

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1360

Introduced by

Representatives Christy, Ista, Lefor, Louser, O'Brien, Pyle

Senators Boschee, Hogue, Roers, Thomas

1 A BILL for an Act to amend and reenact section 54-66-01, subsection 2 of section 54-66-04, and
2 sections 54-66-05, 54-66-08, 54-66-10, and 54-66-12 of the North Dakota Century Code,
3 relating to the enforcement process for the North Dakota ethics commission; and to repeal
4 sections 54-66-06, 54-66-07, and 54-66-09 of the North Dakota Century Code, relating to
5 complaints filed with the North Dakota ethics commission.

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

7 **SECTION 1. AMENDMENT.** Section 54-66-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **54-66-01. Definitions.**

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

- 11 1. ~~"Accused individual" means a lobbyist, public official, candidate for public office,~~
12 ~~political committee, or contributor who is alleged to have violated article XIV of the~~
13 ~~Constitution of North Dakota, this chapter, or another law or rule regarding~~
14 ~~transparency, corruption, elections, or lobbying.~~
- 15 2. ~~"Complainant" means an individual who, in writing or verbally, submits a complaint to~~
16 ~~the commission and is:~~
- 17 a. ~~A North Dakota resident;~~
- 18 b. ~~Subject to licensing by a state agency or other public official subject to the~~
19 ~~jurisdiction of the ethics commission; or~~
- 20 c. ~~A party to a quasi-judicial proceeding before a state agency or other public official~~
21 ~~subject to the jurisdiction of the ethics commission.~~
- 22 3. ~~"Complaint" means a verbal or written allegation to the commission that a lobbyist,~~
23 ~~public official, candidate for public office, political committee, or contributor has~~

~~violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.~~

~~4.~~ "Alleged violation" means a formal written allegation issued by a majority vote of the commission, which alleges a regulated individual may have engaged in an ethical violation.

~~2.~~ "Enforcement action" means an investigation and proceeding before the commission under section 3 of article XIV of the Constitution of North Dakota regarding an alleged violation by a regulated individual.

~~3.~~ "Ethical violation" means a violation of article XIV of the Constitution of North Dakota, chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying by a regulated individual.

~~4.~~ "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.

~~5.~~ "Final commission order" means a written order issued by a majority vote of the commission, which finds an ethical violation and:

a. The time to file a petition for rehearing before the commission has expired;

b. The commission has denied a petition for rehearing; or

c. The commission has affirmed the finding of an ethical violation after rehearing.

~~5.6.~~ "Gift" means any item, service, or thing of value not given in exchange for fair market consideration including travel and recreation, except:

a. Purely informational material;

b. A campaign contribution; and

c. An item, service, or thing of value given under conditions that do not raise ethical concerns, as set forth in rules adopted by the ethics commission, to advance opportunities for state residents to meet with public officials in educational and social settings in the state.

~~6.7.~~ "Influence state government action" means promoting or opposing the adoption of a rule by an administrative agency or the commission under chapter 28-32.

~~7.8.~~ "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.

~~8.9.~~ "Lobbyist" means an individual required to register under section 54-05.1-03.

1 ~~9-10.~~ "Public official" means an elected or appointed official of the state's executive or
2 legislative branch, members of the commission, members of the governor's cabinet,
3 and employees of the legislative branch.

4 ~~10.~~ ~~"Receives the complaint" means one or more members of the commission learn of the~~
5 ~~complaint.~~

6 ~~11.~~ ~~"Regulated individual" means a lobbyist, public official, candidate for public office,~~
7 ~~political committee, or contributor.~~

8 ~~12.~~ ~~"Relevant information" means an assertion provided to the commission that a~~
9 ~~regulated individual engaged in an ethical violation.~~

10 ~~13.~~ ~~"Respondent" means a regulated individual who is the subject of an alleged violation.~~

11 ~~14-14.~~ ~~"Ultimate and true source" means the person that knowingly contributed over two~~
12 ~~hundred dollars solely to lobby or influence state government action.~~

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

15 2. Unless the ~~complaint~~enforcement action at issue has resulted in the ~~imposition of a~~
16 ~~penalty or referral for enforcement under section 54-66-09a~~ final commission order
17 ~~and a court affirmed the final commission order, if appealed,~~ any portion of a meeting
18 during which commission members discuss ~~complaints, informal resolutions, attempts~~
19 ~~to informally resolve complaints, investigations, or referrals under this chapter, the~~
20 ~~identity of an accused individual or complainant, or any other matter arising from a~~
21 ~~complaint are~~ an enforcement action is a closed meetingsmeeting.

22 **SECTION 3. AMENDMENT.** Section 54-66-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **~~54-66-05. Making a complaint – Summary dismissal of complaint~~Rules of procedure.**

25 1. A ~~complaint~~ may be made to the commission orally or in writing. If a complainant does
26 ~~not provide the complainant's name, address, and telephone number with the~~
27 ~~complaint, the ethics commission may not investigate or take other action regarding~~
28 ~~the complaint. The commission shall summarize each oral complaint in writing unless~~
29 ~~the complaint must be disregarded under this section.~~

30 2. Upon receipt of a ~~complaint or information regarding a violation,~~ the commission may
31 ~~summarily dismiss the complaint or decline to proceed with a complaint if the alleged~~

violation does not fall within the commission's jurisdiction, is insufficient to identify a possible violation, or fails to comply with rules adopted by the commission. In lieu of summary dismissal, the commission may refer the matter under section 54-66-08.

3. If a complainant would like the complainant's identity to remain confidential, the commission may not release the complainant's name and address to the accused individual without the authorization of the complainant. If the complainant does not authorize release of the complainant's name and address to the accused individual, the statement of the complainant may not be used as evidence of a violation.
4. If the commission receives an anonymous complaint that contains documentary or real evidence of possible criminal conduct, the commission may refer the matter to the appropriate law enforcement agency as provided under section 54-66-08, and may not otherwise divulge the documentary or real evidence. The commission may adopt rules of pleading, practice, and procedure the commission deems necessary for an enforcement action.

SECTION 4. AMENDMENT. Section 54-66-08 of the North Dakota Century Code is amended and reenacted as follows:

54-66-08. Investigations – Referrals.

1. If an informal resolution is not reached under section 54-66-07, the ethics commission may:
 - a. Dismiss the complaint;
 - b. Require ethics commission staff to investigate the allegations in the complaint; or
 - c. Engage an outside investigator to investigate allegations in the complaint.
2. If the commission believes a complaint contains allegations of criminal conduct, the matter must be coordinated with the appropriate law enforcement agency with jurisdiction over the offense. If the law enforcement agency agrees to accept a referral for possible criminal prosecution, the commission may not take further action on the complaint until the law enforcement agency informs the commission law enforcement proceedings regarding the complaint are complete. If the law enforcement agency declines a referral for prosecution, the commission may investigate the complaint under the rules adopted by the commission. Unless the agency accepting the referral

1 objects, the commission shall inform the complainant and respondent as soon as
2 reasonably possible of a referral and the nature of the referred allegations.

3 3. The commission may require the testimony of a witness or the production of a book,
4 record, document, data, or other object at any of the commission's investigator interviews or
5 proceedings held in connection with ~~the investigation of a complaint~~ an enforcement action.

6 **SECTION 5. AMENDMENT.** Section 54-66-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **54-66-10. Appeals.**

9 ~~An accused individual~~ A respondent may appeal a ~~finding of the ethics~~ final commission
10 order to the district court of the county where the ~~accused individual~~ respondent resides, the
11 district court in Burleigh County, or a district court of the county in which a substantial part of the
12 subject matter of the alleged violation occurred within thirty days after notice of the final
13 commission order.

14 **SECTION 6. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **54-66-12. Confidential information.**

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

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

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

22 **SECTION 7. REPEAL.** Sections 54-66-06, 54-66-07, and 54-66-09 of the North Dakota
23 Century Code are repealed.