



2021 South Dakota Legislature

Senate Bill 103

Introduced by: **Senator Crabtree**

1 **An Act to provide for the confidentiality of personal information of persons affiliated**
 2 **with nonprofit corporations and to provide a penalty therefor.**

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

4 **Section 1.** That a NEW SECTION be added:

5 **47-24-18. Personal affiliation information--Definitions.**

6 Terms used in §§ 47-24-18 to 47-24-22, inclusive, mean:

7 (1) "Personal affiliation information," any list, record, register, registry, roll, roster, or
 8 other compilation of data of any kind that directly or indirectly identifies a person
 9 as a member, supporter, volunteer, or donor of financial or nonfinancial support to
 10 any nonprofit corporation; and

11 (2) "Public agency," any state or local governmental unit in this state, including any
 12 department, agency, office, commission, board, division, county, municipality,
 13 township, school district, court, or other judicial or quasi-judicial body.

14 **Section 2.** That a NEW SECTION be added:

15 **47-24-19. Personal affiliation information--Right to privacy--Public**
 16 **agencies--Prohibitions--Penalty.**

17 Any person who supports a nonprofit corporation has a right to personal privacy
 18 and confidentiality regarding the release of personal affiliation information by a public
 19 agency. A public agency may not:

20 (1) Require any person to provide the public agency with personal affiliation
 21 information or otherwise compel the release of personal affiliation information;

22 (2) Require any nonprofit corporation to provide the public agency with personal
 23 affiliation information or otherwise compel the release of personal affiliation
 24 information;

1 (3) Release, publicize, or otherwise publicly disclose personal affiliation information in
2 the public agency's possession; or

3 (4) Request or require a current or prospective contractor or grantee with the public
4 agency to provide the public agency with a list of nonprofit corporations to which
5 it has provided financial or nonfinancial support.

6 A person who knowingly violates this section is guilty of a Class 1 misdemeanor.

7 **Section 3.** That a NEW SECTION be added:

8 **47-24-20. Personal affiliation information--Nonpublic record.**

9 Personal affiliation information is precluded from public disclosure in accordance
10 with § 1-27-3.

11 **Section 4.** That a NEW SECTION be added:

12 **47-24-21. Personal affiliation information--Exemptions.**

13 The provisions of §§ 47-24-18 to 47-24-22, inclusive, do not apply to:

14 (1) Any report or disclosure required by the secretary of state for campaign finance
15 purposes pursuant to chapter 12-27;

16 (2) Any filing required of a nonprofit corporation pursuant to chapters 47-22 to 47-28,
17 inclusive;

18 (3) Any lawful warrant for personal affiliation information issued by a court of
19 competent jurisdiction;

20 (4) A lawful request for discovery of personal affiliation information in litigation if the
21 following conditions are met:

22 (a) The requestor demonstrates a compelling need for the personal affiliation
23 information by clear and convincing evidence; and

24 (b) The requestor obtains a protective order barring disclosure of personal
25 affiliation information to any person not named in the litigation;

26 (5) Admission of personal affiliation information as relevant evidence before a court of
27 competent jurisdiction. However, no court filing may publicly reveal personal
28 affiliation information absent a specific finding of good cause; or

29 (6) A review of personal affiliation information necessary for a sales or use tax audit
30 of a nonprofit corporation by the Department of Revenue.

31 **Section 5.** That a NEW SECTION be added:

1 **47-24-22. Personal affiliation information--Privacy violation--Penalties.**

2 A person alleging a violation of § 47-24-19 may bring a civil action for appropriate
3 injunctive relief, actual damages, or both.

4 In an action brought under this section, a court may award all or a portion of the
5 costs of litigation, including reasonable attorney fees and witness fees, to the complainant
6 in the action if the court determines that the award is appropriate.