

Introduced by

Representatives Gruchalla, Boschee, Glassheim, Guggisberg, Hanson, Hunskor, J. Kelsh, S. Kelsh

Senators Axness, Dotzenrod, O'Connell, Sinner

1 A BILL for an Act to amend and reenact sections 16.1-08.1-01, 16.1-08.1-03.3, 16.1-08.1-03.5,  
2 16.1-08.1-03.12, and 16.1-08.1-05 of the North Dakota Century Code, relating to campaign  
3 contributions and expenditures; and to provide a penalty.

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

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

7 **16.1-08.1-01. Definitions.**

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

- 9 1. "Association" means any club, association, union, brotherhood, fraternity, organization,  
10 or group of any kind of two or more persons, including labor unions, trade  
11 associations, professional associations, or governmental associations, which is united  
12 for any purpose, business, or object and which assesses any dues, membership fees,  
13 or license fees in any amount, or which maintains a treasury fund in any amount. The  
14 term does not include corporations, cooperative corporations, limited liability  
15 companies, political committees, or political parties.
- 16 2. "Candidate" means an individual who seeks nomination for election or election to  
17 public office, and includes:
- 18 a. A person holding public office;
- 19 b. A person who has publicly declared that person's candidacy for nomination for  
20 election or election to public office or has filed or accepted a nomination for public  
21 office;
- 22 c. A person who has formed a campaign or other committee for that person's  
23 candidacy for public office;

- 1           d. A person who has circulated a nominating petition to have that person's name  
2           placed on the ballot; and
- 3           e. A person who has, in any manner, solicited or received a contribution for that  
4           person's candidacy for public office, whether before or after the election for that  
5           office.
- 6           3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription,  
7           loan, advance, deposit of money, or anything of value, made for the purpose of  
8           influencing the nomination for election, or election, of any person to public office or  
9           aiding or opposing the circulation or passage of a statewide initiative or referendum  
10          petition or measure. The term also means a contract, promise, or agreement, express  
11          or implied, whether or not legally enforceable, to make a contribution for any of the  
12          above purposes. The term includes funds received by a candidate for public office or a  
13          political party or committee which are transferred or signed over to that candidate,  
14          party, or committee from another candidate, party, or political committee or other  
15          source. The term "anything of value" includes any good or service of more than a  
16          nominal value. The term "nominal value" means the cost, price, or worth of the good or  
17          service is trivial, token, or of no appreciable value. The term "contribution" does not  
18          include:
- 19          a. A loan of money from a bank or other lending institution made in the regular  
20          course of business.
- 21          b. Time spent by volunteer campaign or political party workers.
- 22          c. Money spent by a candidate on the candidate's own behalf.
- 23          d. Money or anything of value received for commercial transactions, including rents,  
24          advertising, or sponsorships made as a part of a fair market value bargained-for  
25          exchange.
- 26          e. Money or anything of value received by a candidate in that person's personal  
27          capacity, including pursuant to a contract or agreement made for personal or  
28          private employment purposes, and not received for a political purpose or to  
29          influence the performance of that person's official duty.
- 30          f. Contributions of products or services for which the actual cost or fair market  
31          value are reimbursed by a payment of money.

- 1           g. An independent expenditure.
- 2           4. "Cooperative corporations", "corporations", and "limited liability companies" are as  
3           defined in this code, and for purposes of this chapter "corporations" includes nonprofit  
4           corporations.
- 5           5. "Direct expenditure" means an expenditure made by a corporation, cooperative  
6           corporation, limited liability company, or association for the specific purpose of  
7           promoting passage or defeat of an initiated or referred measure without the express or  
8           implied consent, authorization, or cooperation of, and not in concert with or at the  
9           request or suggestion of a measure committee.
- 10          6. "Expenditure" means a:
- 11           a. A gift, transfer, conveyance, provision, loan, advance, payment, distribution,  
12           disbursement, outlay, or deposit of money or anything of value, except a loan of  
13           money from a bank or other lending institution made in the regular course of  
14           business, made for a political purpose or for the direct purpose of influencing the  
15           passage or defeat of a measure or the nomination for election, or election, of any  
16           individual to office. The term also means a
- 17           b. A contract, promise, or agreement, express or implied, whether or not legally  
18           enforceable, to make any expenditure and includes the.
- 19           c. The transfer of funds by a political committee to another political committee.
- 20           d. An independent expenditure.
- 21          7. "Independent expenditure" means an expenditure made for a political purpose or for  
22           the direct purpose of influencing the passage or defeat of a measure if the expenditure  
23           is made without the express or implied consent, authorization, or cooperation of, and  
24           not in concert with or at the request or suggestion of, any candidate or a candidate  
25           committee.
- 26          8. "Patron" means a person who owns equity interest in the form of stock, shares, or  
27           membership or maintains similar financial rights in a cooperative corporation.
- 28          8-9. "Person" means an individual, partnership, political committee, association,  
29           corporation, cooperative corporation, limited liability company, or other organization or  
30           group of persons.

- 1     ~~9-10.~~ "Political committee" means any committee, club, association, or other group of  
2           persons which receives contributions or makes expenditures for political purposes and  
3           includes the following:
- 4           a.    A political action committee, derived from a corporation, cooperative corporation,  
5                limited liability company, or an association that is prohibited from making direct  
6                contributions for political purposes under section 16.1-08.1-03.3, and which  
7                solicits or receives contributions or makes expenditures for political purposes;
- 8           b.    A candidate committee, established to support an individual candidate seeking  
9                statewide office, that solicits or receives contributions for political purposes;
- 10          c.    An organization governed by section 501 of the Internal Revenue Code  
11                [26 U.S.C. 501] or section 527 of the Internal Revenue Code [26 U.S.C. 527],  
12                which solicits or receives contributions or makes expenditures for political  
13                purposes;
- 14          d.    A multicandidate political committee, established to support multiple groups or  
15                slates of candidates seeking public office, that solicits or receives contributions  
16                for political purposes; and
- 17          e.    A measure committee that solicits or receives contributions for the purpose of  
18                aiding or opposing a measure to be voted upon by the voters of the state.
- 19     ~~10-11.~~ "Political party" means any association, committee, or organization which nominates a  
20           candidate for election to any office which may be filled by a vote of the electors of this  
21           state or any of its political subdivisions and whose name appears on the election ballot  
22           as the candidate of such association, committee, or organization.
- 23     ~~11-12.~~ a.    "Political purpose" means any:
- 24                (1) Any activity undertaken in support of or in opposition to the election or  
25                nomination of a candidate to public office and includes using "vote for",  
26                "oppose", or any similar support or opposition language in any  
27                advertisement whether the activity is undertaken by a candidate, a political  
28                committee, a political party, or any person. ~~In the period thirty days before a~~  
29                ~~primary election and sixty days before a special or general election,~~  
30                ~~"political purpose" also means any~~

1           (2) Any activity undertaken during the period thirty days before a primary  
2           election and sixty days before a special or general election in which a  
3           candidate's name, office, district, or any term meaning the same as  
4           "incumbent" or "challenger" is used in support of or in opposition to the  
5           election or nomination of a candidate to public office, including any activity  
6           that is the functional equivalent of support of or opposition to a candidate  
7           because when taken as a whole, the activity can be interpreted by a  
8           reasonable individual only as advocating the election or defeat of a  
9           candidate, taking into account whether the activity mentions a candidate or  
10          a political party, or takes a position on a candidate's character,  
11          qualifications, or fitness for office. The term

12          b. "Political purpose" does not include activities undertaken in the performance of a  
13          duty of a state office or any position taken in any bona fide news story,  
14          commentary, or editorial.

15   42.13. "Public office" means every office to which ~~persons~~ an individual can be elected by  
16          vote of the people under the laws of this state.

17          **SECTION 2. AMENDMENT.** Section 16.1-08.1-03.3 of the North Dakota Century Code is  
18          amended and reenacted as follows:

19          **16.1-08.1-03.3. Campaign contributions by corporations, cooperative corporations,**  
20          **limited liability companies, and associations prohibited -- Violation -- Penalty - Political**  
21          **action committees authorized - Contribution and expenditure statements.**

- 22          1. A corporation, cooperative corporation, limited liability company, or association may  
23          ~~not make a direct contribution:~~
- 24          a. ~~To aid any political party, political committee, or organization except that a direct~~  
25          ~~contribution may be made to a measure committee as provided in section-~~  
26          ~~16.1-08.1-03.5.~~
  - 27          b. ~~To aid any corporation, limited liability company, or association organized or~~  
28          ~~maintained for political purposes as defined in this chapter.~~
  - 29          c. ~~To aid any candidate for public office or for nomination to public office.~~
  - 30          d. ~~For any political purpose or the reimbursement or indemnification of any person-~~  
31          ~~for money or property so used.~~

1 e. ~~For the influencing of any measure before the legislative assembly, except in~~  
2 ~~accordance with chapter 54-05.1.~~

3 2. ~~This section does not prohibit the establishment, administration, and solicitation of~~  
4 ~~contributions to establish and administer~~ a separate and segregated fund to be utilized  
5 for political purposes by ~~a~~the corporation, cooperative corporation, limited liability  
6 company, or association. It is unlawful for:

7 a. ~~The~~Any person ~~or persons~~ controlling the fund to make contributions or  
8 expenditures utilizing money or anything of value secured by physical force, job  
9 discrimination, financial reprisals, or the threat of them; ~~or utilize money from~~  
10 ~~dues, fees, treasury funds, or other money required as a condition of~~  
11 ~~membership in an association, or as a condition of employment; or utilize money~~  
12 ~~obtained in any commercial transaction. Moneys from fees, dues, treasury funds,~~  
13 ~~or money obtained in a commercial transaction may, however, be used to pay~~  
14 ~~costs of administration of the fund.~~

15 b. Any person soliciting an employee, stockholder, patron, or member for a  
16 contribution to the fund to fail to inform the employee or member of the political  
17 purposes of the fund at the time of the solicitation or of the general political  
18 philosophy intended to be advanced through committee activities.

19 c. Any person soliciting an employee or member for a contribution to the fund to fail  
20 to inform the employee or member at the time of the solicitation of the right to  
21 refuse to contribute without any reprisal.

22 d. Any contribution to be accepted without keeping an accurate record of the  
23 contributor and amount contributed and of amounts expended for political  
24 purposes.

25 e. Any contribution to be accepted from any person ~~who~~that is not an employee,  
26 stockholder, patron, or member of the corporation, cooperative corporation,  
27 limited liability company, or association maintaining the political action committee.

28 f. Any expenditure made for political purposes to be reported under this section  
29 before control of the expenditure has been released by the political action  
30 committee except if there is a contract, promise, or agreement, expressed or  
31 implied, to make ~~such~~the expenditure.

- 1     ~~3-2.~~    A political action committeescommittee, as described in section 16.1-08.1-01,  
2           formed for the purpose of administering the segregated fund provided for in this  
3           section shall file a statement showing the name and mailing address of each  
4           contributor of an amount in excess of two hundred dollars in the aggregate for the  
5           reporting period and a listing of all expenditures of an amount in excess of two  
6           hundred dollars in the aggregate made for political purposes with the secretary of  
7           state. The statement must include the amount of each reportable contribution and the  
8           date it was received and the amount of each reportable expenditure and the date it  
9           was made. A year-end statement covering the entire calendar year must be filed no  
10          later than the thirty-first day of January of the following year. A preelection statement  
11          must be filed no later than the twelfth day before any primary, special, or general  
12          election and must be complete from the beginning of the calendar year through the  
13          twentieth day before the election. Even if a political action committee has not received  
14          any contributions or made any expenditures in excess of two hundred dollars during  
15          the reporting period, the political action committee shall file a statement as required by  
16          this chapter. A statement filed according to this ~~section~~subsection during the reporting  
17          period must show the following:
- 18          a.    The gross total of all contributions received and expenditures made in excess of  
19               two hundred dollars;
  - 20          b.    The gross total of all contributions received and expenditures made of two  
21               hundred dollars, or less; and
  - 22          c.    The cash on hand in the filer's account at the start and close of the reporting  
23               period.
- 24     4.3.    A political action committee shall report the occupation, employer, and principal place  
25           of business of each ~~person, or the political committee if not already registered~~  
26           ~~according to state or federal law,~~individual who contributed five thousand dollars or  
27           more in the aggregate during the reporting period, the name and principal business  
28           address of any corporation, cooperative corporation, limited liability company, or  
29           association that makes any contribution to the political committee during the reporting  
30           period, and the name and address of any other political committee if not already

1           registered according to state or federal law which contributed five thousand dollars or  
2           more in the aggregate during the reporting period.

3       5.4. A person may not make a payment of that person's money or of another person's  
4       money to any other person for a political purpose in any name other than that of the  
5       person ~~who~~that supplies the money and a person may not knowingly receive the  
6       payment nor enter nor cause the payment to be entered in that person's account or  
7       record in any name other than that of the person by ~~whom~~which it actually was  
8       furnished.

9       6. ~~If an officer, employee, agent, attorney, or other representative of a corporation,~~  
10       ~~cooperative corporation, limited liability company, or association makes any~~  
11       ~~contribution prohibited by this section out of corporate, cooperative corporation, limited-~~  
12       ~~liability company, or association funds or otherwise violates this section, it is prima-~~  
13       ~~facie evidence of a violation by the corporation, cooperative corporation, limited liability-~~  
14       ~~company, or association.~~

15       7. ~~A violation of this section may be prosecuted in the county where the contribution is~~  
16       ~~made or in any county in which it has been paid or distributed.~~

17       8. ~~It is a class A misdemeanor for an officer, director, stockholder, manager, governor,~~  
18       ~~member, attorney, agent, or representative of any corporation, cooperative~~  
19       ~~corporation, limited liability company, or association to violate this section or to counsel~~  
20       ~~or consent to any violation. Any person who solicits or knowingly receives any~~  
21       ~~contribution in violation of this section is guilty of a class A misdemeanor.~~

22       9. ~~Any officer, director, stockholder, manager, governor, member, attorney, agent, or~~  
23       ~~representative who makes, counsels, or consents to the making of a contribution in~~  
24       ~~violation of this section is liable to the company, corporation, limited liability company,~~  
25       ~~or association for the amount so contributed.~~

26       5. A corporation, cooperative corporation, limited liability company, or association that  
27       makes an independent expenditure or a contribution that is not made through a  
28       separate and segregated fund as provided under subsection 1 shall file a statement  
29       with the secretary of state within forty-eight hours after making the contribution or  
30       expenditure. The statement must include:



- 1           a. The full name of the corporation, cooperative corporation, limited liability  
2           company, or association;
- 3           b. The complete address of the corporation, cooperative corporation, limited liability  
4           company, or association;
- 5           c. The name and telephone number of the individual completing the report;
- 6           d. The name of the recipient of the contribution or expenditure;
- 7           e. The amount of the contribution or expenditure;
- 8           f. The total amount of all contributions and expenditures made for political purposes  
9           since the beginning of the calendar year;
- 10          g. The printed name and signature of the individual completing the report, attesting  
11          to the report being true, complete, and correct; and
- 12          h. The date on which the report was signed.
- 13          6. A corporation, cooperative corporation, limited liability company, or association that  
14          makes an independent expenditure for an advertisement or other communication shall  
15          append to or include in each advertisement or communication a disclaimer that clearly  
16          and forthrightly:
  - 17           a. Identifies the corporation, cooperative corporation, limited liability company, or  
18           association making the independent expenditure for that advertisement or  
19           communication;
  - 20           b. States the principal business address of the corporation, cooperative corporation,  
21           limited liability company, or association; and
  - 22           c. States that the advertisement or communication is independently funded and not  
23           made in consultation with any candidate, party, or political committee.
- 24          7. It is a class A misdemeanor for an officer or director of any corporation, cooperative  
25          corporation, limited liability company, or association to violate this section or to counsel  
26          or consent to any violation, including the filing of a false report or the willful failure to  
27          file a report required by this section.

28           **SECTION 3. AMENDMENT.** Section 16.1-08.1-03.5 of the North Dakota Century Code is  
29           amended and reenacted as follows:

1           **16.1-08.1-03.5. Allowable corporate contributions and expenditures**Donation to state  
2 **political party for building - Report required.**

- 3           ~~1. Corporations, cooperative corporations, limited liability companies, and associations~~  
4           ~~may make contributions to a measure committee, as described in section~~  
5           ~~16.1-08.1-01, for the purpose of promoting passage or defeat of initiated or referred~~  
6           ~~measures. Corporations, cooperative corporations, limited liability companies, and~~  
7           ~~associations may make expenditures and contributions for promoting any general~~  
8           ~~political philosophy or belief deemed in the best interest of the employees,~~  
9           ~~stockholders, patrons, or members of the corporation, cooperative corporation, limited~~  
10           ~~liability company, or association other than a "political purpose" as defined by this~~  
11           ~~chapter.~~
- 12           2. A corporation, cooperative corporation, limited liability company, or association may  
13           make a donation of property or money to a state political party or nonprofit entity  
14           affiliated with or under the control of a state political party for deposit in a separate and  
15           segregated fund. Money in the fund must be used exclusively by the state political  
16           party or nonprofit entity affiliated with or under the control of a state political party for  
17           purchasing, maintaining, or renovating a building and for the purchase of fixtures for  
18           the building. A state political party or nonprofit entity affiliated with or under the control  
19           of a state political party receiving a donation under this ~~subsection~~section shall file a  
20           statement with the secretary of state no later than the thirty-first day of January of  
21           each calendar year. The statement must include the name and mailing address of  
22           each donor, the amount of each donation, the date each donation was received, all  
23           expenditures made from the fund during the previous calendar year, and cash on hand  
24           in the fund at the start and close of the reporting period. Any income and financial gain  
25           generated from a building purchased, maintained, or renovated from donations  
26           authorized under this ~~subsection~~section and not otherwise authorized by law must be  
27           deposited in the building fund and must be reported when the political party or  
28           nonprofit entity files the statement required under this ~~subsection~~section.
- 29           ~~3. A corporation, cooperative corporation, limited liability company, or association may~~  
30           ~~make a direct expenditure for the purpose of promoting passage or defeat of initiated~~  
31           ~~or referred measures. A direct expenditure statement must be filed with the secretary~~

1 of state within forty-eight hours after making the expenditure. The statement must  
2 include:

- 3 a. The full name of the corporation, cooperative corporation, limited liability-  
4 company, or association;
- 5 b. The complete address of the corporation, cooperative corporation, limited liability-  
6 company, or association;
- 7 c. The name and telephone number of the person completing the report;
- 8 d. The title of the measure and whether the expenditure is made in support of or  
9 opposition to the measure;
- 10 e. The election date on which the measure either will appear or did appear on the  
11 ballot;
- 12 f. The amount of the expenditure;
- 13 g. The cumulative total amount of expenditures since the beginning of the calendar  
14 year in support of or opposition to the measure;
- 15 h. The printed name and signature of the person completing the report, attesting to  
16 the report being true, complete, and correct; and
- 17 i. The date on which the report was signed.

18 **SECTION 4. AMENDMENT.** Section 16.1-08.1-03.12 of the North Dakota Century Code  
19 is amended and reenacted as follows:

20 **16.1-08.1-03.12. Contribution statements of political organizations.**

- 21 1. An organization governed by section 501 of the Internal Revenue Code [26 U.S.C.  
22 501] or section 527 of the Internal Revenue Code [26 U.S.C. 527], which solicits or  
23 receives contributions or makes expenditures for political purposes, shall file a  
24 statement showing the name and mailing address of each contributor of an amount in  
25 excess of two hundred dollars in the aggregate for the reporting period and a listing of  
26 all expenditures of an amount in excess of two hundred dollars in the aggregate made  
27 for political purposes with the secretary of state. The statement must include the  
28 amount of each reportable contribution and the date the contribution was received.  
29 The statement must also include the amount of each reportable expenditure and the  
30 date the expenditure was made.

- 1        2.    A preelection statement must be filed no later than the twelfth day before a primary,  
2            special, or general election and must be complete from the beginning of the calendar  
3            year through the twentieth day before the election.
- 4        3.    A year-end statement covering the entire calendar year must be filed no later than the  
5            thirty-first day of January of the following year.
- 6        4.    Even if such an organization has not received any contributions or made any  
7            expenditure in excess of two hundred dollars during the reporting period, the  
8            organization shall file a statement as required by this chapter.
- 9        5.    A statement filed according to this section during the reporting period must show the  
10          following:
  - 11            a.    The gross total of all contributions received and expenditures made in excess of  
12                two hundred dollars;
  - 13            b.    The gross total of all contributions received and expenditures made of two  
14                hundred dollars or less; and
  - 15            c.    The cash on hand in the filer's account at the start and close of the reporting  
16                period.
- 17        6.    The organization shall report the occupation, employer, and principal place of business  
18            of each person, or the political committee if not already registered according to state or  
19            federal law, that contributed five thousand dollars or more in the aggregate during the  
20            reporting period.

21        **SECTION 5. AMENDMENT.** Section 16.1-08.1-05 of the North Dakota Century Code is  
22        amended and reenacted as follows:

23        **16.1-08.1-05. Audit by secretary of state - Requested audits - Reports.**

- 24        1.    If a substantial irregularity is evident or reasonably alleged, the secretary of state may  
25            arrange an audit of any statement filed pursuant to this chapter, to be performed by a  
26            certified public accountant of the filer's choice, subject to approval by the secretary of  
27            state. If an audit of a statement arranged by the secretary of state under this  
28            subsection reveals a violation of this chapter, the candidate, political party, or political  
29            committee, or other person filing the statement shall pay a fine to the secretary of  
30            state equal to five percent of the aggregate of contributions and expenditures found to  
31            be in violation or an amount sufficient to pay the cost of the audit, whichever is greater.

1           If an audit of a statement arranged by the secretary of state under this subsection  
2           does not reveal a violation of this chapter, the cost of the audit must be paid for by the  
3           secretary of state.

4           2. If a substantial irregularity is reasonably alleged, the secretary of state may arrange an  
5           audit of any statement filed pursuant to this chapter, performed by a certified public  
6           accountant of the filer's choice, subject to approval by the secretary of state, upon  
7           written request by any interested party made to the secretary of state within thirty days  
8           following receipt of a statement by the secretary of state. The request must be made in  
9           writing, recite a substantial irregularity and a lawful reason for requesting an audit, and  
10          be accompanied by a bond in an amount established by the secretary of state  
11          sufficient to pay the cost of the audit. If an audit of a statement arranged by the  
12          secretary of state under this subsection reveals a violation of this chapter, the  
13          candidate, political party, ~~or political committee,~~ or other person filing the statement  
14          shall pay a fine to the secretary of state equal to five percent of the aggregate of  
15          contributions and expenditures found to be in violation or an amount sufficient to pay  
16          the cost of the audit, whichever is greater, and the bond shall be returned to the  
17          person submitting it. If an audit of a statement arranged by the secretary of state under  
18          this subsection does not reveal a violation of this chapter, the cost of the audit must be  
19          satisfied from the bond filed with the secretary of state.

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