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Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2319

Introduced by

Senators Schneider, Triplett

A BILL for an Act to amend and reenact sections 16.1-08.1-01, 16.1-08.1-03.3, 16.1-08.1-03.5, and 16.1-08.1-05 of the North Dakota Century Code, relating to campaign contributions and independent expenditures; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
2. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
   a. A person holding public office;
   b. A person who has publicly declared that person's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
   c. A person who has formed a campaign or other committee for that person's candidacy for public office;

d. A person who has circulated a nominating petition to have that person's name placed on the ballot; and

e. A person who has, in any manner, solicited or received a contribution for that person's candidacy for public office, whether before or after the election for that office.

3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

a. A loan of money from a bank or other lending institution made in the regular course of business.

b. Time spent by volunteer campaign or political party workers.

c. Money spent by a candidate on the candidate's own behalf.

d. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.

e. Money or anything of value received by a candidate in that person's personal capacity, including pursuant to a contract or agreement made for personal or private employment purposes, and not received for a political purpose or to influence the performance of that person's official duty.

f. Contributions of products or services for which the actual cost or fair market value are reimbursed by a payment of money.

g. An independent expenditure.

4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations.

5. "Expenditure" means a gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for the direct purpose of influencing the passage or defeat of a measure or the nomination for election, or election, of any individual to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.

6. "Independent expenditure" means an expenditure made for the direct purpose of influencing the passage or defeat of a measure or the nomination for election, or election, of any individual to office if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, a candidate or a candidate committee.

7. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.

~~7.~~8. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

~~8.~~9. "Political committee" means any committee, club, association, or other ~~group of persons which~~person that receives contributions or makes expenditures for political purposes and includes the following:

a. A political action committee, derived from a corporation, cooperative corporation, limited liability company, or an association that is prohibited from making direct contributions for political purposes under section 16.1-08.1-03.3, and which solicits or receives contributions or makes expenditures for political purposes;

b. A candidate committee, established to support an individual candidate seeking statewide office, that solicits or receives contributions for political purposes;

c. An organization governed by section 527 of the Internal Revenue Code [26 U.S.C. 527], which solicits or receives contributions or makes expenditures for political purposes;

d. A political committee that makes only independent expenditures.

e. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that solicits or receives contributions for political purposes; and

~~e.~~f. A measure committee that solicits or receives contributions for the purpose of aiding or opposing a measure to be voted upon by the voters of the state.

~~9.~~10. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.

~~10.~~11. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state office or any position taken in any bona fide news story, commentary, or editorial.

~~11.~~12. "Public office" means every office to which ~~persons~~an individual can be elected by vote of the people under the laws of this state.

SECTION 2. AMENDMENT. Section 16.1-08.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.3. Campaign contributions by corporations, cooperative corporations, limited liability companies, and associations ~~prohibited - Violation - Penalty~~ - Political action committees authorized - Contribution and expenditure statements.

1. A corporation, cooperative corporation, limited liability company, or association may ~~not make a direct contribution:~~
   ~~a. To aid any political party, political committee, or organization.~~
   ~~b. To aid any corporation, limited liability company, or association organized or maintained for political purposes.~~
   ~~c. To aid any candidate for public office or for nomination to public office.~~
   ~~d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.~~
   ~~e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.~~
~~2.~~ ~~This section does not prohibit the establishment, administration, and solicitation of contributions to~~establish and administer a separate and segregated fund to be utilized for political purposes by ~~a~~the corporation, cooperative corporation, limited liability company, or association. It is unlawful for:
   a. ~~The~~Any person ~~or persons~~ controlling the fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them~~; or utilize money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilize money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund~~.
   b. Any person soliciting an employee, stockholder, patron, or member for a contribution to the fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation or of the general political philosophy intended to be advanced through committee activities.

c. Any person soliciting an employee or member for a contribution to the fund to fail to inform the employee or member at the time of the solicitation of the right to refuse to contribute without any reprisal.

d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed and of amounts expended for political purposes.

e. Any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, limited liability company, or association maintaining the political action committee.

f. Any expenditure made for political purposes to be reported under this section before control of the expenditure has been released by the political action committee except if there is a contract, promise, or agreement, expressed or implied, to make ~~such~~the expenditure.

~~3.~~2. All political action committees, as described in section 16.1-08.1-01, formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of two hundred dollars in the aggregate made for political purposes with the secretary of state. The statement must include the amount of each reportable contribution and the date it was received and the amount of each reportable expenditure and the date it was made. A year-end statement covering the entire calendar year must be filed no later than the thirty-first day of January of the following year. A preelection statement must be filed no later than the twelfth day before any primary, special, or general election and must be complete from the beginning of the calendar year through the twentieth day before the election. Even if a political action committee has not received any contributions or made any expenditures in excess of two hundred dollars during the reporting period, the political action committee shall file a statement as required by this chapter. A statement filed according to this ~~section~~subsection during the reporting period must show the following:

a. The gross total of all contributions received and expenditures made in excess of two hundred dollars;

b. The gross total of all contributions received and expenditures made of two hundred dollars, or less; and

c. The cash on hand in the filer's account at the start and close of the reporting period.

~~4.~~3. A political action committee shall report the occupation, employer, and principal place of business of each ~~person, or the political committee if not already registered according to state or federal law,~~individual who contributed five thousand dollars or more in the aggregate during the reporting period, the name and principal business address of any corporation, cooperative corporation, limited liability company, or association that makes any contribution to the political committee during the reporting period, and the name and address of any other political committee if not already registered according to state or federal law which contributed five thousand dollars or more in the aggregate during the reporting period.

~~5.~~4. A person may not make a payment of that person's money or of another person's money to any other person for a political purpose in any name other than that of the person ~~who~~that supplies the money and a person may not knowingly receive the payment nor enter nor cause the payment to be entered in that person's account or record in any name other than that of the person by ~~whom~~which it actually was furnished.

~~6. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, limited liability company, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, limited liability company, or association funds or otherwise violates this section, it is prima facie evidence of a violation by the corporation, cooperative corporation, limited liability company, or association.~~

~~7. A violation of this section may be prosecuted in the county where the contribution is made or in any county in which it has been paid or distributed.~~

~~8. It is a class A misdemeanor for an officer, director, stockholder, manager, governor, member, attorney, agent, or representative of any corporation, cooperative~~

~~corporation, limited liability company, or association to violate this section or to counsel or consent to any violation. Any person who solicits or knowingly receives any contribution in violation of this section is guilty of a class A misdemeanor.~~

~~9. Any officer, director, stockholder, manager, governor, member, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section is liable to the company, corporation, limited liability company, or association for the amount so contributed.~~

5. A corporation, cooperative corporation, limited liability company, or association that makes an independent expenditure or a contribution that is not made through a separate and segregated fund as provided under subsection 1 shall file a statement with the secretary of state within forty-eight hours after making the contribution or expenditure. The statement must include:

   a. The full name of the corporation, cooperative corporation, limited liability company, or association;

   b. The complete address of the corporation, cooperative corporation, limited liability company, or association;

   c. The name and telephone number of the individual completing the report;

   d. The name of the recipient of the contribution or expenditure;

   e. The amount of the contribution or expenditure;

   f. The total amount of all contributions and expenditures made for political purposes since the beginning of the calendar year;

   g. The printed name and signature of the individual completing the report, attesting to the report being true, complete, and correct; and

   h. The date on which the report was signed.

6. A corporation, cooperative corporation, limited liability company, or association that makes an independent expenditure for an advertisement or other communication shall append to or include in each advertisement or communication a disclaimer that clearly and forthrightly:

   a. Identifies the corporation, cooperative corporation, limited liability company, or association making the independent expenditure for that advertisement or communication;

b. States the principal business address of the corporation, cooperative corporation, limited liability company, or association; and

c. States that the advertisement or communication is independently funded and not made in consultation with any candidate, party, or political committee.

7. It is a class A misdemeanor for an officer or director of any corporation, cooperative corporation, limited liability company, or association to violate this section or to counsel or consent to any violation, including the filing of a false report or the willful failure to file a report required by this section.

SECTION 3. AMENDMENT. Section 16.1-08.1-03.5 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.5. Direct expenditures ~~- Passage or defeat of a measure or~~for state political party building funds - Report required.

~~1. This chapter does not prohibit the exercise by corporations, cooperative corporations, limited liability companies, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, limited liability company, or association other than a "political purpose" as defined by this chapter. Any corporation, cooperative corporation, limited liability company, or association that receives contributions pursuant to section 16.1-08.1-03.1 or spends money for the purpose of promoting passage or defeat of initiated or referred measures, other than a contribution to another person or measure committee promoting passage or defeat of an initiated or referred measure, shall file a statement pursuant to section 16.1-08.1-03.1 along with a statement listing the total amount of money spent for that purpose. The statements filed pursuant to section 16.1-08.1-03.1 must be filed with the secretary of state no later than the twelfth day before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day before the date of the election. Statements showing the total amount of money spent for the purpose of promoting passage or defeat of initiated or referred measures~~

~~must be filed with the secretary of state through the end of the calendar year in which the measure appeared on the ballot.~~

~~2.~~ A corporation, cooperative corporation, limited liability company, or association may make a donation of property or money to a state political party or nonprofit entity affiliated with or under the control of a state political party for deposit in a separate and segregated fund. Money in the fund must be used exclusively by the state political party or nonprofit entity affiliated with or under the control of a state political party for purchasing, maintaining, or renovating a building and for the purchase of fixtures for the building. A state political party or nonprofit entity affiliated with or under the control of a state political party receiving a donation under this ~~subsection~~section shall file a statement with the secretary of state no later than the thirty-first day of January of each calendar year. The statement must include the name and mailing address of each donor, the amount of each donation, the date each donation was received, all expenditures made from the fund during the previous calendar year, and cash on hand in the fund at the start and close of the reporting period. Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this ~~subsection~~section and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this ~~subsection~~section.

SECTION 4. AMENDMENT. Section 16.1-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-05. Audit by secretary of state - Requested audits - Reports.

1. If a substantial irregularity is evident or reasonably alleged, the secretary of state may arrange an audit of any statement filed pursuant to this chapter, to be performed by a certified public accountant of the filer's choice, subject to approval by the secretary of state. If an audit of a statement arranged by the secretary of state under this subsection reveals a violation of this chapter, the candidate, political party, ~~or~~ political committee, or other person filing the statement shall pay a fine to the secretary of state equal to five percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater. If an audit of a statement arranged by the secretary of state under this subsection

does not reveal a violation of this chapter, the cost of the audit must be paid for by the secretary of state.

2. If a substantial irregularity is reasonably alleged, the secretary of state may arrange an audit of any statement filed pursuant to this chapter, performed by a certified public accountant of the filer's choice, subject to approval by the secretary of state, upon written request by any interested party made to the secretary of state within thirty days following receipt of a statement by the secretary of state. The request must be made in writing, recite a substantial irregularity and a lawful reason for requesting an audit, and be accompanied by a bond in an amount established by the secretary of state sufficient to pay the cost of the audit. If an audit of a statement arranged by the secretary of state under this subsection reveals a violation of this chapter, the candidate, political party, ~~or~~ political committee, or other person filing the statement shall pay a fine to the secretary of state equal to five percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater, and the bond shall be returned to the person submitting it. If an audit of a statement arranged by the secretary of state under this subsection does not reveal a violation of this chapter, the cost of the audit must be satisfied from the bond filed with the secretary of state.

3. An audit may not be made or requested of a statement for the sole reason that it was not timely filed with the secretary of state. An audit made or arranged according to this section must audit only those items required to be included in any statement, registration, or report filed with the secretary of state according to this chapter. The secretary of state may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer. Any remaining moneys collected by the secretary of state after an audit is paid for under this section must be deposited in the state's general fund. This section does not apply to statements filed according to sections 16.1-08.1-03.10 and 16.1-08.1-03.11.