

## 2021 South Dakota Legislature

**Senate Bill 103****AMENDMENT 103B FOR THE INTRODUCED BILL**

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 47-24-23~~, 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 **natural**  
9 person as a member, supporter, volunteer, or donor of financial or nonfinancial  
10 support to 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.**

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

- 20 (1) Require any **natural** person **or nonprofit corporation** to provide the public agency  
21 with personal affiliation information or otherwise compel the release of personal  
22 affiliation information;

- 1 ~~(2) Require any nonprofit corporation to provide the public agency with personal~~  
 2 ~~affiliation information or otherwise compel the release of personal affiliation~~  
 3 ~~information;~~  
 4 ~~(3) Release, publicize, or otherwise publicly disclose personal affiliation information in~~  
 5 ~~the public agency's possession; or~~  
 6 ~~(4)(3) Request or require a current or prospective contractor or grantee with the public~~  
 7 ~~agency to provide the public agency with a list of nonprofit corporations to which~~  
 8 ~~it has provided financial or nonfinancial support.~~  
 9 ~~A person who knowingly violates this section is guilty of a Class 1 misdemeanor.~~

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

11 **47-24-20. Personal affiliation information--Privacy violation--Civil action.**

12 ~~Personal affiliation information is precluded from public disclosure in accordance~~  
 13 ~~with § 1-27-3-A natural person alleging a violation of § 47-24-19 may bring a civil action~~  
 14 ~~for appropriate injunctive relief, actual damages, or both.~~

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

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

19 **47-24-21. Personal affiliation information--Exemptions.**

20 The provisions of §§ 47-24-18 to ~~47-24-22~~ 47-24-20, inclusive, do not apply to:

- 21 (1) ~~Any report or disclosure required by the secretary of state for campaign finance~~  
 22 ~~purposes pursuant to chapter 12-27;~~  
 23 (2) ~~Any filing required of a nonprofit corporation pursuant to chapters 47-22 to 47-28,~~  
 24 ~~inclusive;~~  
 25 (3) ~~Any lawful warrant for personal affiliation information issued by a court of~~  
 26 ~~competent jurisdiction;~~  
 27 (4) ~~A lawful request for discovery of personal affiliation information in litigation if the~~  
 28 ~~following conditions are met:~~  
 29 (a) ~~The requestor demonstrates a compelling need for the personal affiliation~~  
 30 ~~information by clear and convincing evidence; and~~  
 31 (b) ~~The requestor obtains a protective order barring disclosure of personal~~  
 32 ~~affiliation information to any person not named in the litigation;~~

- 1        (5) Admission of personal affiliation information as relevant evidence before a court of  
 2        competent jurisdiction. However, no court filing may publicly reveal personal  
 3        affiliation information absent a specific finding of good cause; ~~or~~  
 4        (6) A review of personal affiliation information necessary for a sales or use tax audit  
 5        of a nonprofit corporation by the Department of Revenue; ~~or~~  
 6        (7) A review of personal affiliation information necessary for purposes of an audit,  
 7        examination, or investigation of a nonprofit corporation pursuant to chapter 4-11.

8        **Section 5.** That a ~~NEW SECTION~~ be added:

9                **~~47-24-22. Personal affiliation information—Privacy violation—Penalties.~~**

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

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

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

16               **~~47-24-22. Personal affiliation information--Public benefit.~~**

17               ~~Personal affiliation information derived from a donation to a nonprofit corporation~~  
 18               ~~that is affiliated with a public agency may be disclosed if the donor has not previously~~  
 19               ~~requested anonymity from the nonprofit corporation.~~

20        **Section 6.** That a NEW SECTION be added:

21               **~~47-24-23. Personal affiliation information--Fraud investigation.~~**

22               ~~The provisions of § 47-24-19 do not apply to any information required for, or~~  
 23               ~~obtained in the course of, a state fraud investigation or an enforcement action by the~~  
 24               ~~state. Any information obtained shall be confidential, and its disclosure is restricted as~~  
 25               ~~provided by law.~~