

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 chapter 31, subchapter 1** is amended to read:

11 Subchapter 1. General Provisions: **State Code of Ethics**

12 § 1201. DEFINITIONS

13 As used in this chapter:

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

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

18 (3) “Confidential information” means information that is exempt from
19 public inspection and copying under 1 V.S.A. § 315 et seq. or is otherwise
20 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 **(5) "Domestic partner" means an individual in an enduring**
11 **domestic relationship of a spousal nature with the Executive officer or the**
12 **public servant, as long as the individual and Executive officer or public**
13 **servant:**

14 **(A) have shared a residence for at least six consecutive months;**

15 **(B) are at least 18 years of age;**

16 **(C) are not married to or considered a domestic partner of another**
17 **individual;**

18 **(D) are not related by blood closer than would bar marriage under**
19 **State law; and**

20 **(E) have agreed between themselves to be responsible for each**
21 **other's welfare.**

1 ~~(3)~~(6) “Executive officer” means:

2 (A) a State officer; or

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

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

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

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

10 ~~(5)~~(7) “Governmental conduct regulated by law” means conduct by an
11 individual in regard to the operation of State government that is restricted or
12 prohibited by law and includes:

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

14 (B) neglect of duty by public officers pursuant to 13 V.S.A. § 3006
15 and by members of boards and commissions pursuant to 13 V.S.A. § 3007;

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

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

18 (E) owning or being financially interested in an entity subject to a
19 department’s supervision pursuant to section 204 of this title;

20 (F) failing to devote time to duties of office pursuant to section 205
21 of this title;

1 (G) engaging in retaliatory action due to a State employee’s
2 involvement in a protected activity pursuant to chapter 27, subchapter 4A of
3 this title;

4 (H) a former legislator or former Executive officer serving as a
5 lobbyist pursuant to 2 V.S.A. § 266(b); and

6 (I) a former Executive officer serving as an advocate pursuant to
7 section 267 of this title.

8 **(8)** “Immediate family” means **a person’s an individual’s** spouse,
9 **domestic partner,** or civil union partner; **domestic partner as defined in 17**
10 **V.S.A. § 2414(e)(1); sibling; child or foster child; grandchild; parent;**
11 **grandparent; or in-law, including a parent, sibling, child or foster child,**
12 **grandchild or grandparent of a spouse, civil union partner, or domestic**
13 **partner, child or foster child; sibling; parent; or such relations by**
14 **marriage or by civil union or domestic partnership; or an individual**
15 **claimed as a dependent for federal income tax purposes.**

16 ~~(6)~~**(9)** “Lobbyist” **and “lobbying firm” shall have has shall have** the
17 same meaning as in 2 V.S.A. § 261.

18 **(10)** “Person” means any individual, group, business entity, association,
19 or organization.

20 ~~(7)~~**(11)** “Political committee” and “political party” shall have the same
21 meanings as in 17 V.S.A. § 2901.

- 1 ~~(11) “Prohibited source” means any person who:~~
- 2 ~~(A) is seeking official action by a public servant’s agency;~~
- 3 ~~(B) does business or seeks to do business with a public servant’s~~
- 4 ~~agency or department;~~
- 5 ~~(C) conducts activities regulated by the public servant’s agency;~~
- 6 ~~(D) has interests that may be substantially affected by the~~
- 7 ~~performance or nonperformance of the public servant’s official duties; or~~
- 8 ~~(E) is an organization with a majority of whose members are~~
- 9 ~~described as in subdivisions (A) and (B) of this subdivision (12).~~

10 ~~(8)~~(12) “State officer” means the Governor, Lieutenant Governor,
11 Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

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

13 § 1202. STATE CODE OF ETHICS; **APPLICABILITY; EXCLUSIONS**

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

17 (a) Applicability.

18 (1) Unless excluded under this section, the Code of Ethics applies to all
19 persons individuals elected or appointed to serve as officers of the State, all
20 persons individuals elected or appointed to serve as members of the General
21 Assembly, all State employees, all persons individuals appointed to serve on

1 State boards and commissions, and **persons individuals** who in any other way
2 are authorized to act or speak on behalf of the State. This code refers to them
3 all as “public servants.”

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

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

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

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

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

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

18 ~~**(c) Ethical conduct.**~~

19 **§ 1203. CONFLICT OF INTEREST**

20 ~~**(1) Conflict of interest.**~~

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

10 **(1)** describe the matter requiring action;

11 **(2)** disclose the nature of the potential conflict or actual conflict of
12 interest;

13 **(3)** explain why good cause, as set forth in **subsection (b) of this section**,
14 exists so that the public servant can take action in the matter fairly, objectively,
15 and in the public interest;

16 **(4)** include sufficient detail so that the matter may be understood by the
17 public; and

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

1 **(b)** Good cause. As used in this section, “good cause to proceed” may
2 include any of the following:

3 **(1)** the identified conflict or potential conflict is de **minimum minimis**
4 in nature;

5 **(2)** the action to be taken is ministerial or clerical;

6 **(3)** the conflict is amorphous, intangible, or otherwise speculative; or

7 **(4)** the public servant cannot legally or practically delegate the matter.

8 **(c) Conduct after recusal. Once recused, a public servant shall not in**
9 **any way participate in or act to influence a decision regarding the matter.**

10 **§ 1203a. DIRECTING UNETHICAL CONDUCT**

11 A public servant shall not direct another person to act in a manner that
12 would be unethical for the public servant or the other person to act. A public
13 servant who has a conflict of interest shall not direct others to act to the public
14 servant’s benefit where such action would be a violation of the Code of Ethics
15 if the public servant were to perform the act.

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

19 **§ 1203b. APPEARANCE OF UNETHICAL CONDUCT**

20 A public servant shall avoid any actions creating the appearance that the
21 public servant is violating the law or the Code of Ethics. Whether particular

1 circumstances create an appearance that the law or the Code of Ethics have
2 been violated shall be determined from the perspective of a reasonable **person**
3 **individual** with knowledge of the relevant facts.

4 **§ 1203c. PREFERENTIAL TREATMENT**

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

12 **§ 1203d. MISUSE OF POSITION**

13 A public servant shall not use his or her official position for personal or
14 financial gain.

15 **§ 1203e. MISUSE OF INFORMATION**

16 A public servant shall not use nonpublic government information or
17 confidential information acquired during the course of State service for
18 personal or financial gain or for the personal or financial gain of any other
19 person.

20 **§ 1203f. MISUSE OF GOVERNMENT RESOURCES**

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

9 **§ 1203g. GIFTS**

10 **(a) Gift limitations and exceptions. A public servant shall not solicit or**
11 **accept a gift unless permitted under this section. For purposes of this**
12 **subchapter, a “gift” means anything of value, tangible or intangible, that**
13 **is given for less than adequate consideration. A public servant may**
14 **accept:**

15 **(1) A devise or inheritance. A public servant may accept a devise or**
16 **inheritance.**

17 **(2) Gifts to the State. A public servant may accept goods or services**
18 **that are provided to a State agency for use on State agency property or for**
19 **use by the public servant while serving in an official capacity.**

1 **(3) Ceremonial awards. A public servant may accept a certificate,**
2 **plaque, or other ceremonial award provided the cost does not exceed the**
3 **limit established pursuant to subsection (b) of this section.**

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

7 **(5) Printed or recorded material. A public servant may accept**
8 **printed or recorded informational or educational material germane to**
9 **state action or functions.**

10 **(6) Food or beverages. A public servant may accept food or**
11 **beverages, or both, under the following circumstances:**

12 **(A) The food or beverage or both, that is consumed on an**
13 **occasion or occasions at which the person paying, directly or indirectly,**
14 **for the food or beverage, or the person's representative, is in attendance,**
15 **provided the cost does not exceed the limit established pursuant to**
16 **subsection (b) of this section.**

17 **(B) The food or beverage or both is incidental to the performance**
18 **of a legitimate State function.**

19 **(C) The food or beverage or both is provided at a charitable,**
20 **cultural, political, or civic event at which the public servant participates in**
21 **the public servant's official capacity.**

1 **(7) Admission fees and tickets. A public servant may accept tickets**
2 **or admission to a charitable, cultural, political or civic event at which a**
3 **public servant participates in the public servant’s official capacity,**
4 **provided such tickets or admission is provided by the primary sponsoring**
5 **entity.**

6 **(8) Private employment gifts. A public servant may accept anything**
7 **of value provided by an employer of the public servant, provided such**
8 **benefits are customarily and ordinarily provided to others in similar**
9 **circumstances.**

10 **(9) Public servant to public servant gifts. A public servant may**
11 **accept a gift from another public servant under the following**
12 **circumstances:**

13 **(A) If the recipient is not in a supervisor-supervisee relationship**
14 **with the giver, the public servant may accept a gift for a holiday or**
15 **occasion of significance.**

16 **(B) If the recipient is in a supervisor-supervisee relationship, the**
17 **public servant may accept a gift for a holiday or occasion of significance,**
18 **provided the value does not exceed the limit established pursuant to**
19 **subsection (b) of this section.**

1 **(10) Training or education.** A public servant may accept attendance
2 to training or similar events determined to be in the interest of the public
3 servant’s agency or department.

4 **(11) Gifts of de minimis value.** A public servant may accept an
5 unsolicited gift having a de minimis market value as established pursuant
6 to subsection (b) of this section.

7 **(12) Personal gifts.** A public servant may accept gifts clearly
8 motivated by an outside relationship, family relationship, or personal
9 friendship rather than the position of the public servant. Relevant factors
10 in making such a determination include the history and nature of the
11 relationship and whether the individual, family member, or a friend,
12 personally pays for the gift.

13 **(13) Loans.** A public servant may accept a commercially reasonable
14 loan made on terms not more favorable than loans made in the ordinary
15 course of business.

16 **(14) Gifts otherwise permitted and legal.** A public servant may
17 accept a gift that is otherwise expressly permitted under State law.

18 **(b) Gift valuation.** For purposes of this subchapter, the value or cost
19 limit for gifts described in subsection (a) of this section shall be:

20 **(1) Beginning July 1, 2022:**

21 **(A) Ceremonial awards:** Less than \$100.00.

1 **(B) Food or beverages or both which: Less than \$50.00 in the**
2 **aggregate per recipient, per source, in a calendar year.**

3 **(C) A supervisor-supervisee relationship gift: Less than \$20.00**
4 **for any single gift, and the value of all gifts does not exceed \$50.00 in the**
5 **aggregate per year.**

6 **(D) De minimis gift: \$20.00 or less per source per**
7 **occasion, provided that the aggregate market value of individual gifts**
8 **received from any one person does not exceed \$100.00 in a calendar year.**

9 **(2) After July 1, 2026, the State Ethics Commission may increase the**
10 **value or cost limit set in subdivision (1) of this subsection (b), provided:**

11 **(A) the State Ethics Commission presents its proposed increase to**
12 **the House and Senate Committees on Government Operations at least 180**
13 **days prior to proposed implementation and after consultation with the**
14 **Department of Human Resources and the Judicial Branch;**

15 **(B) the cost or value limit is not increased more than once in a**
16 **five-year period; and**

17 **(C) the increased cost or value limit is posted on the State Ethics**
18 **Commission website and the Commission sends a notice of increase to**
19 **public servants not less than 60 days prior to the increase's effective date.**

20 **(A) Gifts prohibited. Unless covered by an exception, a public**
21 **servant shall not:**

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

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

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

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

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

14 ~~(B) Gift exceptions:~~

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

1 ~~aggregate market value of gifts offered on any single occasion exceeds~~
2 ~~\$20.00, the public servant shall not pay the excess value over \$20.00 in~~
3 ~~order to accept that portion of the gift or those gifts worth \$20.00. Where~~
4 ~~the aggregate value of tangible items offered on a single occasion exceeds~~
5 ~~\$20.00, the public servant may decline any distinct and separate item in~~
6 ~~order to accept those items aggregating \$20.00 or less.~~

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

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

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

20 **§ 1203h. UNAUTHORIZED COMMITMENTS**

1 A public servant shall not make unauthorized commitments or promises of
2 any kind purporting to bind State government.

3 **§ 1203i. EMPLOYMENT RESTRICTIONS**

4 **(a)** Outside employment. A public servant shall not seek or engage in
5 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 **(1)** Executive officers. Executive officers shall comply with the post-
9 government employment restrictions prescribed in 3 V.S.A. § 267 and
10 2 V.S.A. § 266(b) and (c).

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

13 **(3)** Legislative Branch employees. Except as permitted in **subdivision**
14 **(4) of this subsection (b)**, a former Legislative Branch employee shall not, for
15 one year after leaving State service, be an advocate for anyone, other than the
16 State, for compensation before the General Assembly or any of its subparts or
17 the office in which the Legislative Branch employee served at the time of
18 termination of State service concerning any matter in which the State has a
19 direct and substantial interest.

20 **(4)** Contracting exception. The limitations in **subdivisions (1) through**
21 **(3) of this subsection (b)** do not apply to individuals providing information or

1 services to the State pursuant to contracts of the State unless the public servant
2 is otherwise prohibited from doing so by State or federal law.

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

10 **(A)** in which the State is a party or has a direct and substantial
11 interest;

12 **(B)** in which the public servant participated personally and
13 substantially as a public servant; and

14 **(C)** that involved the same party or parties as at the time of such
15 participation.

16 **§ 1203j. COMPLIANCE WITH LAWS, RULES, AND POLICIES**

17 A public servant shall comply with applicable State and federal laws and
18 regulations, including anti-discrimination and equal opportunity laws, and
19 comply with applicable governmental codes of conduct. A public servant shall
20 comply with any other applicable rules or policies established by executive
21 order, agency rule, or policy.

1 **§ 1204. WHISTLEBLOWER PROTECTIONS FOR ETHICS**

2 **COMPLAINTS**

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

7 **§ 1205. MANDATORY ETHICS EDUCATION AND TRAINING**

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

21 **Sec. 2. REPEAL**

1 **3 V.S.A. § 1211(e) is repealed.**

2 Sec. 3. EFFECTIVE DATE

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