

1 S.171

2 Introduced by Senators Pollina and White

3 Referred to Committee on

4 Date:

5 Subject: Ethics; State Ethics Commission; code of ethics

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

8 An act relating to adoption of a State code of ethics

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

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

11 § 1201. DEFINITIONS

12 As used in this chapter:

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

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

17 (3) “Confidential information” means information that is exempt from
18 public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise
19 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**
8 **individuals** generally affected by the outcome of a matter, such as a
9 policyholder in an insurance company or a depositor in a bank.

10 ~~(3)~~(5) “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)~~ **(6)** “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)(7)~~ “Immediate family” means a person’s an individual’s spouse or

18 civil union partner; domestic partner as defined in 17 V.S.A. § 2414(e)(1);

19 sibling; child or foster child; grandchild; parent; grandparent; or in-law;

20 including a parent, sibling, child or foster child, grandchild or

21 grandparent of a spouse, civil union partner, or domestic partner, child or

1 **foster child; sibling; parent; or such relations by marriage or by civil**
2 **union or domestic partnership; or an individual claimed as a dependent**
3 **for federal income tax purposes.**

4 ~~(6)~~(8) “Lobbyist” shall ~~have~~ has the same meaning as in 2 V.S.A. § 261.

5 (9) “Person” means any individual, group, business entity, association,
6 or organization.

7 ~~(7)~~(10) “Political committee” and “political party” shall have the same
8 meanings as in 17 V.S.A. § 2901.

9 ~~(11)~~ **“Prohibited source” means any person who:**

10 ~~(A)~~ **is seeking official action by a public servant’s agency;**

11 ~~(B)~~ **does business or seeks to do business with a public servant’s**
12 **agency or department;**

13 ~~(C)~~ **conducts activities regulated by the public servant’s agency;**

14 ~~(D)~~ **has interests that may be substantially affected by the**
15 **performance or nonperformance of the public servant’s official duties; or**

16 ~~(E)~~ **is an organization with a majority of whose members are**
17 **described as in subdivisions (A) and (B) of this subdivision (12).**

18 ~~(8)~~(11) “State officer” means the Governor, Lieutenant Governor,
19 Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

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

21 § 1202. STATE CODE OF ETHICS

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

4 (a) Applicability.

5 (1) Unless excluded under this section, the Code of Ethics applies to all
6 persons individuals elected or appointed to serve as officers of the State, all
7 persons individuals elected or appointed to serve as members of the General
8 Assembly, all State employees, all persons individuals appointed to serve on
9 State boards and commissions, and persons individuals who in any other way
10 are authorized to act or speak on behalf of the State. This code refers to them
11 all as “public servants.”

12 (2) The Code of Ethics established by this section does not prohibit
13 branches of State government, agencies, or departments from adopting more
14 stringent provisions regarding the ethical conduct of their employees.

15 (3) The application of this Code of Ethics does not in any way abrogate
16 or alter the sole authority of each house of the General Assembly to judge the
17 elections and qualifications of its own members under Chapter II, Sections 14
18 and 19 of the Vermont Constitution.

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

20 (1) the functions of members of the General Assembly that are protected
21 by Chapter I, Article 14 of the Vermont Constitution;

1 (2) those exercising judicial power under Chapter II, Section 4 of the
2 Vermont Constitution; and

3 (3) members of the General Assembly unless the Code of Ethics is
4 adopted by rule by each house of the General Assembly.

5 (c) Ethical conduct.

6 (1) Conflict of interest.

7 (A) Course of action. Each time a public servant is confronted with a
8 conflict of interest, the public servant shall either make a public statement
9 recusing themselves from the matter or, if the public servant chooses to
10 proceed with the matter, prepare a written statement regarding the nature of the
11 conflict. A public servant may request either guidance or an advisory opinion
12 from the State Ethics Commission in making an initial determination whether a
13 conflict of interest exists, or whether good cause to proceed exists as set forth
14 in subdivision (B) of this subdivision (1). If the public servant chooses to
15 proceed with the matter, the public servant’s prepared written statement shall:

16 (i) describe the matter requiring action;

17 (ii) disclose the nature of the potential conflict or actual conflict of
18 interest;

19 (iii) explain why good cause, as set forth in subdivision (B) of this
20 subdivision (1), exists so that the public servant can take action in the matter
21 fairly, objectively, and in the public interest;

1 (iv) include sufficient detail so that the matter may be understood
2 by the public; and

3 (v) be filed in accordance with the policies and procedures set
4 forth by the agency or entity governing the matter in question, including any
5 requirement that the statement be made public.

6 (B) Good cause. As used in this section, “good cause to proceed”
7 may include any of the following:

8 (i) the identified conflict or potential conflict is de **minimum**
9 **minimis** in nature;

10 (ii) the action to be taken is ministerial or clerical;

11 (iii) the conflict is amorphous, intangible, or otherwise
12 speculative; or

13 (iv) the public servant cannot legally or practically delegate the
14 matter.

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

18 (2) Directing unethical conduct. A public servant shall not direct
19 another person to act in a manner that would be unethical for the public servant
20 or the other person to act. A public servant who has a conflict of interest shall
21 not direct others to act to the public servant’s benefit where such action would

1 be a violation of the Code of Ethics if the public servant were to perform the
2 act.

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

6 **(3)** Appearance of unethical conduct. A public servant shall avoid any
7 actions creating the appearance that the public servant is violating the law or
8 the Code of Ethics. Whether particular circumstances create an appearance
9 that the law or the Code of Ethics have been violated shall be determined from
10 the perspective of a reasonable **person individual** with knowledge of the
11 relevant facts.

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

19 **(5)** Misuse of position. A public servant shall not use his or her official
20 position for personal or financial gain.

1 **(6)** Misuse of information. A public servant shall not use nonpublic
2 government information or confidential information acquired during the course
3 of State service for personal or financial gain or for the personal or financial
4 gain of any other person.

5 **(7)** Misuse of government resources. A public servant shall not make
6 use of State materials, funds, property, personnel, facilities, or equipment, or
7 permit another person to do so, for any purpose other than for official State
8 business unless the use is expressly permitted or required by law or by a
9 written agency, departmental, or institutional policy or rule. A public servant
10 shall not engage in or direct another person to engage in work other than the
11 performance of official duties during working hours, except as permitted or
12 required by law or by written agency, departmental, or institutional policy or
13 rule.

14 **(8)** Gifts.

15 ~~**(A) Gifts prohibited. Unless covered by an exception, a public**~~
16 ~~**servant shall not:**~~

17 ~~**(i) accept a gift under circumstances that could reasonably be**~~
18 ~~**inferred as accepting a gift that is intended to influence the public servant**~~
19 ~~**in the public servant's performance of official duties;**~~

1 ~~(ii) use or permit the use of the public servant's government~~
2 ~~position or any authority associated with public office to solicit or coerce~~
3 ~~the offering of a gift;~~

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

7 ~~(iv) accept a gift in violation of an applicable law, rule, policy,~~
8 ~~or executive order; or~~

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

11 ~~(B) Gift exceptions.~~

12 ~~(i) Gifts of \$20.00 or less. A public servant may accept~~
13 ~~unsolicited gifts having an aggregate market value of \$20.00 or less per~~
14 ~~source per occasion, provided that the aggregate market value of~~
15 ~~individual gifts received from any one person under the authority of this~~
16 ~~subdivision (i) does not exceed \$50.00 in a calendar year. This exception~~
17 ~~does not apply to gifts of cash or of investment interests such as stock,~~
18 ~~bonds, or certificates of deposit. Where the market value of a gift or the~~
19 ~~aggregate market value of gifts offered on any single occasion exceeds~~
20 ~~\$20.00, the public servant shall not pay the excess value over \$20.00 in~~
21 ~~order to accept that portion of the gift or those gifts worth \$20.00. Where~~

1 the aggregate value of tangible items offered on a single occasion exceeds
2 \$20.00, the public servant may decline any distinct and separate item in
3 order to accept those items aggregating \$20.00 or less.

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

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

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

17 (A) Gifts prohibited. Unless covered by an exception, a public
18 servant shall not solicit or accept anything of value, tangible or intangible,
19 that is bestowed for less than adequate consideration. For purposes of this
20 subdivision (A), a public servant may accept a commercially reasonable

1 **loan made on terms not more favorable than loans made in the ordinary**
2 **course of business.**

3 **(B) Gift exceptions. A public servant may accept a gift under any**
4 **of the following circumstances:**

5 **(i) A devise or inheritance. A public servant may accept a**
6 **devise or inheritance.**

7 **(ii) Gifts to the State. A public servant may accept goods or**
8 **services that are provided to a State agency for use on State agency**
9 **property or for use by the public servant while serving in an official**
10 **capacity.**

11 **(iii) Ceremonial awards. A public servant may accept a**
12 **certificate, plaque, or other ceremonial award costing less than \$100.00.**

13 **(iv) Rebates, discounts and promotions. A public servant may**
14 **accept a rebate, discount, or promotional item that is available to the**
15 **general public, or to a definable subset of the general public.**

16 **(v) Printed or recorded material. A public servant may accept**
17 **printed or recorded informational or educational material germane to**
18 **state action or functions.**

19 **(vi) Food or beverages. A public servant may accept food or**
20 **beverages, or both, under the following circumstances:**

1 **(I) The food or beverage or both, costs less than \$50.00 in**
2 **the aggregate per recipient, per source, in a calendar year, and is**
3 **consumed on an occasion or occasions at which the person paying, directly**
4 **or indirectly, for the food or beverage, or the person’s representative, is in**
5 **attendance.**

6 **(II) The food or beverage or both is incidental to the**
7 **performance of a legitimate state function.**

8 **(III) The food or beverage or both is provided at a**
9 **charitable, cultural, political, or civic event at which the public servant**
10 **participates in the public servant’s official capacity.**

11 **(vii) Admission fees and tickets. A public servant may accept**
12 **tickets or admission to a charitable, cultural, political or civic event at**
13 **which a public servant participates in the public servant’s official**
14 **capacity, provided such tickets or admission is provided by the primary**
15 **sponsoring entity.**

16 **(viii) Private employment gifts. A public servant may accept**
17 **anything of value provided by an employer of the public servant, provided**
18 **such benefits are customarily and ordinarily provided to others in similar**
19 **circumstances.**

1 **(ix) Public servant to public servant gifts. A public servant**
2 **may accept a gift from another public servant under the following**
3 **circumstances:**

4 **(I) If the recipient is not in a supervisor-supervisee**
5 **relationship with the giver, the public servant may accept a gift for a**
6 **holiday or occasion of significance.**

7 **(II) If the recipient is in a supervisor-supervisee**
8 **relationship, the public servant may accept a gift for a holiday or occasion**
9 **of significance, provided that the value is less than \$20.00 for any single**
10 **gift, and the value of all gifts does not exceed \$50.00 in the aggregate per**
11 **year.**

12 **(x) Training or education. A public servant may accept**
13 **attendance to training or similar events determined to be in the interest of**
14 **the public servant’s agency or department.**

15 **(xi) Gifts of de minimis value. A public servant may accept an**
16 **unsolicited gift having a market value of \$20.00 or less per source per**
17 **occasion, provided that the aggregate market value of individual gifts**
18 **received from any one person does not exceed \$100.00 in a calendar year.**

19 **(xii) Personal gifts. A public servant may accept gifts clearly**
20 **motivated by an outside relationship, family relationship, or personal**
21 **friendship rather than the position of the public servant. Relevant factors**

1 **in making such a determination include the history and nature of the**
2 **relationship and whether the person, family member, or a friend,**
3 **personally pays for the gift.**

4 **(xiii) Gifts otherwise permitted and legal. A public servant**
5 **may accept a gift that is otherwise expressly permitted under State law.**

6 **(9) Unauthorized commitments. A public servant shall not make**
7 **unauthorized commitments or promises of any kind purporting to bind State**
8 **government.**

9 **(10) Employment restrictions.**

10 **(A) Outside employment. A public servant shall not seek or engage**
11 **in outside employment or activities that are inconsistent, incompatible, or in**
12 **conflict with the public servant’s official duties.**

13 **(B) Post-government employment.**

14 **(i) Executive officers. Executive officers shall comply with the**
15 **post-government employment restrictions prescribed in 3 V.S.A. § 267 and**
16 **2 V.S.A. § 266(b) and (c).**

17 **(ii) Legislators. Legislators shall comply with the post-**
18 **government employment restrictions prescribed in 2 V.S.A. § 266(b).**

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) of this subdivision (B) do not apply to individuals providing
7 information or services to the State pursuant to contracts of the State unless the
8 public servant is otherwise prohibited from doing so by State or federal law.

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

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

18 (II) in which the public servant participated personally and
19 substantially as a public servant; and

20 (III) that involved the same party or parties as at the time of
21 such participation.

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

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

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

1 approved by the State Ethics Commission. Copies of ethics training materials
2 by ethics education providers shall be provided to the State Ethics
3 Commission. On request, the State Ethics Commission may collaborate with
4 or assist ethics education providers.

5 Sec. 3. EFFECTIVE DATE

6 This act shall take effect on July 1, 2022.