

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 111

*An Act to amend and reenact §§ 2.2-3104.02, 2.2-3115, 30-103, and 30-356 of the Code of Virginia, relating to Virginia Conflict of Interest and Ethics Advisory Council; powers and duties; guidance; redaction of disclosure forms.*

[H 1011]

Approved March 3, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-3104.02, 2.2-3115, 30-103, and 30-356 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-3104.02. Prohibited conduct for constitutional officers.**

In addition to the prohibitions contained in § 2.2-3103, no constitutional officer shall, during the one year after the termination of his public service, act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer.

The provisions of this section shall not apply to any attorney for the Commonwealth.

Any person subject to the provisions of this section may apply to the *Council or the* attorney for the Commonwealth for the jurisdiction where such person was elected as provided in § 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

**§ 2.2-3115. Disclosure by local government officers and employees.**

A. In accordance with the requirements set forth in § 2.2-3118.2, the members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § 2.2-3118.2, the members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such a statement annually on or before February 1, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117.

In accordance with the requirements set forth in § 2.2-3118.2, persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § 2.2-3118.2, persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

B. In accordance with the requirements set forth in § 2.2-3118.2, nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such form annually on or before February 1.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

D. The disclosure forms required by subsections A and B shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the clerk of the governing body of the county or city. Such forms shall be made public no later than six weeks after the filing deadline.

E. Candidates for membership in the governing body or school board of any county, city or town

with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by § 24.2-502.

F. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subsection A of § 2.2-3112 or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency.

G. In addition to any disclosure required by subsections A and B, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. In accordance with the requirements set forth in § 2.2-3118.2, such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city, or town on or before February 1. Such disclosures shall be filed and maintained as public records for five years. Such forms shall be made public no later than six weeks after the filing deadline. Forms for the filing of such reports shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council to the clerk of each governing body.

H. An officer or employee of local government who is required to declare his interest pursuant to subdivision B 1 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

I. An officer or employee of local government who is required to declare his interest pursuant to subdivision B 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

J. The clerk of the governing body or school board that releases any form to the public pursuant to this section shall redact from the form any residential address, personal telephone number, *email address*, or signature contained on such form; however, any form filed pursuant to subsection G shall not have any residential addresses redacted.

### **§ 30-103. Prohibited conduct.**

No legislator shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid to him by the General Assembly. This prohibition shall not apply to the acceptance of special benefits which may be authorized by law;
2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information which he has acquired by reason of his public position and which is not available to the public;

5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;

6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;

7. During the one year after the termination of his service as a legislator, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on any matter before the General Assembly or any agency of the legislative branch of government. The prohibitions of this subdivision shall apply only to persons engaged in activities that would require registration as a lobbyist under § 2.2-422. Any person subject to the provisions of this subdivision may apply to the *Council, as provided in § 30-356, or the Attorney General, as provided in § 30-122*, for an advisory opinion as to the application of the restriction imposed by this subdivision on any post-public employment position or opportunity;

8. Accept any honoraria for any appearance, speech, or article in which the legislator provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time;

9. Accept appointment to serve on a body or board of any corporation, company or other legal entity, vested with the management of the corporation, company or entity, and on which two other members of the General Assembly already serve, which is operated for profit and regulated by the State Corporation Commission as (i) a financial institution, (ii) a mortgage lender or broker, (iii) any business under Chapter 5 (§ 13.1-501 et seq.) of Title 13.1, (iv) any business under Title 38.2, or (v) any business under Title 56;

10. Accept a gift from a person who has interests that may be substantially affected by the performance of the legislator's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the legislator's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties; or

11. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties.

#### **§ 30-356. Powers and duties of the Council.**

The Council shall:

1. Prescribe the forms required for complying with the disclosure requirements of Article 3 and the Acts. These forms shall be the only forms used to comply with the provisions of Article 3 or the Acts. The Council shall make available the disclosure forms and shall provide guidance and other instructions to assist in the completion of the forms;

2. Review all disclosure forms filed by lobbyists pursuant to Article 3 and by state government officers and employees and legislators pursuant to the Acts. The Council may review disclosure forms for completeness, including reviewing the information contained on the face of the form to determine if the disclosure form has been fully completed and comparing the disclosures contained in any disclosure form filed by a lobbyist pursuant to § 2.2-426 with other disclosure forms filed with the Council, and requesting any amendments to ensure the completeness of and correction of errors in the forms, if necessary. If a disclosure form is found to have not been filed or to have been incomplete as filed, the Council shall notify the filer in writing and direct the filer to file a completed disclosure form within a prescribed period of time, and such notification shall be confidential and is excluded from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.);

3. Require all disclosure forms and lobbyist registration statements that are required to be filed with the Council to be filed electronically in accordance with the standards approved by the Council. The Council shall provide software or electronic access for filing the required disclosure forms and registration statements without charge to all individuals required to file with the Council. The Council shall prescribe the method of execution and certification of electronically filed forms, including the use of an electronic signature as authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.). The Council may grant extensions as provided in § 30-356.2 and may authorize a designee to grant such extensions;

4. Accept and review any statement received from a filer disputing the receipt by such filer of a gift that has been disclosed on the form filed by a lobbyist pursuant to Article 3;

5. Beginning July 1, 2016, establish and maintain a searchable electronic database comprising those disclosure forms that are filed with the Council pursuant to §§ 2.2-426, 2.2-3117, 2.2-3118, and 30-111. Such database shall be available to the public through the Council's official website;

6. Furnish, upon request, formal advisory opinions or guidelines and other appropriate information,

including informal advice, regarding ethics, conflicts issues arising under Article 3 or the Acts, or a person's duties under Article 3 or the Acts to any person covered by Article 3 or the Acts or to any agency of state or local government, in an expeditious manner. The Council may authorize a designee to furnish formal opinions or informal advice. Formal advisory opinions are public record and shall be published on the Council's website; however, no formal advisory opinion furnished by a designee of the Council shall be available to the public or published until such opinion has been approved by the Council. Published formal advisory opinions may have such deletions and changes as may be necessary to protect the identity of the person involved or other persons supplying information. Informal advice given by the Council or the Council's designee is confidential and is excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, if the recipient invokes the immunity provisions of § 2.2-3121 or 30-124, the record of the request and the informal advice given shall be deemed to be a public record and shall be released upon request. Other records relating to formal advisory opinions or informal advice, including records of requests, notes, correspondence, and draft versions of such opinions or advice, shall also be confidential and excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act;

7. Conduct training seminars and educational programs for lobbyists, state and local government officers and employees, legislators, and other interested persons on the requirements of Article 3 and the Acts and provide training sessions for local elected officials in compliance with Article 9 (§ 2.2-3132) of Chapter 31 of Title 2.2 and ethics orientation sessions for legislators in compliance with Article 6 (§ 30-129.1 et seq.) of Chapter 13;

8. Approve orientation courses conducted pursuant to § 2.2-3128 and, upon request, review the educational materials and approve any training or course on the requirements of Article 3 and the Acts conducted for state and local government officers and employees;

9. Publish such educational materials as it deems appropriate on the provisions of Article 3 and the Acts;

10. Review actions taken in the General Assembly with respect to the discipline of its members for the purpose of offering nonbinding advice;

11. Request from any agency of state or local government such assistance, services, and information as will enable the Council to effectively carry out its responsibilities. Information provided to the Council by an agency of state or local government shall not be released to any other party unless authorized by such agency;

12. Redact from any document or form that is to be made available to the public any residential address, personal telephone number, *email address*, or signature contained on that document or form; and

13. Report on or before December 1 of each year on its activities and findings regarding Article 3 and the Acts, including recommendations for changes in the laws, to the General Assembly and the Governor. The annual report shall be submitted by the chairman as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be published as a state document.