

Sixty-ninth  
Legislative Assembly  
of North Dakota

**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.
- 21 2. ~~A person~~An individual is guilty of a class A misdemeanor if as a public servant ~~he~~the  
22 individual takes official action which is likely to benefit ~~him~~the individual as a result of  
23 an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a

speculation or wager, which ~~he~~the individual made, or caused or aided another to make, in contemplation of ~~such~~the official action.

3. An individual is immune from prosecution under this section if:

a. The individual was a member of the legislative assembly at the time the official action was taken;

b. The official action was a vote on a measure in the senate or house of representatives or a legislative committee; and

c. The individual adhered to legislative rules requiring an individual to disclose a personal or private interest to the member's respective chamber of the legislative assembly, legislative committee, the president of the senate, or the speaker of the house.

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

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

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

1. Legislative rules requiring an individual to disclose a personal or private interest to the member's respective chamber of the legislative assembly, a legislative committee, the president of the senate, or the speaker of the house, the individual is immune from criminal prosecution under the laws of this state for an offense arising from the individual voting on a measure in a legislative committee, the senate, or the house of representatives.

2. Informal advice from a staff member of the ethics commission, reliance on the advice is an affirmative defense in a prosecution for an offense arising from the individual voting on a measure in a legislative committee, the senate, or the house of representatives.

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

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

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

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

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

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

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

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

1. The following ~~information is a~~ are confidential record ~~as defined in~~ records under section 44-04-17.1 when in the possession of the commission, unless the commission ~~has determined the accused individual violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying,~~ issued an order in the relevant matter and a court affirmed the ~~determination~~ order if appealed, except the ~~information~~ records may be disclosed as required by law, as allowed under this chapter, or as necessary to conduct an investigation arising ~~from a complaint~~:
- a. ~~Information~~ Recorded facts relating to an allegation of a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying which were submitted to the commission by an individual;
- b. A record prepared for the commission by the commission's staff or agents to help the commission determine whether to issue an alleged violation;
- c. A record revealing the contents of a complaint;
- ~~b. Information~~
- d. A record that reasonably may be used to identify an accused individual; and
- e. ~~Information~~
- e. A record relating to or created as part of an investigation of a complaint.

2. If a complaint is informally resolved under section 54-66-07, the following information-  
is a confidential record as defined in section 44-04-17.1 when in the possession of the  
commission:
  - a. ~~Information~~A record revealing the contents of the complaint;
  - b. ~~Information~~A record that reasonably may be used to identify the accused individual;
  - c. ~~Information~~A record relating to or created as part of the process leading to the informal resolution; and
  - d. ~~Information~~A record revealing the informal resolution.
3. ~~Information~~A record that reasonably may be used to identify the complainant is confidential unless the complainant waives confidentiality, authorizes its disclosure, or divulges information that reasonably would identify the complainant. ~~Information~~A record, including evidence under consideration by the investigator or commission, deemed confidential under this subsection may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint to include disclosure of evidence being considered to an accused individual.
4. ~~The information~~A record deemed confidential in subsections 1 and 2 may be disclosed by the ethics commission if the accused individual agrees to the disclosure.
5. Notwithstanding this chapter:
  - a. If an individual who is a member of a department, board, agency, commission, or other public entity is a subject of a complaint or other commission process or proceeding, the individual may disclose to the other members a record or other information reasonably necessary for the department, board, agency, commission, or other public entity to carry out the entity's duties.
  - b. If a department, board, agency, commission, or other public entity is a subject of a complaint or other commission process or proceeding, a member of the entity may disclose to the other members a record or other information reasonably necessary for the department, board, agency, commission, or other public entity to carry out the entity's duties.
6. Notwithstanding any statute or administrative rule, including a rule of the ethics commission, an individual may disclose a record or other information to the legal

counsel for the individual, whether in the individual's personal or official capacity, and  
to legal counsel for any department, board, agency, commission, or other public entity  
to which the individual belongs or in which the individual is employed.

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

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

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

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

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