

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1043

Introduced by

Judiciary Committee

(At the request of the Ethics Commission)

1 A BILL for an Act to create and enact two new sections to chapter 54-66 of the North Dakota
2 Century Code, relating to the ethics commission delegation of duties and advisory opinions; to
3 amend and reenact subsection 2 of section 54-66-01 and sections 54-66-05, 54-66-06,
4 54-66-07, 54-66-08, 54-66-09, and 54-66-12 of the North Dakota Century Code, relating to
5 ethics commission complaint procedures.

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

7 **SECTION 1. AMENDMENT.** Subsection 2 of section 54-66-01 of the North Dakota Century
8 Code is amended and reenacted as follows:

9 2. "Complainant" means ~~an individual~~ a North Dakota resident who, in writing or verbally,
10 submits a complaint to the commission.

11 **SECTION 2. AMENDMENT.** Section 54-66-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **54-66-05. Making a complaint - Summary dismissal of complaint.**

14 1. A complaint may be made to the commission orally or in writing. If a complainant does
15 not provide the complainant's name, address, and telephone number with the
16 complaint, the ethics commission may not investigate, ~~refer,~~ or take other action
17 regarding the complaint. ~~A meeting under this section at which the commission~~
18 ~~discusses whether there is a reasonable belief a violation has occurred must be held~~
19 ~~in an executive session.~~ The commission shall summarize each oral complaint in
20 writing unless the complaint must be disregarded under this section.

21 2. Upon receipt of a complaint or information regarding a violation, the commission may
22 summarily dismiss the complaint or decline to proceed with a complaint if the alleged
23 violation does not fall within the commission's jurisdiction, is insufficient to identify a

1 possible violation, or fails to comply with rules adopted by the commission. In lieu of
2 summary dismissal, the commission may refer the matter under section 54-66-08.

3 3. If a complainant would like the complainant's identity to remain confidential, the
4 commission may not release the complainant's name and address to the accused
5 individual without the authorization of the complainant. If the complainant does not
6 authorize release of the complainant's name and address to the accused individual,
7 the statement of the complainant may not be used as evidence of a violation.

8 4. If the commission receives an anonymous complaint that contains documentary or real
9 evidence of possible criminal conduct, the commission may refer the matter to the
10 appropriate law enforcement agency as provided under section 54-66-08, and may not
11 otherwise divulge the documentary or real evidence.

12 **SECTION 3. AMENDMENT.** Section 54-66-06 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **54-66-06. Informing the accused individual - Written response permitted.**

15 The commission shall inform an accused individual ~~by registered mail of the identity of the~~
16 ~~complainant who made the allegation against the accused individual~~complaint and include the
17 written complaint or written summary of the oral complaint, witness statements, and other
18 documentary evidence considered as soon as reasonably possible but no later than twenty
19 calendar days after the commission receives the complaint. The accused individual may
20 respond to the complaint in writing within twenty calendar days of receipt of the complaint or
21 summary of the complaint.

22 **SECTION 4. AMENDMENT.** Section 54-66-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **54-66-07. Informal resolution.**

25 The commission shall attempt to negotiate or mediate an informal resolution between the
26 accused individual and the complainant unless the commission ~~disregards~~summarily dismissed
27 ~~the complaint pursuant to~~under section 54-66-05 ~~or for any other reason.~~ The accused
28 individual may be accompanied by legal counsel in a negotiation or mediation.

29 **SECTION 5. AMENDMENT.** Section 54-66-08 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **54-66-08. Investigations - Referrals.**

2 1. If an informal resolution is not reached under section 54-66-07, the ethics commission
3 may:

4 a. ~~Disregard~~Dismiss the complaint;

5 b. Require ethics commission staff to investigate the allegations in the complaint; or

6 c. Engage an outside investigator to investigate allegations in the complaint.

7 2. If the commission believes a complaint contains allegations of criminal conduct, the

8 ~~ethics commission shall refer the allegations of criminal conduct to the bureau of~~

9 ~~criminal investigations or other law enforcement agency and may not take further~~

10 ~~action on the referred allegations. The commission shall inform the accused individual~~

11 ~~by registered mail of a referral under this section and the nature of the referred~~

12 ~~allegations as soon as reasonably possible~~matter must be coordinated with the

13 appropriate law enforcement agency with jurisdiction over the offense. If the law

14 enforcement agency agrees to accept a referral for possible criminal prosecution, the

15 commission may not take further action on the complaint until the law enforcement

16 agency informs the commission law enforcement proceedings regarding the complaint

17 are complete. If the law enforcement agency declines a referral for prosecution, the

18 commission may investigate the complaint under the rules adopted by the

19 commission. Unless the agency accepting the referral objects, the commission shall

20 inform the complainant and respondent as soon as reasonably possible of a referral

21 and the nature of the referred allegations.

22 3. The commission may require the testimony of a witness or the production of a book,

23 record, document, data, or other object at any of the commission's investigator

24 interviews or proceedings held in connection with the investigation of a complaint.

25 **SECTION 6. AMENDMENT.** Section 54-66-09 of the North Dakota Century Code is

26 amended and reenacted as follows:

27 **54-66-09. Investigation findings - Ethics commission determinations.**

28 1. An investigator, other than a law enforcement agency, of a complaint shall provide

29 written findings of the investigation to the ethics commission within a reasonable

30 amount of time. The ethics commission shall provide copies of the written findings and

31 evidence considered to the accused individual, who may respond to the commission in

- 1 person or in writing within a reasonable time. If the accused individual responds in
2 person, no fewer than three members of the commission shall meet in a closed
3 meeting with the accused individual. An accused individual may be accompanied by
4 legal counsel when responding to the commission in person.
- 5 2. After providing a reasonable time for an accused individual to respond to the
6 investigation findings and considering any response to the findings, the ethics
7 commission shall determine whether a violation of article XIV of the Constitution of
8 North Dakota, this chapter, or another law or rule regarding transparency, corruption,
9 elections, or lobbying occurred, and inform the accused individual of the
10 determination. If the commission determined a violation occurred, the commission may
11 impose a penalty authorized by law for the violation or refer the matter to the agency
12 with enforcement authority over the violation.
- 13 3. The commission may not terminate the employment of a public official or otherwise
14 remove a public official from the public official's public office.
- 15 4. The ethics commission may not reconsider, invalidate, or overturn a decision, ruling,
16 recommended finding of fact, recommended conclusion of law, finding of fact,
17 conclusion of law, or order by a hearing officer under chapter 28-32 on the grounds the
18 hearing officer failed to grant a request for disqualification under section 28-32-27 or
19 failed to comply with subsection 5 of section 2 of article XIV of the Constitution of
20 North Dakota.

21 **SECTION 7. AMENDMENT.** Section 54-66-12 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **54-66-12. Confidential information.**

- 24 1. The following information is a confidential record as defined in section 44-04-17.1,
25 unless the commission has determined the accused individual violated article XIV of
26 the Constitution of North Dakota, this chapter, or another law or rule regarding
27 transparency, corruption, elections, or lobbying, and a court affirmed the determination
28 if appealed, except the information may be disclosed as required by law or as
29 necessary to conduct an investigation arising from a complaint:
- 30 a. Information revealing the contents of a complaint;
- 31 b. Information that reasonably may be used to identify an accused individual; and

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

20 **SECTION 8.** A new section to chapter 54-66 of the North Dakota Century Code is created
21 and enacted as follows:

22 **Commission delegation of duties.**

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

28 **SECTION 9.** A new section to chapter 54-66 of the North Dakota Century Code is created
29 and enacted as follows:

1 **Advisory opinions - Authority - Effect.**

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