

STATE OF NEW YORK

7162

2017-2018 Regular Sessions

IN ASSEMBLY

April 11, 2017

Introduced by M. of A. BUCHWALD -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to accomplice liability for certain violations under the jurisdiction of the joint commission on public ethics

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

1 Section 1. Subdivision 14 of section 94 of the executive law, as
2 amended by section 6 of part A of chapter 399 of the laws of 2011, is
3 amended to read as follows:

4 14. An individual subject to the jurisdiction of the commission who
5 knowingly and intentionally violates the provisions of subdivisions two
6 through five-a, seven, eight, twelve or fourteen through seventeen of
7 section seventy-three of the public officers law, section one hundred
8 seven of the civil service law, or a reporting individual who knowingly
9 and wilfully fails to file an annual statement of financial disclosure
10 or who knowingly and wilfully with intent to deceive makes a false
11 statement or fraudulent omission or gives information which such indi-
12 vidual knows to be false on such statement of financial disclosure filed
13 pursuant to section seventy-three-a of the public officers law, or an
14 individual, acting with the mental culpability required for the commis-
15 sion thereof, who solicits, requests, commands, importunes, or inten-
16 tionally aids another person to engage in any of the abovementioned
17 conduct, shall be subject to a civil penalty in an amount not to exceed
18 forty thousand dollars and the value of any gift, compensation or bene-
19 fit received as a result of such violation. An individual or entity who
20 knowingly and intentionally violates the provisions of paragraph a, b,
21 c, d, e, g, or i of subdivision three of section seventy-four of the
22 public officers law, or an individual, acting with the mental culpabili-
23 ty required for the commission thereof, who solicits, requests,
24 commands, importunes, or intentionally aids another person to engage in

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

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1 any of the abovementioned conduct, shall be subject to a civil penalty
2 in an amount not to exceed ten thousand dollars and the value of any
3 gift, compensation or benefit received as a result of such violation. An
4 individual subject to the jurisdiction of the commission who knowingly
5 and willfully violates article one-A of the legislative law, or an indi-
6 vidual, acting with the mental culpability required for the commission
7 thereof, who solicits, requests, commands, importunes, or intentionally
8 aids another person or entity to engage in any of the abovementioned
9 conduct, shall be subject to civil penalty as provided for in that arti-
10 cle. Except with respect to members of the legislature and legislative
11 employees, assessment of a civil penalty hereunder shall be made by the
12 commission with respect to persons subject to its jurisdiction. With
13 respect to a violation of any law other than sections seventy-three,
14 seventy-three-a, and seventy-four of the public officers law, where the
15 commission finds sufficient cause by a vote held in the same manner as
16 set forth in paragraph (b) of subdivision thirteen of this section, it
17 shall refer such matter to the appropriate prosecutor for further inves-
18 tigation. In assessing the amount of the civil penalties to be imposed,
19 the commission shall consider the seriousness of the violation, the
20 amount of gain to the individual and whether the individual previously
21 had any civil or criminal penalties imposed pursuant to this section,
22 and any other factors the commission deems appropriate. Except with
23 respect to members of the legislature and legislative employees, for a
24 violation of this subdivision, other than for conduct which constitutes
25 a violation of section one hundred seven of the civil service law,
26 subdivisions twelve or fourteen through seventeen of section seventy-
27 three or section seventy-four of the public officers law or article
28 one-A of the legislative law, the commission may, in lieu of or in addi-
29 tion to a civil penalty, refer a violation to the appropriate prosecutor
30 and upon such conviction, such violation shall be punishable as a class
31 A misdemeanor. A civil penalty for false filing may not be imposed here-
32 under in the event a category of "value" or "amount" reported hereunder
33 is incorrect unless such reported information is falsely understated.
34 Notwithstanding any other provision of law to the contrary, no other
35 penalty, civil or criminal may be imposed for a failure to file, or for
36 a false filing, of such statement, or a violation of subdivision six of
37 section seventy-three of the public officers law, except that the
38 appointing authority may impose disciplinary action as otherwise
39 provided by law. The commission may refer violations of this subdivision
40 to the appointing authority for disciplinary action as otherwise
41 provided by law. The commission shall be deemed to be an agency within
42 the meaning of article three of the state administrative procedure act
43 and shall adopt rules governing the conduct of adjudicatory proceedings
44 and appeals taken pursuant to a proceeding commenced under article
45 seventy-eight of the civil practice law and rules relating to the
46 assessment of the civil penalties herein authorized and commission
47 denials of requests for certain deletions or exemptions to be made from
48 a financial disclosure statement as authorized in paragraph (h) or para-
49 graph (i) of subdivision nine of this section. Such rules, which shall
50 not be subject to the approval requirements of the state administrative
51 procedure act, shall provide for due process procedural mechanisms
52 substantially similar to those set forth in article three of the state
53 administrative procedure act but such mechanisms need not be identical
54 in terms or scope. Assessment of a civil penalty or commission denial of
55 such a request shall be final unless modified, suspended or vacated
56 within thirty days of imposition, with respect to the assessment of such

1 penalty, or unless such denial of request is reversed within such time
2 period, and upon becoming final shall be subject to review at the
3 instance of the affected reporting individuals in a proceeding commenced
4 against the commission, pursuant to article seventy-eight of the civil
5 practice law and rules.

6 § 2. This act shall take effect on the ninetieth day after it shall
7 have become a law.