

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS55243-ST-51 (03/21)

Short Title: Clarify Use of Position.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THAT A LEGISLATOR'S OR PUBLIC SERVANT'S PUBLIC  
3 POSITION MAY BE DISCLOSED IN AN AGENDA OR OTHER DOCUMENT  
4 RELATED TO A MEETING, CONFERENCE, OR SIMILAR EVENT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 138A-31 reads as rewritten:

7 "**§ 138A-31. Use of public position for private gain.**

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

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

24 (1) ~~political advertising,~~ Political advertising.

25 (2) ~~news stories, news articles,~~ News stories and articles.

26 (3) ~~the~~ The inclusion of a covered person's public position in a directory or  
27 biographical listing, ~~listing.~~

28 (4) The inclusion of a covered person's public position in an agenda or other  
29 document related to a meeting, conference, or similar event when the  
30 disclosure could reasonably be considered material by a person in attendance  
31 of the meeting, conference, or similar event, provided the meeting,  
32 conference, or similar event is sponsored by a nonprofit organization.

33 (5) ~~or the~~ The inclusion of a covered person's public position in a charitable  
34 solicitation for a nonprofit business entity qualifying under 26 U.S.C. §  
35 501(c)(3). Disclosure of a covered person's position to an existing or



1 ~~prospective customer, supplier, or client is not considered advertising for~~  
2 ~~purposes of this subsection when the disclosure could reasonably be~~  
3 ~~considered material by the customer, supplier, or client.~~

4 (c) Notwithstanding G.S. 163-278.16A, no covered person shall use or permit the use of  
5 State funds for any advertisement or public service announcement in a newspaper, on radio,  
6 television, magazines, or billboards, that contains that covered person's name, picture, or voice,  
7 except in case of State or national emergency and only if the announcement is reasonably  
8 necessary to the covered person's official function. This subsection shall not apply to  
9 fund-raising on behalf of and aired on public radio or public television.

10 (d) For purposes of this section, disclosure of a covered person's public position to an  
11 existing or prospective customer, supplier, or client is not considered when the disclosure could  
12 reasonably be considered material by the customer, supplier, or client."

13 **SECTION 2.** This act becomes effective October 1, 2011.