

2025 South Dakota Legislature

Senate Bill 62**AMENDMENT 62C
FOR THE INTRODUCED BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 **An Act to establish mandatory reporting requirements related to ~~crimes~~, improper**
 2 **governmental conduct, ~~and conflicts of interest and crimes~~, to revise reporter**
 3 **protections, and to provide a penalty therefor.**

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

5 **Section 1. That § 1-56-11 be AMENDED:**

6 **1-56-11.** A state employee who ~~suspects the existence of a conflict of interest,~~
 7 ~~fraud, or theft~~ has reasonable cause to suspect that improper governmental conduct or a
 8 crime, as defined in section 2 of this Act, has occurred shall report the matter ~~immediately~~
 9 ~~to any, of the following:~~

- 10 (1) ~~The employee's immediate supervisor;~~
 11 (2) ~~The attorney general's office; or~~
 12 (3) ~~The Department of Legislative Audit pursuant to the requirements set forth in~~
 13 chapter 3-6C.

14 **Section 2. That a NEW SECTION be added to chapter 3-6C:**

15 Terms used in this Act mean:

- 16 (1) "Adverse employment action," constructive or actual discharge, suspension from
 17 employment, demotion, transfer, decrease in compensation or benefits, imposition
 18 of an unfavorable work schedule, or any other similar reprisal or retaliatory action;
 19 (2) "Conflict of interest," conduct defined or described in §§ 5-18A-17 to 5-18A-17.6,
 20 inclusive, 42-7A-27, and 42-7A-28;
 21 (3) "Crime," a criminal act attempted or committed by misusing a state employee's
 22 access, duty, position, or responsibility as a state employee, which constitutes a
 23 felony under state law;

- 1 (4) "Good faith report," a report made, without malice, by a reporter, which the
2 reporter has reasonable cause to believe is accurate and true;
- 3 (5) "Improper governmental conduct," any conduct or omission that results in:
4 (a) A conflict of interest prohibited by state law; or
5 (b) Fraud or theft of moneys or property belonging to or derived from federal,
6 state, or local government sources, which constitutes a felony;
- 7 (6) "Reasonable cause," a sufficient reason, based on known facts, to assume
8 something is true;
- 9 (7) "Reporter," a state employee who witnesses or has evidence of improper
10 governmental conduct or a crime, and who makes a good faith report of the
11 improper governmental conduct or the crime, to a supervisor or other appropriate
12 authority;
- 13 (8) "Required report," a report required in accordance with section 3 of this Act and
14 pertaining to improper governmental conduct or a crime;
- 15 (9) "State agency," any agency, board, bureau, commission, committee, department,
16 division, or office of this state;
- 17 (10) "State employee," a full-time, part-time, seasonal, or temporary employee of any
18 state agency;
- 19 (11) "Supervisor," a state employee with supervisory authority over one or more state
20 employees;
- 21 (12) "Supervisory authority," the power to, on a regular basis, and with use of
22 independent judgment:
23 (a) Hire, lay off, promote, discharge, assign, reward, or discipline another state
24 employee;
25 (b) Address, resolve, or review the grievance of another state employee; or
26 (c) Recommend any action provided in subsection a or b of this subdivision.

27 **Section 3. That a NEW SECTION be added to chapter 3-6C:**

28 Any state employee who, in the regular course of the state employee's duties, has
29 reasonable cause, based on knowledge that is not privileged, to suspect that improper
30 governmental conduct or a crime has occurred by a state employee shall promptly notify
31 a supervisor.

32 Upon receipt of a good faith report, a supervisor shall submit a required report
33 containing the reporter's information that is not privileged to the attorney general and

1 auditor-general in accordance with section 4 of this Act. A supervisor who destroys
2 evidence received through the good faith report is criminally liable under § 22-11-24.

3 A supervisor shall promptly submit to the attorney general and auditor-general any
4 record, as allowed by law, in the supervisor's custody or control, evidencing the improper
5 governmental conduct or crime.

6 A supervisor who knowingly fails to make a required report is guilty of a Class 1
7 misdemeanor.

8 A supervisor who knowingly and intentionally fails to submit a record as required
9 by this section is guilty of a Class 1 misdemeanor.

10 **Section 4. That a NEW SECTION be added to chapter 3-6C:**

11 A supervisor who must submit a required report pursuant to section 3 of this Act
12 shall prepare the required report in a form prescribed by the attorney general. One form
13 may be used by more than one supervisor or reporter concerning the same incident of
14 improper governmental conduct or crime.

15 The reporter and supervisor shall cooperate with any investigation or inquiry
16 initiated in response to the filing of the required report.

17 A good faith report and supporting evidence is confidential as provided in § 1-27-
18 1.5.

19 Nothing in this section may be construed to prohibit the reporter from filing a
20 complaint pursuant to § 3-24-4.

21 **Section 5. That a NEW SECTION be added to chapter 3-6C:**

22 It is an affirmative defense to a prosecution under section 3 of this Act that the
23 reporter or supervisor:

- 24 (1) Reasonably believed the required report was made by another individual; or
- 25 (2) Was unaware that a conflict of interest existed or that the conflict of interest was
- 26 authorized pursuant to § 5-18A-17.2

27
28 **Section 6. That a NEW SECTION be added to chapter 3-6C:**

29 Each state agency shall adopt a written policy on reporting improper governmental
30 conduct and crime and submitting records evidencing the improper governmental conduct

1 or crime. Each state agency shall notify and inform state employees of the obligations and
2 protections set forth in this Act.

3 **Section 7. That a NEW SECTION be added to chapter 3-6C:**

4 The attorney general shall provide information to the Government Operations and
5 Audit Committee, on an annual basis, regarding the number of reports received pursuant
6 to sections 3 and 4 of this Act and the disposition of each report.

7 **Section 8. That a NEW SECTION be added to chapter 3-6C:**

8 Any state employee cooperating in making a good faith report or required report
9 or submitting records pursuant to sections 3 and 4 of this Act is immune from any liability,
10 civil or criminal, which might otherwise be incurred or imposed, and has the same
11 immunity for participation in any judicial proceeding resulting from the reported improper
12 governmental conduct or crime. This immunity does not extend to a state employee who
13 participated in the reported improper governmental conduct or crime.

14 **Section 9. That a NEW SECTION be added to chapter 3-6C:**

15 A state agency may not take adverse employment action against a reporter
16 because the reporter:

- 17 (1) Made a good faith report or otherwise filed a complaint;
- 18 (2) Instituted or caused to be instituted a proceeding;
- 19 (3) Requested or participated in an audit;
- 20 (4) Testified, or will testify, in a proceeding; or
- 21 (5) Exercised any other right or obligation imposed by this chapter or any law of this
22 state.

23 The provisions of this section do not apply to a state employee who makes a false
24 report or who makes a report in reckless disregard for the truth.

25 **Section 10. That a NEW SECTION be added to chapter 3-6C:**

26 To be eligible for protections under sections 8 and 9 of this Act, a state employee
27 who discloses information about improper governmental conduct or a crime must do so in
28 good faith and upon a reasonable belief that the information is accurate and true. A
29 disclosure that is reckless or that the state employee knew or should have known was
30 false or malicious is not a good faith report.

1 **Section 11. That a NEW SECTION be added to chapter 3-6C:**

2 A reporter may bring a civil action for a violation of section 9 of this Act in the
3 circuit court of Hughes County against the reporter's supervisor, in the supervisor's official
4 capacity, or the state agency by which the reporter is employed.

5 The court may order any of the following remedies:

- 6 (1) An injunction to restrain continued violation of section 9 of this Act;
- 7 (2) Reinstatement of the reporter to the same position or, if the position is filled, to an
8 equivalent position;
- 9 (3) Back pay; and
- 10 (4) Full reinstatement of the reporter's fringe benefits and seniority rights.

11 The reporter may be entitled to recover reasonable attorney fees and costs.

12 An action pursuant to this section may not be brought more than two years after
13 the date the unlawful adverse employment action occurred.

14 A reporter bringing an action under this section may not be required to exhaust
15 existing internal procedures or other administrative remedies.

16 Nothing in this section may be construed to exclude a reporter's remedy pursuant
17 to § 3-6D-22.

18 **Section 12. That § 4-11-9 be AMENDED:**

19 **4-11-9.** The auditor-general shall make detailed reports of the result of any audits
20 or investigations made by the Department of Legislative Audit within sixty days after ~~such~~
21 the audits or investigations have been completed. The auditor-general shall file reports of
22 state agencies with the Governor ~~and,~~ the respective state agency, and the attorney
23 general. The auditor-general shall file reports of political subdivisions with the respective
24 governing board and finance director.

25

26