

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

951U0636

## HOUSE STATE AFFAIRS ENGROSSED NO. **SB 200** - 02/27/2013

Introduced by: Senators Kirkeby, Holien, Krebs, Lucas, Maher, Monroe, Rampelberg, Rave, Rhoden, Soholt, Tidemann, Tieszen, and White and Representatives Hoffman, Carson, Conzet, Cronin, Dryden, Feickert, Gibson, Gosch, Hunhoff (Bernie), Munsterman, Olson (Betty), Peterson, Romkema, Rounds, Rozum, Sly, Solum, Verchio, and Wink

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning campaign finance.

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

3 Section 1. That § 12-27-16 be amended to read as follows:

4 12-27-16. The following apply to independent expenditures by individuals and organizations  
5 related to communications advocating for or against candidates, public office holders, ballot  
6 questions, or political parties, ~~and expenditures by individuals and organizations within sixty~~  
7 ~~days of an election that clearly identify a candidate or public office holder but do not expressly~~  
8 ~~advocate the election of the candidate or public office holder:~~

9 (1) Any person or organization that makes ~~an independent expenditure~~ a payment or  
10 promise of payment totaling one hundred dollars or more, including an in-kind  
11 contribution, for a communication which expressly advocates for or against a  
12 candidate, public office holder, ballot question, or political party, ~~regardless of the~~  
13 ~~amount of the expenditure,~~ shall append to or include in each communication a



1 disclaimer that clearly and forthrightly:

2 (a) Identifies the person or organization making the independent expenditure for  
3 that communication;

4 (b) States the address or website address of the person or organization; and

5 (c) States that the communication is independently funded and not made in  
6 consultation with any candidate, political party, or political committee.

7 A violation of this subdivision is a Class 1 misdemeanor;

8 ~~(2) Any person or organization that makes an expenditure, including the payment of~~  
9 ~~money or exchange of other valuable consideration or promise, for a communication~~  
10 ~~that clearly identifies a candidate or public office holder, but does not expressly~~  
11 ~~advocate the election or defeat of the candidate or public office holder, and that is~~  
12 ~~disseminated, broadcast, or otherwise published within sixty days of an election shall~~  
13 ~~append to or include in the communication a disclaimer that clearly and forthrightly:~~

14 ~~———— (a) Identifies the person or organization making the expenditure for that~~  
15 ~~communication; and~~

16 ~~———— (b) States the address or website address of the person or organization.~~

17 ~~———— A violation of this subdivision is a Class 1 misdemeanor;~~

18 ~~———— (3) Any person or organization which is not a recognized business entity and which~~  
19 ~~makes an expenditure that makes a payment or promise of payment of one hundred~~  
20 ~~dollars or more, including an in-kind contribution, for a communication described in~~  
21 ~~subdivision (1) or (2) shall file a statement within forty-eight hours of the time that~~  
22 ~~the communication is disseminated, broadcast, or otherwise published;~~

23 ~~———— (4) Any person or recognized business entity that makes expenditures in excess of two~~  
24 ~~thousand dollars during any calendar year for communications described in~~

1           ~~subdivision (1) or (2) shall file a statement with the secretary of state that is received~~  
2           ~~within forty-eight hours of the time that the person's or organization's expenditures~~  
3           ~~exceed two thousand dollars, and thereafter, within forty-eight hours of the time that~~  
4           ~~any such subsequent communication is disseminated, broadcast, or otherwise~~  
5           ~~published during the remainder of that calendar year;~~

6           ~~(5)~~(3) The statements required by this section shall include the name, street address, city,  
7           and state of the person or organization and, for any expenditures made for  
8           communications described in subdivision (1) ~~or (2)~~ during that calendar year but not  
9           yet reported on a prior statement, the name of each candidate, public office holder,  
10          ballot question, or political party mentioned or identified in each communication, the  
11          amount spent on each communication, and a description of the content of each  
12          communication.

13          For an organization, the statement shall also include the name and title of the person  
14          filing the report, the name of its chief executive, if any, and the name of the person  
15          who authorized the expenditures on behalf of the organization;

16          ~~(6)~~(4) For an organization whose majority ownership is owned by, controlled by, held for  
17          the benefit of, or comprised of twenty or fewer persons, partners, owners, trustees,  
18          beneficiaries, participants, members, or shareholders, the statement shall identify by  
19          name and address each person, partner, owner, trustee, beneficiary, participant,  
20          shareholder, or member who owns, controls, or comprises ten percent or more of the  
21          organization;

22          ~~(7)~~(5) An organization shall also provide supplemental statements, as defined in subdivision  
23          ~~(5)~~ (3), for any of its partners, owners, trustees, beneficiaries, participants, members,  
24          or shareholders identified pursuant to subdivision ~~(6)~~ (4) which are owned by,

1 controlled by, held for the benefit of, or comprised of twenty or fewer persons,  
2 partners, owners, trustees, beneficiaries, participants, members, or shareholders, until  
3 no organization identified in the supplemental statements meets the ownership test  
4 set forth in subdivision ~~(6)~~ (4);

5 ~~(8)~~(6) For the purposes of this section, the term, communication, does not include:

6 (a) Any news articles, editorial endorsements, opinion, or commentary writings,  
7 or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or  
8 other periodical not owned or controlled by a candidate, political committee,  
9 or political party;

10 (b) Any editorial endorsements or opinions aired by a broadcast facility not owned  
11 or controlled by a candidate, political committee, or political party;

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

16 (d) Any communication that refers to any candidate only as part of the popular  
17 name of a bill or statute.

18 Section 2. That § 12-27-17 be amended to read as follows:

19 12-27-17. Any political committee, organization, person, or political party that makes a  
20 payment or promise of payment totaling one ~~thousand~~ hundred dollars or more, including an in-  
21 kind contribution, for a communication that clearly identifies a candidate or public office holder,  
22 but does not expressly advocate the election or defeat of the candidate or public office holder,  
23 and that is disseminated, broadcast, or otherwise published ~~within sixty days of an election,~~ shall  
24 file a statement with the secretary of state disclosing the name, street address, city, and state of

1 such political committee, organization, person, or political party. The statement shall also  
2 include the name of the candidate or public office holder mentioned in the communication, the  
3 amount spent on the communication, and a description of the content of the communication.  
4 The statement shall be received and filed within forty-eight hours of the time that the  
5 communication is disseminated, broadcast, or otherwise published.

6 For the purposes of this section, the term, communication, does not include:

- 7 (1) Any news articles, editorial endorsements, opinion or commentary writings, or letter  
8 to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical  
9 not owned or controlled by a candidate, political committee, or political party;
- 10 (2) Any editorial endorsements or opinions aired by a broadcast facility not owned or  
11 controlled by a candidate, political committee, or political party;
- 12 (3) Any communication by a person made in the regular course and scope of the person's  
13 business or ministry or any communication made by a membership organization  
14 solely to members of the organization and the members' families; and
- 15 (4) Any communication that refers to any candidate only as part of the popular name of  
16 a bill or statute.

17 Section 3. That chapter 12-27 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 Any political committee, organization, person, or political party that makes a  
20 communication as defined in § 12-27-17, which does not expressly advocate for or against a  
21 candidate, public office holder, ballot question, or political party, shall append to or include in  
22 each communication a disclaimer that:

- 23 (1) Identifies the political committee, organization, person, or political party making the  
24 communication; and

1       (2) States the address or website address of the political committee, organization, person,  
2             or political party.

3       If the communication is an independent expenditure made by a person or organization, then  
4 the disclaimer shall include the following: "This communication is independently funded and  
5 not made in consultation with any candidate, political party, or political committee."

6       A violation of this section is a Class 1 misdemeanor.

7       Section 4. That § 12-27-3 be amended to read as follows:

8       12-27-3. The treasurer for a political action committee shall file a statement of organization  
9 with the secretary of state not later than fifteen days after the date upon which the committee  
10 made contributions, received contributions, or paid expenses in excess of five hundred dollars.  
11 However, if such activity falls within thirty days of any statewide election, the statement of  
12 organization shall be filed within forty-eight hours. A candidate shall file a statement of  
13 organization for a candidate campaign committee with the secretary of state not later than fifteen  
14 days after becoming a candidate pursuant to this chapter. ~~Notwithstanding the provisions of~~  
15 ~~§ 12-27-41, the statement of organization shall include the original signature of each person~~  
16 ~~filing the statement.~~ The statement or organization may be filed electronically pursuant to § 12-  
17 27-41. A political committee that regularly files a campaign finance disclosure statement with  
18 another state or the Federal Election Commission or a report of contributions and expenditures  
19 with the Internal Revenue Service is not required to file a statement of organization. A violation  
20 of this section is a Class 2 misdemeanor.

21       Section 5. That § 12-27-6 be amended to read as follows:

22       12-27-6. The statement of organization shall include:

23       (1) The name, street address, postal address, and daytime telephone number of the  
24             committee;

- 1       (2)    The name, street address, postal address, and daytime telephone number of the chair  
2            and the treasurer of the committee;
- 3       (3)    A statement of the type of political committee that has been or is being organized;
- 4       (4)    In the case of a candidate campaign committee, the name, street address, and postal  
5            address of the candidate;
- 6       (5)    In the case of a political action committee or ballot question committee, a concise  
7            statement of its purpose and goals, and the full name, street address, and postal  
8            address of the organization with which the committee is connected or affiliated, or  
9            if the committee is not connected or affiliated with any one organization, the trade,  
10           profession, or primary interest of the committee;
- 11      (6)    If the committee is organized as a corporation under federal or state laws for liability  
12            purposes only as authorized by § 12-27-4, a statement affirming such organization;  
13            and
- 14      (7)    The name, street address, postal address, and telephone number of each financial  
15            institution where an account or depository is maintained.

16       The statement shall be signed by the candidate and treasurer for a candidate campaign  
17       committee and by the chair and treasurer for other political committees or filed electronically  
18       pursuant to § 12-27-41. A political committee continues to exist until a termination statement  
19       is filed pursuant to §§ 12-27-25 and 12-27-26.

20       The treasurer of a political committee shall file an updated statement of organization not  
21       later than fifteen days after any change in the information contained on the most recently filed  
22       statement of organization.

23       Section 6. That chapter 37-30 be amended by adding thereto a NEW SECTION to read as  
24       follows:

1       No person may use an automated telephone dialing system to make a telephone solicitation  
2       to any phone number in the state if the purpose of the call is to communicate any message about  
3       a political candidate or ballot issue unless a live operator first asks for the called person's  
4       consent to play the automated recording. The live operator shall inform the called person of the  
5       caller's identity, the entity paying for the call, and the caller's phone number and mailing  
6       address. A violation of this section is a Class 2 misdemeanor.