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H.384

Introduced by Representative Gannon of Wilmington

Referred to Committee on

Date:

Subject: Ethics; State Ethics Commission; code of ethics

Statement of purpose of bill as introduced: This bill proposes to codify a State code of ethics in 3 V.S.A. chapter 31

An act relating to adoption of a State code of ethics

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 3 V.S.A. § 1201 is amended to read:

§ 1201. DEFINITIONS

As used in this chapter:

(1) “Candidate” and “candidate’s committee” ~~shall~~ have the same meanings as in 17 V.S.A. § 2901.

(2) “Commission” means the State Ethics Commission established under subchapter 3 of this chapter.

(3) “Confidential information” means information that is exempt from public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise designated by law as confidential.

1 (4) “Conflict of interest” means an interest, direct or indirect, financial
2 or otherwise, of a public servant or such an interest, known to the public
3 servant, of a member of the public servant’s immediate family or household, or
4 of a business associate, in the outcome of a particular matter pending before
5 the public servant or the public servant’s public body, or that is in conflict with
6 the proper discharge of the public servant’s duties. “Conflict of interest” does
7 not include any interest that is no greater than that of other persons generally
8 affected by the outcome of a matter, such as a policyholder in an insurance
9 company or a depositor in a bank.

10 ~~(3)~~(4) “Executive officer” means:

11 (A) a State officer; or

12 (B) under the Office of the Governor, an agency secretary or deputy
13 or a department commissioner or deputy.

14 ~~(4)(A) “Gift” means anything of value, tangible or intangible, that is~~
15 ~~bestowed for less than adequate consideration.~~

16 ~~(B) “Gift” does not mean printed educational material such as books,~~
17 ~~reports, pamphlets, or periodicals.~~

18 (6) “Gift” has the same meaning as in 2 V.S.A. § 261.

19 ~~(5)~~(7) “Governmental conduct regulated by law” means conduct by an
20 individual in regard to the operation of State government that is restricted or
21 prohibited by law and includes:

1 (A) bribery pursuant to 13 V.S.A. § 1102;

2 (B) neglect of duty by public officers pursuant to 13 V.S.A. § 3006

3 and by members of boards and commissions pursuant to 13 V.S.A. § 3007;

4 (C) taking illegal fees pursuant to 13 V.S.A. § 3010;

5 (D) false claims against government pursuant to 13 V.S.A. § 3016;

6 (E) owning or being financially interested in an entity subject to a

7 department's supervision pursuant to section 204 of this title;

8 (F) failing to devote time to duties of office pursuant to section 205

9 of this title;

10 (G) engaging in retaliatory action due to a State employee's

11 involvement in a protected activity pursuant to chapter 27, subchapter 4A of

12 this title;

13 (H) a former legislator or former Executive officer serving as a

14 lobbyist pursuant to 2 V.S.A. § 266(b); and

15 (I) a former Executive officer serving as an advocate pursuant to

16 section 267 of this title.

17 (8) "Immediate family" means a person's spouse or civil union partner;

18 domestic partner as defined in 17 V.S.A. § 2414(e)(1); sibling; child or foster

19 child; grandchild; parent; grandparent; or in-law, including a parent, sibling,

20 child or foster child, grandchild or grandparent of a spouse, civil union partner,

21 or domestic partner.

1 ~~(6)~~(9) “Lobbyist” shall have the same meaning as in 2 V.S.A. § 261.

2 (10) “Person” means any individual, group, business entity, association,
3 or organization.

4 ~~(7)~~(11) “Political committee” and “political party” have the same
5 meanings as in 17 V.S.A. § 2901.

6 (12) “Prohibited source” means any person who:

7 (A) is seeking official action by a public servant’s agency;

8 (B) does business or seeks to do business with a public servant’s
9 agency or department;

10 (C) conducts activities regulated by the public servant’s agency;

11 (D) has interests that may be substantially affected by the
12 performance or nonperformance of the public servant’s official duties; or

13 (E) is an organization with a majority of whose members are
14 described as in (A) through (B) of this subdivision.

15 ~~(8)~~(13) “State officer” means the Governor, Lieutenant Governor,
16 Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

17 Sec. 2. 3 V.S.A. § 1202 is amended to read:

18 § 1202. STATE CODE OF ETHICS

19 ~~The Ethics Commission, in consultation with the Department of Human~~
20 ~~Resources, shall create and maintain the State Code of Ethics that sets forth~~
21 ~~general principles of governmental ethical conduct.~~

1 (a) Applicability. Unless excluded under this section, the Code of Ethics
2 applies to all persons elected or appointed to serve as officers of the State, all
3 persons elected or appointed to serve as members of the General Assembly, all
4 State employees, all persons appointed to serve on State boards and
5 commissions, and persons who in any other way are authorized to act or speak
6 on behalf of the State. This code refers to them all as “public servants.” The
7 Code of Ethics established by this section does not prohibit branches of State
8 government, agencies, or departments from adopting more stringent provisions
9 regarding the ethical conduct of their employees.

10 (b) Exclusions. The Code of Ethics does not apply to:

11 (1) the functions of State legislators that are protected by Chapter I,
12 Article 14 of the Vermont Constitution;

13 (2) those exercising judicial power under Chapter II, § 4 of the Vermont
14 Constitution; and

15 (3) members of the General Assembly unless the Code of Ethics is
16 adopted by Rule by each house of the General Assembly.

17 (c) Ethical Conduct.

18 (1) Conflict of Interest. Each time a public servant is confronted with a
19 conflict of interest, the public servant shall recuse from the matter or prepare a
20 written statement that shall:

21 (A) describe the matter requiring action;

1 (B) disclose the nature of the potential conflict or actual conflict of
2 interest;

3 (C) explain why good cause, as set forth subsection (d) of this
4 section, exists so that the public servant can take action in the matter fairly,
5 objectively, and in the public interest; and

6 (D) include sufficient detail so that the matter may be understood by
7 the public.

8 (2) Directing unethical conduct. A public servant shall not direct
9 another person to act in a manner that would be unethical for the public servant
10 or the other person to act. A public servant who has a conflict of interest shall
11 not direct others to act to the public servant's benefit where such action would
12 be a violation of the Code of Ethics if the public servant were to perform the
13 act.

14 (3) Conduct after recusal. Once recused, a public servant shall not in
15 any way participate in or act to influence a decision regarding the matter.

16 (4) Appearance of unethical conduct. A public servant shall avoid any
17 actions creating the appearance that the public servant is violating the law or
18 the Code of Ethics. Whether particular circumstances create an appearance
19 that the law or the Code of Ethics have been violated shall be determined from
20 the perspective of a reasonable person with knowledge of the relevant facts.

1 (5) Preferential treatment. A public servant in the course of conducting
2 State business shall act impartially, showing no favor toward or prejudice
3 against any person. A public servant shall not give or represent an ability to
4 give preference or special treatment to any person because of the person's
5 wealth, position, or status, or because of any personal relationship with the
6 public servant. When permitted by law and written policy or rule, a public
7 servant may give preference to designated persons.

8 (6) Misuse of position. A public servant shall not use his or her official
9 position for personal or financial gain.

10 (7) Misuse of information. A public servant shall not use non-public
11 government information or confidential information acquired during the course
12 of State service for personal or financial gain or for the personal or financial
13 gain of any other person.

14 (8) Misuse of government resources. A public servant shall not make
15 use of State materials, funds, property, personnel, facilities, or equipment, or
16 permit another person to do so, for any purpose other than for official State
17 business, unless the use is expressly permitted or required by law or by a
18 written agency, departmental, or institutional policy or rule. A public servant
19 shall not engage in or direct another person to engage in work other than the
20 performance of official duties during working hours, except as permitted or

1 required by law or by written agency, departmental, or institutional policy or
2 rule.

3 (9)(A) Gifts prohibited. Unless covered by an exception, a public
4 servant shall not:

5 (i) accept a gift under circumstances that could reasonably be
6 inferred as accepting a gift that is intended to influence the public servant in
7 the public servant's performance of official duties;

8 (ii) use or permit the use of the public servant's government
9 position or any authority associated with public office to solicit or coerce the
10 offering of a gift;

11 (iii) accept gifts from the same or different sources on a basis so
12 frequent that a reasonable person would be led to believe the public servant is
13 using the public servant's office for personal gain;

14 (iv) accept a gift in violation of an applicable law, rule, policy, or
15 executive order; or

16 (v) directly or indirectly solicit a gift from a prohibited source or
17 solicit a gift to be given because of the public servant's official position.

18 (B) Gift exceptions.

19 (i) Gifts of \$20.00 or less. A public servant may accept
20 unsolicited gifts having an aggregate market value of \$20.00 or less per source
21 per occasion, provided that the aggregate market value of individual gifts

1 received from any one person under the authority of this subdivision (i) does
2 not exceed \$50.00 in a calendar year. This exception does not apply to gifts of
3 cash or of investment interests such as stock, bonds, or certificates of deposit.
4 Where the market value of a gift or the aggregate market value of gifts offered
5 on any single occasion exceeds \$20.00, the public servant shall not pay the
6 excess value over \$20.00 in order to accept that portion of the gift or those
7 gifts worth \$20.00. Where the aggregate value of tangible items offered on a
8 single occasion exceeds \$20.00, the public servant may decline any distinct
9 and separate item in order to accept those items aggregating \$20.00 or less.

10 (ii) Personal gifts. A public servant may accept a gift given by an
11 individual under circumstances that make it clear that the gift is motivated by
12 an outside relationship, family relationship, or personal friendship rather than
13 the position of the public servant. Relevant factors in making such a
14 determination include the history and nature of the relationship and whether
15 the person, family member, or a friend personally pays for the gift.

16 (iii) Event attendance. A public servant may accept a gift of
17 attendance to training or similar events approved by the public servant's
18 supervisor and determined to be in the interest of the public servant's agency
19 or department.

20 (iv) Otherwise permitted by law. A public servant may accept a
21 gift where expressly permitted to do so under State law.

1 (10) Unauthorized Commitments. A public servant shall not make
2 unauthorized commitments or promises of any kind purporting to bind State
3 government.

4 (11)(A) Outside employment. A public servant shall not seek or engage
5 in outside employment or activities that are inconsistent, incompatible, or in
6 conflict with the public servant's official duties.

7 (B) Post-government employment.

8 (i) Executive officers. Except as permitted in subdivision (iv) of
9 this subdivision (B), an executive officer shall not, for one year after leaving
10 State service, be an advocate for anyone, other than the State, for compensation
11 before the department, division, agency, board, commission, body or office in
12 which the executive officer served at the time of termination of State service
13 concerning any matter in which the State has a direct and substantial interest.

14 (ii) Legislators. Except as permitted in subdivision (iv) of this
15 subdivision (B), a former legislator shall not be an advocate for anyone, other
16 than the State, for compensation, before the General Assembly or any of its
17 constituent parts, until the end of the biennial session following the legislator's
18 departure from the General Assembly.

19 (iii) Legislative Branch employees. Except as permitted in
20 subdivision (iv) of this subdivision (B), a former Legislative Branch employee
21 shall not, for one year after leaving State service, be an advocate for anyone,

1 other than the State, for compensation before the General Assembly or any of
2 its subparts or the office in which the Legislative Branch employee served at
3 the time of termination of State service concerning any matter in which the
4 State has a direct and substantial interest.

5 (iv) Contracting exception. The limitations in subdivisions (i)
6 through (iii) in this subdivision (B) do not apply to individuals providing
7 information or services to the State pursuant to contracts of the State, unless
8 the public servant is otherwise prohibited from doing so by State or federal
9 law.

10 (v) Representation restrictions. A public servant shall not, after
11 termination of State service or employment, knowingly make with the intent to
12 influence any communication or appearance before any entity of the State on
13 behalf of any person other than the State in connection with any investigation,
14 application, request for a ruling or determination, rulemaking, contract,
15 controversy, claim, charge, accusation, arrest, quasi-judicial, judicial or other
16 proceeding:

17 (aa) in which the State is a party or has a direct and substantial
18 interest;

19 (bb) in which the public servant participated personally and
20 substantially as a public servant; and

1 (cc) that involved a same party or parties as at the time of such
2 participation.

3 (12) Compliance with laws, rules and policies. A public servant shall
4 comply with applicable State and federal laws and regulations, including anti-
5 discrimination and equal opportunity laws and comply with applicable
6 governmental codes of conduct. A public servant shall comply with any other
7 applicable rules or policies established by executive order, agency rule, or
8 policy.

9 (d) Request for State Ethics Commission Determination. A public servant
10 or the public servant's supervisor may request that the State Ethics
11 Commission review a statement prepared under subdivision (c)(1) of this
12 section to determine whether a conflict of interest exists and, if good cause
13 exists, whether good cause exists such that the public servant can proceed in
14 the matter without violating the Code of Ethics.

15 (1) The State Ethics Commission responses to requests shall be in
16 writing.

17 (2) As used in this section, "good cause to proceed in the matter" may
18 include any of the following:

19 (A) the identified conflict or potential conflict is de minimum in
20 nature;

21 (B) the action to be taken is ministerial or clerical;

1 (C) the conflict is amorphous, intangible, or other speculative; or

2 (D) the public servant cannot legally or practically delegate the
3 matter.

4 (e) Whistleblower protections for ethics complaints. Consistent with
5 3 V.S.A. § 971 et seq., a public servant shall be free to disclose waste, fraud,
6 abuse of authority, violations of law, or violations of this or other applicable
7 codes regarding ethical conduct to the State Ethics Commission without fear of
8 reprisal, intimidation, or retaliation.

9 (f) Mandatory ethics education and training. Within the first 120 days of
10 public service, a public servant shall engage in ethics training, which may be in
11 person or online. Completion of ethics training shall be documented by the
12 department where the public servant is employed. A public servant shall
13 participate in continuing ethics education, which may be in person or online, at
14 least once every three years thereafter. Approved continuing ethics education
15 providers are the State Ethics Commission, the Department of Human
16 Resources – Center for Achievement in Public Service (CAPS), the Vermont
17 House of Representatives Ethics Panel for the House of Representatives, the
18 Vermont Senate Ethics Panel for the Senate, and any education providers
19 approved by the State Ethics Commission. Copies of ethics training materials
20 by ethics education providers shall be provided to the State Ethics

1 Commission. On request, the State Ethics Commission may collaborate with
2 or assist ethics education providers.

3 Sec. 3. REPEALS

4 (a) 3 V.S.A. § 267 (Executive officers; postemployment restrictions) is
5 repealed.

6 (b) 2 V.S.A. § 266(b) (“A legislator or an Executive officer, for one year
7 after leaving office, shall not be a lobbyist in this State”) is repealed.

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on July 1, 2021.