

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1420

Short Title: Shakedown Prevention.

(Public)

Sponsors: Senators Gulley; Carter, Metcalf, and Robinson.

Referred to: Judiciary I.

June 13, 2002

A BILL TO BE ENTITLED

1
2 AN ACT TO STRENGTHEN THE PENALTIES AGAINST IMPROPER AND
3 COERCIVE POLITICAL FUNDRAISING PRACTICES AGAINST STATE
4 EMPLOYEES AND TO APPLY THE LAW TO ALL STATE EMPLOYEES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 126-13 reads as rewritten:

7 "**§ 126-13. Appropriate political activity of State employees defined.**

8 (a) As an individual, each State employee retains all the rights and obligations of
9 citizenship provided in the Constitution and laws of the State of North Carolina and the
10 Constitution and laws of the United States of America; however, no State employee
11 ~~subject to the Personnel Act or temporary State employee shall:~~

12 (1) Take any active part in managing a campaign, or campaign for
13 political office or otherwise engage in political activity while on duty
14 or within any period of time during which he is expected to perform
15 services for which he receives compensation from the State;

16 (2) Otherwise use the authority of his position, or utilize State funds,
17 supplies or vehicles to secure support for or oppose any candidate,
18 party, or issue in an election involving candidates for office or party
19 nominations, or affect the results thereof.

20 (a1) Nothing in subsection (a) of this section shall prohibit any otherwise lawful
21 action of an elected official to communicate with constituents, to formulate legislation
22 or public policy, to discuss legislation or public policy, to discuss that elected official's
23 conduct in office, and to perform any of the customary and usual duties of that office or
24 elective office generally.

25 (b) No head of any State department, agency, or institution or other State
26 employee exercising supervisory authority shall make, issue, or enforce any rule or
27 policy the effect of which is to interfere with the right of any State employee as an
28 individual to engage in political activity while not on duty or at times during which he is
29 not performing services for which he receives compensation from the State. A State

1 employee who is or may be expected to perform his duties on a twenty-four hour per
2 day basis shall not be prevented from engaging in political activity except during
3 regularly scheduled working hours or at other times when he is actually performing the
4 duties of his office.

5 (c) The willful violation of this ~~subdivision~~ section shall be a Class 1
6 misdemeanor.

7 (d) The provisions of this section apply to all State employees without exception.
8 For purposes of this section, the term "State employees" includes public school
9 employees, community college employees, and employees of The University of North
10 Carolina."

11 **SECTION 2.** G.S. 126-14 reads as rewritten:

12 "**§ 126-14. Promise or threat Coercion by State employee or appointee to obtain**
13 **political contribution or support.**

14 (a) It is unlawful for a ~~any~~ State employee or a person appointed to State ~~office,~~
15 ~~other than elective office or office on a board, commission, committee, or council~~
16 ~~whose function is advisory only, whether or not subject to the Personnel Act, to coerce:~~

- 17 (1) ~~a State employee subject to the Personnel Act,~~
- 18 (2) ~~a probationary State employee,~~
- 19 (3) ~~a temporary State employee, or~~
- 20 (4) ~~an applicant for a position subject to the Personnel Act~~

21 office to coerce any State employee or applicant for State employment to support or
22 contribute to a political candidate, political committee as defined in G.S. 163-278.6, or
23 political party or to change the party designation of ~~his~~ that person's voter registration
24 by threatening that change in employment status or discipline or preferential personnel
25 treatment will occur with regard to a ~~person listed in subdivisions (1) through (4).~~ that
26 person or to any other State employee or applicant for State employment.

27 (b) Any person willfully violating this section shall be guilty of a ~~Class 2~~
28 ~~misdemeanor.~~ Class H felony.

29 (b1) Any candidate, political committee, or political party that accepts a
30 contribution knowing it was coerced in violation of this section shall be subject to a
31 civil penalty of up to three times the amount of the contribution. Any contribution that
32 was coerced in violation of this section shall be returned to the contributor, regardless of
33 whether the contributee knew it was coerced. Except as specified in this subsection, the
34 State Board of Elections shall enforce the provisions of this subsection, using the
35 methods set forth in G.S. 163-278.34(b) and (e).

36 (c) A State employee subject to the Personnel Act, probationary State employee,
37 or temporary State employee who without probable cause falsely accuses a State
38 employee or a person appointed to State office of violating this section shall be subject
39 to discipline or change in employment status in accordance with the provisions of G.S.
40 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to
41 criminal penalties for perjury or civil liability for libel, slander, or malicious
42 prosecution.

1 (c1) Every State employee covered by this section shall be covered with regard to
2 the rights and duties of this section by the protections and rights of Article 14 of this
3 Chapter.

4 (d) The provisions of this section apply to all State employees and applicants for
5 State employment without exception. For purposes of this section, the term "State
6 employees" includes public school employees, community college employees, and
7 employees of The University of North Carolina."

8 **SECTION 3.** G.S. 126-14.1 reads as rewritten:

9 "**§ 126-14.1. ~~Threat—Coercion by non-State employee to obtain political~~**
10 **contribution or support.**

11 (a) It is unlawful for any person who is not a State employee or appointee to a
12 State office to coerce:

13 (1) ~~a State employee subject to the Personnel Act,~~

14 (2) ~~a probationary State employee,~~

15 (3) ~~a temporary State employee, or~~

16 (4) ~~an applicant for a position subject to the Personnel Act~~

17 coerce any State employee or applicant for State employment to support or contribute to
18 a political candidate, political committee as defined in G.S. 163-278.6, or political party
19 or to change the party designation of his voter registration by explicitly threatening that
20 change in employment status or discipline or preferential personnel treatment will occur
21 with regard to ~~any person listed in subdivisions (1) through (3) of this subsection.~~ that
22 person or to any other State employee or applicant for State employment.

23 (b) Any person violating this section shall be guilty of a ~~Class 2~~
24 ~~misdemeanor.~~ Class H felony.

25 (b1) Any candidate, political committee, or political party that accepts a
26 contribution knowing it was coerced in violation of this section shall be subject to a
27 civil penalty of up to three times the amount of the contribution. Any contribution that
28 was coerced in violation of this section shall be returned to the contributor, regardless of
29 whether the contributee knew it was coerced. Except as specified in this subsection, the
30 State Board of Elections shall enforce the provisions of this subsection, using the
31 methods set forth in G.S. 163-278.34(b) and (e).

32 (c) A State employee subject to the Personnel Act, probationary State employee,
33 or temporary State employee, who without probable cause falsely accuses a person of
34 violating this section shall be subject to discipline or change in employment status in
35 accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as
36 otherwise provided by law, be subject to criminal penalties for perjury or civil liability
37 for libel, slander, or malicious prosecution.

38 (c1) Every State employee covered by this section shall be covered with regard to
39 the rights and duties of this section by the protections and rights of Article 14 of this
40 Chapter.

41 (d) The provisions of this section apply to all State employees and applicants for
42 State employment without exception. For purposes of this section, "State employees"
43 includes public school employees, community college employees, and employees of
44 The University of North Carolina."

1 **SECTION 4.** G.S. 126-5(c) reads as rewritten:

2 "(c) Except as to the policies, rules, and plans established by the Commission
3 pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7,
4 and except as to the provisions of G.S. 126-13, 126-14, 126-14.1, and of Articles 6 and
5 7 of this Chapter, the provisions of this Chapter shall not apply to:

- 6 (1) A State employee who is not a career State employee as defined by
7 this Chapter.
- 8 (2) One confidential assistant and two confidential secretaries for each
9 elected or appointed department head and one confidential secretary
10 for each chief deputy or chief administrative assistant.
- 11 (3) Employees in exempt policymaking positions designated pursuant to
12 G.S. 126-5(d).
- 13 (4) The chief deputy or chief administrative assistant to the head of each
14 State department who is designated either by statute or by the
15 department head to act for and perform all of the duties of such
16 department head during his absence or incapacity."

17 **SECTION 5.** G.S. 126-5(c1) reads as rewritten:

18 "(c1) Except as to the provisions of G.S. 126-13, 126-14, 126-14.1, and of Articles
19 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

- 20 (1) Constitutional officers of the State.
- 21 (2) Officers and employees of the Judicial Department.
- 22 (3) Officers and employees of the General Assembly.
- 23 (4) Members of boards, committees, commissions, councils, and advisory
24 councils compensated on a per diem basis.
- 25 (5) Officials or employees whose salaries are fixed by the General
26 Assembly, or by the Governor, or by the Governor and Council of
27 State, or by the Governor subject to the approval of the Council of
28 State.
- 29 (6) Employees of the Office of the Governor that the Governor, at any
30 time, in his discretion, exempts from the application of the provisions
31 of this Chapter by means of a letter to the State Personnel Director
32 designating these employees.
- 33 (7) Employees of the Office of the Lieutenant Governor, that the
34 Lieutenant Governor, at any time, in his discretion, exempts from the
35 application of the provisions of this Chapter by means of a letter to the
36 State Personnel Director designating these employees.
- 37 (8) Instructional and research staff, physicians, and dentists of The
38 University of North Carolina.
- 39 (9) Employees whose salaries are fixed under the authority vested in the
40 Board of Governors of The University of North Carolina by the
41 provisions of G.S. 116-11(4), 116-11(5), and 116-14.
- 42 (10) Repealed by Session Laws 1991, c. 84, s. 1.

- 1 (11) North Carolina School of Science and Mathematics' employees whose
2 salaries are fixed in accordance with the provisions of G.S.
3 116-235(c)(1) and G.S. 116-235(c)(2).
- 4 (12) Employees of the North Carolina Low-Level Radioactive Waste
5 Management Authority whose salaries are fixed pursuant to G.S.
6 104G-5(g)(1) and G.S. 104G-5(g)(2).
- 7 (13) Employees of the North Carolina Hazardous Waste Management
8 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1)
9 and G.S. 130B-6(g)(2).
- 10 (14) Employees of the North Carolina State Ports Authority.
- 11 (15) Employees of the North Carolina Global TransPark Authority.
- 12 (16) The executive director and one associate director of the North Carolina
13 Center for Nursing established under Article 9F of Chapter 90 of the
14 General Statutes.
- 15 (17) The executive director of the independent staff of the Information
16 Resources Management Commission established under G.S.
17 143B-472.41A.
- 18 (18) Employees of the Tobacco Trust Fund Commission established in
19 Article 75 of Chapter 143 of the General Statutes.
- 20 (19) Employees of the Health and Wellness Trust Fund Commission
21 established in Article 21 of Chapter 130A of the General Statutes.
- 22 (20) Employees of the North Carolina Rural Redevelopment Authority
23 created in Part 2D of Article 10 of Chapter 143B of the General
24 Statutes."

25 **SECTION 6.** G.S. 126-5(c2) reads as rewritten:

26 (c2) ~~The~~ Except for the provisions of G.S. 126-13, 126-14, 126-14.1, the
27 provisions of this Chapter shall not apply to:

- 28 (1) Public school superintendents, principals, teachers, and other public
29 school employees.
- 30 (2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Regular
31 Session, 1986), c. 1014, s. 41.
- 32 (3) Employees of community colleges whose salaries are fixed in
33 accordance with the provisions of G.S. 115D-5 and G.S. 115D-20, and
34 employees of the Community Colleges System Office whose salaries
35 are fixed by the State Board of Community Colleges in accordance
36 with the provisions of G.S. 115D-3."

37 **SECTION 7.** G.S. 126-5(c3) reads as rewritten:

38 "(c3) Except as to the policies, rules, and plans established by the Commission
39 pursuant to G.S. 126-4(5) and the provisions of G.S. 126-13, 126-14, 126-14.1, and of
40 Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and
41 related educational classes of employees of the Department of Correction, the
42 Department of Health and Human Services, and any other State department, agency or
43 institution, whose salaries shall be set in the same manner as set for corresponding
44 public school employees in accordance with Chapter 115C of the General Statutes."

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SECTION 8. This act becomes effective January 1, 2003.