

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 392

An Act to amend and reenact § 2.2-3101 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 2.2-3100.1, and by adding in Chapter 31 of Title 2.2 an article numbered 8, consisting of sections numbered 2.2-3128 through 2.2-3131, relating to the State and Local Government Conflict of Interests Act and orientation programs for public personnel.

[S 226]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3101 of the Code of Virginia is amended and reenacted, that the Code of Virginia is amended by adding a section numbered 2.2-3100.1, and by adding in Chapter 31 of Title 2.2 an article numbered 8, consisting of sections numbered 2.2-3128 through 2.2-3131, as follows:

§ 2.2-3100.1. Copy of Chapter; review by officers and employees.

Any person required to file a disclosure statement of personal interests pursuant to subsections A or B of § 2.2-3114, subsections A or B of § 2.2-3115 or § 2.2-3116 shall be furnished by the public body's administrator a copy of this chapter within two weeks following the person's election, reelection, employment, appointment or reappointment.

All officers and employees shall read and familiarize themselves with the provisions of this chapter.

§ 2.2-3101. Definitions.

As used in this chapter:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission,

committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Parent-subsidiary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity.

"State and local government officers and employees" shall not include members of the General Assembly.

"State filer" means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § 2.2-3114.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

Article 8.

Orientation for State Filers.

§ 2.2-3128. Semiannual orientation course.

Each state agency shall offer at least semiannually to each of its state filers an orientation course on this chapter, on ethics in public contracting pursuant to Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title, if applicable to the filer, and on any other applicable regulations that govern the official conduct of state officers and employees.

§ 2.2-3129. Records of attendance.

Each state agency shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to § 2.2-3128 for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with § 2.2-3704.

§ 2.2-3130. Attendance requirements.

Except as set forth in § 2.2-3131, each state filer shall attend the orientation course required in § 2.2-3128, as follows:

1. For a state filer who holds a position with the agency on January 1, 2004, not later than December 31, 2004 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2006.

2. For a person who becomes a state filer with the agency after January 1, 2004, within two months after he or she becomes a state filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

§ 2.2-3131. Exemptions.

A. The requirements of § 2.2-3130 shall not apply to state filers with a state agency who have taken an equivalent ethics orientation course through another state agency within the time periods set forth in subdivision 1 or 2 of § 2.2-3130, as applicable.

B. State agencies may jointly conduct and state filers from more than one state agency may jointly attend an orientation course required by § 2.2-3128, as long as the course content is relevant to the official duties of the attending state filers.

C. Before conducting each orientation course required by § 2.2-3128, state agencies shall consult with the Attorney General regarding appropriate course content.

2. On or before August 1, 2004, the Office of the Attorney General shall make available to all state agencies appropriate course content for the training requirements of § 2.2-3128 of the Code of Virginia. Such course content shall be updated periodically to conform with changes in applicable law. Completion of such course offered by the Office of the Attorney General by state filers shall satisfy the training requirements Article 8 (§ 2.2-3128 et seq.) of Chapter 31 of Title 2.2 of the Code of Virginia.

3. The Virginia Information Technologies Agency shall provide any technical assistance required by the Office of the Attorney General in order to post all course content, including the ability to post course content as an interactive program, on the Internet.