

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

391Z0427

## SENATE ENGROSSED NO. **SB 84** - 2/1/2018

Introduced by: Senators Rusch, Cronin, Frerichs, Heinert, Kennedy, Monroe, Nelson, Nesiba, Novstrup, Stalzer, and Youngberg and Representatives Johnson, Bartling, Frye-Mueller, Heinemann, Jensen (Kevin), Kaiser, Lesmeister, McCleerey, Rasmussen, Ring, Smith, Steinhauer, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public records.

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

3 Section 1. That chapter 1-27 be amended by adding a NEW SECTION to read:

4 No agency of the State of South Dakota or any political subdivision of the state may enter  
5 into a settlement agreement to settle a claim involving monetary damages or equitable relief in  
6 which the settlement agreement requires nondisclosure or confidentiality as to the terms of the  
7 settlement unless the record of the settlement agreement is exempt under § 1-27-1.5.

8 Section 2. That § 1-27-1.5 be amended to read:

9 1-27-1.5. The following records are not subject to §§ 1-27-1, 1-27-1.1, ~~and~~ 1-27-1.3, and  
10 section 1 of this Act:

11 (1) Personal information in records regarding any student, prospective student, or former  
12 student of any educational institution if such records are maintained by and in the  
13 possession of a public entity, other than routine directory information specified and  
14 made public consistent with 20 U. S.C. 1232g, as such section existed on January 1,



1           2009;

2           (2)   Medical records, including all records of drug or alcohol testing, treatment, or  
3           counseling, other than records of births and deaths. This law in no way abrogates or  
4           changes existing state and federal law pertaining to birth and death records;

5           (3)   Trade secrets, the specific details of bona fide research, applied research, or scholarly  
6           or creative artistic projects being conducted at a school, postsecondary institution or  
7           laboratory funded in whole or in part by the state, and other proprietary or  
8           commercial information which if released would infringe intellectual property rights,  
9           give advantage to business competitors, or serve no material public purpose;

10          (4)   Records which consist of attorney work product or which are subject to any privilege  
11          recognized in article V of chapter 19-19;

12          (5)   Records developed or received by law enforcement agencies and other public bodies  
13          charged with duties of investigation or examination of persons, institutions, or  
14          businesses, if the records constitute a part of the examination, investigation,  
15          intelligence information, citizen complaints or inquiries, informant identification, or  
16          strategic or tactical information used in law enforcement training. However, this  
17          subdivision does not apply to records so developed or received relating to the  
18          presence of and amount or concentration of alcohol or drugs in any body fluid of any  
19          person, and this subdivision does not apply to a 911 recording or a transcript of a 911  
20          recording, if the agency or a court determines that the public interest in disclosure  
21          outweighs the interest in nondisclosure. This law in no way abrogates or changes  
22          §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information  
23          from confidential informants;

24          (6)   Appraisals or appraisal information and negotiation records concerning the purchase

- 1 or sale, by a public body, of any interest in real or personal property;
- 2 (7) Personnel information other than salaries and routine directory information.
- 3 However, this subdivision does not apply to the public inspection or copying of any
- 4 current or prior contract with any public employee and any related document that
- 5 specifies the consideration to be paid to the employee;
- 6 (8) Information solely pertaining to protection of the security of public or private
- 7 property and persons on or within public or private property, such as specific, unique
- 8 vulnerability assessments or specific, unique response plans, either of which is
- 9 intended to prevent or mitigate criminal acts, emergency management or response,
- 10 or public safety, the public disclosure of which would create a substantial likelihood
- 11 of endangering public safety or property; computer or communications network
- 12 schema, passwords, and user identification names; guard schedules; lock
- 13 combinations; or any blueprints, building plans, or infrastructure records regarding
- 14 any building or facility that expose or create vulnerability through disclosure of the
- 15 location, configuration, or security of critical systems;
- 16 (9) The security standards, procedures, policies, plans, specifications, diagrams, access
- 17 lists, and other security-related records of the Gaming Commission and those persons
- 18 or entities with which the commission has entered into contractual relationships.
- 19 Nothing in this subdivision allows the commission to withhold from the public any
- 20 information relating to amounts paid persons or entities with which the commission
- 21 has entered into contractual relationships, amounts of prizes paid, the name of the
- 22 prize winner, and the municipality, or county where the prize winner resides;
- 23 (10) Personally identified private citizen account payment information, credit information
- 24 on others supplied in confidence, and customer lists;

- 1 (11) Records or portions of records kept by a publicly funded library which, when  
2 examined with or without other records, reveal the identity of any library patron  
3 using the library's materials or services;
- 4 (12) Correspondence, memoranda, calendars or logs of appointments, working papers, and  
5 records of telephone calls of public officials or employees;
- 6 (13) Records or portions of records kept by public bodies which would reveal the location,  
7 character, or ownership of any known archaeological, historical, or paleontological  
8 site in South Dakota if necessary to protect the site from a reasonably held fear of  
9 theft, vandalism, or trespass. This subdivision does not apply to the release of  
10 information for the purpose of scholarly research, examination by other public bodies  
11 for the protection of the resource or by recognized tribes, or the federal Native  
12 American Graves Protection and Repatriation Act;
- 13 (14) Records or portions of records kept by public bodies which maintain collections of  
14 archeological, historical, or paleontological significance which nongovernmental  
15 donors have requested to remain closed or which reveal the names and addresses of  
16 donors of such articles of archaeological, historical, or paleontological significance  
17 unless the donor approves disclosure, except as the records or portions thereof may  
18 be needed to carry out the purposes of the federal Native American Graves Protection  
19 and Repatriation Act and the Archeological Resources Protection Act;
- 20 (15) Employment applications and related materials, except for applications and related  
21 materials submitted by individuals hired into executive or policymaking positions of  
22 any public body;
- 23 (16) Social security numbers; credit card, charge card, or debit card numbers and  
24 expiration dates; passport numbers, driver license numbers; or other personally

- 1 identifying numbers or codes; and financial account numbers supplied to state and  
2 local governments by citizens or held by state and local governments regarding  
3 employees or contractors;
- 4 (17) Any emergency or disaster response plans or protocols, safety or security audits or  
5 reviews, or lists of emergency or disaster response personnel or material; any location  
6 or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other  
7 military or law enforcement equipment or personnel;
- 8 (18) Any test questions, scoring keys, results, or other examination data for any  
9 examination to obtain licensure, employment, promotion or reclassification, or  
10 academic credit;
- 11 (19) Personal correspondence, memoranda, notes, calendars or appointment logs, or other  
12 personal records or documents of any public official or employee;
- 13 (20) Any document declared closed or confidential by court order, contract, or stipulation  
14 of the parties to any civil or criminal action or proceeding except as provided under  
15 section 1 of this Act;
- 16 (21) Any list of names or other personally identifying data of occupants of camping or  
17 lodging facilities from the Department of Game, Fish and Parks;
- 18 (22) Records which, if disclosed, would constitute an unreasonable release of personal  
19 information;
- 20 (23) Records which, if released, could endanger the life or safety of any person;
- 21 (24) Internal agency record or information received by agencies that are not required to  
22 be filed with such agencies, if the records do not constitute final statistical or factual  
23 tabulations, final instructions to staff that affect the public, or final agency policy or  
24 determinations, or any completed state or federal audit and if the information is not

- 1 otherwise public under other state law, including chapter 15-15A and § 1-26-21;
- 2 (25) Records of individual children regarding commitment to the Department of  
3 Corrections pursuant to chapters 26-8B and 26-8C;
- 4 (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; ~~and~~
- 5 (27) Any other record made closed or confidential by state or federal statute or rule or as  
6 necessary to participate in federal programs and benefits; and
- 7 (28) Any record of investment or bankruptcy-related settlement agreements or litigation  
8 involving the South Dakota Investment Council or the South Dakota Retirement  
9 System, or both, unless either the settlement or litigation involves a finding of  
10 liability only on the part of the South Dakota Investment Council or the South Dakota  
11 Retirement System, or both.