

CHAPTER 54-66 STATE GOVERNMENT ETHICS

54-66-01. Definitions.

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

1. "Accused individual" means a lobbyist, public official, candidate for public office, political committee, or contributor who is alleged to have violated article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying.
2. "Complainant" means an individual who, in writing or verbally, submits a complaint to the commission and is:
 - a. A North Dakota resident;
 - b. Subject to licensing by a state agency or other public official subject to the jurisdiction of the ethics commission; or
 - c. A party to a quasi-judicial proceeding before a state agency or other public official subject to the jurisdiction of the ethics commission.
3. "Complaint" means a verbal or written allegation to the commission that a lobbyist, 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. "Ethics commission" or "commission" means the North Dakota ethics commission established by article XIV of the Constitution of North Dakota.
5. "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. "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. "Lobby" means an activity listed in subsection 1 of section 54-05.1-02.
8. "Lobbyist" means an individual required to register under section 54-05.1-03.
9. "Public official" means an elected or appointed official of the state's executive or legislative branch, members of the commission, members of the governor's cabinet, and employees of the legislative branch.
10. "Receives the complaint" means one or more members of the commission learn of the complaint.
11. "Ultimate and true source" means the person that knowingly contributed over two hundred dollars solely to lobby or influence state government action.

54-66-02. Disclosure of ultimate and true source of funds.

1. A lobbyist who expends an amount greater than two hundred dollars to lobby shall file with the secretary of state a report that includes the known ultimate and true source of funds for the expenditure. The report must be filed with the lobbyist expenditure report required under subsection 2 of section 54-05.1-03.
2. A person that expends an amount greater than two hundred dollars, not including the individual's own travel expenses and membership dues, to influence state government action shall file with the secretary of state a report including the known ultimate and true source of funds for the expenditure. A report under this subsection must be filed on or before the August first following the date of the expenditure. The secretary of state shall provide a form for reports under this subsection and make the form electronically accessible to the public. The secretary of state also shall charge and collect fees for late filing of the reports as follows:
 - a. Twenty-five dollars for a report filed within sixty days after the deadline; or

- b. Fifty dollars for a report filed more than sixty days after the deadline.
3. The secretary of state shall compile the reports required under this section and make the reports electronically accessible to the public.
4. A resident taxpayer may commence an action in a district court of this state against a person required to comply with this section to compel compliance if all other enforcement measures under this chapter have been exhausted and the taxpayer reasonably believes the person has failed to comply with this section.
5. The secretary of state shall determine adjustments for inflation of the reporting thresholds in this section and instruct persons submitting reports under this section of the adjustments. On January first of each year, the secretary shall determine whether the accumulated change in the consumer price index for all urban consumers (all items, United States city average), as applied to each reporting threshold in this section, would result in an adjustment of at least ten dollars of the threshold in effect on that date. If so, the secretary of state shall deem the reporting threshold adjusted by ten dollars.

54-66-03. Lobbyist gifts - Penalty.

1. A lobbyist may not give, offer, solicit, initiate, or facilitate a gift knowingly to a public official, and a public official may not accept a gift from a lobbyist knowingly.
2. The prohibition in subsection 1 does not apply when a lobbyist gives, offers, solicits, initiates, or facilitates, or a public official accepts a gift to or from a family member.
3. The commission may assess a civil penalty upon any individual who violates this section.
 - a. If the gift has a value of five hundred dollars or more, the civil penalty may be up to two times the value of the gift.
 - b. If the gift has a value of less than five hundred dollars, the civil penalty may be two times the value of the gift and may be up to one thousand dollars.

54-66-04. Ethics commission member terms - Meetings - Code of ethics - Compensation - Office.

1. The terms of the initial members of the ethics commission must be staggered to ensure no more than two members' terms expire in one year. The terms of the initial members may be less than four years to accommodate the required staggering of terms.
2. Unless the complaint at issue has resulted in the imposition of a penalty or referral for enforcement under section 54-66-09, any portion of a meeting during which commission members discuss complaints, informal resolutions, attempts to informally resolve complaints, investigations, or referrals under this chapter, the identity of an accused individual or complainant, or any other matter arising from a complaint are closed meetings.
3. The commission shall abide by a code of ethics adopted in a public meeting. The code of ethics must specify when a commission member is disqualified from participating in matters before the commission.
4. Ethics commission members are entitled to:
 - a. Compensation for each day necessarily spent conducting commission business in the amount provided for members of the legislative management under section 54-35-10; and
 - b. Payment for mileage and travel expenses necessarily incurred in the conduct of commission business as provided under sections 44-08-04 and 54-06-09.
5. The director of the office of management and budget shall allocate office space in the state capitol for the ethics commission, or, if office space in the capitol is unavailable, shall negotiate for, contract for, and obtain office space for the ethics commission in the city of Bismarck or in the Bismarck area. The ethics commission's office space may not be located in the office space of any other government agency, board, commission, or other governmental entity, and must provide sufficient privacy and security for the ethics commission to conduct its business. The director shall charge the ethics

commission an amount equal to the fair value of the office space and related services the office of management and budget renders to the ethics commission.

54-66-04.1. Commission delegation of duties.

The commission may delegate duties to the commission's executive director as necessary to assure the efficient administration of the commission's responsibilities. Delegation of duties to the executive director must be made through rules adopted by the commission at a public meeting. The commission may reconsider, modify, or reverse actions taken by the executive director pursuant to a delegated duty.

54-66-04.2. Advisory opinions - Authority - Effect.

1. In response to a request from a public official, candidate for elected office, or lobbyist, the ethics commission may provide a written advisory opinion regarding the application of the following to specified hypothetical facts or prospective conduct:
 - a. Article XIV of the Constitution of North Dakota; or
 - b. State statutes and ethics commission rules related to transparency, corruption, elections, and lobbying.
2. Within fourteen days after receiving a request for a written advisory opinion, the ethics commission shall notify the requester whether the commission will provide an opinion.
3. Within ninety days after notifying a requester a written advisory opinion will be provided, the ethics commission shall issue the opinion.
4. Criminal and civil penalties may not be imposed upon an individual for an action taken in accordance with an opinion issued under this section if:
 - a. The individual acts in good faith; and
 - b. The material facts surrounding the action taken are substantially the same as the conduct presented in the opinion.
5. Opinions and requests for opinions under this section are open records, except names of persons in the opinions and requests are exempt records.
6. The ethics commission shall publish all written advisory opinions issued under this section on a website that is accessible to the public.

54-66-05. Making a complaint - Summary dismissal of complaint.

1. A complaint may be made to the commission orally or in writing. If a complainant does not provide the complainant's name, address, and telephone number with the complaint, the ethics commission may not investigate or take other action regarding the complaint. The commission shall summarize each oral complaint in writing unless the complaint must be disregarded under this section.
2. Upon receipt of a complaint or information regarding a violation, the commission may 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.

54-66-06. Informing the accused individual - Written response permitted.

1. Within thirty calendar days, the commission shall inform an accused individual of the complaint. Subject to the confidentiality requirements set forth in section 54-66-05, the

accused individual will be provided with the written complaint or written summary of the oral complaint, witness statements, and other documentary evidence included with the complaint. The accused individual may provide a written response to the complaint within thirty calendar days, or after the commission requests a written response to the complaint or summary of the complaint, a period as set by the commission. This subsection does not preclude the accused individual from providing a written response to the complaint before receiving a request for written response from the commission.

2. If the commission has summarily dismissed the complaint under subsection 2 of section 54-66-05, before notifying the accused individual as required by this section, the notification to the accused individual must include notice of the summary dismissal.

54-66-07. Informal resolution.

The commission shall attempt to negotiate or mediate an informal resolution between the accused individual and the complainant unless the commission summarily dismissed the complaint under section 54-66-05. The accused individual may be accompanied by legal counsel in a negotiation or mediation.

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 objects, the commission shall inform the complainant and respondent as soon as reasonably possible of a referral and the nature of the referred allegations.
3. The commission may require the testimony of a witness or the production of a book, record, document, data, or other object at any of the commission's investigator interviews or proceedings held in connection with the investigation of a complaint.

54-66-09. Investigation findings - Ethics commission determinations.

1. An investigator, other than a law enforcement agency, of a complaint shall provide written findings of the investigation to the ethics commission within a reasonable amount of time. The ethics commission shall provide copies of the written findings and evidence considered to the accused individual, who may respond to the commission in person or in writing within a reasonable time. If the accused individual responds in person, no fewer than three members of the commission shall meet in a closed meeting with the accused individual. An accused individual may be accompanied by legal counsel when responding to the commission in person.
2. After providing a reasonable time for an accused individual to respond to the investigation findings and considering any response to the findings, the ethics commission shall determine whether a violation of article XIV of the Constitution of North Dakota, this chapter, or another law or rule regarding transparency, corruption, elections, or lobbying occurred, and inform the accused individual of the determination. If the commission determined a violation occurred, the commission may impose a penalty authorized by law for the violation or refer the matter to the agency with enforcement authority over the violation.

3. The commission may not terminate the employment of a public official or otherwise remove a public official from the public official's public office.
4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling, recommended finding of fact, recommended conclusion of law, finding of fact, conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the hearing officer failed to grant a request for disqualification under section 28-32-27 or failed to comply with subsection 5 of section 2 of article XIV of the Constitution of North Dakota.

54-66-10. Appeals.

An accused individual may appeal a finding of the ethics commission to the district court of the county where the accused individual resides.

54-66-11. Rulemaking.

When adopting rules, the ethics commission shall follow the provisions in chapter 28-32 which are specifically applicable to the commission.

54-66-12. Confidential information.

1. The following information is a confidential record as defined in section 44-04-17.1, 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, and a court affirmed the determination if appealed, except the information may be disclosed as required by law or as necessary to conduct an investigation arising from a complaint:
 - a. Information revealing the contents of a complaint;
 - b. Information that reasonably may be used to identify an accused individual; and
 - c. Information 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:
 - a. Information revealing the contents of the complaint;
 - b. Information that reasonably may be used to identify the accused individual;
 - c. Information relating to or created as part of the process leading to the informal resolution; and
 - d. Information revealing the informal resolution.
3. Information 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, 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 deemed confidential in subsections 1 and 2 may be disclosed by the ethics commission if the accused individual agrees to the disclosure.

54-66-13. Restriction on lobbying by public officials - Penalty.

A knowing violation of subsection 2 of section 2 of article XIV of the Constitution of North Dakota is a class A misdemeanor. The ethics commission shall assess a civil penalty of up to one thousand dollars on any individual who knowingly violates the subsection.

54-66-14. Attorney general to provide legal services.

The attorney general shall serve as legal counsel for the commission unless the commission objects to representation by the attorney general in a specific matter. When a conflict of interest prevents the attorney general from providing legal services to the commission, the attorney general may appoint a special assistant attorney general to serve as legal counsel for the commission.

54-66-15. Prohibition on delivering campaign contributions - Penalty.

A lobbyist may not deliver knowingly a campaign contribution made by another person in violation of subsection 3 of section 2 of article XIV of the Constitution of North Dakota. For a first violation, the commission may assess a civil penalty of five hundred dollars upon any individual who knowingly violates this section. For a second and subsequent knowing violation of this section, the person is guilty of a class B misdemeanor, and, if the lobbyist is a registered lobbyist and the secretary of state is notified of the violation by the commission, a state's attorney, or a court, the secretary of state shall revoke the lobbyist's registration. For purposes of this section, "deliver" means to transport, transfer, or otherwise transmit, either physically or electronically. This prohibition does not apply to an individual who delivers a campaign contribution to the individual's own campaign or to the campaign of the individual's immediate family member. This prohibition may not be interpreted to prohibit any person from making a campaign contribution, encouraging others to make a campaign contribution, or otherwise supporting or opposing a candidate.

54-66-16. Removal of ethics commission members.

1. An ethics commission member may be removed from office for:
 - a. Substantial neglect of duty;
 - b. Gross misconduct in office;
 - c. Violation of the commission's code of ethics; or
 - d. Willful or habitual neglect or refusal to perform the duties of the member.
2. Removal of an ethics commission member under subsection 1 requires agreement by a majority of:
 - a. The governor;
 - b. The majority leader of the senate; and
 - c. The minority leader of the senate.

54-66-17. Participation in quasi-judicial proceedings.

For purposes of subsection 5 of section 2 of article XIV of the Constitution of North Dakota, an individual is not disqualified from participating in any capacity in a quasi-judicial proceeding, including an adjudicative proceeding under chapter 28-32, due to an investment in a mutual fund, an ownership interest in one of the parties to the proceeding which is shared by the general public, and an investment or ownership interest in a retirement account of one of the parties to the proceeding.

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 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.