

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

829Y0597

CONFERENCE COMMITTEE

ENGROSSED NO. **SB 151** - 3/10/2017

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

Introduced by: Senators Curd and Maher

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 two hundred  
8 fifty 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,  
13 breach of statutory duty, or malfeasance shall be signed and sworn to by the affiant, fully state  
14 any fact on which the affiant relied and identify any source of factual information. If the sworn



1 affidavit has sufficiently substantiated facts that lead the secretary of state to believe there is  
2 probable cause that a requirement under this chapter has been violated, the secretary of state  
3 may commence the contested case procedure pursuant to chapter 1-26 to remedy the violation  
4 or impose a civil penalty. The secretary of state may refer the complaint to the Division of  
5 Criminal Investigation for an investigation pursuant to chapter 23-3 and shall notify the subject  
6 of the affidavit of the referral by certified mail.

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

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

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

14 The person filing the affidavit with the Division of Criminal Investigation shall provide the  
15 subject of the affidavit with a copy of the affidavit by certified mail. The division shall review  
16 the facts alleged in the sworn affidavit and may initiate and conduct an investigation to  
17 determine if a law has been violated. If the division has cause to believe that a law has been  
18 violated, the division shall refer the matter to a state's attorney or the attorney general for  
19 prosecution and shall notify the subject of the affidavit of the referral by certified mail.

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

21 If an investigation authorized under section 3 of this Act does not reveal sufficient facts to  
22 support a criminal prosecution, the Division of Criminal Investigation may determine that no  
23 further action is required, or refer the matter to:

- 24 (1) The Government Operations and Audit Committee for review of a matter involving

1 a legislator or legislative employee;

2 (2) The secretary of state for a matter involving a candidate for the Legislature or  
3 statewide office who shall resolve the matter in a reasonable time; or

4 (3) The Judicial Qualifications Commission for a matter involving a judicial officer.

5 A sworn affidavit alleging any misconduct, breach of statutory duty, or malfeasance shall  
6 be signed and sworn to by the affiant, fully state any fact on which the affiant relied and identify  
7 any source of factual information.

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

9 The Government Operations and Audit Committee shall review and investigate any matter  
10 referred to the committee by the Division of Criminal Investigation and may recommend  
11 appropriate action. The committee shall promptly notify the subject of the affidavit and resolve  
12 the matter in a reasonable time.

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

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

17 Section 7. That chapter 12-27 be amended by adding a NEW SECTION to read:

18 Any person who makes a false allegation pursuant to this Act is guilty of a Class 2  
19 misdemeanor.