

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 109 Session of 2011

INTRODUCED BY MARSHALL, METCALFE, CLYMER, D. COSTA, GEIST,
GIBBONS, GRELL, KAUFFMAN, LONGIETTI, MAJOR, MILLER, PYLE,
SAYLOR, SCAVELLO, SCHRODER AND J. TAYLOR, JANUARY 21, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 21, 2011

AN ACT

1 Amending the act of July 10, 1968 (P.L.316, No.154), entitled
2 "An act establishing a code of ethics for the General
3 Assembly, its officers and employees, and providing remedies
4 for its enforcement and penalties," further providing for
5 definitions, for prohibitions and for civil remedies.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Sections 3, 5 and 7 of the act of July 10, 1968
9 (P.L.316, No.154), known as the Legislative Code of Ethics, are
10 amended to read:

11 Section 3. Definitions.--Unless the context clearly
12 indicates otherwise, the following words and terms when used
13 herein shall have the respective meanings defined as follows:

14 (1) "Agency" means any department, agency, commission,
15 board, committee, authority or other instrumentality which is
16 created by or under the Constitution or laws of the Commonwealth
17 of Pennsylvania or by executive order, except local political
18 subdivisions or agencies, the majority of the members of whose
19 governing bodies are locally elected or appointed.

(2) "Agency head" and "head of any agency" mean the chief executive or administrative officer of each of the State agencies.

(3) "Assist" means to act, or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person believing that such action is of help, aid, advice, or assistance to such person and with intent to so assist such person.

(4) "Compensation" means any thing of economic value, however designated, which is paid, loaned, granted, given, donated or transferred, or to be paid, loaned, granted, given, donated or transferred for or in consideration of personal services to any person, official or to the State.

(4.1) "Ethics committee" means the Committee on Ethics and Official Conduct of the Senate or the Committee on Ethics of the House of Representatives.

(5) "Gift," as used in section 5, includes any thing of economic value with the exception of public awards, insignificant nonpecuniary gifts, political contributions for which an accounting is required by and is made pursuant to the election laws, or compensation or gifts not connected with or related to either the legislative processes or the donee's services as a member.

(5.1) "Legislative nonprofit organization" means a nonprofit corporation or other entity whose primary purpose is to receive funds under the General Appropriation Act or another appropriations act at the discretion or by reason of the influence of a member for the use at the direction or discretion of the member.

(6) "Member" shall include a Senator, Representative,

1 officer or employee of the General Assembly or any committee
2 thereof; but not a person employed on a contractual basis or
3 without compensation for a particular project.

4 (7) "State action" means any action on the part of the
5 Commonwealth or a Commonwealth agency, including, but not
6 limited to: (i) any decision, determination, finding, ruling or
7 order, including the judgment or verdict of a court or a quasi-
8 judicial board, in which the Commonwealth or any of its
9 agencies, boards and commissions has an interest, except in such
10 matters, involving criminal prosecutions; (ii) any grant,
11 payment, award, license, contract, transaction, decision,
12 sanction or approval, or the denial thereof, or the failure to
13 act with respect thereto, in which the Commonwealth or any of
14 its agencies has an interest, except in such matters involving
15 criminal prosecutions; (iii) any disposition of any matter by
16 the General Assembly or any committee thereof.

17 (8) "Participate" in connection with a transaction involving
18 the Commonwealth means to take part in State action or a
19 proceeding personally as a Commonwealth official, through
20 approval, disapproval, decision, recommendation, the rendering
21 of advice, investigation, or the failure to act or perform a
22 duty.

23 (9) "Person" means: (i) an individual, other than a
24 Commonwealth agency or official; (ii) a partnership,
25 association, corporation, firm, institution, trust, foundation
26 or other legal entity (other than an agency), whether or not
27 operated for profit; (iii) a district, county, municipality or
28 other political subdivision of the State, or any subdivision
29 thereof, provided such is not an agency; (iv) a foreign country
30 or subdivision thereof, or (v) any other entity which is not a

1 Commonwealth agency or official.

2 (10) "Responsibility" in connection with a transaction
3 involving the Commonwealth means the direct administration or
4 operating authority whether intermediate or final, and either
5 exercisable alone or with others, and either personally or
6 through or with others or subordinates, to effectively approve,
7 disapprove, fail to act or perform a duty, or otherwise direct
8 State action in respect of such transaction.

9 (11) "Thing of economic value" means any money or other
10 thing having economic value except food, drink or refreshments
11 consumed by an official including reasonable transportation and
12 entertainment incident thereto, while the personal guest of some
13 person, and includes, without limiting the generality of the
14 foregoing: (i) any loan, except a bone fide loan made by a duly
15 licensed bank or savings and loan association at the normal rate
16 of interest, any property interest, interest in a contract,
17 merchandise, service and any employment or other arrangement
18 involving a right to compensation; (ii) any option to obtain a
19 thing of economic value, irrespective of the conditions to the
20 exercise of such option; and (iii) any promise or undertaking
21 for the present or future delivery or procurement of a thing of
22 economic value.

23 In the case of an option, promise or undertaking, the time of
24 receipt of the thing of economic value shall be deemed to be,
25 respectively, the time the right to the option becomes fixed,
26 regardless of the conditions to its exercise, and the time when
27 the promise or undertaking is made, regardless of the conditions
28 to its performance.

29 (12) "Transaction involving the Commonwealth" means any
30 proceeding, application, submission, request for a ruling or

1 other determination, contract, claim, case or other such
2 particular matter which the official in question believes, or
3 has reason to believe: (i) is, or will be, the subject of State
4 action, or (ii) is one to which the Commonwealth is or will be a
5 party, or (iii) is one in which the Commonwealth has a direct
6 interest.

7 Section 5. Prohibitions.--(a) No member shall knowingly
8 solicit, accept, or receive any gift or compensation other than
9 that to which he is duly entitled from the Commonwealth which is
10 intended to influence the performance of his official duties or
11 which would influence the performance of his official duties nor
12 shall any member solicit, accept, or receive any such gift or
13 compensation for advocating the passage or defeat of any
14 legislation or for doing any act intended to influence the
15 passage or defeat of legislation including, in the case of a
16 Senator or Representative, his vote thereon.

17 (b) No member shall receive compensation or any thing of
18 economic value for any consultation, the subject matter of
19 which:

20 (1) Is devoted substantially to the responsibilities,
21 programs, or operations of the General Assembly, or

22 (2) Draws substantially upon official data or ideas which
23 have not become part of the body of public information.

24 (c) No member shall participate as a principal in any
25 transaction involving the Commonwealth or any Commonwealth
26 agency in which he, his spouse or child, or any person of which
27 he is an officer, director, trustee, partner or employe has a
28 substantial personal economic interest as distinguished from
29 that of a general class or general group of persons of which he
30 may reasonably be expected to know.

(d) No member shall receive any compensation or enter into any agreement with any person for compensation for services rendered or to be rendered, for assisting any person in any transaction involving the Commonwealth or any of its officials or agencies unless he shall file with the Chief Clerk of the House of Representatives or Secretary of the Senate, as the case may be, a written statement, giving the following information:

(1) Name and address of member.

(2) The name and address of the person employing or retaining the member to perform such services.

(3) Whether the amount of compensation for services rendered or to be rendered is (i) one thousand dollars (\$1000), or more, or (ii) less than one thousand dollars (\$1000).

(4) A brief description of the transaction in reference to which service is rendered or is to be rendered, and of the nature of the service.

The sworn statement shall be filed with the chief clerk or secretary within ten days from the date such agreement, express or implied, was entered into, or the compensation was received. Such statement of disclosure shall be deemed confidential and privileged and shall only be made public in connection with a public hearing for an alleged violation of this code where such would be relevant to the charges made and for which the member is being tried.

(e) Subsections (a), (b), (c) and (d) of this section 5, shall not apply to:

(1) Receipt of bona fide reimbursement, to the extent permitted by law, for actual expenses for travel and such other necessary subsistence as is compatible with this act and for which no Commonwealth payment or reimbursement is made.

1 (2) Participation in the affairs of charitable, religious,
2 nonprofit educational, public service or civic organizations, or
3 the activities of national or State political parties not
4 proscribed by law.

5 (3) Awards for meritorious public contribution given by
6 public service or civic organizations.

7 (4) Sharing in any compensation received from the
8 Commonwealth or from any political subdivision of the
9 Commonwealth by a person of which such member owns or controls
10 any portion thereof, provided such compensation was received by
11 such person as a result of having made the lowest competitive
12 bid on a Commonwealth contract or subcontract and having had
13 such bid accepted by the Commonwealth or the general contractor,
14 or by reason of an engagement by the Commonwealth in emergency
15 circumstances where dispensation with bidding is permitted by
16 law, and provided such member did not assist in the procurement
17 of the Commonwealth's or the subdivision's or the general
18 contractor's acceptance of such low bid or engagement without
19 bidding.

20 (5) Campaign contributions for use in meeting campaign
21 expenses by any official who is or becomes a candidate for
22 election to the same or another public office.

23 (6) Receipt of compensation from the Commonwealth, directly
24 or indirectly, where: (i) the total interest of the member and
25 his immediate family in the person receiving said compensation
26 is less than ten percent, or (ii) the member or the person in
27 which he has an interest is the exclusive supplier of the real
28 or personal property or service purchased by the Commonwealth,
29 or (iii) the service purchased is newspaper advertising required
30 by law.

1 (7) Receipt of compensation, directly or indirectly, by a
2 member who is an attorney-at-law, for services in a proceeding
3 where he represents an interest adverse to that of the
4 Commonwealth, where the proceeding is before any court, where
5 the Commonwealth has a right to judicial review in a proceeding
6 not initially before a court, or where the proceeding involves
7 only the uncontested and routine action of administrative
8 officers or employes of the Commonwealth in issuing or renewing
9 a license, charter, certificate or similar document.

10 (f) No member shall use for private gain any information not
11 available to the public at large and acquired by him solely by
12 virtue of his position.

13 (g) No information described in subsection (f) of this
14 section 5 shall be disclosed by a member to others for purposes
15 of their use for private gain, in circumstances where the use of
16 such information by the member would violate subsection (f) of
17 this section 5.

18 (h) No member shall create, maintain or cause to be created
19 or maintained a legislative nonprofit organization. For purposes
20 of implementing this subsection, the appropriate ethics
21 committee shall issue to a member of their body, upon the
22 member's request, an opinion with respect to the member's duties
23 under this subsection. Each ethics committee shall, within
24 fourteen days, issue the opinion. No member who acts in good
25 faith on an opinion issued to that member by an ethics committee
26 shall be subject to any sanctions for so acting, if the material
27 facts are as stated in the opinion request. The respective
28 ethics committees' opinions shall be public records and may from
29 time to time be published, except that the member requesting the
30 legislative nonprofit organization opinion may require that the

1 legislative nonprofit organization opinion contain deletions and
2 changes necessary to protect the identity of the persons
3 involved.

4 Section 7. Civil Remedies.--(a) Any agency head having final
5 authority to approve or execute a contract between the
6 Commonwealth and a private party may cancel or rescind any such
7 contract without further liability to the Commonwealth where he
8 finds that a violation of this act has influenced the making of
9 said contract; provided, such rescission shall be limited so as
10 not to affect adversely the interests of innocent third parties;
11 and provided further, that no such action shall be initiated
12 before the affirmative finding of the appropriate [House or
13 Senate Committee on Ethics] ethics committee that a violation
14 has occurred.

15 (b) The finding referred to in subsection (a) supra shall be
16 made in accordance with the act of June 4, 1945 (P.L.1388), as
17 amended, known as the "Administrative Agency Law," and shall be
18 subject to judicial review, provided that the executive officer
19 may suspend the contract pending determination of the merits of
20 the controversy.

21 (c) The Attorney General may bring a civil action against
22 any member or former member in the judicial district in which
23 said person is domiciled, who shall, to his economic advantage,
24 have acted in violation of this act, to recover on behalf of the
25 Commonwealth an amount equal to such economic advantage, with
26 interest; provided, that no such action shall be brought before
27 the affirmative finding of the appropriate [House or Senate
28 Committee on Ethics] ethics committee that a violation has
29 occurred.

30 (d) No action under subsection (c) of this section 7 shall

1 be commenced after the expiration of two years following the
2 discovery by an agency head or [an Ethics Committee of the
3 General Assembly] the appropriate ethics committee of the
4 occurrence of the alleged violation, or four years after the
5 occurrence of the alleged violation, whichever period is
6 shorter.

7 (e) The Senator or Representative having responsibility for
8 hiring an employe of the General Assembly may, and if so ordered
9 by the [Ethics Committee of his respective house] appropriate
10 ethics committee, shall, dismiss, suspend or take such other
11 action as may be appropriate under the circumstances with
12 respect to any employe upon a finding by the Senator or
13 Representative or by said committee that such employe has
14 violated any of the provisions of this act.

15 Section 2. This act shall take effect in 60 days.