

House Bill No. 1505

Amendment 25.1244.01004

Section 1

- (12.1-13-02) Speculating or wagering on official action or information.
 - Section 1 of the bill relates to the criminal offense for a public servant speculating or wagering on official action and gaining a benefit.
 - The bill provides criminal immunity to a legislator who discloses his or her conflict of interest before voting on a measure.

Section 2

- (New Section of Law) Voting on legislation - Immunity - Affirmative defense.
 - Section 2 provides broad criminal immunity for any charge that might be brought because a legislator voted on a measure if the legislator:
 - Discloses a conflict of interest;
 - Relies on the informal advice of the Ethics Commission Executive Director;
or
 - Relies on the written guidance of the Ethics Commission.

Section 3

- (New Section of Law) Issuance of alleged violation - Closure of the matter.
 - This section relates to an enforcement action by the Ethics Commission.
 - Once an informal investigation is over, the Executive Director will provide a report to the Ethics Commission. The Ethics Commission will then:
 - Issue an alleged violation*,
 - Require more information, or
 - Close the matter.
 - Closing the matter may be accompanied by the issuance of an advisory opinion or informal guidance.
 - The Ethics Commission may close the matter at any time.

* An alleged violation leads to a formal investigation, hearing, and possibly a commission order that may include sanctions.

Section 4

- (54-66-10) Appeals.
 - Section 8 gives the accused individual more courts in which to appeal a final commission order
 - The section also sets a deadline of 30 days in which to make an appeal.

Section 5

- (54-66-12) Confidential information.
 - This section applies to confidentiality.
 - Before a final commission order has been issued, the information related to the investigation, including the identity of the respondent (accused individual), is confidential.
 - This section provides an exception to the confidentiality provision if the respondent (accused individual) agrees the information may be shared.
 - However, information identifying the individual who provided the information to the Ethics Commission is confidential. The respondent (accused individual) may not decide whether to share this information. Only the individual who provided information to the Ethics Commission may waive confidentiality in regard to disclosure of their identity.

Section 6

- (54-66-18) Conflicts of interest - Legislative assembly.
 - This section removes "direct" and "substantial" from the interests that must be disclosed by a legislator.
 - "Direct" was removed because it might be too broad (for instance: every legislator who owns property is directly receiving a property tax credit)
 - "Substantial" was removed because it might violate the Constitution of North Dakota. (Equal Protection dictates legislators may not be divided into different classes due to the amount of an interest)
 - The section retains the requirement for a legislator to disclose an "individual" and "unique" interest.
 - "Individual" means for a reason other than belonging to a group, including as a member of a profession, occupation, industry, region, or the general public.
 - "Unique" means in a way that is distinct from the public.

Section 7

- Emergency clause.

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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 an affirmative
3 defense for individuals 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; and to declare an emergency.

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

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

10 **12.1-13-02. Speculating or wagering on official action or information.**

- 11 1. ~~A person~~An individual is guilty of a class A misdemeanor if during employment as a
12 public servant, or within one year thereafter, in contemplation of official action by
13 ~~himself~~the individual as a public servant or by a government agency with which ~~he~~the
14 individual is or has been associated as a public servant, or in reliance on information
15 to which ~~he~~the individual has or had access only in ~~his~~the individual's capacity as a
16 public servant, ~~he~~the individual:
- 17 a. Acquires a pecuniary interest in any property, transaction, or enterprise which
18 may be affected by ~~such~~the information or official action;
- 19 b. Speculates or wagers on the basis of ~~such~~the information or official action; or
- 20 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 ~~legislative rules~~section 54-66-18 requiring an individual
12 to disclose a ~~personal or private~~potential conflict of interest to the member's
13 respective chamber of the legislative assembly, legislative committee, the
14 president of the senate, or the speaker of 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 - Affirmative defense.**

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

- 19 1. ~~Legislative rules~~Section 54-66-18 requiring an individual to disclose a ~~personal or~~
20 ~~private~~potential conflict of interest to the member's respective chamber of the
21 legislative assembly, a legislative committee, the president of the senate, or the
22 speaker of the house, the individual is immune from criminal prosecution under the
23 laws of this state for an offense arising from the individual voting on a measure in a
24 legislative committee, the senate, or the house of representatives.
- 25 2. Informal ~~advice~~guidance from a ~~staff member~~the executive director of the ethics
26 commission, reliance on the ~~advice~~informal guidance is an affirmative defense in a
27 prosecution for an offense arising from the individual voting on a measure in a
28 legislative committee, the senate, or the house of representatives, if:
- 29 a. The individual acts in good faith; and
- 30 b. The material facts surrounding the conduct are substantially the same as the
31 conduct presented in the informal guidance.

1 3. Written guidance from the executive director of the ethics commission issued under
2 the rules of the ethics commission, reliance on the written guidance is an affirmative
3 defense in a prosecution for an offense arising from the individual voting on a measure
4 in a legislative committee, the senate, or the house of representatives.

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

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

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

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

17 **54-66-10. Appeals.**

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

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

24 **54-66-12. Confidential information.**

25 1. The following information is ~~are~~ confidential record as defined in ~~records under~~
26 section 44-04-17.1 ~~when in the possession of the commission~~, unless the commission
27 has determined the accused individual violated article XIV of the Constitution of North
28 Dakota, this chapter, or another law or rule regarding transparency, corruption,
29 ~~elections, or lobbying~~, issued ~~ana~~ a final commission order in the relevant matter and a
30 court affirmed the ~~determination~~ final commission order, if appealed, except the
31 information ~~records~~ may be disclosed as required by law, as allowed under this

- 1 ~~chapter,~~ or as necessary to conduct an investigation arising from a complaint during an
2 enforcement action:
- 3 a. ~~Information~~ Recorded facts relating to an allegation of a violation of article XIV of
4 ~~the Constitution of North Dakota, this chapter, or another law or rule regarding~~
5 ~~transparency, corruption, elections, or lobbying which were~~ Relevant information
6 submitted to the commission by an individual;
- 7 b. ~~A record~~ Information prepared for the commission by the commission's staff or
8 ~~agents to help the commission~~ determine whether to issue an alleged violation;
- 9 c. ~~A record~~ Information revealing the contents of a complainant alleged violation;
- 10 b. Information
- 11 d. ~~A record~~ Information that reasonably may be used to identify ~~an accused~~
12 ~~individual~~ a respondent; and
- 13 e. Information
- 14 e. ~~A record~~ Information relating to or created as part of an investigation of a
15 ~~complainant~~ alleged violation.
- 16 2. If a complaint is informally resolved under section 54-66-07, the following information
17 is a confidential record as defined in section 44-04-17.1 ~~when in the possession of the~~
18 commission:
- 19 ~~a. Information~~ A record revealing the contents of the complaint;
- 20 ~~b. Information~~ A record that reasonably may be used to identify the accused
21 individual;
- 22 ~~c. Information~~ A record relating to or created as part of the process leading to the
23 informal resolution; and
- 24 ~~d. Information~~ A record revealing the informal resolution.
- 25 ~~3. Information~~ A record that reasonably may be used to identify the complainant
26 individual who provides relevant information to the commission is confidential unless
27 the ~~complainant~~ individual waives confidentiality, authorizes its disclosure, or divulges
28 information that reasonably would identify the ~~complainant~~ individual. Information A
29 ~~record,~~ including evidence under consideration by the investigator or commission,
30 deemed confidential under this subsection may be disclosed as required by law or as

1 necessary to conduct an investigation arising from a complaint to include disclosure of
2 evidence being considered to an ~~accused individual~~ a respondent.

3 ~~4.3.~~ The information ~~A record~~ deemed confidential in subsections 1 and 2 subsection 1 may
4 be disclosed by the ~~ethics~~ individual who provides relevant information to the
5 commission, the respondent, and the commission if the ~~accused individual~~ respondent
6 agrees to the disclosure.

7 ~~5. Notwithstanding this chapter:~~

8 ~~a. If an individual who is a member of a department, board, agency, commission, or~~
9 ~~other public entity is a subject of a complaint or other commission process or~~
10 ~~proceeding, the individual may disclose to the other members a record or other~~
11 ~~information reasonably necessary for the department, board, agency,~~
12 ~~commission, or other public entity to carry out the entity's duties.~~

13 ~~b. If a department, board, agency, commission, or other public entity is a subject of~~
14 ~~a complaint or other commission process or proceeding, a member of the entity~~
15 ~~may disclose to the other members a record or other information reasonably~~
16 ~~necessary for the department, board, agency, commission, or other public entity~~
17 ~~to carry out the entity's duties.~~

18 ~~6. Notwithstanding any statute or administrative rule, including a rule of the ethics~~
19 ~~commission, an individual may disclose a record or other information to the legal~~
20 ~~counsel for the individual, whether in the individual's personal or official capacity, and~~
21 ~~to legal counsel for any department, board, agency, commission, or other public entity~~
22 ~~to which the individual belongs or in which the individual is employed.~~

23 ~~7. Notwithstanding any statute or administrative rule, during the course of any process or~~
24 ~~proceeding of the commission, an individual may disclose a record or other~~
25 ~~information to a codefendant, individual with common interests, or individual who~~
26 ~~possesses information reasonably necessary for the individual to use in the~~
27 ~~commission's process or proceeding.~~

28 4. The commission may disclose the information deemed confidential in subsection 1 to
29 an entity with appropriate enforcement authority.

30 5. A record created or maintained by a public entity, other than the commission, retains
31 its status as an open, closed, exempt, or confidential record as defined in section

1 44-04-17.1, notwithstanding the disclosure of the record to the ethics commission
2 during an enforcement action or the relevance of the record to an enforcement action.

3 **SECTION 6. AMENDMENT.** Section 54-66-18 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-66-18. Conflicts of interest - Legislative assembly.**

- 6 1. Each legislative assembly shall adopt conflict of interest rules. The rules must:
- 7 a. Require the disclosure by a member of a potential conflict of interest relating to
8 any bill in which the member may have a ~~direct~~, unique, ~~substantial~~, or and
9 individual interest.
- 10 b. Ensure a mechanism is in place to record each disclosure and make it readily
11 available to the public.
- 12 2. If the legislative assembly adopts rules under subsection 1 which are at least as
13 restrictive as the conflict of interest rules adopted by the ethics commission, the
14 disclosure process portion of the conflict of interest rules adopted by the ethics
15 commission may not apply to members of the legislative assembly.

16 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.