

2021 South Dakota Legislature

Senate Bill 103**AMENDMENT 103D FOR THE SENATE COMMERCE AND ENERGY BILL**

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

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 47-24-23, 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;
23 (2) Release, publicize, or otherwise publicly disclose personal affiliation information in
24 the public agency's possession; or

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

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

5 **47-24-20. Personal affiliation information--Privacy violation--Civil action.**

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

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

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 47-24-20, inclusive, do not apply to:

- 14 (1) Any report or disclosure required by ~~state law to be filed with~~ the secretary of state
 15 ~~for campaign finance 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~~Any official record or minutes required by law to be maintained by a public
 18 agency if the personal affiliation information was voluntarily disclosed by the donor;
 19 (3) Any lawful warrant for personal affiliation information issued by a court of
 20 competent jurisdiction;
 21 (4) A lawful request for discovery of personal affiliation information in litigation if the
 22 following conditions are met:
 23 (a) The requestor demonstrates a compelling need for the personal affiliation
 24 information by clear and convincing evidence; and
 25 (b) The requestor obtains a protective order barring disclosure of personal
 26 affiliation information to any person not named in the litigation;
 27 (5) Admission of personal affiliation information as relevant evidence before a court of
 28 competent jurisdiction. However, no court filing may publicly reveal personal
 29 affiliation information absent a specific finding of good cause;
 30 (6) A review of personal affiliation information necessary for a sales or use tax audit
 31 of a nonprofit corporation by the Department of Revenue; or
 32 (7) A review of personal affiliation information necessary for purposes of an audit,
 33 examination, or investigation of a nonprofit corporation pursuant to chapter 4-11.

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

2 **47-24-22. Personal affiliation information--Public benefit.**

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

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

7 **47-24-23. Personal affiliation information--Fraud investigation.**

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