

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

487Y0341

HOUSE STATE AFFAIRS

ENGROSSED NO. **HB 1089** - 2/22/2017

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

Introduced by: Representatives Rhoden, Anderson, Bartels, Beal, Carson, Chase, Clark, Dennert, Duvall, Gosch, Haggar, Haugaard, Heinemann, Hunhoff, Jamison, Karr, Latterell, May, McPherson, Mickelson, Otten (Herman), Peterson (Kent), Peterson (Sue), Qualm, Reed, Rounds, Rozum, Tieszen, and Turbiville and Senators Maher, Ewing, Klumb, Kolbeck, Monroe, Novstrup, and Stalzer

1 FOR AN ACT ENTITLED, An Act to provide certain provisions regarding investigations of  
2 misconduct by certain public officials.

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

4 Section 1. That chapter 12-27 be amended by adding a NEW SECTION to read:

5 In addition to any penalty that may be imposed on a person pursuant to § 12-27-29.1, if the  
6 secretary of state finds that any person has failed to perform any duty imposed on that person  
7 by this chapter, that person may be assessed an additional penalty not to exceed five hundred  
8 dollars. The secretary of state may refer repeated violations of any duty required under this  
9 chapter for prosecution by a state's attorney or the attorney general.

10 Section 2. That chapter 12-27 be amended by adding a NEW SECTION to read:

11 Any person may file with the secretary of state a sworn affidavit alleging a violation of the  
12 campaign finance requirements under this chapter. A sworn affidavit alleging any misconduct,



1 breach of statutory duty, or malfeasance shall be signed and sworn to by the affiant, fully state  
2 any fact on which the affiant relied, and identify any source of factual information. The affidavit  
3 shall be sufficiently detailed and any allegation shall be internally consistent and plausible. The  
4 affidavit shall be evaluated from the standpoint of a reasonable person. A lack of credible  
5 factual evidence to corroborate any allegation of misconduct shall undermine any affidavit. No  
6 conclusion, opinion, supposition, rumor, or innuendo may be considered in the review of the  
7 affidavit. If the sworn affidavit has sufficiently substantiated facts that lead the secretary of state  
8 to believe there is probable cause that a requirement under this chapter has been violated, the  
9 secretary of state may commence the contested case procedure pursuant to chapter 1-26 to  
10 remedy the violation or impose a civil penalty. The secretary of state may refer the complaint  
11 to the Division of Criminal Investigation for an investigation pursuant to chapter 23-3.

12 Section 3. That chapter 23-3 be amended by adding a NEW SECTION to read:

13 Any person may file a sworn affidavit with the Division of Criminal Investigation alleging:

- 14 (1) Fraud by an elected official, public officer, or public employee in the performance  
15 of any duty imposed by law on the elected official, public officer, or public employee  
16 pursuant to § 22-30A-10;
- 17 (2) Bribery in public office pursuant to § 2-12-9, 22-12A-7, or 22-12A-11; or
- 18 (3) An intentional violation of any limit on gifts to public officials under chapter 2-12.

19 The division shall review the facts alleged in the sworn affidavit and may initiate and  
20 conduct an investigation to determine if a law has been violated. If the division has cause to  
21 believe that a law has been violated, the division shall refer the matter to a state's attorney or the  
22 attorney general for prosecution.

23 Section 4. That chapter 23-3 be amended by adding a NEW SECTION to read:

24 If an investigation authorized under section 3 of this Act does not reveal sufficient facts to

1 support a criminal prosecution, the Division of Criminal Investigation may determine that no  
2 further action is required, or refer the matter to:

- 3 (1) The Government Operations and Audit Committee for review of a matter involving  
4 a legislator or legislative employee;
- 5 (2) The secretary of state for a matter involving a candidate for the Legislature or  
6 statewide office; or
- 7 (3) The Judicial Qualifications Commission for a matter involving a judicial officer.

8 A sworn affidavit alleging any misconduct, breach of statutory duty, or malfeasance shall  
9 be signed and sworn to by the affiant, fully state any fact on which the affiant relied, and identify  
10 any source of factual information. The affidavit shall be sufficiently detailed and any allegation  
11 shall be internally consistent and plausible. The affidavit shall be evaluated from the standpoint  
12 of a reasonable person. A lack of credible factual evidence to corroborate any allegation of  
13 misconduct shall undermine any affidavit. No conclusion, opinion, supposition, rumor, or  
14 innuendo may be considered in the review of the affidavit.

15 Section 5. That chapter 3-6D be amended by adding a NEW SECTION to read:

16 The Government Operations and Audit Committee shall review and investigate any matter  
17 referred to the committee by the Division of Criminal Investigation and may recommend  
18 appropriate action.

19 Section 6. That chapter 16-1A be amended by adding a NEW SECTION to read:

20 The Judicial Qualifications Commission shall review and investigate any matter referred to  
21 the commission by the Division of Criminal Investigation and may recommend appropriate  
22 action.