

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2397

Introduced by

Senators LaFountain, DeMers, Thompson

1 A BILL for an Act to create and enact a new chapter to title 54 of the North Dakota Century
2 Code, relating to establishment of a code of ethics for state government employees and those
3 doing business with the state; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 54 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Statement of intent.**

- 8 1. The proper operation of democratic government requires that a public official or
9 employee be independent and impartial, that government policy and decisions be
10 made through the established process of government, that a public official or
11 employee not use public office to obtain private benefits, that a public official or
12 employee avoid action that creates the appearance of using public office to obtain
13 a benefit, that a public official or employee administer state programs and laws in a
14 manner that does not give an advantage to a particular business or person, and
15 that the public have confidence in the integrity of its government and public officials
16 and employees.
- 17 2. In accordance with these principles, this chapter sets forth the state of North
18 Dakota's standards of conduct and governing statements concerning employment,
19 financial interests, and other matters for state employees and for those seeking or
20 doing business with the state.

21 **Review and acknowledgment of policy.** A document containing the provisions of this
22 chapter must be reviewed and signed by each employee at the time it becomes effective and
23 annually thereafter, and by each new employee at the time of employment or appointment.

The annual review by an employee may occur in conjunction with the employee's annual employment review.

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Associated" includes those situations when an employee or a member of the employee's immediate family is a director, officer, fiduciary, trustee, agent, or partner, or owns or controls, in the aggregate, at least two percent or a value of more than five thousand dollars whichever is greater, of the outstanding equity of any business or person. An employee, or a member of the employee's immediate family, is not considered associated if the ownership or control is through a mutual fund.
2. "A thing of value" includes anything described in this subsection which exceeds a worth of twenty-five dollars in value, if received in state, or fifty dollars in value, if received out of state; and which was not offered, given, or agreed to be given to influence the action of an employee or to reward an employee for the performance of their duties:
 - a. A pecuniary item, including money, or a bank bill or note.
 - b. A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money.
 - c. A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, amendment or cancellation of an agreement, deposit, distribution, loan, payment, gift, pledge, or transfer of money.
 - d. A stock, bond, note, or other investment interest in a business or person.
 - e. A receipt given for the payment of money or other property.
 - f. A right in action.
 - g. A gift or tangible good, or an interest in a gift or tangible good. It does not include a gift or tangible good in the form of:
 - (1) Unsolicited printed informational or promotional material.
 - (2) A gift, devise, or inheritance from an individual's spouse, child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of that

1 individual, if the donor is not acting as the agent or intermediary for
2 someone other than a person covered by this paragraph.

3 (3) An unsolicited personalized plaque or trophy.

4 h. A loan or forgiveness of indebtedness.

5 i. A work of art, antique, or collectible.

6 j. An automobile or other means of personal transportation.

7 k. Real property or an interest in real property, including title to realty, a fee
8 simple or partial interest, present or future, contingent or vested, in realty, a
9 leasehold interest, or other beneficial interest in realty.

10 l. An honorarium or compensation.

11 m. Tickets, passes, or special privileges given to an employee, family member,
12 or other person when the tickets, passes, or special privileges are not
13 required to perform an official duty unless the same opportunity to obtain the
14 tickets, passes, or special privileges is extended under the same conditions to
15 the public at large and no employee used that person's position to secure the
16 tickets, passes, or special privileges for the employee, family member, or
17 other person.

18 n. A rebate or discount in the price of an item or service unless the rebate or
19 discount is made in the ordinary course of business to a member of the public
20 without regard to that individual's status as an employee.

21 o. The sale or trade of something for compensation that would ordinarily not be
22 available to a member of the public.

23 p. A promise or offer of employment.

24 q. Any other thing that has pecuniary or compensatory value to a business or
25 person.

26 r. The designation by an employee of a business or person or a charitable or
27 nonprofit organization to accept a thing of value which the employee is
28 prohibited from accepting directly or the making of a suggestion that a thing of
29 value which has been offered to the employee and which the employee is
30 prohibited from accepting directly be given to a business or person or a
31 charitable or nonprofit organization.

1 s. Travel, meals, or beverages.

2 "A thing of value" does not mean a campaign contribution properly received and
3 reported in accordance with chapter 16.1-08.1. Each governmental unit may also
4 identify additional items or services as "a thing of value" those things which it
5 deems are related to the governmental unit's authority.

6 3. "Business or person" includes an individual, sole proprietorship, firm, partnership,
7 limited partnership, limited liability partnership, joint venture, cooperative, joint
8 stock company, syndicate, business trust, estate, company, corporation,
9 association, club, committee, organization, limited liability company, governmental
10 unit, or group of persons acting in concert.

11 4. "Compensation" means a thing of value given for services rendered or to be
12 rendered. The term does not include salaries, fees, travel, meal or subsistence
13 payments, and other moneys paid by the state in consideration for which services
14 are performed nor reimbursement of expenses if the reimbursement:

15 a. Does not exceed the amount actually expended; and

16 b. Is substantiated by a written itemization of expenses.

17 5. "Employee" means:

18 a. An elected or appointed official of a governmental unit including a legislator.

19 b. Any employee of a governmental unit.

20 6. "Family member" means an employee's spouse, parent, sibling, child,
21 mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or
22 grandchild or an individual who is a member of an employee's household.

23 7. "Government" or "governmental unit" means any state agency, board, or
24 commission of any governmental branch.

25 8. "Immediate family" means any individual who resides with an employee for more
26 than six months in a year, or who is claimed as a dependent for tax purposes, or
27 who is the child or parent of an employee.

28 9. "Private interest" includes the interest of an employee or the employee's immediate
29 family in a business or person whereby the employee or the employee's immediate
30 family would gain a benefit, privilege, exemption, or advantage which is not

available to the general public from action taken by a governmental unit. Private interest does not include ownership of stock in a mutual fund.

10. "State" means the state of North Dakota.

Conduct of employees.

1. An employee shall avoid any action that would result in or might create the appearance of:
 - a. Using public office for private gain.
 - b. Giving preferential treatment to any business or person.
 - c. Losing independence or impartiality.
 - d. A state decision being made outside official channels.
 - e. Affecting adversely the confidence of the public in the integrity of the state or any of its agencies, departments, or programs.
2. No employee may accept anything listed in the definition of "a thing of value", regardless of the value of the item, if the item was offered, given, or agreed to be given to influence the action of an employee or to reward an employee for the performance of their duties.

Acceptance of a thing of value - Exceptions and disclosure.

1. An employee who receives a thing of value from a business or person which has any interest in a matter over which the employee or the employee's governmental unit has jurisdiction shall disclose the receipt. The disclosure must be in writing and state what was received, the business or person providing the thing of value, and any terms or conditions under which the thing of value was given. Disclosure is not required if the employee returns the thing of value within five working days. A copy of any disclosure must be available for public inspection during regular office hours in the office designated by the employee's governmental unit.
2. An employee, the employee's spouse, minor children, and members of the employee's household may accept, without disclosure, a thing of value from friends and relatives if the circumstances indicate a personal rather than a government business relationship.
3. An employee may receive payment of witness fees as provided by law. No disclosure is required by this section for witness fees received.

4. An employee may receive a gift of a thing of value from a subordinate only if the gift is voluntary, does not exceed twenty-five dollars in value and was made to commemorate a special occasion. No disclosure is required for a gift received under the terms of this subsection.
5. An employee, an employee's immediate family, or a business or person with which the employee or the employee's immediate family is associated who seeks to do business with the employee's governmental unit shall comply with the disclosure provisions of this chapter at the time the business is contemplated.
6. An employee may purchase for full consideration a thing of value from a business or person if the transaction occurs in the ordinary course of the business of the business or person and the purchase could be made by any member of the public. No disclosure is required for a purchase made under the terms of this subsection. This Act does not prohibit a business or person from offering group discounts to employees if all employees in the group are offered the opportunity to participate and the discount is not given to influence the decision or action of a governmental unit.
7. An employee may receive the employee's salary, wages, and travel, lodging and meal reimbursement as provided by state law without making a disclosure under this Act.

Misuse of office.

1. An employee may not use government-owned property for any purpose which is not related to the employee's employment or official position.
2. This section does not prohibit:
 - a. The limited use of government-owned property by an employee for a nongovernmental purpose if all the following requirements are met:
 - (1) The use does not interfere with the performance of the employee's public duties.
 - (2) The cost or value related to the use is nominal.
 - (3) The use does not create the appearance of impropriety.
 - (4) The use is not for a political purpose.

- b. The use of property, records, or information which is available to the general public and has been lawfully accessed or obtained.

Use of confidential or other governmental information. For purposes of this section, the term "confidential information" means any information or records that are not public records under the Constitution of North Dakota and laws of this state. Each government entity shall provide its employees with a copy of this chapter and state laws which relate to conflicts of interest, bribery, and confidential information as they apply to that particular government entity.

1. An employee may not use or disclose confidential information obtained in the course of or by reason of the employee's official capacity or position in any manner that is contrary to the Constitution of North Dakota and laws of this state.
2. An employee may not use confidential information obtained in the course of or by reason of the employee's official capacity or position in any manner with intent to result in financial gain to the employee, a family member, or to any business or person.
3. An employee may not be involved in financial transactions as a result of, or in primary reliance upon, any information gained through the employee's official duties or position. Information gained through official duties are those facts and other data that relate to the employee's official duties or to the functions of the employing component that would not be available to the employee were the employee not an employee unless the information has been publicly distributed.

Votes, deliberations, and discussions. This section applies to a business or person in which the immediate family member of an employee has a private interest or with which the immediate family member of an employee, or a business or person in which the immediate family member has a private interest, has a reasonably foreseeable benefit from a matter under consideration.

For purposes of this section, the term "private interest" includes detriment to a business competitor of the business or person with which the employee or the employee's immediate family is associated.

1. An employee may not participate in, vote on, or attempt to influence a decision made or to be made by a governmental unit with respect to a business or person in which the employee or the member of the employee's immediate family has a

1 private interest or with which the employee or the member of the employee's
2 immediate family is associated. This prohibition does not apply to an employee's
3 salary or employee benefits.

- 4 2. An employee shall abstain from any action in a matter involving the employee's
5 governmental unit if the employee has a private interest in the matter and has any
6 decisionmaking authority with respect to the matter. An employee is not prohibited
7 from participating in a matter in which the employee's private interest is solely as a
8 member of a profession, occupation, or class and any potential benefit to the
9 employee would also benefit all other members of the profession, occupation, or
10 class to the same extent as it would benefit the employee.

- 11 3. An employee's abstention from participating in the discussion and vote on the
12 decision and the reasons therefor must be recorded in the appropriate minutes.

- 13 4. If an employee has a private interest in any matter involving the employee's
14 governmental unit, the employee shall make a full written disclosure of the private
15 interest when a matter affecting the private interest becomes a matter before the
16 governmental unit. The employee shall disclose this information on an annual
17 basis thereafter if the employee's governmental unit has an ongoing relationship
18 with the business or person in which the employee has a private interest.

- 19 5. A member of the legislative assembly who is subject to this section is not restricted
20 from voting, deliberating, or discussing a matter that is before the legislative
21 assembly if the member discloses the facts that subject the member to this section
22 at the time of the vote, deliberation, or discussion.

23 **Loans, grants, public contracts, or other financial benefits.**

- 24 1. Employees, their immediate families, or any business or person in which they have
25 a private interest or with which they are associated, may obtain a loan, grant, or
26 other financial benefit from the governmental unit only if they agree to allow the
27 governmental unit to publicly disclose all related financial and other information if
28 the terms of the loan, grant, or other benefit are violated. Any loan, grant, or other
29 financial benefit provided may not involve preferential treatment with respect to
30 interest rates, maturity, terms, amortization requirements, or the quality and
31 amount of collateral pledged.

2. A loan, grant, or other financial benefit to an executive officer of the Bank of North Dakota, an industrial commission member, or a member of the immediate family of either, may not exceed twenty-five thousand dollars unless the loan was received before the employee began employment and it was approved by unanimous votes of the Bank of North Dakota's investment committee, the Bank of North Dakota's advisory board, and the industrial commission.
3. A loan to an executive officer of the housing finance agency or to an industrial commission member, or a member of the immediate family of either, may not exceed twenty-five thousand dollars unless the loan is approved by unanimous votes of the housing finance agency's advisory board and the industrial commission.
4. A loan, grant, or other financial benefit to an employee of a governmental unit or to an employee with direct or indirect authority over the governmental unit may not exceed twenty-five thousand dollars unless the governing board of the governmental unit approves the loan, grant, or other financial benefit by a unanimous vote. If there is no governing board, no loan, grant, or other financial benefit in excess of twenty-five thousand dollars may be provided.
5. An employee subject to this provision may not be involved in any decision on behalf of the employee's governmental unit regarding the loan, grant, or other financial benefit. The employee may only be involved on the employee's own behalf as a borrower, grantee, or financial beneficiary if the loan, grant, or other financial benefit subject to this section is made personally to the employee and the employee's interest cannot be represented in another manner.
6. The limitations of this section do not apply to loans purchased by the Bank of North Dakota on the secondary market or to student loans.
7. Except as limited by federal law, a governmental unit required to hold public hearings must take any action to approve or change the terms of a loan, grant, or other financial benefit at a meeting that is open to the public.
8. Unless a contract is entered after public notice and competitive bidding process determining the employee to be the lowest and best bidder, an employee may only

contract with a governmental unit for the provision of goods or services if the value of the contract does not exceed two thousand dollars per year.

9. The provisions of this section do not apply:

- a. To compensation paid to an employee for performing the employee's job;
- b. To fees, travel, meal, or subsistence payments otherwise allowed by state law; or
- c. Where prohibited by federal law.

Remedies for violations. In appropriate circumstances and in compliance with written procedures adopted pursuant to this chapter, a government entity may order an employee to take appropriate action including:

- 1. Cease and desist from the activity that is in violation of this chapter.
- 2. Forfeit a prohibited contribution to the state general fund.
- 3. Return the prohibited contribution to the contributor.
- 4. Restrict an employee's duties with regard to a particular agency or activity.
- 5. Relieve an employee of duties pertaining to the governmental entity.
- 6. Impose corrective or disciplinary action including oral or written warnings, placement of an employee on a special review period, suspension with pay, demotion, or termination.

Rules. Each governmental unit shall adopt rules establishing procedures for implementing this chapter including rules to allow public access to all matters disclosed. A governmental unit may also adopt rules to impose more restrictive requirements. No rule may be adopted which is less restrictive than the terms of this chapter. Rules adopted pursuant to this section are not subject to chapter 28-32 if the governmental unit provides notice and a copy of the proposed rule to each employee affected by this chapter.

Part-time employees - Members of the legislative assembly. This chapter does not apply to part-time employees who do not take part in policy or decisionmaking activities. It does apply to part-time board members. This chapter does not limit a member of the legislative assembly from engaging in lawful employment if the member takes steps to assure that the employment does not interfere with the member's ability to act impartially as a member of the legislative assembly.

1 **SECTION 2. EFFECTIVE DATE.** This Act is effective for transactions that have not
2 been completed by August 1, 1997, or that occur after July 31, 1997.