

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 2.2-3101 of the Code of Virginia, relating to the State and Local*
3 *Government Conflict of Interests Act; definition of personal interest in a transaction.*

4 [S 1119]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 2.2-3101 of the Code of Virginia is amended and reenacted as follows:**8 **§ 2.2-3101. Definitions.**

9 As used in this chapter:

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

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

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

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

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

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

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

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

47 "Governmental agency" means each component part of the legislative, executive or judicial branches
48 of state and local government, including each office, department, authority, post, commission,
49 committee, and each institution or board created by law to exercise some regulatory or sovereign power
50 or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by
51 the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

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

55 "Officer" means any person appointed or elected to any governmental or advisory agency including
56 local school boards, whether or not he receives compensation or other emolument of office. Unless the

57 context requires otherwise, "officer" includes members of the judiciary.

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

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

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

75 "Personal interest in a transaction" means a personal interest of an officer or employee in any matter
76 considered by his agency. Such personal interest exists when an officer or employee or a member of his
77 immediate family has a personal interest in property or a business or governmental agency, or represents
78 or provides services to any individual or business and such property, business or represented or served
79 individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable
80 direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.
81 Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where (a)
82 an elected member of a local governing body serves without remuneration as a member of the board of
83 trustees of a not-for-profit entity and such elected member or member of his immediate family has no
84 personal interest related to the not-for-profit entity or (b) an officer ~~or~~, employee ~~where an employee~~, or
85 elected member of a local governing body is appointed by such local governing body to serve on a
86 governmental agency, *or an officer, employee, or elected member of a separate local governmental*
87 *agency formed by a local governing body is appointed to serve on a governmental agency*, and the
88 personal interest in the transaction of the governmental agency is the result of the salary, other
89 compensation, fringe benefits, or benefits provided by the local governing body *or the separate*
90 *governmental agency* to the officer, employee, elected member, or member of his immediate family.

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

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

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