21.0060.01000

Sixty-seventh
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Representative Hanson

A BILL for an Act to create and enact sections 16.1-08.1-09, 16.1-08.1-10, 16.1-08.1-11, and 16.1-08.1-12 of the North Dakota Century Code, relating to reporting the ultimate and true source of funds; to amend and reenact sections 16.1-08.1-01 and 16.1-10-04.1 of the North Dakota Century Code, relating to political advertisements and reporting the ultimate and true sources of funds; to repeal section 16.1-08.1-08 of the North Dakota Century Code, relating to identifying the ultimate and true source of funds; 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. (Effective through January 4, 2021)

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

1. "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.
2. "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.

3. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
   a. An individual holding public office;
   b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
   c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
   d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
   e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.
4. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.
5. "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 including a conduit. 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 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.

d. Money or anything of value received for anything other than a political purpose.

e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.

f. An independent expenditure.

g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.

h. In-kind contributions from a candidate to the candidate's campaign.

6. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

7. "Expenditure" means:

a. 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 a political purpose or for the purpose of influencing the passage or defeat of a measure.

b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.

c. The transfer of funds by a political committee to another political committee.

d. An independent expenditure.

8. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

a. Advertising;

b. Campaign loan repayment;

c. Operations;

d. Travel; and

e. Miscellaneous.

9. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure 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, any candidate, committee, or political party.

10. "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.

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

12. "Personal benefit" means a benefit to the candidate or another person which is not for a political purpose or related to a candidate's responsibilities as a public officeholder, and any other benefit that would convert a contribution to personal income.

13. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes:

a. A political action committee not connected to another organization and free to solicit funds from the general public, or derived from a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or an association that solicits or receives contributions from its employees or members or makes expenditures for political purposes on behalf of its employees or members;

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

c. A political organization registered with the federal election commission, which solicits or receives contributions or makes expenditures for political purposes;

d. A multicandidate political committee, including a caucus, established to support multiple groups or slates of candidates seeking public office, which solicits or receives contributions for political purposes; and

e. A measure committee, including an initiative or referendum sponsoring committee at any stage of its organization, which solicits or receives contributions or makes expenditures for the purpose of aiding or opposing a measure sought to be voted upon by the voters of the state, including any activities undertaken for the purpose of drafting an initiative or referendum petition, seeking approval of the secretary of state for the circulation of a petition, or seeking approval of the submitted petitions.

14. "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.

15. "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 public office or any position taken in any bona fide news story, commentary, or editorial.

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

17. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

Definitions. (Effective after January 4, 2021)

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

1. "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.
2. "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.
3. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
   a. An individual holding public office;
   b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
   c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
   d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and

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

4. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.

5. "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 including a conduit. 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 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.

d. Money or anything of value received for anything other than a political purpose.

e. Products or services for which the actual cost or fair market value are reimbursed by a payment of money.

f. An independent expenditure.

g. The value of advertising paid by a political party, multicandidate political committee, or caucus which is in support of a candidate.

h. In-kind contributions from a candidate to the candidate's campaign.

6. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.

7. "Covered person" means any person that spends more than two hundred dollars in an election cycle on expenditures. "Covered person" does not include:

a. A political committee of a political party;

b. A person that spends or contributes the person's own original funds; and

c. A candidate or candidate committee.

8. "Election cycle" means the two-year period beginning on January 1 of an odd-numbered year and ending on December 31 of an even-numbered year.

9. "Ethics commission" means the ethics commission established by article XIV of the Constitution of North Dakota.

10. "Expenditure" means:

a. 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 a political purpose or for the purpose of influencing the passage or defeat of a measure.

b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.

c. The transfer of funds by a political committee to another political committee.

d. An independent expenditure.

~~8.~~11. "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:

a. Advertising;

b. Campaign loan repayment;

c. Operations;

d. Travel; and

e. Miscellaneous.

~~9.~~12. "Identity" means:

a. The name, mailing address, occupation, and employer of an individual; or

b. The full name and address, federal tax status, and state of incorporation or partnership, if any, of a person other than an individual.

13. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure 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, any candidate, committee, or political party.

14. "Original funds" means:

a. Wages, investment income, or bequests an individual receives; or

b. Money a person receives through ordinary commercial transactions.

~~10.~~15. "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.

~~11.~~16. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.

~~12.~~17. "Personal benefit" means a benefit to the candidate or another person which is not for a political purpose or related to a candidate's responsibilities as a public officeholder, and any other benefit that would convert a contribution to personal income.

~~13.~~18. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes:

a. A political action committee not connected to another organization and free to solicit funds from the general public, or derived from a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or an association that solicits or receives contributions from its employees or members or makes expenditures for political purposes on behalf of its employees or members;

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

c. A political organization registered with the federal election commission, which solicits or receives contributions or makes expenditures for political purposes;

d. A multicandidate political committee, including a caucus, established to support multiple groups or slates of candidates seeking public office, which solicits or receives contributions for political purposes; and

e. A measure committee, including an initiative or referendum sponsoring committee at any stage of its organization, which solicits or receives contributions or makes expenditures for the purpose of aiding or opposing a measure sought to be voted upon by the voters of the state, including any activities undertaken for the purpose of drafting an initiative or referendum petition, seeking approval of the secretary of state for the circulation of a petition, or seeking approval of the submitted petitions.

~~14.~~19. "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.

~~15.~~20. "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 public office or any position taken in any bona fide news story, commentary, or editorial.

~~16.~~21. "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

~~17.~~22. "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

~~18.~~23. "Traceable funds" means funds a covered person receives and for which no donor has opted out of the use or transfer for expenditures under subsection 3 of section 16.1-08.1-09.

24. "Tracing record" means a written record identifying the persons that directly or indirectly contributed or transferred original funds used to make expenditures, the amount of each contribution or transfer of original funds, and the expenditure for which the original funds were used.

25. "Ultimate and true source" means ~~the~~a person ~~that knowingly contributed over two hundred dollars solely to influence a statewide election or an election for the legislative assembly~~whose original funds are used by a covered person to make an expenditure.

SECTION 2. Section 16.1-08.1-09 of the North Dakota Century Code is created and enacted as follows:

16.1-08.1-09. Ultimate and true source of funds - Recordkeeping.

1. A covered person shall maintain tracing records that include:
   a. The identity of each ultimate and true source that directly or indirectly contributed more than two hundred dollars in traceable funds;
   b. For each person identified under subdivision a, the amount of the original funds the person contributed or transferred to the covered person and the date of the contribution or transfer;
   c. The identity of all intermediaries that transferred traceable funds between an ultimate and true source and the covered person. If more than one transfer occurred, the covered person shall disclose all transfers and intermediaries;
   d. The date, amount, recipient, and expenditure category of each expenditure paid with traceable funds; and

e. The candidate or ballot measure that is the subject of the expenditure, if known, and whether the expenditure was used to support or oppose a ballot measure or an election or nomination of a candidate for public office.

2. A covered person shall maintain records identifying transfers and intermediaries under subdivision c of subsection 1 for at least five years, and provide the records to the secretary of state upon request.

3. Before a covered person uses funds other than original funds of the covered person for an expenditure, the covered person shall:

a. Notify the person that contributed or transferred the funds to the covered person:

(1) The funds may be used for an expenditure; and

(2) The covered person may be required to disclose the identity of any person whose original funds are used to make an expenditure.

b. Provide the person that contributed or transferred the funds an opportunity to opt out of allowing the funds to be used for expenditures. The covered person may provide the opportunity to opt out before or after receiving the funds. The covered person may not use the funds to make an expenditure until the earlier of:

(1) The receipt of written consent to use the funds for expenditures; or

(2) Twenty-one days after the opportunity to opt out was provided, and the person has not opted out.

4. A person that contributes or transfers more than two hundred dollars in aggregate traceable funds to a covered person in an election cycle shall inform the covered person no later than ten days after receiving a written request from the covered person of the identity of each person or intermediary that directly or indirectly contributed or transferred more than two hundred dollars in original funds being contributed or transferred, and the amount of the contributions or transfers. The person shall maintain the information under this subsection for at least five years and provide the information to the secretary of state upon request.

SECTION 3. Section 16.1-08.1-10 of the North Dakota Century Code is created and enacted as follows:

16.1-08.1-10. Reporting the ultimate and true source of funds - Penalty.

1. Within five days of first disbursing an aggregate amount of more than two hundred dollars in traceable funds for expenditures during an election cycle, a covered person shall file a statement with the secretary of state disclosing:
   a. The name, phone number, and email address of the person that controls the traceable funds and the individual who determines the expenditures for which the traceable funds are used;
   b. The total amount of traceable funds the covered person controls on the date of the statement;
   c. The name, phone number, and email address of the individual who maintains tracing records for the covered person;
   d. The information in the tracing records required under subsection 1 of section 16.1-08.1-09; and
   e. The identity of any person that provided direct or indirect aggregate contributions or transfers of original funds to the covered person in an amount exceeding fifty percent of the traceable funds controlled by the covered person at the beginning of the election cycle.
2. The secretary of state shall make the information filed under this section accessible to the public on a website in a searchable, machine-readable format within forty-eight hours of receiving the statement.
3. A person that structures or attempts to structure a solicitation, contribution, expenditure, disbursement, transfer, or other transaction in a manner designed to evade the reporting requirements in this chapter is guilty of a class A misdemeanor.

SECTION 4. Section 16.1-08.1-11 of the North Dakota Century Code is created and enacted as follows:

16.1-08.1-11. Enforcement of ultimate and true source reporting.

1. The secretary of state may investigate a possible violation of section 16.1-08.1-09 or section 16.1-08.1-10 with or without receiving a complaint.
2. Any person may file a complaint with the secretary of state alleging a person violated section 16.1-08.1-09 or 16.1-08.1-10. The complaint must state the grounds for the allegation.

3. The secretary of state shall take reasonable steps to investigate the grounds for the allegation and provide the subject of the complaint notice and an opportunity to respond.

4. The secretary of state shall provide notice to the complainant if the secretary of state dismisses the complaint. If the secretary of state dismisses the complaint or fails to act on the complaint within one hundred twenty days of receipt of the complaint, the complainant may file an action against the secretary of state in court alleging the action or inaction of the secretary of state was not reasonable. A lawsuit regarding dismissal of the complaint must be filed within sixty days of receiving notice the complaint was dismissed. A court may not give deference to the secretary of state's decisions in the lawsuit. If the secretary of state fails to comply with a court order in a lawsuit under this subsection, and the complainant is required to return to court to enforce the order and prevails, the secretary of state shall pay the reasonable attorney's fees and costs of the complainant.

5. If the secretary of state or a court determines a person violated a requirement of section 16.1-08.1-09 or section 16.1-08.1-10, the secretary of state or court shall impose a fine in an amount between two and three times the monetary value of the amount that was the subject of the violation.

SECTION 5. Section 16.1-08.1-12 of the North Dakota Century Code is created and enacted as follows:

16.1-08.1-12. Resident taxpayer rights - civil actions.

A civil action by a resident taxpayer alleging this chapter or any rules adopted under this chapter fail to vindicate fully the rights provided under section 1 of article XIV of the Constitution of North Dakota must be filed in a district court of this state.

SECTION 6. AMENDMENT. Section 16.1-10-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-10-04.1. Certain political advertisements to disclose name of sponsor - Name disclosure requirements.

1. Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, website, or by any other similar public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the

candidate by reflecting upon the candidate's personal character or political action, or by a measure committee as described in section 16.1-08.1-01, or a corporation making an independent expenditure either for or against a measure, must disclose on the advertisement the name of the person, as defined in section 16.1-08.1-01, or political party paying for the advertisement. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible individual from the political party, association, or partnership. The name of the person paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible individual from the political party, association, or partnership. In every political advertisement in which the name of the person paying for the advertisement is disclosed, the first and last name of any named individual must be disclosed. An advertisement paid for by an individual candidate or group of candidates must disclose that the advertisement was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed. This section does not apply to campaign buttons.

2. A political advertisement required to disclose the name of the person or political party paying for the advertisement under subsection 1 must disclose the names of the three persons that are the ultimate and true sources of the largest aggregate amounts of traceable funds, contributed or transferred, directly or indirectly, during the election cycle to the person or political party paying for the advertisement.

   a. For a political advertisement with a visual component, a clear and conspicuous written statement identifying the names followed by "are the top three donors that helped pay for this ad." must be included.

   b. For a political advertisement with an audio component, a clear and conspicuous oral statement of the names followed by "are the top three donors that helped pay for this ad." must be included.

3. If the aggregate contributions or transfers of traceable funds from one person constitutes more than fifty percent of a covered person's traceable funds at the beginning of an election cycle, the covered person shall include the aggregate contributions and transfers from the person from the prior election cycle when determining which three names must be included in the covered person's political advertisements under subsection 2.

4. For purposes of this section, "ultimate and true source", "traceable funds", and "election cycle" have the meaning provided in section 16.1-08.1-01.

SECTION 7. REPEAL. Section 16.1-08.1-08 of the North Dakota Century Code is repealed.