

February 3, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2343

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new sections to chapter 16.1-08.1 of the North Dakota Century Code, relating to campaign disclosure statements; to amend and reenact section 16.1-08.1-01, subsections 6 and 7 of section 16.1-08.1-02.1, sections 16.1-08.1-03.1 and 16.1-08.1-03.3, subsection 3 of section 16.1-08.1-05, and subsection 5 of section 16.1-12-02.2 of the North Dakota Century Code, relating to definitions, campaign disclosure statements, and use of campaign contributions; to repeal sections 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, 16.1-08.1-03.8, 16.1-08.1-03.9, 16.1-08.1-03.10, 16.1-08.1-03.12, 16.1-08.1-03.13, and 16.1-08.1-04 of the North Dakota Century Code, relating to campaign disclosure statements; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions.

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

1. "Affiliate" means an organization that controls, is controlled by, or is under common control with another organization. For purposes of this definition, control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if an organization, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing fifty percent or more of the voting securities of any other organization.
2. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
3. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
 - a. An individual holding public office;

- b. An individual who has publicly declared that individual's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
 - c. An individual who has formed a campaign or other committee for that individual's candidacy for public office;
 - d. An individual who has circulated a nominating petition to have that individual's name placed on the ballot; and
 - e. An individual who has, in any manner, solicited or received a contribution for that individual's candidacy for public office, whether before or after the election for that office.
4. "Conduit" means a person that is not a political party, political committee, or candidate and which receives a contribution of money and transfers the contribution to a candidate, political party, or political committee when the contribution is designated specifically for the candidate, political party, or political committee and the person has no discretion as to the recipient and the amount transferred. The term includes a transactional intermediary, including a credit card company or a money transfer service that pays or transfers money to a candidate on behalf of another person.
5. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source including a conduit. The term "anything of value" includes any good or service of more than a nominal value. The term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:
- ~~a. A loan of money from a bank or other lending institution made in the regular course of business.~~
 - ~~b. Time spent by volunteer campaign or political party workers.~~
 - ~~c. Money spent by a candidate on the candidate's own behalf.~~
 - ~~d. b. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.~~
 - ~~e. c. Money or anything of value received by a candidate in that person's personal capacity, including pursuant to a contract or agreement made for personal or private employment purposes, and not received for anything other than a political purpose or to influence the performance of that person's official duty.~~

- ~~f.d.~~ ~~Contributions of products~~ Products or services for which the actual cost or fair market value are reimbursed by a payment of money.
- ~~g.e.~~ An independent expenditure.
6. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations. However, if a political committee, the only purpose of which is accepting contributions and making expenditures for a political purpose, incorporates for liability purposes only, the committee is not considered a corporation for the purposes of this chapter.
7. "Expenditure" means:
- a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for a political purpose or for the purpose of influencing the passage or defeat of a measure.
 - b. A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure.
 - c. The transfer of funds by a political committee to another political committee.
 - d. An independent expenditure.
8. ~~"Incidental committee" means a committee, club, association, or other group of persons that makes a contribution or expenditure, but for which making contributions and expenditures for political purposes is not its primary purpose.~~ "Expenditure categories" means the categories into which expenditures must be grouped for reports under this chapter. The expenditure categories are:
- a. Advertising;
 - b. Campaign loan repayment;
 - c. Consulting;
 - d. Operations;
 - e. Postage;
 - f. Printing;
 - g. Travel; and
 - h. Miscellaneous.
9. "Independent expenditure" means an expenditure made for a political purpose or for the purpose of influencing the passage or defeat of a measure if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate ~~or a candidate,~~ committee, ~~or measure-~~ committee political party.

10. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
11. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
12. "Personal benefit" means a benefit to the candidate or another person which is not for a political purpose or related to a candidate's responsibilities as a public officeholder, and any other benefit that would convert a contribution to personal income.
13. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes the following:
 - a. A political action committee, derived from a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or an association that is prohibited from making a contribution for political purposes under section 16.1-08.1-03.5, and which that solicits or receives contributions from its employees or members or makes expenditures for political purposes on behalf of its employees or members;
 - b. A candidate committee, established to support an individual candidate seeking statewide, judicial, or legislative public office which solicits or receives contributions for political purposes;
 - c. A political organization governed by the Internal Revenue Code and registered with the federal election commission, which solicits or receives contributions or makes expenditures for political purposes;
 - d. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that which solicits or receives contributions for political purposes; and
 - e. A measure committee, including an initiative or referendum sponsoring committee at any stage of its organization, which solicits or receives contributions or makes expenditures for the purpose of aiding or opposing a measure sought to be voted upon by the voters of the state, including any activities undertaken for the purpose of drafting an initiative or referendum petition, seeking approval of the secretary of state for the circulation of a petition, or seeking approval of the submitted petitions; and
 - f. An incidental committee.
- 13-14. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
- 14-15. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office and

includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of a duty of a state public office or any position taken in any bona fide news story, commentary, or editorial.

~~15-16.~~ "Public office" means every office to which an individual can be elected by vote of the people under the laws of this state.

~~16-17.~~ "Subsidiary" means an affiliate of a corporation under the control of the corporation directly or indirectly through one or more intermediaries.

SECTION 2. AMENDMENT. Subsection 6 of section 16.1-08.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

6. If a net gain from the convention is transferred to the accounts established for the support of the nomination or election of candidates, the total transferred must be reported as a contribution in the statements required by section ~~16.1-08.1-034~~ of this Act.

SECTION 3. AMENDMENT. Subsection 7 of section 16.1-08.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

7. If a net loss from the convention is covered by a transfer from the accounts established for the support of the nomination or election of candidates, the total transferred must be reported as an expenditure in the statements required by section ~~16.1-08.1-034~~ of this Act.

SECTION 4. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Pre-election, supplemental, and year-end campaign disclosure statement requirements for candidates, political committees, and political parties.

1. Prior to the thirty-first day before a primary, general, or special election, a candidate or candidate committee formed on behalf of the candidate, a political committee, or political party shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through the fortieth day before the election. The statement may be submitted for filing beginning on the thirty-ninth day before the election. The statement must include:
 - a. For each aggregated contribution from a contributor which totals in excess of two hundred dollars received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and

- (3) The date the last contributed amount was received;
 - b. The total of all aggregated contributions from contributors which total in excess of two hundred dollars during the reporting period;
 - c. The total of all contributions received from contributors that contributed two hundred dollars or less each during the reporting period;
 - d. The balance of the campaign fund on the fortieth day before the election;
 - e. The balance of the campaign fund on January first; and
 - f. The total of all expenditures made during the reporting period.
 - 2. Beginning on the thirty-ninth day before the election through the day before the election, a person that files a report under subsection 1 must file a supplemental statement within forty-eight hours of the start of the day following the receipt of a contribution or aggregate contribution from a contributor which is in excess of five hundred dollars. The statement must include:
 - a. The name and mailing address of the contributor;
 - b. The total amount of the contribution received during the reporting period; and
 - c. The date the last contributed amount was received.
 - 3. Prior to February first, a candidate or candidate committee formed on behalf of the candidate who sought nomination or election to public office during the previous year or who holds public office, a political committee, or political party shall file a campaign disclosure statement that includes all contributions received and expenditures made from January first through December thirty-first of the previous year. The statement may be submitted for filing beginning on January first. The statement must include:
 - a. The balance of the campaign fund on January first;
 - b. For each aggregated contribution from a contributor which totals in excess of two hundred dollars received during the reporting period:
 - (1) The name and mailing address of the contributor;
 - (2) The total amount of the contribution; and
 - (3) The date the last contributed amount was received;
 - c. The total of all aggregated contributions from contributors which total in excess of two hundred dollars during the reporting period;
 - d. The total of all contributions received from contributors that contributed two hundred dollars or less each during the reporting period;
 - e. For each recipient of an expenditure from campaign funds in excess of two hundred dollars in the aggregate which is a candidate, political committee, or political party:

- (1) The name and mailing address of the recipient;
 - (2) The total amount of the expenditure; and
 - (3) The date the last expenditure was made to the recipient;
 - f. The aggregate total of all expenditures from campaign funds of two hundred dollars or less to recipients that are candidates, political committees, or political parties;
 - g. The total of all other expenditures made during the previous year, separated into expenditure categories; and
 - h. The balance of the campaign fund on December thirty-first.
4. A person required to file a report under subsection 1 or subsection 3, other than a candidate for judicial office or a candidate committee for a candidate for judicial office, shall report each aggregated contribution from a contributor which totals five thousand dollars or more during the reporting period. For these contributions, the report must include:
 - a. The contributor's occupation, employer, and the employer's principal place of business; or
 - b. If the contributor was a political committee or political party, the name and mailing address of the contributor.
 5. The filing officer shall assess and collect fees for any reports filed after the filing deadline. A person that filed a late report shall pay the late fee before any subsequent filing from the person may be accepted.

SECTION 5. AMENDMENT. Section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.1. ~~Contributions statement~~Special requirements for ~~statements~~ required of measure committees circulating or promoting passage or defeat of initiated or referred measure.

1. ~~Any person or measure committee, as described in section 16.1-08.1-01, that is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly at any election shall file a statement in accordance with this subsection if the person has received any contribution in excess of one hundred dollars. The statement must include the name and mailing address of each person that contributed in excess of one hundred dollars to the person, the amount of each reportable contribution, and the date each reportable contribution was received. The statement must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made.~~
2. ~~A person or measure committee as described in section 16.1-08.1-01 which is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly may not accept a contribution of more than one~~

~~hundred dollars from an out-of-state person or political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person that contributed more than one hundred dollars of the contribution. The statement must indicate if no person contributed in excess of one hundred dollars of the out-of-state person's or political committee's overall contribution. The certified statement must also list the occupation, employer, and principal place of business for each individual who contributed more than one hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or referred measure shall include this statement with the contribution statement required to be filed under subsection 1.~~

- ~~3. The statement required of a person or measure committee under subsection 1 must be filed with the secretary of state no later than the thirty-second day before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the fortieth day before the date of the election. A complete statement for the entire calendar year for each statement required to be filed under this section must be filed no later than the thirty-first day of January of the following year. Even if a person required to report according to this section has not received any contributions in excess of one hundred dollars during the reporting period, the person shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:
 - ~~a. The gross total of all contributions received and expenditures made in excess of one hundred dollars;~~
 - ~~b. The gross total of all contributions received and expenditures made of one hundred dollars, or less; and~~
 - ~~c. The cash on hand in the filer's account at the start and close of the reporting period~~~~

For each reportable contribution under section 4 of this Act, the threshold for reporting is one hundred dollars for any person or measure committee circulating or promoting passage or defeat of an initiated or referred measure.

2. For contributions received from an out-of-state contributor, a person or measure committee circulating or promoting passage or defeat of an initiated or referred measure shall include the following information regarding subcontributors in the statements required under section 4 of this Act:
 - a. A designation as to whether any person contributed in excess of one hundred dollars of the total contribution;
 - b. The name and mailing address of each subcontributor that contributed in excess of one hundred dollars of the total contribution;
 - c. The contribution amounts of each disclosed subcontributor; and

- d. The occupation, employer, and address for the employer's principal place of business of each disclosed subcontributor.
3. An initiative and referendum sponsoring committee also shall file a disclosure statement by the date the secretary of state approves the petition for circulation, and shall file an additional statement on the date the petitions containing the required number of signatures are submitted to the secretary of state for review. The statements required under this subsection must be in the same form as the year-end statements under section 4 of this Act.
4. A sponsoring committee shall file a statement regarding its intent to compensate circulators before paying for petitions to be circulated.

SECTION 6. AMENDMENT. Section 16.1-08.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.3. Campaign contributions by corporations, cooperative corporations, limited liability companies, and associations - Violation - Penalty - Political action committees authorized.

1. A corporation, cooperative corporation, limited liability company, or association may establish, administer, and solicit contributions to a separate and segregated fund to be utilized for political purposes by the corporation, cooperative corporation, limited liability company, or association. It is unlawful for:
 - a. The person or persons controlling the fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilize money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilize money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund.
 - b. Any person soliciting an employee, stockholder, patron, board member, or member for a contribution to the fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation or of the general political philosophy intended to be advanced through committee activities.
 - c. Any person soliciting an employee or member for a contribution to the fund to fail to inform the employee or member at the time of the solicitation of the right to refuse to contribute without any reprisal.
 - d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed and of amounts expended for political purposes.
 - e. Any contribution to be accepted from any person ~~who~~ is not an employee, a stockholder, a patron, a board member or a member of the corporation, cooperative corporation, limited liability company, or association maintaining the political action committee, except a corporation may accept a contribution from an employee, a

stockholder, a patron, a board member, or a member of an affiliate or a subsidiary of the corporation.

- f. Any expenditure made for political purposes to be reported under this section before control of the expenditure has been released by the political action committee except if there is a contract, a promise, or an agreement, expressed or implied, to make such expenditure.
2. ~~All political action committees, as described in section 16.1-08.1-01, formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of two hundred dollars in the aggregate made for political purposes with the secretary of state. The statement must include the amount of each reportable contribution and the date it was received and the amount of each reportable expenditure and the date it was made. A year-end statement covering the entire calendar year must be filed no later than the thirty-first day of January of the following year. A pre-election statement must be filed no later than the thirty-second day before any primary, special, or general election and must be complete from the beginning of the calendar year through the fortieth day before the election. Even if a political action committee has not received any contributions or made any expenditures in excess of two hundred dollars during the reporting period, the political action committee shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:~~
 - a. ~~The gross total of all contributions received and expenditures made in excess of two hundred dollars;~~
 - b. ~~The gross total of all contributions received and expenditures made of two hundred dollars, or less; and~~
 - c. ~~The cash on hand in the filer's account at the start and close of the reporting period.~~
 3. ~~A political action committee shall report the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, who contributed five thousand dollars or more in the aggregate during the reporting period.~~
 4. A person may not make a payment of that person's money or of another person's money to any other person for a political purpose in any name other than that of the person ~~who~~that supplies the money and a person may not knowingly receive the payment nor enter nor cause the payment to be entered in that person's account or record in any name other than that of the person by ~~whom~~which it actually was furnished.
- 5-3. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, limited liability company, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, limited liability company, or association funds or otherwise violates this section, it is prima facie evidence of a

violation by the corporation, cooperative corporation, limited liability company, or association.

- 6-4. A violation of this section may be prosecuted in the county where the contribution is made or in any county in which it has been paid or distributed.
- 7-5. It is a class A misdemeanor for an officer, director, stockholder, manager, governor, member, attorney, agent, or representative of any corporation, cooperative corporation, limited liability company, or association to violate this section or to counsel or consent to any violation. Any person ~~who~~that solicits or knowingly receives any contribution in violation of this section is guilty of a class A misdemeanor.
- 8-6. Any officer, director, stockholder, manager, governor, member, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section is liable to the company, corporation, limited liability company, or association for the amount so contributed.

SECTION 7. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Personal use of contributions prohibited.

A candidate may not use any contribution received by the candidate, the candidate's candidate committee, or a multicandidate political committee to:

1. Give a personal benefit to the candidate or another person;
2. Make a loan to another person;
3. Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
4. Pay a criminal fine or civil penalty.

SECTION 8. AMENDMENT. Subsection 3 of section 16.1-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. An audit may not be made or requested of a statement for the sole reason that it was not timely filed with the secretary of state. An audit made or arranged according to this section must audit only those items required to be included in any statement, registration, or report filed with the secretary of state according to this chapter. The secretary of state may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer. Any remaining moneys collected by the secretary of state after an audit is paid for under this section must be deposited in the state's general fund. This section does not apply to statements filed ~~according to sections 16.1-08.1-03.10- and under section 16.1-08.1-03.11~~ or to statements filed by candidates for county office or by candidate committees for candidates for county office.

SECTION 9. AMENDMENT. Subsection 5 of section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

5. An individual who intends to be a write-in candidate for any legislative district office shall file a certificate of write-in candidacy with the secretary of state. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election. When the candidate files a certificate, the candidate also shall file the contribution statement provided for under section ~~16.1-08.1-024~~ of this Act complete through the day of the filing of the certificate.

SECTION 10. REPEAL. Sections 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, 16.1-08.1-03.8, 16.1-08.1-03.9, 16.1-08.1-03.10, 16.1-08.1-03.12, 16.1-08.1-03.13, and 16.1-08.1-04 of the North Dakota Century Code are repealed."

Renumber accordingly