

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0376

SENATE ENGROSSED NO. **SB 59** - 01/27/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public records kept
2 by state agencies.

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

4 Section 1. That § 1-27-28 be amended to read as follows:

5 1-27-28. Terms used in §§ 1-27-29 to 1-27-32, inclusive, mean:

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

8 (2) "State agency," ~~each~~ any association, authority, board, commission, committee,
9 council, department, division, ~~state office, officer,~~ task force, ~~and their officers, legal~~
10 ~~representatives, consultants, or other agents~~ or other agent of the state vested with the
11 authority to exercise any portion of the state's sovereignty. The term does not include
12 the Legislature, the Unified Judicial System, the Public Utilities Commission, the
13 Department of Environment and Natural Resources, any law enforcement agency, or
14 any unit of local government, or joint venture comprised of local governments;

15 (3) "Financial investigation, examination, or audit," any examination conducted by a



1 state agency of a private entity's proprietary information or trade secret information;

2 (4) "Proprietary information," information on pricing, costs, revenue, taxes, market
3 share, customers, and personnel held by private entities and used for that private
4 entity's business purposes;

5 (5) "Trade secret," information, including a formula, pattern, compilation, program,
6 device, method, technique, process, marketing plan, or strategic planning information
7 that:

8 (a) Derives independent economic value, actual or potential, from not being
9 generally known to, and not being readily ascertainable by proper means by,
10 other persons who can obtain economic value from its disclosure or use; and

11 (b) Is the subject of efforts that are reasonable under the circumstances to
12 maintain its secrecy.

13 Section 2. That § 1-27-29 be amended to read as follows:

14 1-27-29. ~~A No state agency which is authorized by law to investigate, examine~~ may disclose
15 that it is conducting a financial investigation, examination, or audit the papers, books, records,
16 financial condition, or other information held by or concerning of a private entity may not
17 disclose that it is conducting such an investigation, examination, or audit while the financial
18 investigation, examination, or audit is ongoing, except as provided by §§ 1-27-28 to 1-27-32,
19 inclusive § 1-27-31.

20 Section 3. That § 1-27-30 be amended to read as follows:

21 1-27-30. All proprietary or trade secret information obtained by a state agency from or
22 concerning ~~the a~~ private entity ~~by the state agency as a result of such an investigation,~~
23 ~~examination, or audit~~ is confidential, except as provided by §§ 1-27-28 to 1-27-32, inclusive
24 § 1-27-31.

1 Section 4. That § 1-27-31 be amended to read as follows:

2 1-27-31. A state agency may ~~not~~ disclose that it is ~~investigating, examining, or auditing~~
3 conducting a financial investigation, examination, or audit of a private entity; and ~~may only~~
4 disclose the information obtained from such an investigation, examination, or audit as follows:

- 5 (1) To the private entity being investigated, examined, or audited;
- 6 (2) To those persons whom the private entity has authorized in writing to receive such
7 information;
- 8 (3) To the officers, employees, or legal representatives of any other state agency which
9 requests the information in writing for the purpose of investigating and enforcing
10 civil or criminal matters. The written request will specify the particular information
11 desired and the purpose for which the information is requested;
- 12 (4) To any administrative or judicial body if the information is directly related to the
13 resolution of an issue in the proceeding, or pursuant to an administrative or judicial
14 order. However, no person may use a subpoena, discovery, or other applicable
15 statutes to obtain such information;
- 16 (5) To another state pursuant to an agreement between the State of South Dakota and the
17 other state, but only if the other state agrees to keep the information confidential as
18 set forth in §§ 1-27-28 to 1-27-32, inclusive;
- 19 (6) To the attorney general, state's attorney, or any state, federal, or local law
20 enforcement officer;
- 21 (7) To a federal agency pursuant to the provisions of federal law;
- 22 (8) To the extent necessary to submit any final reports or filings which are otherwise
23 required by law to be prepared or filed;
- 24 (9) ~~For investigations to protect the natural resources of the state, or~~

1 (10) To comply with federal law, rules, or program delegation requirements; or

2 (11) To the extent necessary to protect the health or welfare of the citizens of this state or
3 nation pursuant to a court order obtained under the same process as orders issued
4 pursuant to § 15-6-65(b).

5 Section 5. That § 1-27-32 be amended to read as follows:

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

8 Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The provisions of this chapter do not supersede more specific provisions regarding public
11 access or confidentiality elsewhere in state or federal law.