

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

837V0655

## HOUSE BILL NO. 1207

Introduced by: Representatives Kirschman, Bartling, Ecklund, Feickert, Gibson, Hawks, Hawley, Heinert, Hunhoff (Bernie), Killer, Nelson, Parsley, Peterson, Ring, Russell, Schrempp, Soli, Tyler, and Wismer and Senators Begalka, Frerichs, Jensen, Jones (Tom), Lucas, and Welke

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions, commonly known as the gag  
2 law, prohibiting certain disclosures by a state agency of information concerning a private  
3 entity.

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

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 That § 1-27-28 be repealed.

6 ~~1-27-28. Terms used in §§ 1-27-29 to 1-27-32, inclusive, mean:~~

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

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



1 ~~(3) "Financial investigation, examination, or audit," any examination conducted by a~~  
2 ~~state agency of a private entity's proprietary information or trade secret information;~~

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

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

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

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

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 That § 1-27-29 be repealed.

15 ~~1-27-29. No state agency may disclose that it is conducting a financial investigation,~~  
16 ~~examination, or audit of a private entity while the financial investigation, examination, or audit~~  
17 ~~is ongoing, except as provided by § 1-27-31.~~

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

19 ~~1-27-30. All proprietary or trade secret information obtained by a state agency from or~~  
20 ~~concerning a private entity is confidential, except as provided by § 1-27-31.~~

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

22 ~~1-27-31. A state agency may disclose that it is conducting a financial investigation,~~  
23 ~~examination, or audit of a private entity and disclose the information obtained from such an~~  
24 ~~investigation, examination, or audit as follows:~~

- 1 ~~— (1) — To the private entity being investigated, examined, or audited;~~
- 2 ~~— (2) — To those persons whom the private entity has authorized in writing to receive such~~  
3 ~~information;~~
- 4 ~~— (3) — To the officers, employees, or legal representatives of any other state agency which~~  
5 ~~requests the information in writing for the purpose of investigating and enforcing~~  
6 ~~civil or criminal matters. The written request will specify the particular information~~  
7 ~~desired and the purpose for which the information is requested;~~
- 8 ~~— (4) — To any administrative or judicial body if the information is directly related to the~~  
9 ~~resolution of an issue in the proceeding, or pursuant to an administrative or judicial~~  
10 ~~order. However, no person may use a subpoena, discovery, or other applicable~~  
11 ~~statutes to obtain such information;~~
- 12 ~~— (5) — To another state pursuant to an agreement between the State of South Dakota and the~~  
13 ~~other state, but only if the other state agrees to keep the information confidential as~~  
14 ~~set forth in §§ 1-27-28 to 1-27-32, inclusive;~~
- 15 ~~— (6) — To the attorney general, state's attorney, or any state, federal, or local law~~  
16 ~~enforcement officer;~~
- 17 ~~— (7) — To a federal agency pursuant to the provisions of federal law;~~
- 18 ~~— (8) — To the extent necessary to submit any final reports or filings which are otherwise~~  
19 ~~required by law to be prepared or filed;~~
- 20 ~~— (9) — Repealed by SL 2004, ch 25, § 4.~~
- 21 ~~— (10) — To comply with federal law, rules, or program delegation requirements ; or~~
- 22 ~~— (11) — To the extent necessary to protect the health or welfare of the citizens of this state or~~  
23 ~~nation pursuant to a court order obtained under the same process as orders issued~~  
24 ~~pursuant to § 15-6-65(b).~~

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

2 ~~—1-27-32. Disclosure of information made confidential by §§ 1-27-28 to 1-27-32, inclusive,~~

3 ~~except as provided in § 1-27-31, is a Class 1 misdemeanor.~~