



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

RECEIVED
SEP 25 2015
S.D. SEC. OF STATE

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

September 25, 2015

HAND DELIVERED

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

Re: **Attorney General's Statement and revised initiated measure—
revisions to campaign finance and lobbying laws**

Dear Secretary Krebs,

After we filed our Attorney General's Statement on September 21, 2015, regarding the above initiated measure, the sponsors submitted a revised measure to our Office. The revision makes some corrections to the measure to accurately reflect the current version of the law in SDCL ch. 12-27. The sponsors have submitted this to us as the final form of the initiated measure for purposes of SDCL 12-13-25.1. I am forwarding you a copy of the sponsors' revised final initiated measure, as well as an Attorney General's Statement issued pursuant to SDCL 12-13-25.1. Please be advised that no changes to the title or explanation have been made from the one previously filed.

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

Thank you.

Very truly yours,

Handwritten signature of Marty J. Jackley in black ink.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Rick Weiland
Don Frankenfeld
John Fiksdal
Jason Hancock, Director of LRC

Filed this 25th day of
September 2015

Handwritten signature of Shantel Krebs in black ink.

SECRETARY OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to revise State campaign finance and lobbying laws, create a publicly funded campaign finance program, create an ethics commission, and appropriate funds

Explanation:

This measure extensively revises State campaign finance laws. It requires additional disclosures and increased reporting. It lowers contribution amounts to political action committees; political parties; and candidates for statewide, legislative, or county office. It also imposes limits on contributions from candidate campaign committees, political action committees, and political parties.

The measure creates a publicly funded campaign finance program for statewide and legislative candidates who choose to participate and agree to limits on campaign contributions and expenditures. Under the program, two \$50 "credits" are issued to each registered voter, who assigns them to participating candidates. The credits are redeemed from the program, which is funded by an annual State general-fund appropriation of \$9 per registered voter. The program fund may not exceed \$12 million at any time.

The measure creates an appointed ethics commission to administer the credit program and to enforce campaign finance and lobbying laws.

The measure prohibits certain State officials and high-level employees from lobbying until two years after leaving State government. It also places limitations on lobbyists' gifts to certain state officials and staff members.

If approved, the measure may be challenged in court on constitutional grounds.

Filed this 25th day of
September 2015

Shantal Krebs

SECRETARY OF STATE

FOR AN ACT ENTITLED, an Act to increase accountability to the people of South Dakota in electoral politics by revising certain provisions concerning campaign finance and lobbying, establishing an ethics commission, creating a democracy credit program, and making an appropriation therefor.

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

Section 1. This Act may be referred to as the "South Dakota Government Accountability and Anti-Corruption Act."

Section 2. The people find and declare that accountability to the people is of the utmost importance in South Dakota's political system. Today, that system does not properly prevent corruption or its appearance and is weakened by: insufficient participation by citizens, who believe that current campaign financing incentives have rendered their role insignificant; rapidly rising costs of elections that force candidates to prioritize special interest donors, often from outside of South Dakota, who have the potential to make large contributions; insufficient and delayed disclosure to the public of relevant information on campaign contributions, political advertising, and paid lobbying; and inadequate enforcement of the laws intended to address these problems. Therefore, the purpose of this Act is to increase accountability to the people of South Dakota in electoral politics and to combat government corruption and its appearance.

Section 3. Terms used in this Act mean:

- (1) "Commission," the ethics commission established by sections 32 to 41, inclusive, of this Act;
- (2) "Democracy credit," a credit valued at fifty dollars, issued by the commission to a South Dakota resident voter under the Program established by sections 43 to 62, inclusive, of this Act, that can be, through proper assignment, used to make a contribution to a participating candidate;
- (3) "Participating candidate," a candidate for statewide or legislative office who is certified by the ethics commission as qualified to be assigned and redeem democracy credits, pursuant to sections 51 to 54, inclusive, of this Act;
- (4) "Program," the South Dakota democracy credit Program established by sections 43 to 62, inclusive, of this Act;
- (5) "Qualified contribution," a contribution made by a natural person resident of the state that is not, in the aggregate, in excess of two hundred and fifty dollars to a candidate for legislative office or in excess of five hundred dollars to a candidate for statewide office; and
- (6) "Registered representative," a volunteer who is permitted to solicit and collect democracy credits on behalf of a specific participating candidate because the volunteer has, pursuant to section 56 of this Act, properly filed with the commission to affirm understanding of the regulations and penalties associated with the Program.

Other terms used in this Act have the meanings defined by § 12-27-1.

Section 4. That § 12-27-1 be amended to read as follows:

12-27-1. Terms used in this chapter mean:

- (1) "Ballot question," any referendum, initiative, proposed constitutional amendment, or other measure submitted to voters at any election;
- (2) "Ballot question committee," a person or organization that raises, collects, or disburses contributions for the placement of a ballot question on the ballot or the adoption or defeat of any ballot question. A ballot question committee is not a person, political committee, or political party that makes a contribution to a ballot question committee. A ballot question committee is not an organization that makes a contribution to a ballot question committee from treasury funds;
- (3) "Candidate campaign committee," any entity organized by a candidate to receive contributions and make expenditures for the candidate. Only one candidate campaign committee may be organized for each candidate;
- (4) "Candidate," any person who seeks nomination for or election to public office, and for the purpose of this chapter a person is deemed a candidate if the person raises, collects, or disburses contributions in excess of five hundred dollars; has authorized the solicitation of contributions or the making of expenditures; or has created a candidate campaign committee for the purpose of obtaining public office. The person is also deemed a candidate if the person has taken all actions required by state law to qualify for nomination for or election to public office;
- (5) "Clearly identified," the appearance of the name, nickname, a photograph or a drawing of a candidate or public office holder, or the unambiguous reference to the identity of a candidate or public office holder;
- (6) "Contribution," any gift, advance, distribution, deposit, or payment of money or any other valuable consideration, or any contract, promise or agreement to do so; any discount or rebate not available to the general public; any forgiveness of indebtedness or payment of indebtedness by another person; or the use of services or property without full payment made or provided by any person, political committee, or political party whose primary business is to provide such services or property for the purpose of influencing:
 - (a) The nomination, election, or re-election of any person to public office; or
 - (b) The placement of a ballot question on the ballot or the adoption or defeat of any ballot question submitted.

The term does not include services provided by a person as a volunteer for or on behalf of any candidate, political committee, or political party, including the free or discounted use of a person's residence. ~~Nor does the term include the purchase of any item of value or service from any political committee or political party. The purchase price of the item may not exceed the fair market value and may not include an intent to contribute beyond the item's value or office.~~ A contribution does not include administration and solicitation of a contribution for a political action committee established by an organization and associated expenses, nor the use of an

organization's real or personal property located on its business premises for such purposes. A contribution does not include nominal use of a candidate's real or personal property or nominal use of resources available at a candidate's primary place of business;

(7) "County office," any elected office at a county in this state;

(8) "Election," any election for public office; any general, special, primary, or runoff election; and any election on a ballot question;

(9) "Expenditure," includes: any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election, office or ballot initiative, measure, or question; and The term includes a written contract, promise, or agreement to make an expenditure. However, the term "expenditure" does not include:

(a) A communication appearing in a news story, commentary, or editorial or letter to the editor distributed through the facility of any broadcasting station, newspaper, magazine, or other periodical publication, unless the facility is owned or controlled by any political party, political committee, or candidate;

(b) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families; or

(c) Any communication that refers to any candidate only as part of the popular name of a bill or statute;

~~(9)~~ (10) "Expressly advocate," any communication which:

(a) In context has no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question by use of explicit words of advocacy of election or defeat. The following are examples of words that convey a message of express advocacy: vote, re-elect, support, cast your ballot for, reject, and defeat; or

(b) If taken as a whole and with limited reference to external events, such as the proximity to the election, may only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question because:

(i) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and