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**SENATE BILL NO. 1267**

Offered January 14, 2015

Prefiled January 14, 2015

*A BILL to amend and reenact §§ 2.2-3103, 2.2-3103.1, 30-103, 30-103.1, and 30-356 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 30-356.1, relating to the State and Local Government Conflict of Interests Act and the General Assembly Conflicts of Interests Act; prohibited conduct related to gifts.*

Patron—Edwards

Referred to Committee on Rules

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

**1. That §§ 2.2-3103, 2.2-3103.1, 30-103, 30-103.1, and 30-356 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 30-356.1 as follows:**

**§ 2.2-3103. Prohibited conduct.**

No officer or employee of a state or local governmental or advisory agency 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 by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that 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 that 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. Accept any honoraria for any appearance, speech, or article in which the officer or employee 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. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;

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

9. 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; or

10. Solicit, accept, or receive any gift, including transportation, lodging, meal, hospitality, or other travel-related thing of value, that is otherwise prohibited by § 2.2-3103.1 prior to submitting to the Council a request for a waiver to accept such gift and receiving such a waiver pursuant to § 30-356.1. The prohibition in this subdivision shall apply only to any state or local government officer or employee required to file the disclosure form prescribed in § 2.2-3117.

**§ 2.2-3103.1. Certain gifts prohibited.**

A. For purposes of this section:

"Intangible gift" means a thing of temporary value or a thing that upon the happening of a certain event or expiration of a given date loses its value. "Intangible gift" includes entertainment, hospitality, a

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59 ticket, admission, or pass, transportation, lodgings, and meals that are reportable on Schedule E of the  
60 disclosure form prescribed in § 2.2-3117.

61 "Tangible gift" means a thing of value that does not lose its value upon the happening of a certain  
62 event or expiration of a given date. "Tangible gift" includes currency, negotiable instruments, securities,  
63 stock options, or other financial instruments that are reportable on Schedule E of the disclosure form  
64 prescribed in § 2.2-3117. "Tangible gift" does not include payments or reimbursements received for any  
65 intangible gift.

66 "Third party" means any person who the officer or employee knows or has reason to know is a  
67 lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; a lobbyist's principal as  
68 defined in § 2.2-419; a person, organization, or business who is a party to or is seeking to become a  
69 party to a contract with the Commonwealth or one of its political subdivisions; or a person whose  
70 interests may be substantially affected by the performance of the officer's or employee's official duties.

71 B. An officer or employee of a state or local governmental or advisory agency or candidate required  
72 to file the disclosure form prescribed in § 2.2-3117 (i) shall not solicit, accept, or receive within any  
73 calendar year any single tangible gift with a value in excess of \$250 or a any combination of tangible  
74 gifts with an aggregate value in excess of \$250 from any person that he knows or has reason to know is  
75 (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (b) a lobbyist's principal  
76 as defined in § 2.2-419; or (c) a person, organization, or business who is a party to or is seeking to  
77 become a party to a contract with the local agency of which he is an officer or an employee; (ii) shall  
78 report any tangible gift with a value of \$250 or less or any intangible gift received from any person  
79 listed in clause (i) on Schedule E of such disclosure form; and (iii) shall report any payments for talks,  
80 meetings, and publications on Schedule D of such disclosure form a third party.

81 C. ~~An~~ Notwithstanding the provisions of subsection B, an officer or employee of a state or local  
82 governmental or advisory agency or candidate required to file the disclosure form prescribed in  
83 § 2.2-3117 (i) shall not solicit, accept, or receive within any calendar year any single tangible gift with a  
84 value in excess of \$250 or a combination of tangible gifts with an aggregate value in excess of \$250  
85 from any person that he knows or has reason to know is (a) a lobbyist registered pursuant to Article 3  
86 (§ 2.2-418 et seq.) of Chapter 4; (b) a lobbyist's principal as defined in § 2.2-419; or (c) a person,  
87 organization, or business who is a party to or is seeking to become a party to a contract with the  
88 Commonwealth; (ii) shall report any tangible gift with a value of \$250 or less or any intangible gift  
89 received from any person listed in clause (i) on Schedule E of such disclosure form; and (iii) shall  
90 report any payments for talks, meetings, and publications on Schedule D of such disclosure form may  
91 accept or receive from a third party a gift with a value in excess of \$250, or a combination of gifts with  
92 an aggregate value in excess of \$250, when he has submitted a request for a waiver to and has received  
93 the approval of the Council pursuant to § 30-356.1. Such gifts shall be reported on the disclosure form  
94 prescribed in § 2.2-3117.

95 D. During the pendency of a civil action in any state or federal court to which the Commonwealth is  
96 a party, the Governor or the Attorney General or any employee of the Governor or the Attorney General  
97 who is subject to the provisions of this chapter shall not solicit, accept, or receive any tangible gift from  
98 any person that he knows or has reason to know is a person, organization, or business who that is a  
99 party to such civil action. A person, organization, or business who that is a party to such civil action  
100 shall not knowingly give any tangible gift to the Governor or the Attorney General or any of their  
101 employees who are subject to the provisions of this chapter. For purposes of this subsection, "person,  
102 organization, or business" includes individuals who are officers, directors, or owners of or who have a  
103 controlling ownership interest in such organization or business

104 E. The \$250 limitation imposed in accordance with this section shall be adjusted by the Council  
105 every five years, as of January 1 of that year, in an amount equal to the annual increases for that  
106 five-year period in the United States Average Consumer Price Index for all items, all urban consumers  
107 (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the  
108 nearest whole dollar.

109 F. For purposes of this section, "person, organization, or business" includes individuals who are  
110 officers, directors, or owners of or who have a controlling ownership interest in such organization or  
111 business.

## 112 § 30-103. Prohibited conduct.

113 No legislator shall:

114 1. Solicit or accept money or other thing of value for services performed within the scope of his  
115 official duties, except the compensation, expenses or other remuneration paid to him by the General  
116 Assembly. This prohibition shall not apply to the acceptance of special benefits which may be  
117 authorized by law;

118 2. Offer or accept any money or other thing of value for or in consideration of obtaining  
119 employment, appointment, or promotion of any person with any governmental or advisory agency;

120 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 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; or

12. *Solicit, accept, or receive any gift, including transportation, lodging, meal, hospitality, or other travel-related thing of value, that is otherwise prohibited by § 30-103.1 prior to submitting to the Council a request for a waiver to accept such gift and receiving such a waiver pursuant to § 30-356.1.*

#### **§ 30-103.1. Certain gifts prohibited.**

A. For purposes of this section:

"Intangible gift" means a thing of temporary value or a thing that upon the happening of a certain event or expiration of a given date loses its value. "Intangible gift" includes entertainment, hospitality, a ticket, admission, or pass, transportation, lodgings, and meals that are reportable on Schedule E of the disclosure form prescribed in § 30-111.

"Tangible gift" means a thing of value that does not lose its value upon the happening of a certain event or expiration of a given date. "Tangible gift" includes currency, negotiable instruments, securities, stock options, or other financial instruments that are reportable on Schedule E of the disclosure form prescribed in § 30-111. "Tangible gift" does not include payments or reimbursements received for any intangible gift.

"Third party" means any person who the legislator knows or has reason to know is a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; a lobbyist's principal as defined in § 2.2-419; a person, organization, or business that is a party to or is seeking to become a party to a contract with the Commonwealth or one of its political subdivisions; or a person whose interests may be substantially affected by the performance of the legislator's official duties.

B. A legislator or candidate for the General Assembly required to file the disclosure form prescribed in § 30-111 (i) shall not solicit, accept, or receive within any calendar year any single tangible gift with a value in excess of \$250 or a any combination of tangible gifts with an aggregate value in excess of \$250 from any person that he knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (~~§ 2.2-418 et seq.~~) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in ~~§ 2.2-419~~; or (c) a person, organization, or business who is a party to or is seeking to become a party to a contract

182 with the Commonwealth; (ii) shall report any tangible gift with a value of \$250 or less or any intangible  
183 gift received from any person listed in clause (i) on Schedule E of such disclosure form; and (iii) shall  
184 report any payments for talks, meetings, and publications on Schedule D-1 of such disclosure form. For  
185 purposes of this subsection, "person, organization, or business" includes individuals who are officers,  
186 directors, or owners of or who have a controlling ownership interest in such organization or business a  
187 third party.

188 *B. Notwithstanding the provisions of subsection A, a legislator or candidate for the General*  
189 *Assembly required to file the disclosure form prescribed in § 30-111 may accept or receive from a third*  
190 *party a gift with a value in excess of \$250, or a combination of gifts with an aggregate value in excess*  
191 *of \$250, when he has submitted a request for a waiver to and has received the approval of the Council*  
192 *pursuant to § 30-356.1. Such gifts shall be reported on the disclosure form prescribed in § 30-111.*

193 *C. The \$250 limitation imposed in accordance with this section shall be adjusted by the Council*  
194 *every five years, as of January 1 of that year, in an amount equal to the annual increases for that*  
195 *five-year period in the United States Average Consumer Price Index for all items, all urban consumers*  
196 *(CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the*  
197 *nearest whole dollar.*

198 **§ 30-356. Powers and duties of the Council.**

199 The Council shall:

200 1. Review all disclosure forms filed by lobbyists pursuant to Article 3 and by state and local  
201 government officers and employees and legislators pursuant to the Acts. The Council shall review all  
202 disclosure forms for completeness, which shall include reviewing the information contained on the face  
203 of the form to determine if the disclosure form has been fully completed and comparing the disclosures  
204 contained in any disclosure form filed by a lobbyist pursuant to § 2.2-426 with other disclosure forms  
205 filed with the Council, and ~~be followed by~~ *shall follow up with* requests for amendments to ensure the  
206 completeness of and correction of errors in the forms, if necessary;

207 2. Accept any disclosure forms by computer or electronic means in accordance with the standards  
208 approved by the Council and using software meeting standards approved by it. The Council shall  
209 provide software to filers without charge and may prescribe the method of execution and certification of  
210 electronically filed forms, including the use of an electronic signature as authorized by the Uniform  
211 Electronic Transactions Act (§ 59.1-479 et seq.), and the procedures for receiving forms in the office of  
212 the Council;

213 3. Beginning July 1, 2015, establish and maintain a searchable electronic database comprising  
214 disclosure forms filed pursuant to §§ 2.2-426, 2.2-3117, 2.2-3118, and 30-111. Such database shall be  
215 available to the public through the Council's official website;

216 4. Furnish, upon request, formal advisory opinions or guidelines and other appropriate information,  
217 including informal advice, regarding ethics and conflicts issues arising under Article 3 or the Acts to any  
218 person or to any agency of state or local government, in an expeditious manner. Informal advice given  
219 by the Council is confidential, protected by the attorney-client privilege, and is excluded from the  
220 provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.);

221 5. Conduct training seminars and educational programs for lobbyists, state and local government  
222 officers and employees ~~and~~, legislators, and other interested persons on the requirements of Article 3 and  
223 the Acts and provide ethics orientation sessions for legislators in compliance with Article 6 (§ 30-129.1  
224 et seq.) of Chapter 13;

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

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

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

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

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

241 **§ 30-356.1. Waivers for certain gifts.**

242 *A. The Council shall receive, review, and approve or deny requests for waivers submitted by persons*  
243 *required to file the disclosure form prescribed in § 2.2-3117 or 30-111 to accept any gift or combination*

of gifts, including transportation, lodging, meal, hospitality, or other travel-related things of value, that will be provided by a third party and has a value exceeding or expected to exceed \$250. A waiver shall not be required for acceptance of travel-related things of value that are paid for or provided by the government of the United States, any of its territories, or another state in the United States or the political subdivision of such other state.

B. Within seven days of receipt of a request for a waiver, the Council shall approve or deny the waiver, unless additional information has been requested. If additional information has been requested, the Council shall approve or deny the waiver within seven days of receipt of such information. Within 10 days of approving a request for a waiver, the Council shall post the waiver on its website.

C. When reviewing the request for a waiver, the Council shall consider the nature of the gift, the relationship between the requester and the third party providing the gift, and whether the gift relates to the official duties of the requester. The Council shall also consider the purpose of any travel-related gift as it relates to the official duties of the requester and may approve a waiver for a travel-related gift in whole or in part, which may include limiting the duration of the trip.

D. A request for a waiver shall be on a form prescribed by the Council and shall contain any information required by the Council. All information included in the request will be subject to public disclosure. Requests to accept any transportation, lodging, meal, hospitality, or other travel-related thing of value shall include specific information regarding the travel, including a detailed agenda and estimated costs.

E. No person shall be prosecuted, assessed a civil penalty, or otherwise disciplined for acceptance of a gift that is otherwise prohibited by § 2.2-3103.1 or 30-103.1, if he accepted such gift after receiving a waiver under this section and the waiver was granted after his full disclosure of the material facts.

F. The Council shall provide instructions for completing and submitting a request. It shall make available on its website the form prescribed for requesting a waiver. It shall prescribe the procedures for receiving and reviewing requests for waivers and the standards for approving or denying waivers.