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ภาคผนวก

ภาคผนวก 1

BRIBERY; GRAFT AND CONFLICTS OF INTEREST

(18 U.S.C.)

United States Information Agency, postemployment restrictions, administrative enforcement procedures, see 22 CFR 525.1 et seq.

United States International Trade Commission, administrative enforcement of postemployment conflict of interest restrictions, see 19 CFR 200.735-124.

§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Subsection (a) shall not apply—

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies;

(3) in the case of a special Government employee serving on an advisory committee within the mean-

ing of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee's appointment, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved; or

(4) if the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights—

(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

(C) in an Indian claims fund held in trust or administered by the United States,

if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

(c)(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

(2) The potential availability of an exemption under any particular paragraph of subsection (b) does not preclude an exemption being granted pursuant to another paragraph of subsection (b).

(d)(1) Upon request, a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) shall be made available to the public by the agency granting the exemption pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978. In making such determination available, the agency may withhold from disclosure any information contained in the determination that would be exempt from disclosure under section 552 of title 5. For purposes of determinations under subsection (b)(3), the information describing each financial interest shall be no more extensive than that required of the individual in his or her financial disclosure report under the Ethics in Government Act of 1978.

(2) The Office of Government Ethics, after consultation with the Attorney General, shall issue uniform regulations for the issuance of waivers and exemptions under subsection (b) which shall—

(A) list and describe exemptions; and

(B) provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.

(Added Pub.L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1124, and amended Pub.L. 95-188, Title II, § 205, Nov. 16, 1977, 91 Stat. 1388; Pub.L. 101-194, Title IV, § 405, Nov. 30, 1989, 103 Stat. 1751; Pub.L. 101-280, § 5(e), May 4, 1990, 104 Stat. 159; Pub.L. 103-322, Title XXXIII, §§ 330002(b), 330008(6), Sept. 13, 1994, 108 Stat. 2140, 2143.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Federal Advisory Committee Act, referred to in subsec. (b)(3), is Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in Appendix 2 to Title 5, Government Organization and Employees.

The Ethics in Government Act of 1978, referred to in subsecs. (b)(3) and (d)(1), is Pub.L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub.L. 95-521 in Appendix 4 to Title 5, Government Organization and Employees, and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (b)(4)(A), is Pub.L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (section 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43, and Tables.

Prior Provisions

A prior § 208, Act June 25, 1948, c. 645, 62 Stat. 693, which related to the acceptance of solicitation of a bribe by a judicial officer, was eliminated in the general amendment of this chapter by Pub.L. 87-849 and is substantially covered by revised § 201.

Provisions similar to those comprising this section were contained in § 434 of this title prior to the repeal of such section and the general amendment of this chapter by Pub.L. 87-849.

Effective Date of 1990 Amendment

Amendment by Pub.L. 101-280 effective on May 4, 1990, see section 11 of Pub.L. 101-280, set out as a note under section 101 of Appendix 4 to Title 5, Government Organization and Employees.

Effective Date

Section effective 90 days after Oct. 23, 1962, see § 4 of Pub.L. 87-849, set out as a note under § 201 of this title.

§ "Particular Matter" Defined. Pub.L. 100-446, Title III, § 219, Sept. 27, 1988, 102 Stat. 1826, which provided that notwithstanding any other provision of law, for the purposes of this section the term "particular matter", as applied to employees of the Department of the Interior and the Indian Health Service, would mean "particular matter involving

specific parties", was repealed by Pub.L. 101-194, Title V, § 505(b), Nov. 30, 1989, 103 Stat. 1756, as amended Pub.L. 101-280, § 6(c), May 4, 1990, 104 Stat. 160. Similar provisions had previously appeared in Pub.L. 100-202, § 101(g) [Title III, § 318], Dec. 22, 1987, 101 Stat. 1329-255.

Canal Zone

Applicability of section to Canal Zone, see § 14 of this title.

Legislative History

For legislative history and purpose of Pub.L. 87-849, see 1962 U.S. Code Cong. and Adm. News, p. 3852.

For legislative history and purpose of Pub.L. 95-188, see 1977 U.S. Code Cong. and Adm. News, p. 3636. See, also, Pub.L. 101-194, 1989 U.S. Code Cong. and Adm. News, p. 1225; Pub.L. 101-280, 1990 U.S. Code Cong. and Adm. News, p. 169; Pub.L. 103-322, 1994 U.S. Code Cong. and Adm. News, p. 1801.

CODE OF FEDERAL REGULATIONS

Department of Justice, employees, disqualification arising from private financial interests, see 28 CFR 45.735-5.

Federal Reserve System, reserve bank directors, actions and responsibilities, 12 CFR 264a.1 et seq.

Federal Trade Commission—

Criminal sanction for conflict of interest, see 16 CFR 5.14.

Exemption of insubstantial financial conflicts, see 16 CFR 5.8.

Office of the Secretary of Commerce, employees, conflict of financial interest, see 15 CFR 0.735-13.

Tennessee Valley Authority, employees, disclosure of financial interests of, see 18 CFR 1301.4.

U.S. Arms Control and Disarmament Agency, employees, financial interests of, see 22 CFR 606.735-1 et seq.

§ 209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United

States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of chapter 41 of title 5.

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: *Provided*, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days.

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title, of contributions or payments from an organization which is described in section 501(c) (3) of the Internal Revenue Code of 1954 and which is exempt from taxation under section 501(a) of such Code.

(Added Pub.L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1125, and amended Pub.L. 96-174, Dec. 29, 1979, 93 Stat. 1288; Pub.L. 97-171, § 1, Apr. 13, 1982, 96 Stat. 67; Pub.L. 99-646, § 70, Nov. 10, 1986, 100 Stat. 3617; Pub.L. 101-194, Title IV, § 406, Nov. 30, 1989, 103 Stat. 1753; Pub.L. 101-647, Nov. 29, 1990, Title XXXV, § 3510, 104 Stat. 4922; Pub.L. 103-322, Title XXXIII, § 33000S(7), Sept. 13, 1994, 108 Stat. 2143.)

HISTORICAL AND STATUTORY NOTES

References in Text

Section 501(c)(3) and (a) of the Internal Revenue Code of 1954, referred to in subsec. (f), is section 501(c) (3) and (a) of Title 26, Internal Revenue Code.

Prior Provisions

A prior § 209, Act June 25, 1948, c. 645, 62 Stat. 693, which related to an offer of a bribe to a witness, was eliminated in the general amendment of this chapter by Pub.L. 87-849 and is substantially covered by § 201.

Provisions similar to those comprising this section were contained in § 1914 of this title prior to the repeal of such section and the general amendment of this chapter by Pub.L. 87-849.

Effective Date

Section effective 90 days after Oct. 23, 1962, see § 4 of Pub.L. 87-849, set out as a note under § 201 of this title.

Canal Zone

Applicability of section to Canal Zone, see § 14 of this title.

Legislative History

For legislative history and purpose of Pub.L. 87-849, see 1962 U.S. Code Cong. and Adm. News, p. 3852.

For legislative history and purpose of Pub.L. 96-174, see 1979 U.S. Code Cong. and Adm. News, p. 2631. See, also, Pub.L. 99-646, 1986 U.S. Code Cong. and Adm. News, p. 6139; Pub.L. 101-194, 1989 U.S. Code Cong. and Adm. News, p. 1225; Pub.L. 101-647, 1990 U.S. Code Cong. and Adm. News, p. 6472; Pub.L. 103-322, 1994 U.S. Code Cong. and Adm. News, p. 1801.

CODE OF FEDERAL REGULATIONS

Department of Justice, employees, salary payable only by United States, see 28 CFR 45.735-8.

§ 210. Offer to procure appointive public office

Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, c. 645, 62 Stat. 694, § 210, formerly § 214, renumbered Oct. 23, 1962, Pub.L. 87-849, § 1(b), 76 Stat. 1125; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(H), 108 Stat. 2147.)

HISTORICAL AND STATUTORY NOTES

Reviser's Note

Based on Title 18, U.S.C., 1940 ed., §§ 149 and 151 (Dec. 11, 1926, c. 3, §§ 1, 3, 44 Stat. 918).

Changes of style and substance were made in this section.

Term "or place" was inserted after words "appointive office" in order to give broader scope to the section and also to follow the phraseology used in similar provisions of § 202 of Title 18, U.S.C., 1940 ed., now § 216 [repealed] of this title. (See 46 Corpus Juris 924, where it is explained that the word "places" is used in a less technical sense than the word "offices".)

The punishment provision, added at the end of this section, and § 215 [now § 211] of this title to secure uniformity of style throughout this chapter, was originally enacted as a separate section, incorporating the other two by reference, 80th Congress House Report No. 304.

Prior Provisions

A prior § 210, Act June 25, 1948, c. 645, 62 Stat. 693, which related to acceptance of a bribe by a witness, was eliminated in the general amendment of this chapter by Pub.L. 87-849 and is substantially covered in revised § 201.

Canal Zone

Applicability of section to Canal Zone, see § 14 of this title.

guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public. (June 25, 1948, c. 645, 62 Stat. 695, § 215, formerly § 220, amended Sept. 21, 1950, c. 967, § 4, 64 Stat. 894, and renumbered Oct. 23, 1962, Pub.L. 87-849, § 1(d), 76 Stat. 1125; Oct. 12, 1984, Pub.L. 98-473, Title II, § 1107(a), 98 Stat. 2145; Aug. 4, 1986, Pub.L. 99-370, § 2, 100 Stat. 779; Aug. 9, 1989, Pub.L. 101-473, Title IX, §§ 961(a), 962(e)(1), 103 Stat. 499, 503; Nov. 29, 1990, Pub.L. 101-647, Title XXV, § 2504(a), 104 Stat. 4861; Sept. 13, 1994, Pub.L. 103-322, Title XXXIII, § 330016(1)(H), 108 Stat. 2147; Oct. 11, 1996, Pub.L. 104-294, Title VI, § 606(a), 110 Stat. 3511.)

HISTORICAL AND STATUTORY NOTES

Reviser's Note

Based on §§ 595, 1125, and 1315 of Title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, c. 6, § 22, first sentence of second paragraph, 38 Stat. 272; July 17, 1916, c. 245, § 211(e), as added Mar. 4, 1923, c. 252, § 2, 42 Stat. 1460; June 21, 1917, c. 32, § 11, 40 Stat. 240; Sept. 26, 1918, c. 177, § 5, part (22(c)), 40 Stat. 970; Mar. 4, 1923, c. 252, Title II, § 216(e), 42 Stat. 1472).

The punishment provisions of the three sections were identical, and all other provisions thereof were similar, except that § 595 of said Title 12, relating to officers, directors, employees, or attorneys of member banks of the Federal Reserve System, did not include the terms "agent" and "acceptance" and did not include the phrase "or extension or renewal of loan or substitution of security".

Words "shall be deemed guilty of a misdemeanor" were omitted because of definition of misdemeanor in § 1 of this title.

Words "and upon conviction" and "and shall upon conviction thereof" were omitted as surplusage because punishment cannot be imposed until after conviction.

Verbal changes were made for style purposes. 80th Congress House Report No. 304.

References in Text

Section 2 of the Federal Home Loan Bank Act, referred to in subsec. (b)(4), is classified to section 1422 of Title 12, Banks and Banking.

Section 103 of the Small Business Investment Act of 1958, referred to in subsec. (b)(6), is classified to section 662 of Title 15, Commerce and Trade.

Section 2 of the Bank Holding Company Act of 1956, referred to in subsec. (b)(7), is classified to section 1841 of Title 12, Banks and Banking.

Section 408 of the National Housing Act, referred to in subsec. (b)(8), is classified to section 1730a of Title 12.

Prior Provisions

A prior § 215 of this title was redesignated § 211.

Effective Date of 1986 Amendment

Section 3 of Pub.L. 99-370 provided that: "This Act and the amendments made by this Act [amending this section and enacting a provision set out as a note under section 201 of this title] shall take effect 30 days after the date of the enactment of this Act [Aug. 4, 1986]."

Legislative History

For legislative history and purpose of Act Sept. 21, 1950, see 1950 U.S. Code Cong. Service, p. 3765. See, also, Pub.L. 87-849, 1962 U.S. Code Cong. and Adm. News, p. 3852.

For legislative history and purpose of Pub.L. 98-473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 99-370, 1986 U.S. Code Cong. and Adm. News, p. 1782; Pub.L. 101-73, 1989 U.S. Code Cong. and Adm. News, p. 86; Pub.L. 101-647, 1990 U.S. Code Cong. and Adm. News, p. 6472; Pub.L. 103-322, 1994 U.S. Code Cong. and Adm. News, p. 1801; Pub.L. 104-294, 1996 U.S. Code Cong. and Adm. News, p. _____

§ 216. Penalties and injunctions

(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

(Added Pub.L. 101-194, Title IV, § 407(a), Nov. 30, 1989, 104 Stat. 1753, and amended Pub.L. 101-280, § 5(f), May 8, 1988, 104 Stat. 159.)

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THE ETHICS REFORM ACT 1989

PUBLIC LAW 101-194 [H.R. 3660]; November 30, 1989



ETHICS REFORM ACT OF 1989

For Signing Statement, see p. 775-1.

An Act to amend the Rules of the House of Representatives and the Ethics in Government Act of 1978 to provide for Government-wide ethics reform, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Ethics Reform
Act of 1989.
5 USC app. 101
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ethics Reform Act of 1989".

TITLE I—POST EMPLOYMENT RESTRICTIONS ON THE EXECUTIVE AND LEGISLATIVE BRANCHES

SEC. 101. RESTRICTIONS ON POSTEMPLOYMENT ACTIVITIES.

(a) RESTRICTIONS.—Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

"(a) RESTRICTIONS ON ALL OFFICERS AND EMPLOYEES OF THE EXECUTIVE BRANCH AND CERTAIN OTHER AGENCIES.—

District of
Columbia.

"(1) PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS.—Any person who is an officer or employee of the executive branch of the United States Government (including any independent agency of the United States and any special Government employee), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States Government or the District of Columbia, as the case may be, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, as the case may be, on behalf of any other person (except the United States) in connection with a particular matter—

"(A) in which the United States is a party or has a direct and substantial interest,

"(B) in which the person participated personally and substantially as such officer or employee, and

"(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

"(2) TWO-YEAR RESTRICTIONS CONCERNING PARTICULAR MATTERS UNDER OFFICIAL RESPONSIBILITY.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States Government, knowingly makes, with the intent to

influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States), in connection with a particular matter—

“(A) in which the United States is a party or has a direct and substantial interest,

“(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government or the District of Columbia, and

“(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

“(b) ONE-YEAR RESTRICTIONS ON AIDING OR ADVISING.—

“(1) IN GENERAL.—Any person who is a former officer or employee subject to the restrictions contained in subsection (a)(1), and any person described in subsection (e)(7), who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, and which is so designated by the appropriate department or agency, shall not, on the basis of that information, which the person knew or should have known was so designated, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for 1 year after his or her service or employment with the United States Government terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

“(2) DEFINITION.—For purposes of this paragraph—

“(A) the term ‘trade negotiation’ means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

“(B) the term ‘treaty’ means an international agreement made by the President that requires the advice and consent of the Senate.

“(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

“(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee of the executive branch (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on

which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

“(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

“(i) employed at a rate of pay fixed according to subchapter II of chapter 53 of title 5, or a comparable or greater rate of pay under other authority,

“(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay is equal to or greater than the basic rate of pay payable for GS-17 of the General Schedule,

“(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or

Uniformed
services.

“(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O-7 or above.

“(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

“(C) Subparagraph (A)(ii) includes persons employed in the Senior Executive Service at the basic rate of pay specified in that subparagraph.

“(D) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

“(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

“(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

“(d) RESTRICTIONS ON VERY SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

“(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

“(A) serves in the position of Vice President of the United States,

“(B) is employed in a position paid at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

“(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person

(except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

“(2) ENTITIES TO WHICH RESTRICTIONS APPLY.—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

“(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

“(B) any other person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

“(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND OFFICERS AND EMPLOYEES OF THE LEGISLATIVE BRANCH.—

“(1) MEMBERS OF CONGRESS AND ELECTED OFFICERS.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

“(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

“(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

“(2) PERSONAL STAFF.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

“(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

“(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

“(ii) any employee of that Senator or Member of the House of Representatives.

“(3) COMMITTEE STAFF.—Any person who is an employee of a committee of Congress and who, within 1 year after the termi-

nation of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(4) LEADERSHIP STAFF.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

"(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

"(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

"(5) OTHER LEGISLATIVE OFFICES.—(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

"(6) LIMITATION ON RESTRICTIONS.—The restrictions contained in paragraphs (2), (3), (4), and (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid for such service at a basic rate of pay equal to or greater than the basic rate of pay payable for GS-17 of the General Schedule under section 5332 of title 5.

"(7) DEFINITIONS.—As used in this subsection—

“(A) the term ‘committee of Congress’ includes standing committees, joint committees, and select committees;

“(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

“(C) the term ‘employee of the House of Representatives’ means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

“(D) the term ‘employee of the Senate’ means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

“(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

“(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

“(G) the term ‘employee of any other legislative office of the Congress’ means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

“(H) the term ‘employee on the leadership staff of the House of Representatives’ means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

“(I) the term ‘employee on the leadership staff of the Senate’ means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

“(J) the term ‘Member of Congress’ means a Senator or a Member of the House of Representatives;

“(K) the term ‘Member of the House of Representatives’ means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

“(L) the term ‘Member of the leadership of the House of Representatives’ means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

“(M) the term ‘Member of the leadership of the Senate’ means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

“(f) RESTRICTIONS RELATING TO FOREIGN ENTITIES.—

“(1) RESTRICTIONS.—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in subsection (c), (d), or (e), as the case may be—

“(A) represents the interests of a foreign entity before any officer or employee of any department or agency of the Government of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

“(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the Government of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

“(2) DEFINITION.—For purposes of this subsection, the term ‘foreign entity’ means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.”

“(g) SPECIAL RULES FOR DETAILEES.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

“(h) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS.—

“(1) DESIGNATIONS —For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

“(2) INAPPLICABILITY OF DESIGNATIONS.—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No

designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A) (i) or (iii).

“(i) DEFINITIONS.—For purposes of this section—

“(1) the term ‘intent to influence’ means the intent to affect any official action by a Government entity of the United States through any officer or employee of the United States, including Members of Congress;

“(2) the term ‘participated’ means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

“(3) the term ‘particular matter’ includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

“(j) EXCEPTIONS.—

“(1) OFFICIAL GOVERNMENT DUTIES.—The restrictions contained in subsections (a), (c), (d), and (e) shall not apply to acts done in carrying out official duties as an officer or employee of the United States Government or as an elected official of a State or local government.

“(2) STATE AND LOCAL GOVERNMENTS AND INSTITUTIONS, HOSPITALS, AND ORGANIZATIONS.—The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

“(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

“(B) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

“(3) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in subsections (c), (d), and (e) shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization of which the United States is a member.

“(4) PERSONAL MATTERS AND SPECIAL KNOWLEDGE.—The restrictions contained in subsections (c), (d), and (e) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibitions of those subsections prevent a former officer or employee from making or providing a statement, which is based on the former officer’s or employee’s own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

“(5) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (c), (d), and (e) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned

Federal
Register,
publication.

or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

Vice President
of U.S.

“(6) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent a former Member of Congress or officer or employee of the executive or legislative branch or an independent agency (including the Vice President and any special Government employee) from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence, a former officer or employee subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter.”

(b) CONFORMING AMENDMENT.—The item relating to section 207 in the table of sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows:

“207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches.”

18 USC 207 note.

SEC. 102. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by section 101 take effect on January 1, 1991.

(b) EFFECT ON EMPLOYMENT.—(1) The amendments made by section 101 apply only to persons whose service as a Member of Congress or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

(2) With respect to service as an officer or employee which terminates before the effective date set forth in subsection (a), section 207 of title 18, United States Code, as in effect at the time of the termination of such service, shall continue to apply, on and after such effective date, with respect to such service.

TITLE II—FINANCIAL DISCLOSURE OF FEDERAL PERSONNEL

SEC. 201. REPEAL OF TITLES II AND III OF THE ETHICS IN GOVERNMENT ACT OF 1978.

Titles II and III of the Ethics in Government Act of 1978 (5 U.S.C. App.; 28 U.S.C. App.) are repealed.

SEC. 202. FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL.

Title I of the Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.) is amended to read as follows:

SEC. 203. PRESIDENT'S COMMISSION ON THE FEDERAL APPOINTMENT PROCESS.

(a) **ESTABLISHMENT.**—There shall be established an advisory commission to study the best means of simplifying the Presidential appointment process, in particular by reducing the number and complexity of forms to be completed by nominees. The Commission shall be known as the President's Commission on the Federal Appointment Process.

(b) **MEMBERSHIP.**—The Commission shall be composed of 14 members from among officers and employees of the three branches of the Federal Government. Eight members shall be appointed by the President, two members shall be appointed by the majority leader of the Senate, two members shall be appointed by the minority leader of the Senate, one member shall be appointed by the Speaker of the House of Representatives, and one member shall be appointed by the minority leader of the House of Representatives. Any vacancy on the Commission shall be filled in the same manner as the initial appointment.

(c) **REPORT.**—The Commission shall present its report to the President no later than ninety days after its first meeting. The Commission shall cease to exist upon submission of its report.

TITLE III—GIFTS AND TRAVEL

SEC. 301. GIFTS TO SUPERIORS.

Section 7351 of title 5, United States Code, is amended by—

(1) adding "(a)" before "An employee may not"; and

(2) striking the final sentence and inserting the following:

"(b) An employee who violates this section shall be subject to appropriate disciplinary action by the employing agency or entity.

"(c) The Office of Government Ethics is authorized to issue regulations implementing this section, including regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under other similar circumstances."

Regulations

SEC. 302. TRAVEL ACCEPTANCE AUTHORITY.

(a) **IN GENERAL.**—Subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end thereof the following:

"§1352. Acceptance of travel and related expenses from non-Federal sources

"(a) Notwithstanding any other provision of law, the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, shall prescribe by regulation the conditions under which an agency or employee in the executive branch may accept payment from non-Federal sources for travel, subsistence, and related expenses with respect to attendance of the employee (or the spouse of such employee) at any meeting or similar function relating to the official duties of the employee. Any cash payment so accepted shall be credited to the appropriation applicable to such expenses. In the case of a payment in kind so accepted, a pro rata reduction shall be made in any entitlement of the employee to payment from the Government for such expenses.

Regulations

“(b) Except as provided in this section or section 4111 of title 5, an agency or employee may not accept payment for expenses referred to in subsection (a). An employee who accepts any payment in violation of the preceding sentence—

“(1) may be required, in addition to any penalty provided by law, to repay, for deposit in the general fund of the Treasury, an amount equal to the amount of the payment so accepted; and

“(2) in the case of a repayment under paragraph (1) shall not be entitled to any payment from the Government for such expenses.

“(c) As used in this section—

“(1) the term ‘executive branch’ means any executive agency (as such term is defined in section 105 of title 5); and

“(2) the term ‘employee in the executive branch’ means—

“(A) an appointed officer or employee in the executive branch; and

“(B) an expert or consultant in the executive branch, under section 3109 of title 5; and

“(3) the term ‘payment’ means a payment or reimbursement, in cash or in kind.

“(d)(1) The head of each agency of the executive branch shall, in the manner provided in paragraph (2), submit to the Director of the Office of Government Ethics reports of payments of more than \$250 accepted under this section with respect to employees of the agency. The Director shall make such reports available for public inspection and copying.

Public
information.

“(2) The reports required by paragraph (1) shall, with respect to each payment—

“(A) specify the amount and method of payment, the name of the person making the payment, the name of the employee, the nature of the meeting or similar function, the time and place of travel, the nature of the expenses, and such other information as the Administrator of General Services may prescribe by regulation under subsection (a);

“(B) be submitted not later than May 31 of each year with respect to payments in the preceding period beginning on October 1 and ending on March 31; and

“(C) be submitted not later than November 30 of each year with respect to payments in the preceding period beginning on April 1 and ending on September 30.”

(b) CLERICAL AMENDMENT.—The table of sections for subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end the following new item:

“1352. Acceptance of travel and related expenses from non-Federal sources.”

SEC. 303. GIFTS TO FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subchapter V of chapter 73 of title 5, United States Code, is amended by adding at the end thereof the following new section:

“§ 7353. Gifts to Federal employees

“(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branches shall solicit or accept anything of value from a person—

“(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by the individual’s employing agency; or

"(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

"(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

Regulations.

"(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).

"(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

"(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.

"(c) An employee who violates this section shall be subject to appropriate disciplinary and other remedial action in accordance with any applicable laws, Executive orders, and rules or regulations.

"(d) For purposes of this section—

"(1) the term 'supervising ethics office' means—

"(A) the Committee on Standards of Official Conduct of the House of Representatives or the House of Representatives as a whole, for Members, officers, and employees of the House of Representatives;

"(B) the Select Committee on Ethics of the Senate, or the Senate as a whole, for Senators, officers and employees of the Senate;

"(C) the Judicial Conference of the United States for judges and judicial branch officers and employees;

"(D) the Office of Government Ethics for all executive branch officers and employees; and

"(E) the ethics committee with which the officer or employee is required to file financial disclosure forms, for all legislative branch officers and employees other than those specified in subparagraphs (A) and (B), except that such authority may be delegated; and

"(2) the term 'officer or employee' means an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government other than a Member of Congress.

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents for chapter 73 of title 5 United States Code, is amended by inserting after the item relating to section 7352 the following new item:

"7353. Gifts to Federal employees."

TITLE IV—AMENDMENTS TO TITLE 18 OF THE UNITED STATES CODE

SEC. 401. AMENDMENT TO SECTION 202 OF TITLE 18, UNITED STATES CODE.

Section 202 of title 18, United States Code, is amended by adding at the end thereof the following new subsections:

"(c) Except as otherwise provided in such sections, the terms 'officer' and 'employee' in sections 203, 205, 207, 208, and 209 of this title, mean those individuals defined in sections 2104 and 2105 of

title 5. The terms 'officer' and 'employee' shall not include the President, the Vice President, a Member of Congress, or a Federal judge.

"(d) The term 'Member of Congress' in sections 204 and 207 shall include—

"(1) a United States Senator; and

"(2) a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives.

"(e) As used in this chapter, the term—

"(1) 'executive branch' means any executive agency as defined in title 5, and any other entity or administrative unit in the executive branch;

"(2) 'judicial branch' means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to article I of the United States Constitution, including the Court of Military Appeals, the United States Claims Court, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch; and

"(3) 'legislative branch' means—

"(A) a Member of Congress, or any officer or employee of the United States Senate or United States House of Representatives; and

"(B) an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch."

SEC. 402. AMENDMENTS TO SECTION 203 OF TITLE 18, UNITED STATES CODE.

Section 203 of title 18, United States Code, is amended by—

(1) striking "services" the first place it appears in subsection (a)(1) and inserting "representational services, as agent or attorney or otherwise,";

(2) inserting "court," after "departmental agency," in subsection (a)(1);

(3) striking "shall be fined under this title or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States" in subsection (a) and inserting "shall be subject to the penalties set forth in section 216 of this title";

(4) inserting "representational" before "services" in subsection (a)(2);

(5) inserting "Member Elect," after "Member," in subsection (a)(2);

(6) inserting "Delegate Elect," after "Delegate," in subsection (a)(2);

(7) striking "including the District of Columbia," in subsection (a)(1)(B);

(8) in subsection (b)—

(A) by redesignating such subsection as subsection (c); and

(B) by striking "subsection (a)" and inserting "subsections (a) and (b)";

(9) by inserting after subsection (a) the following:

"(b) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

District of Columbia.

"(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another, at a time when such person is an officer or employee of the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission; or

"(2) knowingly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was an officer or employee of the District of Columbia; shall be subject to the penalties set forth in section 216 of this title." and

(10) adding at the end the following:

"(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

"(1) in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

"(2) in those matters that are the subject of his official responsibility, subject to approval by the Government official responsible for appointment to his position.

"(e) Nothing in this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register."

Grants
Contracts
Federal
Register,
publication

SEC. 403. AMENDMENT TO SECTION 204 OF TITLE 18, UNITED STATES CODE.

Section 204 of title 18, United States Code, is amended to read as follows:

"§ 204. Practice in United States Claims Court or the United States Court of Appeals for the Federal Circuit by Members of Congress

"Whoever, being a Member of Congress or Member of Congress Elect, practices in the United States Claims Court or the United States Court of Appeals for the Federal Circuit shall be subject to the penalties set forth in section 216 of this title."

SEC. 404. AMENDMENT TO SECTION 205 OF TITLE 18, UNITED STATES CODE.

Section 205 of title 18, United States Code, is amended to read as follows:

“§ 205. ⁴Activities of officers and employees in claims against and other matters affecting the Government

“(a) Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties—

“(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

“(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

District of
Columbia.

“(b) Whoever, being an officer or employee of the District of Columbia or an officer or employee of the Office of the United States Attorney for the District of Columbia, otherwise than in the proper discharge of official duties—

“(1) acts as agent or attorney for prosecuting any claim against the District of Columbia, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim; or

“(2) acts as agent or attorney for anyone before any department, agency, court, officer, or any commission in connection with any covered matter in which the District of Columbia is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

“(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties—

“(1) in which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

“(2) which is pending in the department or agency of the Government in which he is serving.

Paragraph (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

“(d) Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

“(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse, child, or any person for whom, or

for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

“(1) in those matters in which he has participated personally and substantially as a Government employee or special Government employée through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

“(2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

“(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

“(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

“(h) For the purpose of this section, the term ‘covered matter’ means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.”.

SEC. 405. AMENDMENTS TO SECTION 208 OF TITLE 18, UNITED STATES CODE.

Section 208 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “or” after “United States Government,”;

(B) by inserting “an officer or employee” before “of the District of Columbia”;

(C) by striking “partner” and inserting “general partner”; and

(D) by striking “Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.” and inserting “Shall be subject to the penalties set forth in section 216 of this title.”; and

(2) by striking subsection (b) and inserting the following:

“(b) Subsection (a) shall not apply—

“(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

“(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of paragraph (1) as being too remote or too inconsequential to affect the integrity of the services of the

Grants.
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Federal
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Government officers or employees to which such regulation applies;

“(3) in the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee’s appointment, after review of the financial disclosure report filed by the individual pursuant to section 107 of the Ethics in Government Act of 1978, certifies in writing that the need for the individual’s services outweighs the potential for a conflict of interest created by the financial interest involved; or

Indians.
Alaska.

“(4) the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights—

“(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

“(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

Claims.

“(C) in an Indian claims fund held in trust or administered by the United States,

if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

“(c)(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve Banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

“(2) The potential availability of an exemption under any particular paragraph of subsection (b) does not preclude an exemption being granted pursuant to another paragraph of subsection (b).

Public
information.

“(d)(1) A copy of any determination by other than the Director of the Office of Government Ethics granting an exemption pursuant to subsection (b)(1) or (b)(3) shall be submitted to the Director, who shall make all determinations available to the public pursuant to section 105 of the Ethics in Government Act of 1978. For determinations pursuant to subsection (b)(3), the information from the financial disclosure report of the officer or employee involved describing the asset or assets that necessitated the waiver shall also be made available to the public. This subsection shall not apply, however, if the head of the agency or his or her designee determines that the determination under subsection (b)(1) or (b)(3), as the case may be, involves classified information.

Classified
information

Regulations

“(2) The Office of Government Ethics, after consultation with the Attorney General, shall issue uniform regulations for the issuance of waivers and exemptions under subsection (b) which shall—

“(A) list and describe exemptions; and

“(B) provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the

integrity of the services the Government may expect from the employee.”.

SEC. 406. AMENDMENT TO SECTION 209 OF TITLE 18, UNITED STATES CODE.

Section 209(a)¹ of title 18, United States Code, is amended by striking “Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.” and inserting “Shall be subject to the penalties set forth in section 216 of this title.”.

SEC. 407. PENALTIES AND INJUNCTIONS.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by inserting after section 215 the following new section:

“§ 216. Penalties and injunctions

“(a) The punishment for an offense under sections 203, 204, 205, 207, 208, and 209 of this title is the following:

“(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

“(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

“(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under sections 203, 204, 205, 207, 208, and 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

“(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.”.

(b) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 11 of title 18, United States Code, is amended by inserting after the item relating to section 215 the following:

“216. Penalties and injunctions.”.

TITLE V—OTHER ETHICS REFORMS

SEC. 501. REFERRAL OF ETHICS VIOLATIONS BY THE SENATE ETHICS COMMITTEE TO THE GENERAL ACCOUNTING OFFICE FOR INVESTIGATION.

2 USC 72a-1g

If the Committee on Ethics of the Senate determines that there is a reasonable basis to believe that a Member, officer, or employee of the Senate may have committed an ethics violation, the committee may request the Office of Special Investigations of the General

Sec. 507

18 USC 281 note.
42 USC 7213
note, 7214 note,
7215 note, 7216
note, 7217 note,
7218 note.

(3) Section 281 of title 18, United States Code.

(4) Sections 603 through 606, subsections (a) and (b) of section 607, and subsections (a) and (c) of section 608 of the Department of Energy Organization Act.

TITLE VI—LIMITATIONS ON OUTSIDE EMPLOYMENT AND ELIMINATION OF HONORARIA

SEC. 601. LIMITATIONS ON OUTSIDE EARNED INCOME AND EMPLOYMENT.

(a) LIMITATIONS.—Title V of the Ethics in Government Act of 1978 is amended to read as follows:

“TITLE V—GOVERNMENT-WIDE LIMITATIONS ON OUTSIDE EARNED INCOME AND EMPLOYMENT

5 USC app. 501.

*SEC. 501. OUTSIDE EARNED INCOME LIMITATION.

“(a) OUTSIDE EARNED INCOME LIMITATION.—

“(1) Except as provided by paragraph (2), a Member or an officer or employee who is not a career civil servant and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code, may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year.

“(2) In the case of any individual who becomes a Member or an officer or employee who is not a career civil servant and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule during a calendar year, such individual may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member, officer or employee which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of such calendar year multiplied by a fraction the numerator of which is the number of days such individual is a Member, officer or employee during such calendar year and the denominator of which is 365.

“(b) HONORARIA PROHIBITION.—An individual may not receive any honorarium while that individual is a Member, officer or employee.

“(c) TREATMENT OF CHARITABLE CONTRIBUTIONS.—Any honorarium which, except for subsection (b), might be paid to a Member, officer or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. No such payment shall exceed \$2,000 or be made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any financial benefit.

"SEC. 502. LIMITATIONS ON OUTSIDE EMPLOYMENT.

"A Member or an officer or employee who is not a career civil servant and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule shall not—

"(1) affiliate with or be employed by a firm, partnership, association, corporation, or other entity to provide professional services which involves a fiduciary relationship for compensation;

"(2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;

"(3) practice a profession which involves a fiduciary relationship for compensation;

"(4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or

"(5) receive compensation for teaching, without the prior notification and approval of the appropriate entity referred to in section 503.

"SEC. 503. ADMINISTRATION.

5 USC app. 503.

"This title shall be subject to the rules and regulations of—

"(1) and administered by the committee of the House of Representatives assigned responsibility for administering the reporting requirements of title I with respect to Members, officers and employees of the House of Representatives;

"(2) the Office of Government Ethics and administered by designated agency ethics officials with respect to officers and employees of the executive branch; and

"(3) and administered by the Judicial Conference of the United States (or such other agency as it may designate) with respect to officers and employees of the judicial branch.

"SEC. 504. CIVIL PENALTIES.

5 USC app. 504.

"(a) CIVIL ACTION.—The Attorney General may bring a civil action in any appropriate United States district court against any individual who violates any provision of section 501 or 502. The court in which such action is brought may assess against such individual a civil penalty of not more than \$10,000 or the amount of compensation, if any, which the individual received for the prohibited conduct, whichever is greater.

"(b) ADVISORY OPINIONS.—Any entity described in section 503 may render advisory opinions interpreting this title, in writing, to individuals covered by this title. Any individual to whom such an advisory opinion is rendered and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of such advisory opinion, acts in good faith in accordance with its provisions and findings shall not, as a result of such actions, be subject to any sanction under subsection (a).

"SEC. 505. DEFINITIONS.

5 USC app. 505.

"For purposes of this title:

"(1) The term 'Member' means a Representative in, or a Delegate or Resident Commissioner to, the Congress.

"(2) The term 'officer or employee' means any officer or employee of the Government except (A) any individual (other

than the Vice President) whose compensation is disbursed by the Secretary of the Senate or (B) any special Government employee (as defined in section 202 of title 18, United States Code).

“(3) The term ‘honorarium’ means a payment of money or any thing of value for an appearance, speech or article by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.

“(4) The term ‘travel expenses’ means, with respect to a Member, officer or employee, or a relative of any such individual, the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.

“(5) The term ‘charitable organization’ means an organization described in section 170(c) of the Internal Revenue Code of 1986.”

(b) CONFORMING AMENDMENTS.—

(1) Section 323 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441i) is amended—

(A) in subsection (a) by striking “No person while an elected or appointed officer or employee of the Federal Government” and by inserting “No person while a Senator or officer or employee of the Senate”, and by striking “accept” the first place it appears; and

(B) in subsection (b) by striking “an elected or appointed officer or employee of any branch of the Federal Government” and by inserting “a Senator or any officer or employee of the Senate”.

(2) Section 908(a)(3) of the Supplemental Appropriations Act, 1983 (2 U.S.C. 31-1(a)(3)), is amended to read as follows:

“(3) ‘Member’ means a Senator; and”.

SEC. 602. TAX TREATMENT OF AMOUNTS PAID TO CHARITY.

26 USC 7701

Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following:

“(k) TREATMENT OF CERTAIN AMOUNTS PAID TO CHARITY.—In the case of any payment which, except for section 501(b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c)—

State and local governments

“(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

“(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government and a Senator or

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THE LOCAL GOVERNMENT ACT 1972

PART V

GENERAL PROVISIONS AS TO MEMBERS AND PROCEEDINGS OF LOCAL AUTHORITIES

Qualifications and disqualifications

SECT.

- 79. Qualifications for election and holding office as member of local authority.
- 80. Disqualifications for election and holding office as member of local authority.
- 81. Exceptions to provisions of section 80.
- 82. Validity of acts done by unqualified persons.

Acceptance, resignation and vacation of office, and casual vacancies

- 83. Declaration of acceptance of office.
- 84. Resignation.
- 85. Vacation of office by failure to attend meetings.
- 86. Declaration by local authority of vacancy in office in certain cases.
- 87. Date of casual vacancies.
- 88. Filling of casual vacancy in case of chairman, etc.
- 89. Filling of casual vacancies in case of councillors.
- 90. Term of office of persons filling casual vacancies.
- 91. Temporary appointment of members of parish and community councils.

Proceedings for disqualification

- 92. Proceedings for disqualification.

Restrictions on voting

- 93. Limitation on voting by Greater London Councillors.
- 94. Disability of members of authorities for voting on account of interest in contracts, etc.
- 95. Pecuniary interests for purposes of section 94.
- 96. General notices and recording of disclosures for purposes of section 94.
- 97. Removal or exclusion of disability, etc.
- 98. Interpretation of sections 95 and 97.

Meetings and proceedings

- 99. Meetings and proceedings of local authorities.
- 100. Admission of public and press to local authority committee meetings.

PART VI

DISCHARGE OF FUNCTIONS

- 101. Arrangements for discharge of functions by local authorities.
- 102. Appointment of committees.
- 103. Expenses of joint committees.
- 104. Disqualification for membership of committees and joint committees.
- 105. Disability for voting on account of interest in contracts, etc.
- 106. Standing orders.
- 107. Application of foregoing provisions to police authorities.
- 108. Committees of parish meetings.
- 109. Conferring functions of parish council on parish meeting.
- 110. Transitional arrangements for discharge of functions.

PART VII

MISCELLANEOUS POWERS OF LOCAL AUTHORITIES

Subsidiary powers

- 111. Subsidiary powers of local authorities.

Staff

- 112. Appointment of staff.
- 113. Placing of staff of local authorities at disposal of other local authorities.
- 114. Security to be taken in relation to officers.
- 115. Accountability of officers.
- 116. Members of local authorities not to be appointed as officers.
- 117. Disclosure by officers of interest in contracts.
- 118. Payment of salary, etc., due to mentally disordered person.
- 119. Payments due to deceased officers.

disqualified at the time of election the matter can be challenged by way of election petition pursuant to the Representation of the People Act 1949, s. 112.

As to disqualification in the case of membership of committees and joint committees, see s. 104.

Subs. (1)

"after the expiration of more than six months." See hereon *Bishop v. Deakin* [1936] Ch. 409. Time runs from the first date after election on which the person acted.

Restrictions on voting

Limitation on voting by Greater London Councillors

93. Except in the exercise of a casting vote when presiding over a meeting of the Greater London Council or a committee thereof—

- (a) a councillor of the Greater London Council elected for an electoral area which includes the City and the Temples shall not vote at any such meeting on any matter involving only expenditure on account of which no part of the City, the Temples or the City of Westminster is for the time being liable to be charged; and
- (b) a councillor of the Greater London Council elected for any other electoral area shall not vote at any such meeting on any matter involving only expenditure on account of which the London borough in which that electoral area is situated is not for the time being liable to be charged.

DEFINITIONS

"the City": s. 270.

"electoral area": s. 270.

"the Temples": s. 270.

GENERAL NOTE

This section derives from para. 9 of Sched. 2 to the London Government Act 1963. Limitation on voting applies only to Greater London.

Disability of members of authorities for voting on account of interest in contracts, etc.

94.—(1) Subject to the provisions of section 97 below, if a member of a local authority has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

(2) If any person fails to comply with the provisions of subsection (1) above he shall for each offence be liable on summary conviction to a fine not exceeding £200 unless he proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.

(4) A local authority may by standing orders provide for the exclusion of a member of the authority from a meeting of the authority while any contract, proposed contract or other matter in which he has a pecuniary interest, direct or indirect, is under consideration.

(5) The following, that is to say—

- (a) the receipt by the chairman, vice-chairman or deputy chairman of a principal council of an allowance to meet the expenses of his office or his right to receive, or the possibility of his receiving, such an allowance;
- (b) the receipt by a member of a local authority of an allowance or other payment under any provision of sections 173 to 176 below or his right to receive, or the possibility of his receiving, any such payment;

shall not be treated as a pecuniary interest for the purposes of this section.

DEFINITION

"local authority": s. 270.

GENERAL NOTE

This section derives from s. 76 of the Local Government Act 1933 and s. 1 of the Local Government (Pecuniary Interests) Act 1964.

A member is precluded from taking part in the conduct of business in which he has a pecuniary interest, direct or indirect.

It would appear that where a council acts in a quasi-judicial capacity a vote cast by a member having an interest renders the decision void: see *R. v. London County Council* [1892] 1 Q.B. 190, *R. v. Hendon Rural District Council* [1933] 2 K.B. 696.

Subs. (1)

"pecuniary interest." See hereon *England v. Inglis* [1920] 2 K.B. 636. The interest, to be caught by the section, must be pecuniary, or, at least, a material interest. It must be something more than a sentimental interest.

It is a pecuniary interest, not a pecuniary advantage, to which the section is directed. Voting in a matter which is to the financial detriment of a member is therefore illegal: see hereon *Brown v. Director of Public Prosecutions* [1956] 2 Q.B. 639.

"any contract, proposed contract or other matter." See hereon *Hely-Hutchinson Ltd. v. Brayhead Ltd.* [1968] 1 Q.B. 549. As to the words "or other matter," see *Rands v. Oldroyd* [1959] 1 Q.B. 204. These words are not to be construed *cuiusdem generis* with "contract or proposed contract."

Pecuniary Interests for purposes of section 94

95.—(1) For the purposes of section 94 above a person shall be treated, subject to the following provisions of this section and to section 97 below, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if—

- (a) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) he is a partner, or is in the employment, of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

(2) Subsection (1) above does not apply to membership of or employment under any public body, and a member of a company or other body shall not by reason only of his membership be treated as having an interest in any contract, proposed contract or other matter if he has no beneficial interest in any securities of that company or other body.

(3) In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purpose of section 94 above to be also an interest of the other.

DEFINITIONS

"public body": s. 98 (2).

"securities": s. 98 (1).

"shares": s. 98 (1).

GENERAL NOTE

This section derives from subss. (2), (2A) and (3) of s. 76 of the Local Government Act 1933.

Subs. (1)

"*in the employment.*" It is not always easy to decide whether a relationship is one of master and servant or one of principal and independent contractor. The rules applied to tortious liability might be imported here. See hereon *Bverett v. Griffiths* [1924] 1 K.B. 941.

Subs. (2)

"*beneficial interest.*" A person who holds shares as a trustee would not apparently be caught by the interest provisions.

General notices and recording of disclosures for purposes of section 94

96.—(1) A general notice given in writing to the proper officer of the authority by a member thereof to the effect that he or his spouse is a member or in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person, or that he or his spouse is the tenant of any premises owned by the authority, shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body or to that person or to those premises which may be the subject of consideration after the date of the notice.

(2) The proper officer of the authority shall record in a book to be kept for the purpose particulars of any disclosure made under section 94 above and of any notice given under this section, and the book shall be open at all reasonable hours to the inspection of any member of the local authority.

DEFINITION

"local authority": s. 270.

GENERAL NOTE

This section derives from s. 76 (4) and (5) of the Local Government Act 1933.

Removal or Exclusion of disability, etc.

97.—(1) The district council, as respects a member of a parish or community council, and the Secretary of State, as respects a member of any other local authority, may, subject to such conditions as the district council or the Secretary of State may think fit to impose, remove any disability imposed by section 94 above in any case in which the number of members of the local authority disabled by that section at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the district council or the Secretary of State in the interests of the inhabitants of the area that the disability should be removed.

(2) The power of a district council and of the Secretary of State under subsection (1) above includes power to remove, either indefinitely or for any period, any such disability which would otherwise attach to any member (or, in the case of the power of the Secretary of State, any member or any class or description of member) by reason of such interests, and in respect of such matters, as may be specified by the council or the Secretary of State.

(3) Nothing in section 94 above precludes any person from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to a district council or the Secretary of State for the exercise of the powers conferred by subsections (1) and (2) above.

(4) Section 94 above does not apply to an interest in a contract, proposed contract or other matter which a member of a local authority has as a ratepayer or inhabitant of the area or as an ordinary consumer of water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

(5) For the purposes of section 94 above a member shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of an interest of his or of any company, body or person with which he is connected as mentioned in section 95 (1) above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of, or in voting on, any question with respect to that contract or matter.

(6) Where a member of a local authority has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £1,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, section 94 above shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

DEFINITIONS

"community council": s. 33.

"district": s. 270.

"local authority": s. 270.

"securities": s. 98 (1).

"shares": s. 98 (1).

GENERAL NOTE

This section derives from s. 76 of the Local Government Act 1933 and s. 1 of the Local Government (Pecuniary Interests) Act 1964.

The Secretary of State may remove or modify a disability in relation to a member of a principal council and a district council may remove or modify a disability in respect of a parish or community councillor. A member desiring a dispensation is not precluded from voting on a motion to apply for a dispensation.

Where a member's interest is so remote or insignificant that it is unlikely to affect his judgment, the member is not obliged to declare it.

Subs. (1)

The dispensing power in the case of parishes and communities lies with the district council. The powers of the county council are superseded. This subsection derives from s. 76 (8) of the Local Government Act 1933.

Subs. (2)

This subsection derives from s. 1 (5) of the Local Government (Pecuniary Interests) Act 1964.

Subs. (3)

This subsection derives from s. 1 (6) of the Local Government (Pecuniary Interests) Act 1964.

Subs. (4)

This subsection derives from s. 76 (1) of the Local Government Act 1933. The reference to consumers of gas and electricity is not repeated.

Subs. (5)

This subsection derives from s. 1 (1) of the Local Government (Pecuniary Interests) Act 1964.

Subs. (6)

This subsection derives from s. 76 (2A) of the Local Government Act 1933. The relevant sum is now £1,000.

Interpretation of sections 95 and 97

98.—(1) In sections 95 and 97 above “securities” and “shares” have the same meanings respectively as in the Prevention of Fraud (Investments) Act 1958.

(2) In section 95 above “public body” includes any body established for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, the governing body of any university, university college or college, school or hall of a university and the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907.

*Meetings and proceedings***Meetings and proceedings of local authorities**

99. The provisions of Schedule 12 to this Act shall have effect with respect to the meetings and proceedings of local authorities and their committees, parish meetings and their committees and community meetings.

DEFINITIONS

“community”: s. 20 (4).

“local authority”: s. 270.

“parish meeting”: s. 9 (1).

Admission of public and press to local authority committee meetings

100.—(1) For the purpose of securing the admission, so far as practicable, of the public (including the press) to all meetings of committees of local authorities as well as to meetings of local authorities themselves, the Public Bodies (Admission to Meetings) Act 1960 (in this section referred to as “the 1960 Act”) shall have effect subject to the following provisions of this section.

(2) Without prejudice to section 2 (1) of the 1960 Act (application of section 1 of that Act to any committee of a body whose membership consists of or includes all members of that body) section 1 of the 1960 Act shall apply to any committee constituted under an enactment specified in paragraphs (c) to (h) of section 101 (9) below and to any committee appointed by one or more local authorities under section 102 below, not being a committee falling within section 2 (1) of the 1960 Act.

(3) Where section 1 of the 1960 Act applies to a committee by virtue of subsection (2) above, then, for the purposes of subsection (4) (c) of that section, premises belonging to the local authority or one or more of the local authorities which appointed the committee shall be treated as belonging to the committee.

DEFINITIONS

“local authority”: s. 270.

“1960”: subs. (1).

GENERAL NOTE

This section applies the Public Bodies (Admission to Meetings) Act 1960 to committees, joint committees and advisory committees appointed by local authorities under ss. 101 and 102, except in so far as the provisions of the 1960 Act already apply.

ภาคผนวก 4

พระราชบัญญัติประกอบรัฐธรรมนูญว่าด้วยการป้องกันและปราบปรามทุจริต

พุทธศักราช 2542



ราชกิจจานุเบกษา

ฉบับกฤษฎีกา

เล่ม ๑๑๖ ตอนที่ ๑๑๔ ก

วันที่ ๑๗ พฤศจิกายน ๒๕๕๒

พระราชบัญญัติประกอบรัฐธรรมนูญ
ว่าด้วยการป้องกันและปราบปรามการทุจริต
พ.ศ. ๒๕๕๒



หมวด ๙ การขัดกันระหว่างประโยชน์ส่วนบุคคล และประโยชน์ส่วนรวม

มาตรา ๑๐๐ ห้ามมิให้เจ้าหน้าที่ของรัฐผู้ใดดำเนินกิจการดังต่อไปนี้

(๑) เป็นคู่สัญญาหรือมีส่วนได้เสียในสัญญาที่ทำกับหน่วยงานของรัฐที่เจ้าหน้าที่ของรัฐผู้นั้นปฏิบัติหน้าที่ในฐานะที่เป็นเจ้าหน้าที่ของรัฐซึ่งมีอำนาจกำกับ ดูแล ควบคุม ตรวจสอบ หรือดำเนินคดี

(๒) เป็นหุ้นส่วนหรือผู้ถือหุ้นในห้างหุ้นส่วนหรือบริษัทที่เข้าเป็นคู่สัญญากับหน่วยงานของรัฐที่เจ้าหน้าที่ของรัฐผู้นั้นปฏิบัติหน้าที่ในฐานะที่เป็นเจ้าหน้าที่ของรัฐซึ่งมีอำนาจกำกับ ดูแล ควบคุม ตรวจสอบ หรือดำเนินคดี

(๓) รับสัมปทานหรือคงถือไว้ซึ่งสัมปทานจากรัฐ หน่วยงานราชการ หน่วยงานของรัฐ รัฐวิสาหกิจ หรือราชการส่วนท้องถิ่น หรือเข้าเป็นคู่สัญญากับรัฐ หน่วยงานราชการ หน่วยงานของรัฐ รัฐวิสาหกิจ หรือราชการส่วนท้องถิ่นอันมีลักษณะเป็นการผูกขาด ตัดตอน ทั้งนี้ ไม่ว่าโดยทางตรงหรือทางอ้อม หรือเป็นหุ้นส่วนหรือ

ผู้ถือหุ้นในห้างหุ้นส่วนหรือบริษัทที่รับสัมปทานหรือเข้าเป็นคู่สัญญา
ในลักษณะดังกล่าว

(๔) เข้าไปมีส่วนได้เสียในฐานะเป็นกรรมการ ที่ปรึกษา
ตัวแทน พนักงานหรือลูกจ้างในธุรกิจของเอกชนซึ่งอยู่ภายใต้
การกำกับ ดูแล ควบคุม หรือตรวจสอบของหน่วยงานของรัฐ
ที่เจ้าหน้าที่ของรัฐผู้นั้นสังกัดอยู่หรือปฏิบัติหน้าที่ในฐานะเป็น
เจ้าหน้าที่ของรัฐ ซึ่งโดยสภาพของผลประโยชน์ของธุรกิจของ
เอกชนนั้นอาจขัดหรือแย้งต่อประโยชน์ส่วนรวม หรือประโยชน์
ทางราชการ หรือกระทบต่อความมีอิสระในการปฏิบัติหน้าที่ของ
เจ้าหน้าที่ของรัฐผู้นั้น

เจ้าหน้าที่ของรัฐตำแหน่งใดที่ต้องห้ามมิให้ดำเนินกิจการ
ตามวรรคหนึ่งให้เป็นไปตามที่คณะกรรมการ ป.ป.ช. กำหนดโดย
ประกาศในราชกิจจานุเบกษา

ให้นำบทบัญญัติในวรรคหนึ่งมาใช้บังคับกับคู่สมรสของเจ้า
หน้าที่ของรัฐตามวรรคสอง โดยให้ถือว่าการดำเนินกิจการของคู่
สมรสดังกล่าว เป็นการดำเนินกิจการของเจ้าหน้าที่ของรัฐ

มาตรา ๑๐๑ ให้นำบทบัญญัติมาตรา ๑๐๐ มาใช้บังคับ
กับการดำเนินกิจการของผู้ซึ่งพ้นจากการเป็นเจ้าหน้าที่ของรัฐมาแล้ว
ยังไม่ถึงสองปีโดยอนุโลม เว้นแต่การเป็นผู้ถือหุ้นไม่เกินร้อยละห้า

ของจำนวนหุ้นทั้งหมดที่จำหน่ายได้ในบริษัทมหาชนจำกัด ซึ่งมิใช่บริษัทที่เป็นคู่สัญญากับหน่วยงานของรัฐตามมาตรา ๑๐๐ (๒) ที่ได้รับอนุญาตตามกฎหมายว่าด้วยหลักทรัพย์และตลาดหลักทรัพย์

มาตรา ๑๐๒ บทบัญญัติมาตรา ๑๐๐ มิให้นำมาใช้บังคับกับการดำเนินกิจการของเจ้าหน้าที่ของรัฐ ซึ่งหน่วยงานของรัฐที่มีอำนาจกำกับ ดูแล ควบคุม หรือตรวจสอบการดำเนินงานของบริษัทจำกัดหรือบริษัทมหาชนจำกัดมอบหมายให้ปฏิบัติหน้าที่ในบริษัทจำกัดหรือบริษัทมหาชนจำกัดที่หน่วยงานของรัฐถือหุ้นหรือเข้าร่วมทุน

มาตรา ๑๐๓ ห้ามมิให้เจ้าหน้าที่ของรัฐผู้ได้รับทรัพย์สินหรือประโยชน์อื่นใดจากบุคคล นอกเหนือจากทรัพย์สินหรือประโยชน์อันควรได้ตามกฎหมาย หรือกฎ ข้อบังคับที่ออกโดยอาศัยอำนาจตามบทบัญญัติแห่งกฎหมาย เว้นแต่การรับทรัพย์สินหรือประโยชน์อื่นใดโดยธรรมจรรยา ตามหลักเกณฑ์และจำนวนที่คณะกรรมการ ป.ป.ช. กำหนด

บทบัญญัติในวรรคหนึ่งให้ใช้บังคับกับการรับทรัพย์สินหรือประโยชน์อื่นใดของผู้ซึ่งพ้นจากการเป็นเจ้าหน้าที่ของรัฐมาแล้วยังไม่ถึงสองปีด้วยโดยอนุโลม

มาตรา ๑๒๒ เจ้าหน้าที่ของรัฐผู้ใดฝ่าฝืนบทบัญญัติมาตรา ๑๐๐ มาตรา ๑๐๑ หรือมาตรา ๑๐๓ ต้องระวางโทษจำคุกไม่เกินสามปี หรือปรับไม่เกินหกหมื่นบาท หรือทั้งจำทั้งปรับ

กรณีความผิดตามมาตรา ๑๐๐ วรรคสาม หากเจ้าหน้าที่ของรัฐผู้ใดพิสูจน์ได้ว่า ตนมิได้รู้เห็นยินยอมด้วยในการที่คู่สมรสของตนดำเนินกิจการตามมาตรา ๑๐๐ วรรคหนึ่ง ให้ถือว่าผู้นั้นไม่มีความผิด

มาตรา ๑๒๓ เจ้าหน้าที่ของรัฐผู้ใดปฏิบัติหรือละเว้นการปฏิบัติอย่างใดในพฤติการณ์ที่อาจทำให้ผู้อื่นเชื่อว่ามีตำแหน่งหรือหน้าที่ ทั้งที่ตนมิได้มีตำแหน่งหรือหน้าที่นั้น เพื่อแสวงหาประโยชน์ที่มิควรได้โดยชอบด้วยกฎหมายสำหรับตนเองหรือผู้อื่น ต้องระวางโทษจำคุกตั้งแต่หนึ่งปีถึงสิบปี หรือปรับตั้งแต่สองพันบาทถึงสองหมื่นบาท หรือทั้งจำทั้งปรับ

มาตรา ๑๒๔ ผู้ใดเป็นผู้ริเริ่มให้มีการเข้าชื่อเพื่อถอดถอนบุคคลออกจากตำแหน่งตามมาตรา ๖๐ หรือยื่นคำร้องเพื่อดำเนินคดีอาญาตามมาตรา ๖๖ หรือยื่นคำกล่าวหาตามมาตรา ๘๔ รู้ว่าไม่มีเหตุที่จะถอดถอนบุคคลออกจากตำแหน่ง หรือรู้ว่าไม่มีพฤติการณ์ว่าบุคคลร่ำรวยผิดปกติ หรือรู้ว่าไม่มีการกระทำผิดต่อตำแหน่งหน้าที่ราชการตามประมวลกฎหมายอาญาหรือตามกฎหมายอื่น

ประวัติผู้เขียน



ชื่อ นายวุฒิพงษ์ พาณิชยสวอย เกิดวันที่ 6 ธันวาคม 2507 ที่อำเภอเมืองชัยนาท จังหวัดชัยนาท เข้าเรียนชั้นประถมศึกษาที่โรงเรียนวัดศรีวิชัย จนจบชั้นประถมศึกษาปีที่ 7 และเข้าเรียนต่อระดับมัธยมศึกษาปีที่ 1 ที่โรงเรียนสวนกุหลาบวิทยาลัย พระนคร จนถึงมัธยมศึกษาปีที่ 4 (พ.ศ. 2521-2524) เมื่อสอบเทียบมัธยมศึกษาปีที่ 5 ได้เข้าเรียนต่อระดับอุดมศึกษาที่มหาวิทยาลัยรามคำแหง สำเร็จปริญญาวิทยาศาสตรบัณฑิต (พ.ศ. 2525-2529) สิบปีต่อมาเข้าศึกษาต่อระดับปริญญาโทนิติศาสตร์ สาขากฎหมายมหาชน จุฬาลงกรณ์มหาวิทยาลัย (พ.ศ. 2539-2542)

ประวัติการทำงานเข้าทำงานเป็นผู้ตรวจการตลาด สำนักงานตลาด กรุงเทพมหานคร (พ.ศ. 2532-2534) ปลัดอำเภอ กรมการปกครอง กระทรวงมหาดไทย (พ.ศ. 2535-2540) นิติกรกองนิติการ สำนักงานคณะกรรมการป้องกันและปราบปรามยาเสพติด สำนักงานกฤษฎีกา (พ.ศ. 2540 - ปัจจุบัน)