUENCES ~~AN ELECTOR~~ ^A VOTER^ TO VOTE IN

ANY PARTICULAR MANNER OR REFRAIN FROM VOTING, IS GUILTY OF A CLASS 6

FELONY ~~PUNISHABLE BY UP TO TWO YEARS IN PRISON OR A FINE OF FORTY~~ ^four^

~~THOUSAND DOLLARS, OR BOTH.~~   *Note: Class 6 felony fine is provided in 22-6-1*

Section 7

~~(7) (a)~~ To cast ~~any received~~ ^a^ ballot ~~described in this section, the elector~~ ^received pursuant to this Act, the voter^ shall mark the ballot, sign

the return identification envelope supplied with the ballot, and comply with the instructions

provided with the ballot.

~~(b)~~ The ~~elector~~ ^voter^ may return the marked ballot to the person in charge of the election by United

States mail or ~~by returning~~ ^return^ the ballot to ~~an officially~~ ^a^ designated ballot dropoff facility in ~~any~~ ^the^

county or ~~any~~ ^the^ county courthouse.

(c) The ballot ~~must~~ ^shall^ be returned in the return identification envelope. If the ~~elector~~ ^voter^ returns the

ballot by mail, the ~~elector must~~ ^voter shall^ provide the postage.

~~(d) Subject to paragraph (e) of this subsection,~~ ^I^f an authorized messenger returns a ballot for ~~an~~

~~elector,~~ ^a voter^ the person shall deposit the ballot in a ~~manner described in paragraph (b) of this~~ ^designated ballot dropoff facility ~~or~~ in the county^

~~subsection not later than~~ ^or the county courthouse within^ two days after receiving the ballot.

Section 8.

(c) A ballot ~~must~~ [shall] be received by the person in charge of the election via the United States Postal Service, or be received at any ballot dropoff facility or county courthouse by a county election official not later than ~~8~~ [8:00] p.m. on the date of an election.

(8) A ballot ~~shall~~ [may only] be counted ~~only~~ if: ~~(a) It~~ [(1) The ballot] is returned in the [return] identification envelope; ~~(b)~~ [(2)] The envelope is signed by the ~~elector~~ [voter] to whom the ballot ~~is~~ [was] issued; and ~~(c)~~ [(3) Voter's] The signature is verified ~~as provided in subsection (9) of this section.~~

Note: show as subdivisions like section 14

Section 9.

(9) The person in charge of the election shall verify the signature of each ~~elector~~ [voter] on the return identification envelope with the signature on the ~~elector's~~ [voter's] registration record, ~~according to the procedure provided by rules adopted by the~~ [The] State Board of Elections [shall adopt rules, pursuant to chapter 1-26, establishing the procedure to use to verify voter signature]. If the county auditor determines that ~~an elector~~ [a voter] to whom a replacement ballot has been issued has voted more than once, the person in charge of the election ~~shall~~ [may only] count ~~only~~ one ballot cast by that ~~elector~~ [voter].

Section 10.

(10) ~~At 8 p.m. on election day, electors who are~~ [Any voter who is] at the county courthouse or a ballot dropoff facility ~~designated under subsection (12) of this section~~ and ~~who are~~ [is] in line waiting to vote or deposit a ~~voted~~ [completed] ballot ~~shall be~~ [is] considered to have ~~begun~~ [started] the act of voting.

Section 11.

(11) ~~An elector~~ [A voter] may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the ~~elector~~ [voter]. [A] Replacement ~~ballots~~ [ballot] shall be issued and processed as described in this ~~section~~ [Act]. To ~~vote~~ [request] a replacement ballot, the ~~elector must~~ [voter shall] complete and sign a replacement ballot request form. The request for a replacement ballot may be made electronically, ~~by telephone,~~ in writing, in person, or by other means designated by the State Board of Elections by rule [promulgated pursuant to chapter 1-26]. The county auditor shall keep a record of each replacement ballot provided under this ~~subsection~~ [section]. Notwithstanding any deadline for mailing ballots in ~~subsection (7) of this section~~ [in this Act], a replacement

ballot may be mailed, ✓ or made available in the office of the county auditor. ~~A~~ No replacement ballot

may ~~need not~~ be mailed after the fifth day before the date of the election.

section 12.
~~(12) (a)~~ At least two secure and accessible ballot dropoff facilities shall be provided within each

county where an election under ~~subsections (1) or (2) of this section~~ sections 1 or 2 of this Act is held. For each county

a population of   fifteen thousand persons
that has more than ~~15,000 citizens~~, there ~~must~~ shall be at least one additional ballot dropoff facility

each
provided for ~~every~~ additional ~~5,000 citizens~~. Five thousand persons.

(b) A ballot dropoff facility ~~provided for under this section~~ shall consists of a secure, accessible, and

locked ballot box located as near as possible to established public transportation routes and that

completed
is able to receive ~~voted~~ ballots twenty-four hours a day. At each ballot dropoff facility

~~designated under this section,~~ the person in charge of the election shall prominently display a

sign stating that the location is an official ballot drop site.

~~12-29-2. Assistance in marking ballot — Vote by mail impacts on voters with disabilities —~~

~~Mitigation — Advisory committee, plan.~~

~~(1) Given the potential barriers resulting from the elimination of polling places and transition to~~

~~vote by mail that restrict the ability of some voters with disabilities from achieving the~~

~~independence and privacy in voting provided by the accessible voting devices required under the~~

~~Help America Vote Act, counties shall take appropriate steps to mitigate these impacts and to~~

~~address the obligation to provide voters with disabilities an equal opportunity to vote~~

~~independently and privately, to the extent that this can be achieved without incurring undue~~

~~administrative and financial burden.~~

Section 13.   any voter who by reason
~~(2)~~ If ~~an elector is within a voting precinct and, because of a~~ physical disability or ~~an~~ inability to

write, is unable to
read or ~~write, is unable to~~ mark a ballot, the ~~elector may request and shall~~ voter may receive ~~the~~ assistance

~~of~~ *from* an authorized messenger in marking the ballot. The authorized messenger assisting the ~~elector~~ *voter*

shall ascertain the wishes of the ~~elector~~ *voter* and assist the ~~elector~~ *voter* in voting the ballot accordingly⟨.⟩ *No authorized messenger may solicit any votes or*
~~ands thereafter may~~ give ~~no~~ information regarding the vote. ~~An elector~~ *A voter* wishing to use an

authorized messenger ~~under this section must~~ *shall* request an authorized messenger from the person

in charge of the election ~~by 3~~ *before 3:00* p.m. on the day of the election.

Section 14.
~~(3)~~ An authorized messenger may not assist ~~an elector under subsection (1) of this section~~ *a voter pursuant to this Act* if the

~~person:~~ *authorized messenger is:*

(1) *An*
~~(a) Is an~~ employer of the ~~elector~~ *voter* or an agent of the employer;

(2) *An*
~~(b) Is an~~ officer or agent of the union of which the ~~elector~~ *voter* is a member; or

(3) *A*
~~(c) Is a~~ candidate for office in the election or an agent of a candidate for office in the election.

~~(3) In preparing the ballot, an elector may use or copy a sample ballot, which may be marked in~~

~~advance to assist the elector in marking the official ballot.~~

~~12-29-3. Special procedure for ballots challenged due to failure to sign return envelope or~~

~~nonmatching signature.~~

Section 15.
~~(1)~~ If a ballot is challenged because it is returned in an unsigned return identification envelope or

because the signature of ~~an elector~~ *the voter* on a return identification envelope is determined to not match

the signature in the voter registration record for the ~~elector~~ *voter*, the person in charge of the election

shall mail ~~to the elector~~ *the voter* a notice to ~~that effect~~. The State Board of Elections shall design ~~a~~

~~standard~~ *the* form to be used ~~in all notifications sent~~ by person*s* in charge of election*s* ~~under this~~

~~subsection.~~ *to provide notification to the voter that the ballot was denied or challenged.*

(2) (a) In order for the vote of the ~~elector~~ **voter** to be counted, the ~~elector must~~ **voter shall** provide evidence ~~sufficient~~ to disprove the challenge, or provide an updated voter registration card with a signature that is determined to be a match, no later than ~~the 14th calendar day~~ **fourteen days** after the date of the election.

(b) If the ~~elector~~ **voter** does not provide evidence ~~sufficient~~ to disprove a challenge alleging that the signature of the elector on a return identification envelope does not match the signature in the voter registration record for the ~~elector by the 14th calendar day after the date of~~ **voter within fourteen days after** the election, the registration of the ~~elector~~ **voter** shall be ~~considered~~ **moved to the** inactive. ~~→~~ **registration file**

Section 16.

(3) (a) The filing officer may not release as a public record any information that could be used to identify ~~an elector~~ **a voter** whose ballot has been challenged ~~under this section~~ **pursuant to section 15 of this Act** until the eighth ~~calendar~~ day after the date of an election.

(b) ~~Following the seventh calendar day after~~ **Eight days after** the date of an election, the filing officer may disclose as a public record the following information about each ~~elector~~ **voter** whose ballot was challenged ~~under this section:~~ **pursuant to section 15 of this Act:**

(1) ~~(a)~~ The name of the ~~elector~~ **voter**;

(2) **residential address of the voter;**
~~(b) The residence addresses of the elector;~~ and

(3) **challenge of voters'**
~~(e)~~ The reason ~~the elector's~~ ballot ~~is being challenged~~ **for the**.

~~(4) As used in this section, "filing officer" means:~~
For the purpose of this section, the term, filing officer, means
~~(a) The~~ **The** Secretary of State, for, **any** federal ~~or~~ statewide election**; any** ~~and for elections to the office of~~
~~state Senator or Representative or~~ **or any election for the Legislature; or the**

(b) The precinct superintendent~~,~~ for county, ~~city~~, or district elections~~.~~ [the] [any] [municipal]

~~12-29-4. Extension of deadline for returning ballots in case of emergency.~~

Section 17.

~~(1)~~ The Governor by written proclamation may extend the deadline for returning ballots in any state, county, ~~city~~ or district election if the Governor receives a written request for the extension [municipal,] from the Secretary of State. The secretary [of state] may request the Governor to extend the deadline for returning ballots under this section if, after consultation with affected county ~~clerks~~, the secretary [auditors] [of state] determines that it would be impossible or impracticable for ~~electors~~ to return ballots or for [the voters] elections officials to tally ballots due to an emergency as defined in ~~SDCL~~ § 34-48A-1.

~~(2)~~ The Governor may not extend the deadline for returning ballots in any state, county, ~~city~~ or [municipal,] district election under ~~subsection (1) of~~ this section for more than seven ~~calendar~~ days after the date of an election.

~~(3)~~ The written proclamation ~~required under subsection (1) of this section~~ shall state:

(1)
~~(a)~~ The determination of the Governor;

(2)
~~(b)~~ The reason the deadline for returning ballots was extended; and

(3)
~~(c)~~ The date and time by which ballots ~~must~~ [shall] be returned in the election.

(4) Notwithstanding any other provision of this ~~chapter~~ [Act], if the Governor extends the deadline for returning ballots under ~~subsection (1) of~~ this section, the person in charge of an election in any voting precinct may not order a tally report from any vote tally machine in the election until the date and time set by the Governor by which ballots ~~must~~ [shall] be returned in the election.

~~12-29-5. Preparation for counting ballots — Record of voters issued a ballot and voters who~~

~~returned a ballot — Public access.~~

Section 18.

(1) All received return envelopes ~~must~~ shall be placed in secure location**s** from the time of delivery by

the ~~elector~~ voter until ~~their subsequent~~ the opening. — of the envelopes

^identification shall

^a

(2) Not ~~sooner than the seventh day~~ more than seven days before the date of an election, the person in charge of an

election may begin opening return identification and secrecy envelopes of ballots delivered by

^envelopes

mail and received by the person in charge of the election for the purpose of preparing the ballots

for counting, ~~which can begin no sooner than 8 am on Election Day.~~ . However, no ballots may be counted before 8:00 a.m. on the election day.

~~(3) The person in charge of an election may take any other actions that are necessary to count~~

~~ballots delivered by mail.~~

Section 19.

(4) Each person in charge of an election shall maintain ~~in his or her office~~ a record, open for public

inspection, ~~a record of all~~ of each voters issued a ballot and ~~all~~ each voters who returned a ballot. For each

primary, special election, or general election, not ~~earlier than the seventh day~~ more than seven days before the date of

an election, any political party, ~~political~~ committee, or person may request a list of ~~all~~ each registered voters

who ~~have or have~~ has or has not voted.

Section 20.

(5) Any person who ~~prior to the counting of the votes,~~ before opens, unfolds or examines any ballot or

makes any communication to any person concerning the markings or contents of ~~the~~ any ballot, is

guilty of a Class 2 misdemeanor.

before the counting of the votes

~~12-29-6. Penalties.~~

(1) Any person who forges another voter's signature, or by use of force or other means, unduly influences ~~an elector~~ _a voter_ to vote in any particular manner or refrain from voting is guilty of a Class 6 felony.

(2) Any person who, ~~having procured an official ballot,~~ intentionally disposes of a ballot in any manner other than provided in this ~~chapter~~ _Act_ is guilty of a Class 2 misdemeanor.

(3) Any person who, having procured an official _after procuring a_ ballot ~~or ballots for another~~ _for another voter who_, intentionally fails to deliver the ballots to the voter ~~or who~~ intentionally fails to deliver the return identification _envelope_ and _the_ secrecy envelopes with ballots ~~contained therein to the proper officer~~ _to the person in charge of the election_, or ~~who~~ tampers with the envelope or ballots is guilty of a Class 6 felony.

~~Section 4. SDCL § 12-19-4 is amended by adding the following section:~~

~~12-4-54. Voter registration update in mail ballot counties.~~

Section 21.

(1) Notwithstanding ~~existing~~ voter registration update procedures ~~under this Chapter~~ _provided by this Act_, a county auditor shall update the registration of ~~an elector~~ _a voter_ in a county that has opted to conduct elections entirely by mail under SDCL § 12-29-1 ~~upon receiving~~ _if_ evidence from the United States Postal Service indicating a ~~residence~~ _residential_ address that is different from the ~~residence~~ _residential address_ for the ~~elector~~ _voter_ as contained in the records of the county ~~clerk~~ _auditor_ _is received_.

(2) ~~When a~~ _If a_ county auditor updates the registration of ~~an elector under subsection (1) of~~ _a voter pursuant to_ this section, the ~~clerk~~ _county auditor_ shall send a new confirmation mailing by nonforwardable mail as provided in ~~SDCL~~ § 12-4-19.

(3) ~~An elector is not~~ _No voter may be_ disqualified from voting due to any error ~~relating~~ _made pursuant to this section_ to an update of registration ~~made under this section~~ _the voter_.

Section 22. That § 12-19-2 be amended to read

~~Section 5. SDCL § 12-19-2 is amended as follows:~~

~~12-19-2. Application for absentee ballot - Contents - Permanent status.~~

An absentee voter desiring to vote by mail may apply to the person in charge of the election for

an absentee ballot. The application or request shall be made in writing and be signed by the

applicant and shall state the applicant's voter registration address. *Remove the overstrikes* (The) ~~application or request~~

~~shall contain an oath verifying the validity of the information contained in the application or~~

~~request. The oath shall be administered by a notary public or other officer authorized by statute~~

~~to administer an oath. If the application or request does not contain an oath,~~ The application or

request shall be accompanied by a copy of the voter's identification card as required by § 12-18-

6.1. The copy of the voter's identification card shall be maintained by the person in charge of the

election. However, the voter's identification card is not available for public inspection. (The)

Remove overstrikes (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~~

application ~~request~~ *or* shall give the applicant permanent absentee status, and the person in charge

of the election shall send the ballot to the voter for each ~~ballots to that elector for all future~~ elections, unless the county has

decided to conduct each ~~all~~ elections by mail pursuant to section 1 or 2 of this Act ~~§ 12-29-1.~~ 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.

~~Section 6. SDCL Title 12 is amended by adding the following as Chapter 30, entitled "Automatic Voter Registration."~~

~~12-30-1. Preservation of existing law.~~

~~(1) Nothing in this section shall be construed to amend the substantive qualifications of an elector in this State established by the state Constitution.~~

~~(2) Nothing in this section shall be construed to interfere with any election official's authority or obligation, under state or federal law, to:~~

~~(a) Determine whether any individual is qualified to be an elector; or~~

~~(b) Conduct regular, nondiscriminatory list maintenance.~~

~~12-30-2. Automatic voter registration at Departments of Motor Vehicles.~~

~~(1) Collecting and maintaining reliable quality data.~~

SDCL 32-12-3.1   — provides for the collection and maintenance of this information

~~(a) For any individual who applies for a driver's license or non-driver's identification at the state's Department of Motor Vehicles ("DMV") after enactment of this law, the DMV shall scan,~~

~~copy and keep records of the documentation provided.~~

~~(b) The scan of the document shall be in a searchable, auditable format and retained in a DMV database.~~

Section 1. Any person who applies for and receives a driver license or nondriver identification card pursuant to chapter 32-12 has fulfilled the

~~(c) Individuals who in the course of business with the DMV have provided a document that incontrovertibly proves U.S. citizenship shall be flagged in the DMV database as fulfilling the~~ citizenship eligibility requirement to register to vote.

~~(d) This system shall be audited for quality of data prior to implementation of the automatic voter registration system, and subject to regular audits and random checks to ensure accuracy and reliability thereafter.~~

~~(e) Under no circumstances shall the information retained by the DMV regarding citizenship status or country of origin be shared with any other federal, state or local government agency. Such an act shall be punishable by law with up to a $10,000 fine and/or up to five years in jail.~~

~~(2) Electronic transmission of voter registration data.~~

Section 2.

~~(a)~~ With respect to individuals flagged in the database, ~~the~~ The Department of ~~Motor Vehicles is required to~~ Public Safety shall transmit electronically to election officials ~~certain basic~~ the voter registration information ~~about individuals~~ for any person who fulfilled the citizenship eligibility requirement pursuant to section 1 of this Act. the information shall be ~~as enumerated below,~~ in a format that ~~can~~ may be reviewed by an election officials and translated and uploaded onto the statewide computerized voter registration database. The ~~Department of Motor~~

~~Vehicles~~ shall also transmit for review by the county auditors, any ~~address or name updates to their~~ change of name or address ~~records to ensure that the voter rolls are kept up-to-date.~~ to the voter registration records.

Section 3.

After receiving information from the Department of Public Safety, the county auditor

~~(b) Upon receiving the electronic record for information, election officials~~ shall notify each

person of the process to:

(1) Decline being registered as ~~an elector; and/or~~ a voter; and

(2) Adopt a political party affiliation.

The
~~(c) Any~~ notification ~~must~~ shall comply with the language requirements of Section 203 of the 1965

Voting Rights Act. as of January 1, 2017.

Section 4.

~~(d)~~ If a person notified under ~~subsection (2) of this section~~ section 3 of this Act does not decline to be registered as ~~an~~

a voter   thirty   county auditor
~~elector~~ within ~~30 calendar~~ days after the ~~election officials~~ issues the notification, the person's

section 1 of this Act
electronic record submitted under ~~subsection (2) of this section will~~ constitute a completed voter

registration.

~~12-30-3. Voluntary exclusion from voter list.~~

Section 5

, after
~~(1)~~ The county auditor ~~shall ensure that, upon~~ receipt and verification of a person's ~~express~~

may not enter or include
request to opt out of voter registration, the person's name and registration record ~~is so~~

into the voter registration ~~list~~ file
~~designated, unless and~~ until the voter consents to registration. ~~Nothing in this section shall~~

~~preclude a person who has previously declined voter registration from subsequently registering~~

~~to vote.~~

Section 6.

~~(2) The Secretary of State, in conjunction with the State Board of Elections shall ensure that~~

No person may
~~election officials shall not~~ provide the record of any person who has opted out of voter

pursuant to section 5 of this Act
registration, ~~in whole or in part,~~ to any third party for any purpose other than the compilation of a

jury list.

~~12-30-4. Security and privacy protocols.~~

Section 7.

~~(1)~~ The Secretary of State, ~~in conjunction with the State Board of Elections~~ shall review ~~current~~ the

privacy and security measures applied to the existing electronic voter registration files, ~~and, as~~

The secretary of state shall
~~provided in this section,~~ establish ~~enhanced~~ standards and procedures to ~~further~~ safeguard the

collected
privacy, integrity, and security of the information ~~used~~ pursuant to this Act.

~~(2) Security.~~

Section 8.

the
~~(a) All source agencies,~~ the Secretary of State, ~~and the State Board of Elections shall work~~

shall
~~individually and jointly to:~~

(1) Ensure the confidentiality and integrity of all of the data ~~they~~ collected, maintained, received or

transmitted;

(2) Identify and protect against any ~~anticipated~~ [any] threats to the security and integrity of the information, including impermissible uses or disclosures;

(3) Train ~~all workers~~ [each ~~employee~~ person] who handle[s] or ~~have access to such~~ [accesses the] data regarding implementation of the [established] security protocols ~~established.~~;

(4) ~~Before implementing the registration process,~~ [C]onduct a risk evaluation and implement security measures to address any risks to the data or databases identified[, before the implementation of the registration process established by this Act;]

(5) Conduct regular audits and risk management assessments and pursue [any] measures that ~~are~~ [is] indicated ~~as necessary~~;

(6) Provide ~~the highest level of physical~~ security to facilities, computers, and other sensitive equipment;

(7) Employ available software to detect [any] anomalies and irregularities;

(8) Implement measures to ensure against [any] unauthorized access or changes in [the] data through the process of transmitting data from one agency to another;

(9) Develop procedures ~~in the case of~~ [to immediately address] a breach of any kind ~~to immediately address it, and~~ [the breach] [and to] ~~appropriately~~ inform the public and [any] other necessary parties.

(3) ~~Privacy.~~

Section 9.

~~(a)~~ The Secretary of State, ~~in conjunction with the State Board of Elections shall publish and enforce a privacy policy that:~~ *shall promulgate rules, pursuant to chapter 1-26, to:*

(1) Specifies each class of internal users who ~~shall have authorized~~ *has* access to the statewide voter registration ~~list~~ *file*, specifying ~~for each such class~~ the permissions and levels of access to be granted *for each class*, and ~~setting forth other~~ *establish* safeguards to protect the privacy of the information on the statewide voter registration ~~list~~ *file*;

(2) Prohibits public disclosure of any information not necessary to voter registration;

(3) Protects against public disclosure of Social Security numbers *any* ~~and digits~~, driver's license numbers, ~~and~~ *nondriver identification card number, or* signatures;

(4) Prohibits public disclosure of ~~an individual's~~ *any person's* decision not to register to vote;

(5) Prohibits ~~agencies~~ *any agency* from transmitting to election officials *an* information other than that required *information* for voter registration or specified *an* information relevant to the administration of *an* elections ~~, such as language preference and demographic information.~~;

(6) Prohibits the disclosure of information relating to ~~persons in categories~~ *any person in a category* designated confidential by federal or state law, including *any* victims of domestic violence or stalking,

prosecutors ~~and~~ [or] law enforcement personnel, ~~and~~ [on] participants in a witness protection program.

~~12-30-5. Records retention.~~
Section 10.

(1) The Secretary of State, ~~in conjunction with the State Board of Elections~~ shall, ~~as provided in this subsection,~~ establish standards and procedures to maintain all election records required for purposes of this Act, including for the purpose of determining the eligibility of person[s] casting [a] [any] provisional ballot[s]. The record for any voter who has ~~Records for voters who have~~ been retained on the statewide voter registration database but identified as ineligible to vote within the State, or removed from the statewide voter registration list due to ineligibility, shall be maintained and kept available until at least the date of the second general election ~~for Federal office~~ President of the United States. that occurs after the date that the voter was identified as ineligible.

~~12-30-6. Record keeping.~~
Section 11.

~~(1)~~ The Secretary of State, ~~in conjunction with the State Board of Elections shall produce an~~ shall submit an annual ~~public~~ report ~~for submission~~ to the legislature, ~~including:~~ by February first that provides by source:

(1)
~~(a)~~ The number of records that have been transferred under section ~~III~~ [3] of this Act, ~~by source;~~

(2)
~~(b)~~ The number of voters ~~newly~~ added to the statewide voter registration ~~list~~ file because of records [a] ~~transferred by source;~~

(3)

~~(c)~~ The number of voters on the statewide voter registration list whose information was updated because of records transferred ~~by source~~ a ;

(4)

~~(d)~~ The number of records transferred ~~by source~~, that do not relate to ~~individuals~~ persons affirmatively identified as eligible to vote;

(5)

~~(e)~~ The number of persons who opted out of voter registration;

(6)

~~(f)~~ The number of voters who ~~submit~~ submitted requests to update or correct voter registration information through the system established by this Act, by the type of information updated;

(7) A breakdown of information by race.

~~(g) Breakdown of Information by Race of Individuals.~~ In preparing the report under this section, the information provided for each subdivision shall ~~the State shall, for each category of information~~ include a breakdown by race of the ~~individuals~~ persons whose information ~~is~~ was included in ~~the category~~ each subdivision, to the extent that the information on the race ~~of such~~ is available ~~to the State.~~ ~~individuals is available to the State.~~;

(8)

~~(h)~~ Information on implementation the ~~of audits,~~ and management of the security and privacy protocols required by this Act ~~and~~.

12-30-7. Confidentiality.

Section 12.

(1) Any report produced under this ~~Chapter~~ Act ~~or information~~ shall exclude any personal identifying information.

~~12-30-8. Protections against liability of individuals on basis of information transferred.~~

Section 13

~~(1) Unless~~ *If* an ineligible ~~individual~~ *person* willfully and knowingly takes affirmative steps to register to

vote knowing that he or she is not eligible to do so, the record and signature of ~~an~~ *the* ineligible

~~individual~~ *person* that is transmitted through an electronic system by a government agency to any

elections or voter registration authority ~~shall~~ *does* not constitute a completed voter registration form.

~~and that individual shall not be considered to have registered to vote. Therefore if such~~

If the person's ~~ineligible person's~~ registration is processed by the state, ~~it shall be presumed to have been effectuated and officially~~

~~authorized by the state and the individual cannot be~~ *the person is not* subject to any penalty ~~under any relevant~~ *criminal or civil*

~~laws.~~

~~12-30-9. Automatic voter registration at other agencies currently collecting documents.~~

Section 14

In addition to the information required by

~~(1) As designated under SDCL~~ § 12-4-5.4, ~~other state government agencies~~ *any state agency* that the Secretary *of state*

~~that is~~ *approves to* *the* *needed to*

~~verifies already~~ collect documents ~~that would~~ provide proof of eligibility, including age and

this Act

citizenship, may follow the procedures for automatic voter registration ~~enumerated for the~~ *as required by* ~~chapter~~ *32-12*

~~Department of Motor Vehicles as described in section 12-30-2.~~ This may include ~~but shall not~~

any agency that has been *under section 7 of the*

~~be limited to agencies currently~~ designated ~~by~~ the National Voter Registration Act ~~Section 7 to~~

as of January 1, 2017,

provide voter registration services.

Note:
~~the~~ Legislature has this authority

Governor *by* *a*

~~(2) The~~ ~~state legislature or governor~~ may establish ~~by legislation or~~ by executive order ~~additional~~

agency that meets *Act* *an*

state ~~government agencies that meet~~ the requirements of this ~~Chapter~~ *Act* as automatic voter

agency *shall* *and requirements*

registration ~~agencies~~ that ~~will~~ follow the procedures ~~enumerated for the Department of Motor~~

~~Vehicles established in section 12-30-2.~~ *established under this Act.*

(3) Any additional agencies that are designated for automatic registration must follow the rules and protocols established in the statute herein for the DMV, including pre-implementation audit and risk assessment, and ongoing audits and accuracy checks.