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HOUSE BILL NO. 644

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 30-116, 30-122, 30-123, and 30-126 of the Code of Virginia, relating to the General Assembly Conflicts of Interests Act; knowing violations.

Patrons—Armstrong and Abbott

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-116, 30-122, 30-123, and 30-126 of the Code of Virginia are amended and reenacted as follows:

§ 30-116. Disposition of cases.

Within 120 days of the chairman's receiving a signed and sworn complaint, the Panel, or a majority of its members acting in its name, shall dispose of the matter in one of the following ways:

1. If the Panel determines that the complaint is without merit, the Panel shall dismiss the complaint, so advise the complainant, and take no further action. In such case, the Panel shall retain its records and findings in confidence unless the legislator under inquiry requests in writing that the records and findings be made public.

2. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated the provisions of this chapter but that the violation was not made knowingly, the Panel shall refer the matter by a written report setting forth its findings and the reasons therefor to the appropriate house of the General Assembly for appropriate action. All Panel reports, which are advisory only, shall be delivered to the Clerk of the appropriate house, who shall refer the report to the Committee on Privileges and Elections in accordance with the rules of the appropriate house. Said Committee shall in all cases report, after due hearings and consideration, its determination of the matter and its recommendations and reasons for its resolves to the appropriate house. If the Committee deems disciplinary action warranted, it shall report a resolution to express such action. The appropriate house as a whole shall then consider the resolution, and if it finds the legislator in violation of any provision of this chapter, it may by recorded vote take such disciplinary action as it deems warranted.

3. If the Panel determines that there is a reasonable basis to conclude that the legislator knowingly violated *or should have known that he had violated* any provision of Article 2 (§ 30-102 et seq.), 3 (§ 30-104 et seq.), 4 (§ 30-107 et seq.) or 5 (§ 30-109 et seq.) of this chapter, except § 30-108 or subsection C of § 30-110, it shall refer the matter by a written report setting forth its findings and the reasons therefor to the Attorney General for such action he deems appropriate. The Panel shall also file its report with the Clerk of the appropriate house, who shall refer the report in accordance with the rules of his house. In the event the Attorney General determines not to prosecute the alleged violation, he shall notify the Clerk of the appropriate house of his determination and the Clerk shall send the report to the Committee on Privileges and Elections. The matter shall thereafter be handled in accordance with the provisions of subdivision 2.

4. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated § 30-108 or subsection C of § 30-110, it shall refer the matter by a written report to the appropriate house pursuant to subdivision 2. As its first order of business other than organizational matters and committee work, the house in which the member sits shall immediately upon the convening of the next regular or special session take up and dispose of the matter by taking one or more of the following actions: (i) dismiss the complaint; (ii) sustain the complaint and reprimand the member; (iii) sustain the complaint, censure the member, and strip the member of his seniority; (iv) sustain the complaint and expel the member by a two-thirds vote of the elected members; (v) in the event the house finds a ~~knowing violation~~ *that the legislator knew or should have known that he violated § 30-108 or subsection C of § 30-110*, it may refer the matter to the Attorney General pursuant to subdivision 3.

5. The Panel shall make public any report that it refers pursuant to the provisions of subdivision 2, 3 or 4 on the date it refers its report.

§ 30-122. Enforcement.

The provisions of this chapter shall be enforced by the Attorney General. In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties:

1. If he determines that any legislator has knowingly violated *or should have known that he had violated* any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of the legislator; and

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59 2. He shall render advisory opinions to any legislator who seeks advice as to whether the facts in a
60 particular case would constitute a violation of the provisions of this chapter. He shall determine which
61 of his opinions or portions thereof are of general interest to the public and which may, from time to
62 time, be published.

63 Irrespective of whether an opinion of the Attorney General has been requested and rendered, any
64 legislator has the right to seek a declaratory judgment or other judicial relief as provided by law.

65 § 30-123. Knowing violation of chapter a misdemeanor.

66 Any legislator who knowingly violates any of the provisions of Articles 2 through 5 (§§ 30-102
67 through 30-111) of this chapter shall be guilty of a Class 1 misdemeanor. A knowing violation under
68 this section is one in which the person engages in conduct, performs an act or refuses to perform an act
69 when he knows *or should have known* that the conduct is prohibited or required by this chapter. There
70 shall be no prosecution for a violation of § 30-108 or subsection C of § 30-110 unless the house in
71 which the member sits has referred the matter to the Attorney General as provided in subdivision 4 of
72 § 30-116.

73 § 30-126. Forfeiture of money, etc., derived from violation of this chapter.

74 In addition to any other fine or penalty provided by law, any money or other thing of value derived
75 by a legislator from a violation of §§ 30-103 through 30-108 shall be forfeited and, in the event of a
76 ~~knowing violation that the legislator knew or should have known that he violated §§ 30-103 through~~
77 ~~30-108~~, there may also be imposed a civil penalty in an amount equal to the amount of money or thing
78 of value forfeited to the Commonwealth. If the thing of value received by the legislator in violation of
79 this chapter should enhance in value between the time of the violation and the time of discovery of the
80 violation, the greater value shall determine the amount of forfeiture.