



## 2021 South Dakota Legislature

# Senate Bill 103

HOUSE STATE AFFAIRS ENGROSSED

Introduced by: **Senator Crabtree**

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  
15       state;
- 16       (2) Any official record or minutes required by law to be maintained by a public agency  
17       if the personal affiliation information was voluntarily disclosed by the donor;
- 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;
- 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; or
- 31       (7) A review of personal affiliation information necessary for purposes of an audit,  
32       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.