

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

912Q0377

HOUSE ENGROSSED NO. **HB 1184** - 2/10/2009

Introduced by: Representatives Lust, Bolin, Boomgarden, Brunner, Burg, Carson, Cutler, Dennert, Dreyer, Elliott, Faehn, Fargen, Feickert, Gibson, Gosch, Greenfield, Hamiel, Hunhoff (Bernie), Juhnke, Kirkeby, Krebs, Lederman, Lucas, McLaughlin, Moser, Noem, Novstrup (David), Nygaard, Olson (Betty), Olson (Ryan), Peters, Pitts, Putnam, Rausch, Rave, Romkema, Rounds, Schlekeway, Solum, Thompson, Tidemann, Turbiville, Van Gerpen, Vanneman, Verchio, Wink, and Wismer and Senators Gray, Abdallah, Adelstein, Ahlers, Bartling, Bradford, Brown, Dempster, Fryslie, Gant, Garnos, Hansen (Tom), Hanson (Gary), Haverly, Howie, Hundstad, Hunhoff (Jean), Jerstad, Knudson, Maher, Merchant, Miles, Nelson, Novstrup (Al), Olson (Russell), Peterson, Rhoden, Schmidt, Tieszen, Turbak Berry, and Vehle

- 1 FOR AN ACT ENTITLED, An Act to clarify provisions dealing with the initiative process.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. That § 12-13-25 be amended to read as follows:
- 4 12-13-25. The sponsors of each initiative or initiated amendment to the Constitution shall
- 5 submit a copy of the initiative or initiated amendment to the Constitution to the director of the
- 6 Legislative Research Council for review and comment before it may be circulated for signatures.
- 7 The director shall review each submitted initiative or initiated amendment to the Constitution
- 8 to determine if the requirements of § 12-13-24 are satisfied. Within fifteen days of receipt of an
- 9 initiative or initiated amendment to the Constitution, the director shall provide written
- 10 comments on the initiative or initiated amendment to the Constitution to the sponsors of the



1 initiative or initiated amendment, the attorney general, and the secretary of state for the purpose  
2 of assisting the sponsors in complying with § 12-13-24. The sponsors may, but are not required  
3 to, amend the initiative or initiated amendment to the Constitution to comply with the director's  
4 comments.

5 Section 2. That chapter 12-13 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Following receipt of the written comments of the director of the Legislative Research  
8 Council, the sponsors shall submit a copy of the initiative or initiated amendment to the  
9 Constitution in final form, to the attorney general. The attorney general shall prepare an attorney  
10 general's statement which consists of a title and explanation. The title shall be a concise  
11 statement of the subject of the proposed initiative or initiated amendment to the Constitution.  
12 The explanation shall be an objective, clear, and simple summary to educate the voters of the  
13 purpose and effect of the proposed initiated measure or initiated amendment to the Constitution.  
14 The attorney general shall include a description of the legal consequences of the proposed  
15 amendment or initiated measure, including the likely exposure of the state to liability if the  
16 proposed amendment or initiated measure is adopted. The explanation may not exceed two  
17 hundred words in length. The attorney general shall file the title and explanation with the  
18 secretary of state and shall provide a copy to the sponsors within sixty days of receipt of the  
19 initiative or initiated amendment to the Constitution.

20 If the petition is filed as set forth in § 2-1-2, the attorney general shall deliver to the secretary  
21 of state before the third Tuesday in May a simple recitation of a "Yes" or "No" vote. On the  
22 printed ballots, the title shall be followed by the explanation and the explanation shall be  
23 followed by the recitation.

24 Section 3. That § 12-13-26 be amended to read as follows:

1 12-13-26. The secretary of state may not accept any initiative or initiated amendment to the  
2 Constitution unless such initiative or initiated amendment to the Constitution has been  
3 submitted to the director of the Legislative Research Council and the director has reviewed and  
4 commented on such initiative or initiated amendment to the Constitution, and unless the  
5 attorney general has filed the title and explanation of the initiative or initiated amendment to the  
6 Constitution with the secretary of state.

7 Section 4. That § 12-13-9.2 be amended to read as follows:

8 12-13-9.2. If the proponents or opponents of a proposed amendment to the Constitution,  
9 initiated measure, or referred measure believe that the attorney general's statement does not  
10 satisfy the requirements of § 12-13-9 or section 2 of this Act, they shall, within seven days of  
11 delivery of the statement to the secretary of state, file an action in circuit court challenging the  
12 adequacy of the statement. The action takes precedence over other cases in circuit court and a  
13 final order shall be filed within fifteen days of the commencement of the action. Any party  
14 appealing the circuit court order to the Supreme Court shall file a notice of appeal within five  
15 days of the date of the circuit court order.

16 Section 5. That § 2-1-6.2 be amended to read as follows:

17 2-1-6.2. The ~~full text of petition as it is to be circulated for any initiative petition, referred~~  
18 ~~law petition,~~ or initiated constitutional amendment ~~petition~~ shall contain the full text of the  
19 measure, the date of the general election at which the initiated law or initiated constitutional  
20 amendment is to be submitted, ~~a short title that will be used by the petition sponsors during the~~  
21 ~~circulation process,~~ and the title and explanation as prepared by the attorney general,  
22 accompanied by the names and addresses of the petition sponsors and shall be filed with the  
23 secretary of state prior to circulation for signatures. The circulator shall provide to each person  
24 who signs the petition a copy of the explanation as prepared by the attorney general. The petition

1 as it is to be circulated for a referred law shall contain the title of the referred law, the effective  
2 date of the referred law, and the date of the general election at which the referred law is to be  
3 submitted. The petition shall be accompanied by the names and addresses of the petition  
4 sponsors and shall be filed with the secretary of state prior to circulation for signatures. The  
5 signer's post office box number may be given in lieu of a street address if the signer lives within  
6 a municipality of the second or third class. The form of the petitions shall be prescribed by the  
7 State Board of Elections. For any initiated measure or initiated constitutional amendment  
8 petition, no signatures may be obtained more than twenty-four months preceding the general  
9 election that was designated at the time of filing of the full text. ~~For any initiative petition, no~~  
10 ~~signatures may be obtained more than nineteen months preceding the general election that was~~  
11 ~~designated at the time of filing of the full text.~~ An initiative petition and an initiated  
12 constitutional amendment petition shall be filed with the secretary of state by the date set forth  
13 in § 2-1-2 or 2-1-2.1, as applicable. All sections of any petition filed under this chapter shall be  
14 filed with the secretary of state simultaneously together with a sworn affidavit on forms  
15 promulgated by the State Board of Elections, signed by two-thirds of the sponsors stating that  
16 the documents filed constitute the entire petition and to the best of their knowledge contain a  
17 sufficient number of signatures.

18 Section 6. That § 2-1-6.3 be repealed.

19 ~~— 2-1-6.3. The 2000 amendments to § 2-1-6.2 do not apply to any initiative petition or initiated~~  
20 ~~constitutional amendment petition filed with the secretary of state, prior to circulation for~~  
21 ~~signatures, before July 1, 2000.~~

22 Section 7. That § 2-1-7 be amended to read as follows:

23 2-1-7. Every petition proposing a measure ~~must contain the substance of the law desired and~~  
24 ~~must~~ shall be signed in person by the petitioners, ~~and every petition to submit a law to a vote~~

1 ~~of the electors must be signed in person by the petitioners and must describe the law desired to~~  
2 ~~be submitted, by setting forth its title, together with the date of its passage and approval.~~

3 Section 8. That § 2-1-2 be amended to read as follows:

4 2-1-2. The petition shall be filed in the Office of the Secretary of State by the first Tuesday  
5 in ~~April~~ of a November of the year prior to a general election year for submission to the electors  
6 at the next general election.

7 Section 9. That chapter 2-1 be amended by adding thereto a NEW SECTION to read as  
8 follows:

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

14 Section 10. That § 12-13-9 be amended to read as follows:

15 12-13-9. Before the third Tuesday in May, the attorney general shall deliver to the secretary  
16 of state an attorney general's statement for each ~~proposed~~ amendment to the Constitution, ~~each~~  
17 ~~initiated measure, proposed by the Legislature,~~ and any referred measure from an odd year. The  
18 attorney general's statement for each referred measure from an even year shall be delivered to  
19 the secretary of state before the second Tuesday in July. The attorney general's statement shall  
20 be written by the attorney general and shall consist of a title, an explanation, and a clear and  
21 simple recitation of the effect of a "Yes" or "No" vote. The title shall be a concise statement of  
22 the subject of the proposed amendment, ~~initiated measure,~~ or referred measure authored by the  
23 attorney general, ~~who may adopt the title used by the petition sponsors during the circulation~~  
24 ~~process if that title is legally sufficient.~~ The explanation shall be an objective, clear, and simple

1 summary to educate the voters of the purpose and effect of the proposed amendment to the  
2 Constitution, ~~the initiated measure~~, or the referred law. The attorney general shall include a  
3 description of the legal consequences of the proposed amendment, ~~the initiated measure~~, or the  
4 referred law, including the likely exposure of the state to liability if the proposed amendment;  
5 ~~the initiated measure~~, or the referred law is adopted. The explanation may not exceed two  
6 hundred words in length. On the printed ballots, the title shall be followed by the explanation  
7 and the explanation shall be followed by the recitation.

8 Section 11. This Act is effective July 1, 2010. The provisions of this Act do not apply to any  
9 initiative petition or initiated constitutional amendment petition filed with the secretary of state  
10 for the 2010 general election.