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HOUSE BILL NO. 2281

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact §§ 30-123, 30-126, 30-127, 30-356, and 30-357 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 30-356.3; and to repeal §§ 30-112 through 30-119 of the Code of Virginia, relating to Virginia Conflict of Interest and Ethics Advisory Council; powers and duties; complaints; penalties.*

Patron—Shin

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-123, 30-126, 30-127, 30-356, and 30-357 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 30-356.3 as follows:

§ 30-123. Knowing violation of chapter; penalty.

Any legislator who knowingly violates any of the provisions of Articles 2 (§ 30-102 *et seq.*) through 5 (~~§§ 30-102 through 30-111~~ § 30-109 *et seq.*) of this chapter shall be is guilty of a Class 4 misdemeanor or Class 6 felony. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter. There shall be no prosecution for a violation of § 30-108 or subsection C of § 30-110 unless the house in which the member sits Council has referred the matter to the Attorney General as provided in subdivision 4 of § ~~30-116~~ F 2 of § 30-356.3.

§ 30-126. Civil penalty from violation of this chapter.

A. In addition to any other fine or penalty provided by law, any money or other thing of value derived by a legislator from a violation of §§ 30-103 through 30-108 shall be forfeited and, in the event of a knowing violation, there may also be imposed a civil penalty in an amount equal to the amount of money or thing of value forfeited to the Commonwealth. If the thing of value received by the legislator in violation of this chapter should enhance in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of the civil penalty.

B. A legislator who fails to file the disclosure form required by § 30-111, *fails to file such disclosure form* within the time period prescribed, *or fails to file a completed disclosure form* shall be assessed a civil penalty in an amount equal to \$250 not to exceed \$500. *In the case of any second or subsequent violation within a 12-month period, the legislator shall be assessed a civil penalty of \$1,000 for each such violation.*

The Council shall notify the Attorney General of any legislator's failure to file the required form, *failure to file the required form by the prescribed deadline, or failure to file a completed disclosure form*, within 30 days of the deadline for filing, and the Attorney General shall assess and collect the civil penalty. All civil penalties collected pursuant to this subsection shall be deposited into the general fund and used exclusively to fund the Council.

§ 30-127. Criminal prosecutions.

A. Violations of this chapter may be prosecuted notwithstanding the jurisdiction of, or any pending proceeding before, the ~~House or Senate Ethics Advisory Panel Council~~.

B. Nothing in this chapter shall limit or affect the application of other criminal statutes and penalties as provided in the Code of Virginia, including but not limited to bribery, embezzlement, perjury, conspiracy, fraud, and violations of the Campaign Finance Disclosure Act Chapter 9.3 (§ 24.2-945 *et seq.*) of Title 24.2.

§ 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~~ *State and Local Government Conflict of Interests Act*. The Council may review disclosure forms for *timeliness, accuracy, and 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

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59 a lobbyist pursuant to § 2.2-426 with other disclosure forms filed with the Council, and requesting any
60 amendments to ensure the completeness of and correction of errors in the forms, if necessary. If a
61 disclosure form is found to have not been filed or to have been incomplete as filed, the Council shall
62 notify the filer in writing and direct the filer to file a completed disclosure form within a prescribed
63 period of time, and such notification shall be confidential and is excluded from the provisions of the
64 Virginia Freedom of Information Act (§ 2.2-3700 et seq.);

65 3. *Review all disclosure forms filed by legislators pursuant to the General Assembly Conflicts of*
66 *Interests Act to determine (i) compliance with applicable disclosure requirements, (ii) compliance with*
67 *applicable limitations on gifts, (iii) the accuracy of the information disclosed, and (iv) whether filing*
68 *deadlines were met. The Council may initiate an investigation pursuant to § 30-356.3 into any*
69 *discrepancies or possible violations of the General Assembly Conflicts of Interests Act discovered in the*
70 *course of the review;*

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

79 4. 5. Accept and review any statement received from a filer disputing the receipt by such filer of a
80 gift that has been disclosed on the form filed by a lobbyist pursuant to Article 3;

81 5- 6. Beginning July 1, 2016, establish and maintain a searchable electronic database comprising
82 those disclosure forms that are filed with the Council pursuant to §§ 2.2-426, 2.2-3117, 2.2-3118, and
83 30-111. Such database shall be available to the public through the Council's official website;

84 6- 7. Furnish, upon request, formal advisory opinions or guidelines and other appropriate information,
85 including informal advice, regarding ethics, conflicts issues arising under Article 3 or the Acts, or a
86 person's duties under Article 3 or the Acts to any person covered by Article 3 or the Acts or to any
87 agency of state or local government, in an expeditious manner. The Council may authorize a designee to
88 furnish formal opinions or informal advice. Formal advisory opinions are public record and shall be
89 published on the Council's website; however, no formal advisory opinion furnished by a designee of the
90 Council shall be available to the public or published until such opinion has been approved by the
91 Council. Published formal advisory opinions may have such deletions and changes as may be necessary
92 to protect the identity of the person involved or other persons supplying information. Informal advice
93 given by the Council or the Council's designee is confidential and is excluded from the mandatory
94 disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, if the
95 recipient invokes the immunity provisions of § 2.2-3121 or 30-124, the record of the request and the
96 informal advice given shall be deemed to be a public record and shall be released upon request. Other
97 records relating to formal advisory opinions or informal advice, including records of requests, notes,
98 correspondence, and draft versions of such opinions or advice, shall also be confidential and excluded
99 from the mandatory disclosure provisions of the Virginia Freedom of Information Act;

100 7- 8. Conduct training seminars and educational programs for lobbyists, state and local government
101 officers and employees, legislators, and other interested persons on the requirements of Article 3 and the
102 Acts and provide training sessions for local elected officials in compliance with Article 9 (§ 2.2-3132) of
103 Chapter 31 of Title 2.2 and ethics orientation sessions for legislators in compliance with Article 6 (§
104 30-129.1 et seq.) of Chapter 13;

105 8- 9. Approve orientation courses conducted pursuant to § 2.2-3128 and, upon request, review the
106 educational materials and approve any training or course on the requirements of Article 3 and the Acts
107 conducted for state and local government officers and employees;

108 9- 10. Publish such educational materials as it deems appropriate on the provisions of Article 3 and
109 the Acts;

110 10- 11. Review actions taken in the General Assembly with respect to the discipline of its members
111 for the purpose of offering nonbinding advice;

112 11- 12. Request from any agency of state or local government such assistance, services, and
113 information as will enable the Council to effectively carry out its responsibilities. Information provided
114 to the Council by an agency of state or local government shall not be released to any other party unless
115 authorized by such agency;

116 12- 13. Redact from any document or form that is to be made available to the public any residential
117 address, personal telephone number, email address, or signature contained on that document or form;
118 and

119 13- 14. Report on or before December 1 of each year on its activities and findings regarding Article
120 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.

§ 30-356.3. Investigations.

A. The Council shall have the authority to investigate alleged violations of the Acts. Such investigations may be initiated upon the Council's own motion or in response to the signed written complaint of any resident of the Commonwealth who has firsthand knowledge of the alleged violation. No investigation shall be initiated in the 60 days immediately preceding a primary election or other nominating event or before a general election in which the subject of such motion or complaint is a candidate for office. All proceedings during the investigation of any complaint by the Council shall be confidential.

B. Upon its own motion, the Council, through its executive director, may initiate an investigation into an alleged violation of the Acts. Such investigation shall begin no later than 30 days after the Council's discovery of the facts giving rise to the alleged violation.

C. Upon receipt of a complaint of a resident of the Commonwealth who has firsthand knowledge of an alleged violation, the Council, through its executive director, shall conduct a preliminary inquiry into any alleged violation of the Acts no later than 30 days after receipt of the complaint. The Council shall notify the subject of the inquiry and forward to him a copy of the complaint. During its preliminary inquiry, the Council shall determine whether the facts stated in the complaint, when taken as true, are sufficient to show a violation of the Acts. It shall complete its preliminary inquiry within 30 days of the initiation of the inquiry. All documents, records, and other information related to the preliminary inquiry are confidential and are excluded from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the original complaint shall be made publicly available no later than six months following the completion of the preliminary inquiry, regardless of the outcome of the inquiry.

If the preliminary inquiry establishes that the facts stated in the complaint taken as true are not sufficient to show a violation of the Acts, the Council shall notify the complainant in writing of such finding, and the complainant shall have an additional seven days to provide additional information to the Council in support of his complaint. After due consideration of any additional information provided, if the Council determines that the facts are not sufficient to show a violation of the Acts, it shall dismiss the complaint and notify the subject of the complaint and the complainant.

If the preliminary inquiry establishes that the facts stated in the complaint taken as true are sufficient to show a violation of the Acts, the Council, through its executive director, shall initiate an investigation to determine if there has been a violation. The investigation shall begin within 30 days of the completion of the preliminary inquiry.

D. An investigation initiated pursuant to subsection B or C shall not begin until the subject of the investigation has been notified and provided with a general statement of the alleged violation and the applicable statutes with respect to such violation. Service of notice is complete upon mailing by certified or registered mail. During the investigation, the Council, its executive director, and its staff shall conduct interviews, take statements, receive and inspect documents and records, and gather other evidence as may be relevant. The Council shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents, records, and other information. The Council shall complete its investigation no later than 180 days after the initiation of the investigation and within 30 days of completion of the investigation shall make a written report of its findings and shall provide a copy of that report to the subject of the investigation. If the Council finds that no violation was committed, the Council shall put in the written report its reasons for dismissal of the complaint and shall notify the subject of the investigation and the complainant, if there is one. In all other cases, the written report shall include the pertinent findings of fact, and the Council shall schedule a hearing on the matter. Any person subpoenaed pursuant to this subsection may immediately procure by petition a decision on the validity of the subpoena in the circuit court as provided in § 2.2-4003.

E. Any hearing conducted pursuant to subsection D shall be open to the public and shall be held no later than 30 days after the issuance of the findings report. At any hearing, the Council shall have the authority to issue subpoenas to compel the attendance of witnesses or the production of documents, records, and other information, and the Council shall issue such subpoenas upon the request of the subject of the investigation. The subject of the investigation shall have the right to request the issuance of subpoenas; present evidence; have access to any evidence used or developed by the Council during its investigation; cross-examine witnesses; face and examine the complainant, if there is one; and be represented by counsel. At the conclusion of the hearing, the Council shall deliberate on the evidence and determine whether a violation of the Acts has been proven by clear and convincing evidence. Any person subpoenaed pursuant to this subsection may immediately procure by petition a decision on the validity of the subpoena in the circuit court as provided in § 2.2-4003.

F. Within 30 days following the conclusion of a hearing conducted pursuant to subsections D and E,

182 *the Council shall issue a final order. The final order shall set forth the alleged violation, the findings of*
183 *fact, and the conclusions of law. It may also include recommendations for disciplinary action, civil*
184 *penalties, or criminal prosecution. Final orders are public record and shall be published on the*
185 *Council's website.*

186 *1. If the Council finds that a person subject to the requirements of the State and Local Government*
187 *Conflict of Interests Act (§ 2.2-3100 et seq.) has knowingly violated one or more provisions of that Act,*
188 *it shall refer a matter involving a state officer or employee by its final order to the Attorney General*
189 *and a matter involving a local officer or employee by its final order to the attorney for the*
190 *Commonwealth within the political subdivision for which such local officer or employee was elected or*
191 *is employed. The final order referred to the appropriate authority pursuant to this section shall contain*
192 *recommendations for civil penalties or criminal prosecution.*

193 *2. If the Council finds that a person subject to the requirements of the General Assembly Conflicts of*
194 *Interests Act (§ 30-100 et seq.) has knowingly violated one or more of the provisions of that Act, it shall*
195 *refer the matter by its final order to the Attorney General. The final order referred to the Attorney*
196 *General pursuant to this section shall contain recommendations for civil penalties or criminal*
197 *prosecution. The Council shall transmit a copy of the final order to the Clerk of the appropriate house,*
198 *for the information of the House or Senate.*

199 *3. If the Council determines that there is a reasonable basis to conclude that a person subject to the*
200 *requirements of the General Assembly Conflicts of Interests Act (§ 30-100 et seq.) has violated one or*
201 *more provisions of that Act but that the violation was not made knowingly, the Council shall refer the*
202 *matter by its final order to the appropriate house of the General Assembly for appropriate action.*

203 **§ 30-357. Staff.**

204 *Staff assistance to the Council shall be provided by the Division of Legislative Services. Staff shall*
205 *perform those duties assigned to it by the Council, including those duties enumerated in § 30-356. The*
206 *Division of Legislative Services shall employ an executive director, who The Council may appoint and*
207 *employ and, at its pleasure, remove an executive director and such other persons as it deems necessary*
208 *to assist it in carrying out its duties as set forth in this chapter. The executive director shall be subject*
209 *to the confirmation of the Joint Committee on Rules. The Council may determine the duties of such staff*
210 *and fix their salaries and compensation within the amounts as may be appropriated from general or*
211 *nongeneral funds.*

212 **2. That §§ 30-112 through 30-119 of the Code of Virginia are repealed.**

213 **3. That the provisions of this act shall become effective on July 1, 2024.**

214 **4. That the provisions of this act may result in a net increase in periods of imprisonment or**
215 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
216 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
217 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**
218 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
219 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
220 **appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile**
221 **Justice.**