

HOUSE BILL NO. 1277

Introduced by

Representative Lefor

Senator Hogue

1 A BILL for an Act to create and enact a new section to chapter 54-03 and two new sections to
2 chapter 54-66 of the North Dakota Century Code, relating to immunity from criminal prosecution
3 and an affirmative defense for individuals voting on legislation, closure of a matter and issuance
4 of guidance by the ethics commission, and the discretionary referral of an investigation to an
5 outside attorney or investigator by the ethics commission's executive director; to amend and
6 reenact sections 12.1-13-02 and 54-66-01, subsection 2 of section 54-66-04, and sections
7 54-66-12 and 54-66-18 of the North Dakota Century Code, relating to immunity from criminal
8 prosecution when adhering to legislative rules, definitions related to state government ethics,
9 confidential records related to an alleged violation of an ethics law or rule, and conflicts of
10 interest in the legislative assembly; to repeal sections 54-66-05, 54-66-06, 54-66-07, 54-66-08,
11 54-66-09, and 54-66-10 of the North Dakota Century Code, relating to the complaint process of
12 the ethics commission; and to declare an emergency.

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

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

16 **12.1-13-02. Speculating or wagering on official action or information.**

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

- 1 b. Speculates or wagers on the basis of ~~such~~the information or official action; or
- 2 c. Aids another individual to do any of the foregoing.
- 3 2. ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the
- 4 individual takes official action which is likely to benefit ~~him~~the individual as a result of
- 5 an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a
- 6 speculation or wager, which ~~he~~the individual made, or caused or aided another to
- 7 make, in contemplation of ~~such~~the official action.
- 8 3. An individual is immune from prosecution under this section if:
- 9 a. The individual was a member of the legislative assembly at the time the official
- 10 action was taken;
- 11 b. The official action was a vote on a measure in the senate or house of
- 12 representatives; and
- 13 c. The individual adhered to legislative rules requiring an individual to disclose a
- 14 personal or private interest to the member's respective chamber of the legislative
- 15 assembly, the president of the senate, or the speaker of the house.

16 **SECTION 2.** A new section to chapter 54-03 of the North Dakota Century Code is created

17 and enacted as follows:

18 **Voting on legislation - Immunity - Affirmative defense.**

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

- 20 1. Legislative rules requiring an individual to disclose a personal or private interest to the
- 21 member's respective chamber of the legislative assembly, the president of the senate,
- 22 or the speaker of the house, the individual is immune from criminal prosecution under
- 23 the laws of this state for an offense arising from the individual voting on a measure in
- 24 the senate or house of representatives.
- 25 2. Informal advice from a staff member of the ethics commission, reliance on the advice
- 26 is an affirmative defense in a prosecution for an offense arising from the individual
- 27 voting on a measure in the senate or house of representatives.

28 **SECTION 3. AMENDMENT.** Section 54-66-01 of the North Dakota Century Code is

29 amended and reenacted as follows:

30 **54-66-01. Definitions.**

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

Sixty-ninth
Legislative Assembly

- 1 1. ~~"Accused individual" means a lobbyist, public official, candidate for public office,~~
2 ~~political committee, or contributor who is alleged to have violated article XIV of the~~
3 ~~Constitution of North Dakota, this chapter, or another law or rule regarding~~
4 ~~transparency, corruption, elections, or lobbying.~~
- 5 2. "Complainant" means an individual who, in writing or verbally, submits a complaint to
6 the commission and is:
 - 7 a. A North Dakota resident;
 - 8 b. Subject to licensing by a state agency or other public official subject to the
9 jurisdiction of the ethics commission; or
 - 10 e. A party to a quasi-judicial proceeding before a state agency or other public official
11 subject to the jurisdiction of the ethics commission.
- 12 3. "Complaint" means a verbal or written allegation to the commission that a lobbyist,
13 public official, candidate for public office, political committee, or contributor has
14 violated article XIV of the Constitution of North Dakota, this chapter, or another law or
15 rule regarding transparency, corruption, elections, or lobbying. "Alleged violation"
16 means a formal written allegation issued by a majority vote of the commission alleging
17 a regulated individual engaged in an ethical violation.
- 18 2. "Enforcement action" means an investigation and proceeding before the commission
19 pursuant to section 3 of article XIV of the Constitution of North Dakota regarding an
20 alleged violation by a regulated individual.
- 21 3. "Ethical violation" means a violation of article XIV of the Constitution of North Dakota,
22 chapter 54-66, or another law or rule regarding transparency, corruption, elections, or
23 lobbying by a regulated individual.
- 24 4. "Ethics commission" or "commission" means the North Dakota ethics commission
25 established by article XIV of the Constitution of North Dakota.
- 26 5. "Final commission order" means a written order issued by a majority vote of the
27 commission finding an ethical violation after:
 - 28 a. The time to file a petition for rehearing before the commission has expired;
 - 29 b. The commission has denied a petition for rehearing; or
 - 30 c. The commission has affirmed the finding of an ethical violation after rehearing.

- 1 6. "Gift" means any item, service, or thing of value not given in exchange for fair market
2 consideration including travel and recreation, except:
- 3 a. Purely informational material;
- 4 b. A campaign contribution; and
- 5 c. An item, service, or thing of value given under conditions that do not raise ethical
6 concerns, as set forth in rules adopted by the ethics commission, to advance
7 opportunities for state residents to meet with public officials in educational and
8 social settings in the state.
- 9 ~~6-7.~~ "Influence state government action" means promoting or opposing the adoption of a
10 rule by an administrative agency or the commission under chapter 28-32.
- 11 ~~7-8.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
- 12 ~~8-9.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.
- 13 ~~9-10.~~ "Public official" means an elected or appointed official of the state's executive or
14 legislative branch, members of the commission, members of the governor's cabinet,
15 and employees of the legislative branch.
- 16 ~~10.~~ ~~"Receives the complaint" means one or more members of the commission learn of the~~
17 ~~complaint.~~
- 18 11. "Regulated individual" means a lobbyist, public official, candidate for public office,
19 political committee, or contributor.
- 20 12. "Relevant information" means facts provided to the commission asserting a regulated
21 individual engaged in an ethical violation.
- 22 13. "Respondent" means a regulated individual who is the subject of an alleged violation.
- 23 14. "Ultimate and true source" means the person that knowingly contributed over two
24 hundred dollars solely to lobby or influence state government action.

25 **SECTION 4. AMENDMENT.** Subsection 2 of section 54-66-04 of the North Dakota Century
26 Code is amended and reenacted as follows:

- 27 2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for
28 enforcement ~~under section 54-66-09~~, any portion of a meeting during which
29 commission members discuss complaints, informal resolutions, attempts to informally
30 resolve complaints, investigations, or referrals under this chapter, the identity of an

1 accused individual or complainant, or any other matter arising from a complaint are
2 closed meetings.

3 **SECTION 5.** A new section to chapter 54-66 of the North Dakota Century Code is created
4 and enacted as follows:

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

6 Upon completion of an informal investigation, the executive director shall close the matter or
7 prepare a request to the commission to issue an alleged violation. Upon closure of the matter,
8 the executive director may issue a guidance letter. The executive director may close the matter
9 at any time during the enforcement action.

10 **SECTION 6.** A new section to chapter 54-66 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Investigation - Referral.**

13 With the permission of the commission, the executive director may refer a formal
14 investigation to an outside attorney or investigator in lieu of the executive director completing
15 the investigation.

16 **SECTION 7. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **54-66-12. Confidential information.**

19 1. The following information is a confidential record as defined in section 44-04-17.1,
20 unless the commission has ~~determined the accused individual violated article XIV of~~
21 ~~the Constitution of North Dakota, this chapter, or another law or rule regarding~~
22 ~~transparency, corruption, elections, or lobbying,~~issued a final commission order and a
23 court affirmed the ~~determination~~final commission order, if appealed, except the
24 information may be disclosed as required by law or as necessary to conduct an
25 investigation ~~arising from a complaint~~during an enforcement action:

- 26 a. Relevant information submitted to the commission by an individual;
27 b. Information prepared for the commission to determine whether to issue an
28 alleged violation;
29 c. Information revealing the contents of a ~~complaint~~an alleged violation;
30 ~~b.d.~~ Information that reasonably may be used to identify an accused individual a
31 respondent; and

- 1 e-e. Information relating to or created as part of an investigation of a complainant
2 alleged violation.
- 3 2. ~~If a complaint is informally resolved under section 54-66-07, the following information-~~
4 ~~is a confidential record as defined in section 44-04-17.1:~~
- 5 a. ~~Information revealing the contents of the complaint;~~
6 b. ~~Information that reasonably may be used to identify the accused individual;~~
7 c. ~~Information relating to or created as part of the process leading to the informal-~~
8 ~~resolution; and~~
- 9 d. ~~Information revealing the informal resolution.~~
- 10 3. ~~Information that reasonably may be used to identify the complainant individual who~~
11 ~~provides relevant information to the commission is confidential unless the~~
12 ~~complainant individual waives confidentiality, authorizes its disclosure, or divulges~~
13 ~~information that reasonably would identify the complainant individual. Information,~~
14 ~~including evidence under consideration by the investigator or commission, deemed~~
15 ~~confidential under this subsection may be disclosed as required by law or as~~
16 ~~necessary to conduct an investigation arising from a complaint to include disclosure of~~
17 ~~evidence being considered to an accused individual a respondent.~~
- 18 4.3. ~~The information deemed confidential in subsections 1 and 2~~subsection 1 may be
19 disclosed by the individual who provides relevant information to the commission, the
20 respondent, and the ethics commission if the accused individual respondent agrees to
21 the disclosure.
- 22 4. The commission may disclose the information deemed confidential in subsection 1 to
23 an entity with appropriate enforcement authority.

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

26 **54-66-18. Conflicts of interest - Legislative assembly.**

- 27 1. Each legislative assembly shall adopt conflict of interest rules. The rules must:
- 28 a. Require the disclosure by a member of a potential conflict of interest relating to
29 any bill in which the member may have a direct, unique, substantial, or and
30 individual interest.

1 b. Ensure a mechanism is in place to record each disclosure and make it readily
2 available to the public.

3 2. If the legislative assembly adopts rules under subsection 1 which are at least as
4 restrictive as the conflict of interest rules adopted by the ethics commission, the
5 disclosure process portion of the conflict of interest rules adopted by the ethics
6 commission may not apply to members of the legislative assembly.

7 **SECTION 9. REPEAL.** Sections 54-66-05, 54-66-06, 54-66-07, 54-66-08, 54-66-09, and
8 54-66-10 of the North Dakota Century Code are repealed.

9 **SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.