

Breakdown of SB 2052

- Article XIV, § 4(2) of the North Dakota Constitution defines “public officials.”

Section 4.

1. This article is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate, safeguard, or expand, but not to hamper, restrict, or impair, this article. This article shall take effect sixty days after approval.
2. For the purposes of this article, "public office" or "public official" means any elected or appointed office or official of the state's executive or legislative branch, including members of the ethics commission, or members of the governor's cabinet, or employees of the legislative branch, and "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency.

- Article XIV, § 2(2) of the North Dakota Constitution limits lobbying by **elected** public officials.

Section 2.

1. A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official. A public official may not knowingly accept a gift from a lobbyist. These prohibitions do not apply if the lobbyist is an immediate family member of the public official. "Gift," as used in this subsection, means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation. However, "gift" does not mean any purely informational material, campaign contribution, or, in order to advance opportunities for North Dakota residents to meet with public officials in educational and social settings inside the state, any item, service, or thing of value given under conditions that do not raise ethical concerns, as determined by rules adopted by the ethics commission. Such rules must be adopted within two years after the effective date of this article. So as to allow for the adoption of these rules, these prohibitions shall take effect two years after the effective date of this article. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.
2. An elected public official may not be a lobbyist while holding office or for two years after holding office. Appropriate civil and criminal sanctions for violations of this subsection shall be set by the legislative assembly.

- 2019 Legislative Assembly sets a penalty for violations, as required by Article XIV, § 2(2).

54-66-13. Restriction on lobbying by public officials - Penalty.

A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

- Caption is notably missing the word “elected.”
 - Other public officials call the Ethics Commission because they are confused.
 - “Did the Legislative Assembly expand the lobbying prohibition in the constitution to all public officials?”
 - No, but the missing word in the caption creates this confusion.
- Captions ≠ Law

1-02-12. Caption, cross-reference note, and source note.
 No caption, source note, or cross-reference note, whether designating an entire title, chapter, section, subsection, or subdivision, constitutes any part of a statute. A caption may not be used to determine legislative intent or the legislative history for any statute. An effective date or expiration date note immediately following a caption is not a part of the caption and is a part of the statute.

- The Ethics Commission asked Legislative Council if “elected” could be added to the caption of section 54-66-13 without bringing a bill
- Legislative Council recommended the Commission bring a bill to create a record of the change.
- SB 2052 does **NOT** change the law. Only the caption.
- As introduced

54-66-13. Restriction on lobbying by elected public officials - Penalty.
 A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

- And even with the House amendment

54-66-13. Restriction on ~~lobbying by~~ being a lobbyist as an elected public official - Penalty.
 A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.