

STATE OF NEW YORK

5831

2017-2018 Regular Sessions

IN ASSEMBLY

February 16, 2017

Introduced by M. of A. SANTABARBARA, WOERNER, RAIA, GUNTHER, KEARNS,
LUPINACCI -- Multi-Sponsored by -- M. of A. GLICK -- read once and
referred to the Committee on Governmental Operations

AN ACT to amend the legislative law, in relation to prohibiting members
of the legislature from receiving certain income

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

Section 1. The legislative law is amended by adding a new section 5-b
to read as follows:

§ 5-b. Prohibition on outside earned income for members. 1. Starting
in calendar year two thousand nineteen, a member of the legislature may
not have outside earned income attributable to such year which exceeds
fifteen percent of the gross annual salary of members of the legisla-
ture, pursuant to section five of this article.

2. a. For the purposes of this section, the term "outside earned
income" includes, but is not limited to, wages, salaries, fees, and
other forms of compensation for services actually rendered.

b. For the purposes of this section, the term "outside earned income"
does not include:

(1) salary, benefits, and allowances paid by New York state;

(2) income attributable to service with the military reserves or
national guard;

(3) income from pensions and other continuing benefits attributable to
previous employment or services;

(4) income from investment activities, where the member's services are
not a material factor in the production of income;

(5) income from a trade or business in which the member or their fami-
ly holds a controlling interest, where the member's services are not a
material factor in the production of income;

(6) copyright royalties, fees, and their functional equivalent, from
the use or sale of copyright, patent and similar forms of intellectual

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 property rights, when received from established users or purchasers of
2 those rights; and

3 (7) compensation for services actually rendered prior to January
4 first, two thousand nineteen, or prior to being sworn in as a member of
5 the legislature.

6 3. Notwithstanding any other provisions of law to the contrary,
7 members of the legislature are prohibited from:

8 a. receiving compensation for affiliating with or being employed by a
9 firm, partnership, association, corporation, or other entity that
10 provides professional services involving a fiduciary relationship,
11 except for the practice of medicine;

12 b. permitting their name to be used by such a firm, partnership, asso-
13 ciation, corporation, or other entity;

14 c. receiving compensation for practicing a profession that involves a
15 fiduciary relationship except for the practice of medicine;

16 d. receiving compensation as an officer or member of the board of an
17 association, corporation, or other entity;

18 e. receiving compensation for teaching, without prior notification to
19 and approval from the legislative ethics commission;

20 f. receiving advance payments on copyright royalties, fees, and their
21 functional equivalents.

22 4. A member of the legislature who knowingly and willfully violates
23 the provisions of this section shall be subject to a civil penalty in an
24 amount not to exceed forty thousand dollars. Assessment of a civil
25 penalty shall be made by the legislative ethics commission. The legisla-
26 tive ethics commission, acting pursuant to subdivision eleven of section
27 eighty of this chapter, may, in lieu of or in addition to a civil penal-
28 ty, refer a violation to the appropriate prosecutor and upon such
29 conviction, but only after such referral, such violation shall be
30 punishable as a class A misdemeanor.

31 § 2. Paragraph (a) of subdivision 9 of section 80 of the legislative
32 law, as amended by section 9 of part A of chapter 399 of the laws of
33 2011, is amended to read as follows:

34 (a) An individual subject to the jurisdiction of the commission with
35 respect to the imposition of penalties who knowingly and intentionally
36 violates the provisions of subdivisions two through five-a, seven,
37 eight, twelve, fourteen or fifteen of section seventy-three of the
38 public officers law or section five-b of this chapter or a reporting
39 individual who knowingly and wilfully fails to file an annual statement
40 of financial disclosure or who knowingly and wilfully with intent to
41 deceive makes a false statement or gives information which such individ-
42 ual knows to be false on such statement of financial disclosure filed
43 pursuant to section seventy-three-a of the public officers law shall be
44 subject to a civil penalty in an amount not to exceed forty thousand
45 dollars and the value of any gift, compensation or benefit received as a
46 result of such violation. Any such individual who knowingly and inten-
47 tionally violates the provisions of paragraph a, b, c, d, e, g, or i of
48 subdivision three of section seventy-four of the public officers law
49 shall be subject to a civil penalty in an amount not to exceed ten thou-
50 sand dollars and the value of any gift, compensation or benefit received
51 as a result of such violation. Assessment of a civil penalty hereunder
52 shall be made by the commission with respect to persons subject to its
53 jurisdiction. In assessing the amount of the civil penalties to be
54 imposed, the commission shall consider the seriousness of the violation,
55 the amount of gain to the individual and whether the individual previ-
56 ously had any civil or criminal penalties imposed pursuant to this

1 section, and any other factors the commission deems appropriate. For a
2 violation of this section, other than for conduct which constitutes a
3 violation of subdivision twelve, fourteen or fifteen of section seven-
4 ty-three or section seventy-four of the public officers law, the legis-
5 lative ethics commission may, in lieu of or in addition to a civil
6 penalty, refer a violation to the appropriate prosecutor and upon such
7 conviction, but only after such referral, such violation shall be
8 punishable as a class A misdemeanor. Where the commission finds suffi-
9 cient cause, it shall refer such matter to the appropriate prosecutor. A
10 civil penalty for false filing may not be imposed hereunder in the event
11 a category of "value" or "amount" reported hereunder is incorrect unless
12 such reported information is falsely understated. Notwithstanding any
13 other provision of law to the contrary, no other penalty, civil or crim-
14 inal may be imposed for a failure to file, or for a false filing, of
15 such statement, or a violation of subdivision six of section seventy-
16 three of the public officers law, except that the appointing authority
17 may impose disciplinary action as otherwise provided by law. The legis-
18 lative ethics commission shall be deemed to be an agency within the
19 meaning of article three of the state administrative procedure act and
20 shall adopt rules governing the conduct of adjudicatory proceedings and
21 appeals taken pursuant to a proceeding commenced under article seventy-
22 eight of the civil practice law and rules relating to the assessment of
23 the civil penalties herein authorized. Such rules, which shall not be
24 subject to the promulgation and hearing requirements of the state admin-
25 istrative procedure act, shall provide for due process procedural mech-
26 anisms substantially similar to those set forth in such article three
27 but such mechanisms need not be identical in terms or scope. Assessment
28 of a civil penalty shall be final unless modified, suspended or vacated
29 within thirty days of imposition, with respect to the assessment of such
30 penalty, or unless such denial of request is reversed within such time
31 period, and upon becoming final shall be subject to review at the
32 instance of the affected reporting individuals in a proceeding commenced
33 against the legislative ethics commission, pursuant to article seventy-
34 eight of the civil practice law and rules.

35 § 3. This act shall take effect January 1, 2019.