

Article 4.

Ethical Standards for Covered Persons.

**§ 138A-31. Use of public position for private gain.**

(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial benefit to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised.

(b) A covered person shall not mention or authorize another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition in this subsection shall not apply to any of the following:

- (1) Political advertising.
- (2) News stories and articles.
- (3) The inclusion of a covered person's public position in a directory or a biographical listing.
- (4) The inclusion of a covered person's public position in an agenda or other document related to a meeting, conference, or similar event when the disclosure could reasonably be considered material by an individual attending the meeting, conference, or similar event.
- (5) The inclusion of a covered person's public position in a charitable solicitation for a nonprofit business entity qualifying under 26 U.S.C. § 501(c)(3).
- (6) The disclosure of a covered person's position to an existing or prospective customer, supplier, or client when the disclosure could reasonably be considered material by the customer, supplier, or client.
- (7) A letter of character reference for any of the following:
  - a. A student seeking admittance to a school or institution of higher education.
  - b. An individual seeking an academic scholarship.
  - c. An individual seeking leniency upon sentencing by the courts, or other matters related to probation or parole.
  - d. An individual seeking employment, at the request of that individual or in response to the inquiry of a potential employer as to the qualifications and character of that individual.

(c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, television, magazines, or billboards, that contains that covered person's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to the covered person's official function. This subsection shall not apply to fund-raising on behalf of and aired on public radio or public television. (2006-201, s. 1; 2009-549, s. 16; 2011-393, s. 1; 2015-208, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**§ 138A-32. Gifts.**

(a) A covered person or a legislative employee shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person or legislative employee, or for another person, in return for being influenced in the discharge of the covered person's or legislative employee's official responsibilities, other than that which is received by the covered person or the legislative employee from the State for acting in the covered person's or legislative employee's official capacity.

(b) A covered person may not solicit for a charitable purpose any thing of monetary value from any subordinate State employee. This subsection shall not apply to generic written solicitations to all members of a class of subordinates. Nothing in this subsection shall prohibit a covered person from serving as the honorary head of the State Employees Combined Campaign.

(c) No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No legislator or legislative employee shall knowingly accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:

- (1) The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.
- (2) The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for an ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303.

(d) No public servant shall knowingly accept a gift from a person whom the public servant knows or has reason to know any of the following:

- (1) Is doing or is seeking to do business of any kind with the public servant's employing entity.
- (2) Is engaged in activities that are regulated or controlled by the public servant's employing entity.
- (3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant's official duties.

(e) No public servant shall accept a gift knowing all of the following:

- (1) The gift was obtained indirectly from a person described under subdivision (d)(1), (2), or (3) of this section.
- (2) The person described under subdivision (d)(1), (2), or (3) of this section intended for an ultimate recipient of the gift to be a public servant.

(f) Subsections (c), (d), and (e) of this section shall not apply to any of the following:

- (1) Food and beverages for immediate consumption in connection with any of the following:
  - a. An open meeting of a public body, provided that the open meeting is properly noticed under Article 33C of Chapter 143 of the General Statutes.
  - b. A gathering of a person or governmental unit with at least 10 or more individuals in attendance open to the general public, provided that a sign or other communication containing a message that is reasonably

designed to convey to the general public that the gathering is open to the general public is displayed at the gathering.

c. A gathering of a person or governmental unit to which the entire board of which a public servant is a member, at least 10 public servants, all the members of the House of Representatives, all the members of the Senate, all the members of a county or municipal legislative delegation, all the members of a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, all the members of a committee, a standing subcommittee, a joint committee or joint commission of the House of Representatives, the Senate, or the General Assembly, or all legislative employees are invited, and one of the following applies:

1. At least 10 individuals associated with the person or governmental unit actually attend, other than the covered person or legislative employee, or the immediate family of the covered person or legislative employee.
2. All shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit located in North Carolina are notified and invited to attend.

For purposes of this sub-subdivision only, the term "invited" shall mean written notice from at least one host or sponsor of the gathering containing the date, time, and location of the gathering given at least 24 hours in advance of the gathering to the specific qualifying group listed in this sub-subdivision. If it is known at the time of the written notice that at least one sponsor is a lobbyist or lobbyist principal, the written notice shall also state whether or not the gathering is permitted under this section.

- (2) Informational materials relevant to the duties of the covered person or legislative employee.
- (3) Reasonable actual expenditures of the legislator, public servant, or legislative employee for food, beverages, registration, travel, lodging, other incidental items of nominal value, and entertainment, in connection with (i) a legislator's, public servant's, or legislative employee's attendance at an educational meeting for purposes primarily related to the public duties and responsibilities of the legislator, public servant, or legislative employee; (ii) a legislator's, public servant's, or legislative employee's participation as a speaker or member of a panel at a meeting; (iii) a legislator's or legislative employee's attendance and participation in meetings of a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or that the legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or as a member of a board, agency, or committee of such organization; or (iv) a public servant's attendance and participation in meetings as a member of a board, agency, or committee of a nonpartisan state, regional, national, or international organization of which the public servant's agency is a member or the public

servant is a member by virtue of that public servant's public position, provided the following conditions are met:

- a. The reasonable actual expenditures shall be made by a lobbyist principal, and not a lobbyist.
  - b. Any meeting must be attended by at least 10 or more participants, have a formal agenda, and notice of the meeting has been given at least 10 days in advance.
  - c. Any food, beverages, transportation, or entertainment must be provided to all attendees or defined groups of 10 or more attendees as part of the meeting or in conjunction with the meeting.
  - d. Any entertainment must be incidental to the principal agenda of the meeting.
  - e. If the legislator, public servant, or legislative employee is participating as a speaker or member of a panel, then that legislator, public servant, or legislative employee must be a bona fide speaker or participant.
- (4) A plaque or similar nonmonetary memento recognizing individual services in a field or specialty or to a charitable cause.
  - (5) Gifts accepted on behalf of the State for use by the State or for the benefit of the State.
  - (6) Anything generally made available or distributed to the general public or all other State employees by lobbyists or lobbyist principals, or persons described in subdivisions (d)(1), (2), or (3) of this section.
  - (7) Gifts from the covered person's or legislative employee's extended family, or a member of the same household of the covered person or legislative employee.
  - (8) Gifts given to a public servant not otherwise subject to an exception under this subsection, where the gift is food and beverages, transportation, lodging, entertainment or related expenses associated with the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the public servant is responsible for conducting the business on behalf of the State, provided all the following conditions apply:
    - a. The public servant did not solicit the gift, and the public servant did not accept the gift in exchange for the performance of the public servant's official duties.
    - b. The public servant reports electronically to the Commission within 30 days of receipt of the gift or of the date set for disclosure of public records under G.S. 132-6(d), if applicable. The report shall include a description and value of the gift and a description how the gift contributed to the public business of industry recruitment, promotion of international trade, or the promotion of travel and tourism. This report shall be posted to the Commission's public Web site.
    - c. A tangible gift, other than food or beverages, not otherwise subject to an exception under this subsection shall be turned over as State property to the Department of Commerce within 30 days of receipt, except as permitted under subsection (g) of this section.
  - (9) Gifts of personal property valued at less than one hundred dollars (\$100.00) given to a public servant in the commission of the public servant's official duties

if the gift is given to the public servant as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

- (10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:
  - a. The relationship is not related to the public servant's, legislator's, or legislative employee's public service or position.
  - b. The gift is made under circumstances that a reasonable person would conclude that the gift was not given to lobby.
- (11) Food and beverages for immediate consumption and related transportation provided all of the following conditions are met:
  - a. The food, beverage, or transportation is given by a lobbyist principal and not a lobbyist.
  - b. The food, beverage, or transportation is provided during a conference, meeting, or similar event and is available to all attendees of the same class as the recipient.
  - c. The recipient of the food, beverage, or transportation is a director, officer, governing board member, employee, or independent contractor of one of the following:
    - 1. The lobbyist principal giving the food, beverage, or transportation.
    - 2. A third party that received the funds to purchase the food, beverages, or transportation.
- (12) Food and beverages for immediate consumption at an organized gathering of a person, the State, or a governmental unit to which a public servant is invited to attend for purposes primarily related to the public servant's public service or position, and to which at least 10 individuals, other than the public servant, or the public servant's immediate family, actually attend, or to which all shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit who are located in a specific North Carolina office or county are notified and invited to attend.

(g) A prohibited gift that would constitute an expense appropriate for reimbursement by the public servant's employing entity if it had been incurred by the public servant personally shall be considered a gift accepted by or donated to the State, provided the public servant has been approved by the public servant's employing entity to accept or receive such things of value on behalf of the State. The fact that the employing entity's reimbursement rate for the type of expense is less than the value of a particular gift shall not render the gift prohibited.

(h) A prohibited gift shall be, and a permissible gift may be, promptly declined, returned, paid for at fair market value, or donated to charity or the State.

(i) A covered person or legislative employee shall not accept an honorarium from a source other than the employing entity for conducting any activity where any of the following apply:

- (1) The employing entity reimburses the covered person or legislative employee for travel, subsistence, and registration expenses.
- (2) The employing entity's work time or resources are used.
- (3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person's or legislative employee's official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person or legislative employee in conducting an activity within the duties of the covered person or legislative employee, or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person or legislative employee. An honorarium permissible under this subsection shall not be considered a gift for purposes of subsection (c) of this section.

(j) Acceptance or solicitation of a gift in compliance with this section without corrupt intent shall not constitute a violation of the statutes related to bribery under G.S. 14-217, 14-218, or 120-86. (2006-201, s. 1; 2007-347, s. 11; 2007-348, ss. 15(b), 35-41(a); 2008-213, ss. 77(a), 78(a), 79-82, 90; 2009-549, s. 17; 2010-169, ss. 15(b), (c), 17(r); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

#### **§ 138A-33. Other compensation.**

A public servant or legislative employee shall not solicit or receive personal financial gain, other than that received by the public servant or legislative employee from the State, or with the approval of the employing entity, for acting in the public servant's or legislative employee's official capacity, or for advice or assistance given in the course of carrying out the public servant's or legislative employee's duties. (2006-201, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

#### **§ 138A-34. Use of information for private gain.**

A public servant or legislative employee shall not use or disclose nonpublic information gained in the course of, or by reason of, the public servant's or legislative employee's official responsibilities in a way that would affect a personal financial interest of the public servant or legislative employee, a member of the public servant's or legislative employee's extended family, or a person or governmental unit with whom or business with which the public servant or legislative employee is associated. A public servant or legislative employee shall not improperly use or improperly disclose any confidential information. (2006-201, s. 1; 2008-213, s. 83; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

#### **§ 138A-35. Other rules of conduct.**

(a) A public servant shall make a due and diligent effort before taking any action, including voting or participating in discussions with other public servants on a board on which the public servant also serves, to determine whether the public servant has a conflict of interest. If the public servant is unable to determine whether or not a conflict of interest may exist, the public servant has a duty to inquire of the Commission as to that conflict.

(b) A public servant shall continually monitor, evaluate, and manage the public servant's personal, financial, and professional affairs to ensure the absence of conflicts of interest.

(c) A public servant shall obey all other civil laws, administrative requirements, and criminal statutes governing conduct of State government applicable to appointees and employees. (2006-201, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

#### **§ 138A-36. Public servant participation in official actions.**

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall participate in an official action by the employing entity if the public servant knows the public servant or a person with which the public servant is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the public servant's independence of judgment or from which it could reasonably be

inferred that the financial benefit would influence the public servant's participation in the official action.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself to the extent necessary, to protect the public interest and comply with this Chapter from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, partner, member or manager of a limited liability company, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain about whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the individual presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the individual presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) This section shall not allow participation in an official action prohibited by G.S. 14-234. (2006-201, s. 1; 2007-347, s. 12; 2007-348, s. 42; 2008-213, s. 84(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

### **§ 138A-37. Legislator participation in legislative actions.**

(a) Except as permitted under G.S. 138A-38, no legislator shall participate in a legislative action if the legislator knows the legislator or a person with which the legislator is associated may incur a reasonably foreseeable financial benefit from the action, and if after considering whether the legislator's judgment would be substantially influenced by the financial benefit and considering the need for the legislator's particular contribution, including special knowledge of the subject matter to the effective functioning of the legislature, the legislator concludes that an actual financial benefit does exist which would impair the legislator's independence of judgment.

(b) The legislator shall submit in writing to the principal clerk of the house of which the legislator is a member the reasons for the abstention from participation in the legislative matter.

(c) If the legislator has a material doubt as to whether the legislator should act, the legislator may submit the question for an advisory opinion to the State Ethics Commission in accordance with G.S. 138A-13 or the Legislative Ethics Committee in accordance with G.S. 120-104. (2006-201, s. 1; 2007-347, s. 13; 2008-213, s. 84(b); 2010-169, s. 22(c); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**§ 138A-38. Permitted participation exception.**

(a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

- (1) The only interest or reasonably foreseeable benefit or detriment that accrues to the covered person, the covered person's extended family, business with which the covered person is associated, or nonprofit corporation or organization with which the covered person is associated as a member of a profession, occupation, or general class is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.
- (2) When an official or legislative action affects or would affect the covered person's compensation and allowances as a covered person.
- (3) Before the covered person participated in the official or legislative action, the covered person requested and received from the Commission or Committee a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the Commission or Committee shall consider the need for the legislator's particular contribution, such as special knowledge of the subject matter, to the effective functioning of the General Assembly.
- (4) Before participating in an official action, a public servant made full written disclosure to the public servant's employing entity which then made a written determination that the interest or benefit would neither impair the public servant's independence of judgment nor influence the public servant's participation in the official action. The employing entity shall file a copy of that written determination with the Commission.
- (5) When action is ministerial only and does not require the exercise of discretion.
- (6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under G.S. 138A-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.
- (7) When a public servant notifies the Commission in writing that the public servant, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest.

(b) This section shall not allow participation in an official action prohibited by G.S. 14-234.

(c) Notwithstanding G.S. 138A-37, if a legislator is employed or retained by, or is an independent contractor of, a governmental unit, and the legislator is the only member of the house elected from the district where that governmental unit is located, then the legislator may take legislative action on behalf of that governmental unit provided the legislator discloses in writing to the principal clerk the nature of the relationship with the governmental unit prior to, or at the time of, taking the legislative action.



(d) Notwithstanding G.S. 138A-36, service by the president, chief financial officer, chief administrative officer, or voting member of the board of trustees of a community college as an officer, employee, or member of the board of directors of a nonprofit corporation established under G.S. 115D-20(9) to support the community college shall not constitute a conflict of interest under G.S. 138A-36, provided that the majority of the nonprofit corporation's board of directors is not comprised of the president, chief financial officer, and chief administrative officer, or voting members of the board of trustees of the community college which the nonprofit corporation was created to support. (2006-201, s. 1; 2007-347, s. 14; 2008-213, s. 85; 2010-169, s. 22(d); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**§ 138A-39. Disqualification to serve.**

(a) Within 30 days of notice of the Commission's determination that a public servant has a disqualifying conflict of interest, the public servant shall eliminate the interest that constitutes the disqualifying conflict of interest or resign from the public position.

(b) Failure by a public servant to comply with subsection (a) of this section is a violation of this Chapter for purposes of G.S. 138A-45.

(c) A decision under this section shall be considered a final decision for contested case purposes under Article 3 of Chapter 150B of the General Statutes.

(d) As used in this section, a disqualifying conflict of interest is a conflict of interest of such significance that the conflict of interest would prevent a public servant from fulfilling a substantial function or portion of the public servant's public duties. (2006-201, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**§ 138A-40. Employment and supervision of members of covered person's or legislative employee's extended family.**

A covered person or legislative employee shall not cause the employment, appointment, promotion, transfer, or advancement of an extended family member of the covered person or legislative employee to a State office, or a position to which the covered person or legislative employee supervises or manages, except for positions at the General Assembly as permitted under G.S. 120-32(2). A public servant or legislative employee shall not supervise, manage, or participate in an action relating to the discipline of a member of the public servant's or legislative employee's extended family, except as specifically authorized by the public servant's or legislative employee's employing entity. (2006-201, s. 1; 2007-347, s. 15; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**§ 138A-41. Other ethics standards.**

(a) Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

(b) The Governor, as a constitutional officer of the State, shall have the authority to adopt additional and supplemental ethics standards applicable to any appointee of the Governor to any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, whether advisory or nonadvisory in

authority. If the Governor adopts such ethics standards, the standards shall be published in the North Carolina Register and made available to each appointee subject to the ethics standards.

(c) The Governor, as a constitutional officer of the State, shall have the authority to adopt minimum ethics standards applicable to any employee of a State agency. If the Governor adopts such standards, the ethics standards shall be published in the North Carolina Register and made available to each employee subject to the ethics standards. (2006-201, s. 1; 2010-169, s. 14; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

**§ 138A-42. Reserved for future codification purposes.**

**§ 138A-43. Reserved for future codification purposes.**

**§ 138A-44. Reserved for future codification purposes.**