

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.

- 1 2. ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the
2 individual takes official action which is likely to benefit ~~him~~the individual as a result of
3 an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a
4 speculation or wager, which ~~he~~the individual made, or caused or aided another to
5 make, in contemplation of ~~such~~the official action.
- 6 3. An individual is immune from prosecution under this section if:
- 7 a. The individual was a member of the legislative assembly at the time the official
8 action was taken;
- 9 b. The official action was a vote on a measure in the senate or house of
10 representatives or a legislative committee; and
- 11 c. The individual adhered to section 54-66-18 requiring an individual to disclose a
12 potential conflict of interest to the member's respective chamber of the legislative
13 assembly, legislative committee, the president of the senate, or the speaker of
14 the house.

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

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

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

- 19 1. Section 54-66-18 requiring an individual to disclose a potential conflict of interest to
20 the member's respective chamber of the legislative assembly, a legislative committee,
21 the president of the senate, or the speaker of the house, the individual and an
22 "organization" for which the individual is an "agent", as those terms are defined under
23 section 12.1-03-04, are immune from criminal prosecution under the laws of this state
24 for an offense arising from the individual voting on a measure in a legislative
25 committee, the senate, or the house of representatives.
- 26 2. Informal guidance from the executive director of the ethics commission, reliance on
27 the informal guidance is a defense in a prosecution for an offense arising from the
28 individual voting on a measure in a legislative committee, the senate, or the house of
29 representatives, if:
- 30 a. The individual acts in good faith; and

- 1 b. The material facts surrounding the conduct are substantially the same as the
2 conduct presented in the informal guidance.
- 3 3. Written guidance from the executive director of the ethics commission issued under
4 the rules of the ethics commission, reliance on the written guidance is a defense in a
5 prosecution for an offense arising from the individual voting on a measure in a
6 legislative committee, the senate, or the house of representatives.

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

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

10 Upon completion of an informal investigation, the executive director shall prepare a report
11 and recommendation to the commission to close the matter or issue an alleged violation. The
12 commission may issue an alleged violation, require additional informal investigation, or close
13 the matter. At any time during the enforcement action, the commission may settle and close the
14 matter. A settlement may include the issuance of an advisory opinion pursuant to section
15 54-66-04.2 or informal guidance pursuant to the rules of the commission.

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

18 **54-66-10. Appeals.**

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

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

25 **54-66-12. Confidential information.**

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

- 1 information may be disclosed as required by law or as necessary to conduct an
2 investigation arising from a complaint during an enforcement action:
- 3 a. ~~Information~~ Relevant information submitted to the commission by an individual;
4 b. Information prepared for the commission to determine whether to issue an
5 alleged violation;
6 c. Information revealing the contents of a complaint an alleged violation;
7 b. ~~Information~~
8 d. Information that reasonably may be used to identify an accused individual a
9 respondent; and
10 e. ~~Information~~
11 e. Information relating to or created as part of an investigation of a complaint an
12 alleged violation.
- 13 2. ~~If a complaint is informally resolved under section 54-66-07, the following information-~~
14 ~~is a confidential record as defined in section 44-04-17.1:~~
- 15 a. ~~Information revealing the contents of the complaint;~~
16 b. ~~Information that reasonably may be used to identify the accused individual;~~
17 e. ~~Information relating to or created as part of the process leading to the informal-~~
18 ~~resolution; and~~
19 d. ~~Information revealing the informal resolution.~~
- 20 3. ~~Information that reasonably may be used to identify the complainant an individual who~~
21 ~~provides relevant information to the commission~~ is confidential unless the
22 ~~complainant individual~~ waives confidentiality, authorizes its disclosure, or divulges
23 information that reasonably would identify the ~~complainant individual~~. Information,
24 including evidence under consideration by the investigator or commission, deemed
25 confidential under this subsection may be disclosed as required by law or as
26 necessary to conduct an investigation arising from a complaint to include disclosure of
27 evidence being considered to an ~~accused individual a~~ respondent.
- 28 4.3. ~~The information deemed confidential in subsections 1 and 2 subsection 1~~ may be
29 disclosed by the ~~ethics individual who provides relevant information to the commission,~~
30 the respondent, and the commission if the accused individual respondent agrees to the
31 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.