

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

519I0066

## HOUSE BILL NO. 1004

Introduced by: Representatives Olson (Mel), Bartling, Bradford, Burg, Elliott, Engels, Gassman, Gillespie, Hanson, Hargens, Hundstad, Kroger, Lange, Miles, Nesselhuf, Peterson (Jim), Sigdestad, Thompson, and Van Norman and Senators Moore, Dennert, Duxbury, Kloucek, Koetzle, Nachtigal, Reedy, Sutton (Dan), and Symens

1 FOR AN ACT ENTITLED, An Act to repeal the prohibition of certain disclosures by a state  
2 agency of information concerning a private entity and to refer the Act to the electors of this  
3 state at the next general election.

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

5 Section 1. That the following Act be enacted by the South Dakota Legislative Assembly and  
6 referred to the vote of the electors of the state for their approval at the next general election to  
7 be held in the year 2004:

8 FOR AN ACT ENTITLED, An Act to repeal the prohibition of certain disclosures by a state  
9 agency of information concerning a private entity.

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

11 Section 1. That § 1-27-28 be repealed.

12 ~~1-27-28. Terms used in §§ 1-27-29 to 1-27-32, inclusive, mean:~~

13 ~~(1) "Private entity," any person or entity that is not a public entity as defined by~~  
14 ~~subdivision 3-21-1(2);~~



1 ~~(2) "State agency," each association, authority, board, commission, committee, council,~~  
2 ~~department, division, state office, task force, and their officers, legal representatives,~~  
3 ~~consultants, or other agents. The term does not include the Legislature, the Unified~~  
4 ~~Judicial System, any law enforcement agency, or any unit of local government.~~

5 Section 2. That § 1-27-29 be repealed.

6 ~~1-27-29. A state agency which is authorized by law to investigate, examine, or audit the~~  
7 ~~papers, books, records, financial condition, or other information held by or concerning a private~~  
8 ~~entity may not disclose that it is conducting such an investigation, examination, or audit, except~~  
9 ~~as provided by §§ 1-27-28 to 1-27-32, inclusive.~~

10 Section 3. That § 1-27-30 be repealed.

11 ~~1-27-30. All information obtained from or concerning the private entity by the state agency~~  
12 ~~as a result of such an investigation, examination, or audit is confidential, except as provided by~~  
13 ~~§§ 1-27-28 to 1-27-32, inclusive.~~

14 Section 4. That § 1-27-31 be repealed.

15 ~~1-27-31. A state agency may not disclose that it is investigating, examining, or auditing a~~  
16 ~~private entity, and may only disclose the information obtained from such an investigation,~~  
17 ~~examination, or audit as follows:~~

18 ~~(1) To the private entity being investigated, examined, or audited;~~

19 ~~(2) To those persons whom the private entity has authorized in writing to receive such~~  
20 ~~information;~~

21 ~~(3) To the officers, employees, or legal representatives of any other state agency which~~  
22 ~~requests the information in writing for the purpose of investigating and enforcing civil~~  
23 ~~or criminal matters. The written request will specify the particular information desired~~  
24 ~~and the purpose for which the information is requested;~~

1 ~~— (4) — To any administrative or judicial body if the information is directly related to the~~  
 2 ~~resolution of an issue in the proceeding, or pursuant to an administrative or judicial~~  
 3 ~~order. However, no person may use a subpoena, discovery, or other applicable~~  
 4 ~~statutes to obtain such information;~~

5 ~~— (5) — To another state pursuant to an agreement between the State of South Dakota and~~  
 6 ~~the other state, but only if the other state agrees to keep the information confidential~~  
 7 ~~as set forth in §§ 1-27-28 to 1-27-32, inclusive;~~

8 ~~— (6) — To the attorney general, state's attorney, or any state, federal, or local law~~  
 9 ~~enforcement officer;~~

10 ~~— (7) — To a federal agency pursuant to the provisions of federal law;~~

11 ~~— (8) — To the extent necessary to submit any final reports or filings which are otherwise~~  
 12 ~~required by law to be prepared or filed;~~

13 ~~— (9) — For investigations to protect the natural resources of the state; or~~

14 ~~— (10) — To comply with federal law, rules, or program delegation requirements.~~

15 Section 5. That § 1-27-32 be repealed.

16 ~~— 1-27-32. Disclosure of information made confidential by §§ 1-27-28 to 1-27-32, inclusive,~~  
 17 ~~except as provided in § 1-27-31, is a Class 6 felony.~~

18 Section 6. Notwithstanding § 12-13-9 the following explanation of this Act shall appear on  
 19 the ballot:

20 The referred measure allows the voters to decide whether the law enacted in 1996,  
 21 commonly known as the gag law, prohibiting a state agency, except in certain circumstances,  
 22 from disclosing that it is investigating, examining, or auditing a private entity or disclosing the  
 23 information obtained from an investigation, examination, or audit should be repealed. A "yes"  
 24 vote is to repeal the law. A "no" vote keeps the law.