

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

400Y0139

SENATE STATE AFFAIRS
ENGROSSED NO. **HB 1035** - 3/6/2017

Introduced by: The Committee on Local Government at the request of the State Board of
Elections

1 FOR AN ACT ENTITLED, An Act to revise and provide certain procedures for filing,
2 certifying, and challenging petitions.

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

4 Section 1. That § 2-1-17 be amended to read:

5 2-1-17. If the random sample indicates that a sufficient number of qualified electors have
6 signed the petition, the secretary of state shall certify that the petition has been signed by the
7 required number of qualified electors and shall place the proposed measure or amendment on
8 the next general election ballot. If the random sample indicates that an insufficient number of
9 qualified electors have signed the petition, the secretary of state shall certify that the petition has
10 not been signed by the required number of qualified electors and may not place the proposed
11 measure or amendment on the next general election ballot. The secretary of state shall, within
12 five days of certifying, notify the petition sponsors by certified mail of the secretary of state's
13 action pursuant to this section.

14 Section 2. That § 2-1-18 be amended to read:



1 2-1-18. Nothing in section 3 of this Act and §§ 2-1-15 to 2-1-18, inclusive, prohibits any
2 person from challenging in circuit court the validity of signatures or other information required
3 on a petition by statute or administrative rule. A challenge to a petition in circuit court may
4 include items prohibited in section 3 of this Act.

5 Section 3. That chapter 2-1 be amended by adding a NEW SECTION to read:

6 Within thirty days after a statewide petition for an initiated constitutional amendment,
7 initiated measure, or referendum has been validated and filed, any interested person who has
8 researched the signatures contained on the petition may submit an affidavit to the Office of
9 Secretary of State to challenge the petition. The affidavit shall include an itemized listing of
10 each specific deficiency in question. Any challenge to the following items is prohibited under
11 this challenge process:

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

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

20 The original signed affidavit shall be received by the Office of Secretary of State by 5:00
21 p.m. central time on the deadline date. If the affidavit challenges any item that is prohibited by
22 this section, only that line item shall summarily be rejected. A challenge to a line item is not a
23 challenge to the petition as a whole.

24 The secretary of state's decision regarding a challenge may not be challenged a second time

1 with the secretary of state, but may be appealed to the circuit court of Hughes County. If a
2 person fails to challenge a petition pursuant to this section, it does not deny that person any
3 other legal remedy to challenge the filing of an initiative or referendum petition in circuit court.
4 A challenge to a petition in circuit court may include items prohibited in this section.

5 Section 4. That chapter 7-18A be amended by adding a NEW SECTION to read:

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

15 Section 5. That § 12-1-13 be amended to read:

16 12-1-13. Within five business days after a nominating, initiative, or referendum petition,
17 excluding petitions for statewide initiative, referendum, or constitutional initiative petitions, is
18 validated and filed with the person in charge of the election, any interested person who has
19 researched the signatures contained on the petition may ~~file~~ submit an affidavit stating that the
20 petition contains deficiencies as to the number of signatures ~~from~~ of persons who are eligible
21 to sign the petition. The affidavit shall include an itemized listing of the specific deficiencies
22 in question. ~~Any challenge to the certification or rejection of a nominating petition for a primary~~
23 ~~election shall be to the circuit court. This action~~

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

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

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

11 The original signed affidavit shall be received by the person in charge of that election by
12 5:00 p.m. local time on the deadline date. If the affidavit challenges any item that is prohibited
13 by this section, only that line item shall be summarily rejected.

14 The decision of the secretary of state or the person in charge of the election regarding a
15 challenge may not be challenged a second time with the secretary of state or the person in charge
16 of the election, but may be appealed to the circuit court. Any challenge with the secretary of
17 state may be appealed in Hughes County. An appeal challenging a nominating petition for a
18 primary election, takes precedence over other cases in circuit court. Any party appealing the
19 circuit court order to the Supreme Court shall file a notice of appeal within ten days of the date
20 of the notice of the entry of the circuit court order. ~~Any statewide initiated measure or~~
21 ~~referendum petition may be challenged by any person pursuant to this section by submitting an~~
22 ~~affidavit as set forth above within thirty days after the petition is filed with the person in charge~~
23 ~~of the election.~~

24 A failure to challenge a petition pursuant to this section, does not deny a person any other

1 legal remedy to challenge the filing of a nominating, initiative, or referendum petition in circuit
2 court. A challenge to a petition in circuit court may include items prohibited in this section.

3 Section 6. That chapter 12-5 be amended by adding a NEW SECTION to read:

4 No person may employ, reward, or compensate any person to circulate a petition for the
5 organization of a political party based on the number of registered voters who signed the
6 petition. Nothing in this section prohibits any person from employing a petition circulator based
7 on one of the following practices:

- 8 (1) Paying an hourly wage or salary;
- 9 (2) Establishing either express or implied minimum signature requirements for the
10 petition circulator;
- 11 (3) Terminating the petition circulator's employment, if the petition circulator fails to
12 meet certain productivity requirements; and
- 13 (4) Paying discretionary bonuses based on reliability, longevity, and productivity.

14 Any violation of this section is a Class 2 misdemeanor.

15 Section 7. That § 2-1-16 be amended to read:

16 2-1-16. The secretary of state shall verify the signatures pursuant to § 2-1-15 by random
17 sampling. The random sample of signatures to be verified shall be drawn so that ~~every~~ each
18 signature received by the secretary of state ~~shall be~~ is given an equal opportunity to be included
19 in the sample. The secretary of state shall calculate the number of valid signatures by
20 multiplying the total number of signatures received by the percentage of successfully verified
21 signatures from the random sample. The secretary of state shall, ~~by rules promulgated~~
22 promulgate rules, pursuant to chapter 1-26, ~~establish~~ establishing the methodology for
23 conducting the random sample. The random sampling shall be an examination of ~~five percent~~
24 of the signatures received consisting of a number of signatures that is statistically correlative to

1 not less than ninety-five percent level of confidence with a margin of error equal to not more
2 than three and sixty-two one-hundredths percent.

3 Section 8. That § 12-1-36 be amended to read:

4 12-1-36. The secretary of state shall verify the signatures received pursuant to § 12-1-35 by
5 random sampling. The random sample of signatures to be verified shall be drawn so that each
6 signature received by the secretary of state is given an equal opportunity to be included in the
7 sample. The secretary of state shall calculate the number of valid signatures by multiplying the
8 total number of signatures received by the percentage of successfully verified signatures from
9 the random sample. The secretary of state shall promulgate rules, pursuant to chapter 1-26,
10 establishing the methodology for conducting the random sample. The random sampling shall
11 be an examination of ~~five percent~~ of the signatures received consisting of a number of signatures
12 that is statistically correlative to not less than ninety-five percent level of confidence with a
13 margin of error equal to not more than three and sixty-two one-hundredths percent.