

Sixty-ninth  
Legislative Assembly  
of North Dakota

## FIRST ENGROSSMENT

### ENGROSSED HOUSE BILL NO. 1505

Introduced by

Representative Lefor

Senator Hogue

1 A BILL for an Act to create and enact a new section to chapter 54-03 and a new section to  
2 chapter 54-66 of the North Dakota Century Code, relating to immunity and a defense for  
3 persons related to voting on legislation and closure of matters by the ethics commission; to  
4 amend and reenact sections 12.1-13-02, 54-66-10, 54-66-12, and 54-66-18 of the North Dakota  
5 Century Code, relating to immunity from criminal prosecution, individuals' rights to appeals,  
6 confidential information, and conflicts of interest; to provide for application; and to declare an  
7 emergency.

#### 8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 **SECTION 1. AMENDMENT.** Section 12.1-13-02 of the North Dakota Century Code is  
10 amended and reenacted as follows:

#### 11 **12.1-13-02. Speculating or wagering on official action or information.**

- 12 1. ~~A person~~An individual is guilty of a class A misdemeanor if during employment as a  
13 public servant, or within one year thereafter, in contemplation of official action by  
14 ~~himself~~the individual as a public servant or by a government agency with which ~~he~~the  
15 individual is or has been associated as a public servant, or in reliance on information  
16 to which ~~he~~the individual has or had access only in ~~his~~the individual's capacity as a  
17 public servant, ~~he~~the individual:
- 18 a. Acquires a pecuniary interest in any property, transaction, or enterprise which  
19 may be affected by ~~such~~the information or official action;
- 20 b. Speculates or wagers on the basis of ~~such~~the information or official action; or
- 21 c. Aids another individual to do any of the foregoing.

2. ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the  
individual takes official action which is likely to benefit ~~him~~the individual as a result of  
an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a  
speculation or wager, which ~~he~~the individual made, or caused or aided another to  
make, in contemplation of ~~such~~the official action.

3. An individual is immune from prosecution under this section if:

a. The individual was a member of the legislative assembly at the time the official  
action was taken;

b. The official action was a vote on a measure in the senate or house of  
representatives or a legislative committee; and

c. The individual adhered to section 54-66-18 requiring an individual to disclose a  
potential conflict of interest to the member's respective chamber of the legislative  
assembly, legislative committee, the president of the senate, or the speaker of  
the house.

**SECTION 2.** A new section to chapter 54-03 of the North Dakota Century Code is created  
and enacted as follows:

**Voting on legislation - Immunity - Defense.**

If an individual who is a member of the legislative assembly adheres to:

1. Section 54-66-18 requiring an individual to disclose a potential conflict of interest to  
the member's respective chamber of the legislative assembly, a legislative committee,  
the president of the senate, or the speaker of the house, the individual and an  
"organization" for which the individual is an "agent", as those terms are defined under  
section 12.1-03-04, are immune from criminal prosecution under the laws of this state  
for an offense arising from the individual voting on a measure in a legislative  
committee, the senate, or the house of representatives.

2. Informal guidance from the executive director of the ethics commission, reliance on  
the informal guidance is a defense in a prosecution for an offense arising from the  
individual voting on a measure in a legislative committee, the senate, or the house of  
representatives, if:

a. The individual acts in good faith; and

b. The material facts surrounding the conduct are substantially the same as the conduct presented in the informal guidance.

3. Written guidance from the executive director of the ethics commission issued under the rules of the ethics commission, reliance on the written guidance is a defense in a prosecution for an offense arising from the individual voting on a measure in a legislative committee, the senate, or the house of representatives.

**SECTION 3.** A new section to chapter 54-66 of the North Dakota Century Code is created and enacted as follows:

**Issuance of alleged violation - Closure of the matter.**

Upon completion of an informal investigation, the executive director shall prepare a report and recommendation to the commission to close the matter or issue an alleged violation. The commission may issue an alleged violation, require additional informal investigation, or close the matter. At any time during the enforcement action, the commission may settle and close the matter. A settlement may include the issuance of an advisory opinion pursuant to section 54-66-04.2 or informal guidance pursuant to the rules of the commission.

**SECTION 4. AMENDMENT.** Section 54-66-10 of the North Dakota Century Code is amended and reenacted as follows:

**54-66-10. Appeals.**

An accused individual may appeal a finding of the ethics commission order to the district court of the county where the accused individual resides, the district court in Burleigh County, or a district court of the county in which a substantial part of the subject matter of the alleged violation occurred within thirty days after notice of the commission order.

**SECTION 5. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is amended and reenacted as follows:

**54-66-12. Confidential information.**

1. The following information is a confidential record as defined in section 44-04-17.1, unless the commission has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying, issued a final commission order and a court affirmed the determinationfinal commission order, if appealed, except the

information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint during an enforcement action:

a. ~~Information~~ Relevant information submitted to the commission by an individual;

b. Information prepared for the commission to determine whether to issue an alleged violation;

c. Information revealing the contents of a complaint an alleged violation;

b. ~~Information~~

d. Information that reasonably may be used to identify an accused individual a respondent; and

e. ~~Information~~

e. Information relating to or created as part of an investigation of a complaint an alleged violation.

2. ~~If a complaint is informally resolved under section 54-66-07, the following information is a confidential record as defined in section 44-04-17.1:~~

a. ~~Information revealing the contents of the complaint;~~

b. ~~Information that reasonably may be used to identify the accused individual;~~

c. ~~Information relating to or created as part of the process leading to the informal resolution; and~~

d. ~~Information revealing the informal resolution.~~

3. Information that reasonably may be used to identify the complainant an individual who provides relevant information to the commission is confidential unless the complainant individual waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant individual. Information, including evidence under consideration by the investigator or commission, deemed confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint to include disclosure of evidence being considered to an accused individual a respondent.

4.3. The information deemed confidential in subsections 1 and 2 subsection 1 may be disclosed by the ethics individual who provides relevant information to the commission, the respondent, and the commission if the accused individual respondent agrees to the disclosure.

1       4. The commission may disclose the information deemed confidential in subsection 1 to  
2       an entity with appropriate enforcement authority.

3       5. A record created or maintained by a public entity, other than the commission, retains  
4       its status as an open, closed, exempt, or confidential record as defined in section  
5       44-04-17.1, notwithstanding the disclosure of the record to the ethics commission  
6       during an enforcement action or the relevance of the record to an enforcement action.

7       **SECTION 6. AMENDMENT.** Section 54-66-18 of the North Dakota Century Code is  
8       amended and reenacted as follows:

9       **54-66-18. Conflicts of interest - Legislative assembly.**

- 10      1. Each legislative assembly shall adopt conflict of interest rules. The rules must:
- 11          a. Require the disclosure by a member of a potential conflict of interest relating to
- 12              any bill in which the member may have a ~~direct, unique, substantial, or~~ and
- 13              individual interest.
- 14          b. Ensure a mechanism is in place to record each disclosure and make it readily
- 15              available to the public.
- 16      2. If the legislative assembly adopts rules under subsection 1 which are at least as
- 17          restrictive as the conflict of interest rules adopted by the ethics commission, the
- 18          disclosure process portion of the conflict of interest rules adopted by the ethics
- 19          commission may not apply to members of the legislative assembly.

20      **SECTION 7. APPLICATION.** This Act applies to actions occurring on or after the effective  
21      date of this Act.

22      **SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure.