

8728

2009-2010 Regular Sessions

I N A S S E M B L Y

June 4, 2009

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

AN ACT to amend the executive law, the public officers law, the civil service law, the legislative law and the election law, in relation to financial disclosure by public officers; and to repeal certain provisions of the public officers law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (f) of subdivision 9 of section 94 of the execu-
2 tive law, as amended by chapter 14 of the laws of 2007, is amended to
3 read as follows:

4 (f) Review financial disclosure statements in accordance with the
5 provisions of this section AND SHALL CONDUCT A PROGRAM OF RANDOM AUDITS
6 SUBJECT TO THE TERMS AND CONDITIONS OF THIS SECTION. ANY SUCH PROGRAM
7 SHALL BE CARRIED OUT IN THE FOLLOWING MANNER, provided however, that the
8 commission may delegate all or part of this review function to the execu-
9 tive director who shall be responsible for completing staff review of
10 such statements in a manner consistent with the terms of the commis-
11 sion's delegation;

12 (I) THE COMMISSION SHALL RANDOMLY SELECT FINANCIAL DISCLOSURE FORMS
13 REQUIRED TO BE FILED BY PUBLIC OFFICERS PURSUANT TO THIS ARTICLE FOR
14 AUDIT. ANY SUCH SELECTION SHALL BE DONE IN A MANNER PURSUANT TO WHICH
15 THE IDENTITY OF ANY PARTICULAR PUBLIC OFFICIAL WHOSE DISCLOSURE FORM IS
16 SELECTED FOR AUDIT IS UNKNOWN TO THE COMMISSION, ITS STAFF OR ANY OF
17 THEIR AGENTS PRIOR TO SELECTION.

18 (II) THE COMMISSION SHALL DEVELOP PROTOCOLS FOR THE CONDUCT OF SUCH
19 RANDOM AUDITS. SUCH RANDOM AUDITS MAY REQUIRE THE PRODUCTION OF RECORDS
20 RELEVANT AND MATERIAL TO THE PREPARATION OF THE FINANCIAL DISCLOSURE
21 FORMS FOR EXAMINATION BY THE COMMISSION. ANY SUCH PROTOCOLS SHALL ENSURE
22 THAT DISCLOSURE FORMS ARE AUDITED IN A UNIFORM MANNER.

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

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1 (III) THE COMMISSION SHALL CONTRACT WITH AN OUTSIDE ACCOUNTING ENTITY,
2 WHICH SHALL MONITOR THE PROCESS PURSUANT TO WHICH THE COMMISSION SELECTS
3 STATEMENTS OR REPORTS FOR AUDIT AND CARRIES OUT THE PROVISIONS OF
4 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH AND CERTIFIES THAT SUCH
5 PROCESS COMPLIES WITH THE PROVISIONS OF SUCH SUBPARAGRAPHS.

6 (IV) UPON COMPLETION OF A RANDOM AUDIT CONDUCTED IN ACCORDANCE WITH
7 THE PROVISIONS OF SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH,
8 THE COMMISSION SHALL DETERMINE WHETHER THERE IS REASONABLE CAUSE TO
9 BELIEVE THAT ANY SUCH STATEMENT OR REPORT IS INACCURATE OR INCOMPLETE.
10 UPON A DETERMINATION THAT SUCH REASONABLE CAUSE EXISTS, THE COMMISSION
11 MAY REQUIRE THE PRODUCTION OF FURTHER RECORDS, SUBPOENA WITNESSES,
12 COMPEL THEIR ATTENDANCE AND TESTIMONY AND ADMINISTER OATHS OR AFFIRMA-
13 TIONS, TO THE EXTENT THE COMMISSION DETERMINES SUCH ACTIONS ARE NECES-
14 SARY TO OBTAIN INFORMATION RELEVANT AND MATERIAL TO INVESTIGATING SUCH
15 INACCURACIES OR OMISSIONS.

16 (V) IN THE EVENT THAT THE COMMISSION FAILS TO CONDUCT RANDOM AUDITS AS
17 REQUIRED BY THIS SUBDIVISION, EACH MEMBER OF THE COMMISSION SHALL BE
18 ASSESSED A CIVIL PENALTY OF FIVE HUNDRED DOLLARS;

19 S 2. Subdivision 11 of section 94 of the executive law, as amended by
20 chapter 14 of the laws of 2007, is amended to read as follows:

21 11. If a person required to file a financial disclosure statement with
22 the commission has failed to file a disclosure statement or has filed a
23 deficient statement, the commission shall notify the reporting person in
24 writing, state the failure to file or detail the deficiency, provide the
25 person with a fifteen day period to cure the deficiency, and advise the
26 person of the penalties for failure to comply with the reporting
27 requirements. Such notice shall be confidential. If the person fails to
28 make such filing or fails to cure the deficiency within the specified
29 time period, the commission shall send a notice of delinquency: (a) to
30 the reporting person; (b) in the case of a statewide elected official,
31 to the temporary president of the senate [and], the speaker of the
32 assembly AND THE GOVERNOR; [and] (c) in the case of a state officer or
33 employee, to the appointing authority for such person; AND (D) IN THE
34 CASE OF A LEGISLATOR OR LEGISLATIVE EMPLOYEE, TO THE TEMPORARY PRESIDENT
35 OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE GOVERNOR. Such
36 notice of delinquency may be sent at any time during the reporting
37 person's service as a [statewide] STATE elected official, state officer
38 or employee, political party chair or while a candidate for [statewide]
39 STATE office, or within one year after termination of such service or
40 candidacy. The jurisdiction of the commission, when acting pursuant to
41 subdivision thirteen of this section with respect to financial disclo-
42 sure, shall continue notwithstanding that the reporting person separates
43 from state service, or ceases to hold office as a [statewide] STATE
44 elected official or political party chair, or ceases to be a candidate,
45 provided the commission notifies such person of the alleged failure to
46 file or deficient filing pursuant to this subdivision. FAILURE TO
47 RESPOND TO THIS SECOND NOTICE OF DEFICIENCY SHALL REQUIRE THE COMMISSION
48 TO MAKE PUBLIC ITS FILE IN THIS MATTER WITHIN SIXTY DAYS OF THE DATE OF
49 THE SECOND NOTICE AND SHALL BE DEEMED A KNOWING AND WILLFUL FAILURE TO
50 DISCLOSE FOR WHICH A CIVIL PENALTY MUST BE ASSESSED IN ADDITION TO OTHER
51 REMEDY.

52 S 3. Paragraphs (f) and (g) of subdivision 2 of section 73-a of the
53 public officers law are REPEALED.

54 S 4. The third undesignated paragraph of paragraph 3 of subdivision 3
55 of section 73-a of the public officers law, as added by chapter 813 of
56 the laws of 1987, is amended to read as follows:

1 Whenever a "value" or "amount" is required to be reported herein, such
 2 value or amount shall be reported as being within one of the following
 3 Categories: Category A - under \$5,000; Category B - \$5,000 to under
 4 \$20,000; Category C - \$20,000 to under \$60,000; Category D - \$60,000 to
 5 under \$100,000; Category E - \$100,000 to under \$250,000; [and] Category
 6 F - \$250,000 TO UNDER \$1 MILLION; AND CATEGORY G - \$1 MILLION or over. A
 7 reporting individual shall indicate the Category by letter only.

8 S 5. Subparagraph (a) of paragraph 5 of subdivision 3 of section 73-a
 9 of the public officers law, as amended by chapter 242 of the laws of
 10 1989, is amended to read as follows:

11 (a) List the name, address and description of any occupation, employ-
 12 ment (other than the employment listed under Item 2 above), trade, busi-
 13 ness or profession engaged in by the reporting individual. If such
 14 activity was licensed by any state or local agency, was regulated by any
 15 state regulatory agency or local agency, or, as a regular and signif-
 16 icant part of the business or activity of said entity, did business
 17 with, or had matters other than ministerial matters before, any state or
 18 local agency, list the name of any such agency. IN ADDITION, LIST THE
 19 NAME AND ADDRESS OF EACH GOVERNMENTAL AGENCY, CORPORATION, PARTNERSHIP,
 20 JOINT VENTURE, SOLE PROPRIETORSHIP, ASSOCIATION, UNION, OR OTHER BUSI-
 21 NESS OR COMMERCIAL ENTITY FROM WHOM COMPENSATION HAS BEEN RECEIVED FOR
 22 ANY VALUE OF FIVE HUNDRED DOLLARS OR MORE; THE VALUE OF THE COMPEN-
 23 SATION; AND THE CONSIDERATION GIVEN OR PERFORMED IN EXCHANGE FOR THE
 24 COMPENSATION.

25				State or
26				Local
27	Position	Name & Address of Organization	Description	Agency
28	<hr/>			
29	<hr/>			
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33 S 6. Subparagraph (a) of paragraph 8 of subdivision 3 of section 73-a
 34 of the public officers law, as added by chapter 813 of the laws of 1987,
 35 is amended to read as follows:

36 (a) If the reporting individual practices law, is licensed by the
 37 department of state as a real estate broker or agent or practices a
 38 profession licensed by the department of education, OR WORKS AS A MEMBER
 39 OR EMPLOYEE OF A FIRM REQUIRED TO REGISTER WITH THE COMMISSION AS
 40 REQUIRED UNDER SECTION ONE-E OF THE LEGISLATIVE LAW, give a general
 41 description of the principal subject areas of matters undertaken by such
 42 individual. Additionally, if such an individual practices with a firm or
 43 corporation and is a partner or shareholder of the firm or corporation,
 44 give a general description of principal subject areas of matters under-
 45 taken by such firm or corporation. Do not list the name of the individ-
 46 ual clients, customers or patients PROVIDED, HOWEVER THAT THE REPORTING
 47 INDIVIDUAL MUST LIST THE NAME AND ADDRESS OF EACH GOVERNMENTAL AGENCY,
 48 CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, ASSOCI-
 49 ATION, UNION, OR OTHER BUSINESS OR COMMERCIAL ENTITY FROM WHOM COMPEN-
 50 SATION HAS BEEN RECEIVED FOR ANY VALUE OF FIVE HUNDRED DOLLARS OR MORE;
 51 THE VALUE OF THE COMPENSATION; AND THE CONSIDERATION GIVEN OR PERFORMED
 52 IN EXCHANGE FOR THE COMPENSATION.

1 _____
 2 _____
 3 _____
 4 _____
 5 _____

6 S 7. Subdivision 4 of section 73-a of the public officers law, as
 7 amended by chapter 242 of the laws of 1989, is amended to read as
 8 follows:

9 4. A reporting individual who knowingly and [wilfully] WILLFULLY fails
 10 to file an annual statement of financial disclosure or who knowingly and
 11 [wilfully] WILLFULLY with intent to deceive makes a false statement or
 12 gives information which such individual knows to be false on such state-
 13 ment of financial disclosure filed pursuant to this section shall be
 14 subject to a civil penalty in an amount not to BE LESS THAN FIVE HUNDRED
 15 DOLLARS AND NOT TO exceed ten thousand dollars. Assessment of a civil
 16 penalty hereunder shall be made by the [state ethics] commission ON
 17 PUBLIC INTEGRITY, or by the legislative ethics [committee] COMMISSION,
 18 as the case may be, with respect to persons subject to their respective
 19 jurisdictions. The [state ethics] commission ON PUBLIC INTEGRITY acting
 20 pursuant to subdivision thirteen of section ninety-four of the executive
 21 law, or the legislative ethics [committee] COMMISSION acting pursuant to
 22 subdivision twelve of section eighty of the legislative law, as the case
 23 may be, may, in lieu of a civil penalty, refer a violation to the appro-
 24 priate prosecutor and upon such conviction, but only after such refer-
 25 ral, such violation shall be punishable as a class A misdemeanor. A
 26 civil penalty for false filing may not be imposed hereunder in the event
 27 a category of "value" or "amount" reported hereunder is incorrect unless
 28 such reported information is falsely understated. [Notwithstanding any
 29 other provision of law to the contrary, no other penalty, civil or crim-
 30 inal may be imposed for a failure to file, or for a false filing, of
 31 such statement, except that the appointing authority may impose disci-
 32 plinary action as otherwise provided by law.] The [state ethics] commis-
 33 sion ON PUBLIC INTEGRITY, and the legislative ethics [committee] COMMIS-
 34 SION shall each be deemed to be an agency within the meaning of article
 35 three of the state administrative procedure act and shall adopt rules
 36 governing the conduct of adjudicatory proceedings and appeals relating
 37 to the assessment of the civil penalties herein authorized. Such rules,
 38 which shall not be subject to the approval requirements of the state
 39 administrative procedure act, shall provide for due process procedural
 40 mechanisms substantially similar to those set forth in such article
 41 three but such mechanisms need not be identical in terms or scope.
 42 Assessment of a civil penalty shall be final unless modified, suspended
 43 or vacated within thirty days of imposition and upon becoming final
 44 shall be subject to review at the instance of the affected reporting
 45 individual in a proceeding commenced against the [state ethics] commis-
 46 sion ON PUBLIC INTEGRITY or legislative ethics [committee] COMMISSION,
 47 pursuant to article seventy-eight of the civil practice law and rules.

48 S 8. The public officers law is amended by adding a new section 74-b
 49 to read as follows:

50 S 74-B. REPORTS OF BUSINESS DEALINGS WITH LOBBYISTS. 1. ANY PUBLIC
 51 OFFICER WHO RETAINS, EMPLOYS, DESIGNATES OR OTHERWISE DOES BUSINESS WITH
 52 A LOBBYIST OR LOBBYISTS SHALL, WITHIN THIRTY DAYS OF THE DATE UPON WHICH
 53 SUCH BUSINESS DEALINGS COMMENCE, FILE WITH THE COMMISSION ON PUBLIC
 54 INTEGRITY CREATED BY SECTION NINETY-FOUR OF THE EXECUTIVE LAW, A REPORT
 55 OF SUCH BUSINESS DEALINGS.

1 2. SUCH REPORT SHALL BE FILED WITH THE COMMISSION ON PUBLIC INTEGRITY,
2 ON FORMS SUPPLIED BY SUCH COMMISSION AND SHALL CONTAIN:

3 (A) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PUBLIC OFFICER;

4 (B) THE NAME, ADDRESS AND TELEPHONE NUMBER OF EACH LOBBYIST RETAINED,
5 EMPLOYED OR DESIGNATED BY SUCH PUBLIC OFFICER OR WITH WHOM SUCH PUBLIC
6 OFFICER DID BUSINESS;

7 (C) A DESCRIPTION OF THE GENERAL SUBJECT OR SUBJECTS OF THE TRANS-
8 ACTIONS BETWEEN THE PUBLIC OFFICER AND THE LOBBYIST OR LOBBYISTS;

9 (D) THE COMPENSATION, INCLUDING EXPENSES, TO BE PAID BY VIRTUE OF THE
10 BUSINESS DEALINGS.

11 3. (A) ALL SUCH REPORTS SHALL BE SUBJECT TO REVIEW BY THE COMMISSION
12 ON PUBLIC INTEGRITY.

13 (B) SUCH REPORTS SHALL BE KEPT ON FILE FOR A PERIOD OF THREE YEARS AND
14 SHALL BE OPEN TO PUBLIC INSPECTION DURING SUCH PERIOD.

15 (C) EACH REPORT FILED BY A PUBLIC OFFICER PURSUANT TO THIS SECTION
16 SHALL BE ACCOMPANIED BY A FILING FEE OF FIFTY DOLLARS. IN ADDITION TO
17 THE FILING FEES AUTHORIZED BY THIS ARTICLE, THE COMMISSION ON PUBLIC
18 INTEGRITY MAY IMPOSE A FEE FOR LATE FILING OF A REPORT REQUIRED BY THIS
19 SECTION NOT TO EXCEED TWENTY-FIVE DOLLARS FOR EACH DAY THAT THE REPORT
20 REQUIRED TO BE FILED IS LATE, EXCEPT THAT IF THE PUBLIC OFFICER MAKING A
21 LATE FILING HAS NOT PREVIOUSLY BEEN REQUIRED BY STATUTE TO FILE A
22 REPORT, THE FEE FOR LATE FILING SHALL NOT EXCEED TEN DOLLARS FOR EACH
23 DAY THAT THE REPORT REQUIRED TO BE FILED IS LATE.

24 S 9. Subdivision 5 of section 107 of the civil service law, as amended
25 by chapter 14 of the laws of 2007, is amended to read as follows:

26 5. Violation of this section. Complaints alleging a violation of this
27 section by a [statewide] STATE elected official or a state officer or
28 employee, as defined in section seventy-three of the public officers
29 law, may be directed to the commission on public integrity.

30 S 10. Section 60 of the legislative law, as amended by chapter 416 of
31 the laws of 1954, is amended to read as follows:

32 S 60. Testimony before legislative committees. 1. A legislative
33 committee may require the attendance of witnesses in this state whom the
34 committee may wish to examine, or may issue a commission for the exam-
35 ination of witnesses who are out of the state or unable to attend the
36 committee or excused from attendance, which commission if directed by
37 the house or legislature by which the committee is appointed may be
38 executed during the recess of the legislature. A commission issued as
39 provided by this section shall be in the form used in the courts of
40 record of this state and shall be executed in like manner. Unless other-
41 wise instructed by the committee appointing them the commissioners shall
42 examine privately every witness attending before them and shall not make
43 public the particulars of such examination. No committee of either house
44 or a joint committee of both houses shall have the power to take testi-
45 mony at a private hearing or at a public hearing unless at least two of
46 its members are present at such hearing.

47 2. THE LEGISLATIVE COMMITTEES RESPONSIBLE FOR OVERSIGHT OF THE COMMIS-
48 SION ON PUBLIC INTEGRITY CREATED PURSUANT TO SECTION NINETY-FOUR OF THE
49 EXECUTIVE LAW SHALL HOLD HEARINGS REGARDING THE ANNUAL REPORT AND RECOM-
50 MENDATIONS OF SUCH COMMISSION WITHIN THIRTY DAYS OF THE PUBLIC RELEASE
51 OF SUCH COMMISSION'S ANNUAL REPORT.

52 S 11. Paragraph h of subdivision 7 of section 80 of the legislative
53 law, as amended by chapter 14 of the laws of 2007, is amended to read as
54 follows:

55 h. Review financial disclosure statements in accordance with the
56 provisions of this section, AND SHALL CONDUCT A PROGRAM OF RANDOM AUDITS

1 SUBJECT TO THE TERMS AND CONDITIONS OF THIS SECTION. ANY SUCH PROGRAM
2 SHALL BE CARRIED OUT IN THE FOLLOWING MANNER, provided however, that the
3 commission may delegate all or part of the review function relating to
4 financial disclosure statements filed by legislative employees pursuant
5 to sections seventy-three and seventy-three-a of the public officers law
6 to the executive director who shall be responsible for completing staff
7 review of such statements in a manner consistent with the terms of the
8 commission's delegation;

9 (I) THE COMMISSION SHALL RANDOMLY SELECT FINANCIAL DISCLOSURE FORMS
10 REQUIRED TO BE FILED BY PUBLIC OFFICERS PURSUANT TO THIS ARTICLE FOR
11 AUDIT. ANY SUCH SELECTION SHALL BE DONE IN A MANNER PURSUANT TO WHICH
12 THE IDENTITY OF ANY PARTICULAR PUBLIC OFFICIAL WHOSE DISCLOSURE FORM IS
13 SELECTED FOR AUDIT IS UNKNOWN TO THE COMMISSION, ITS STAFF OR ANY OF
14 THEIR AGENTS PRIOR TO SELECTION.

15 (II) THE COMMISSION SHALL DEVELOP PROTOCOLS FOR THE CONDUCT OF SUCH
16 RANDOM AUDITS. SUCH RANDOM AUDITS MAY REQUIRE THE PRODUCTION OF RECORDS
17 RELEVANT AND MATERIAL TO THE PREPARATION OF THE FINANCIAL DISCLOSURE
18 FORMS FOR EXAMINATION BY THE COMMISSION. ANY SUCH PROTOCOLS SHALL ENSURE
19 THAT DISCLOSURE FORMS ARE AUDITED IN A UNIFORM MANNER.

20 (III) THE COMMISSION SHALL CONTRACT WITH AN OUTSIDE ACCOUNTING ENTITY,
21 WHICH SHALL MONITOR THE PROCESS PURSUANT TO WHICH THE COMMISSION SELECTS
22 STATEMENTS OR REPORTS FOR AUDIT AND CARRIES OUT THE PROVISIONS OF
23 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH AND CERTIFIES THAT SUCH
24 PROCESS COMPLIES WITH THE PROVISIONS OF SUCH SUBPARAGRAPHS.

25 (IV) UPON COMPLETION OF A RANDOM AUDIT CONDUCTED IN ACCORDANCE WITH
26 THE PROVISIONS OF SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH,
27 THE COMMISSION SHALL DETERMINE WHETHER THERE IS REASONABLE CAUSE TO
28 BELIEVE THAT ANY SUCH STATEMENT OR REPORT IS INACCURATE OR INCOMPLETE.
29 UPON A DETERMINATION THAT SUCH REASONABLE CAUSE EXISTS, THE COMMISSION
30 MAY REQUIRE THE PRODUCTION OF FURTHER RECORDS, SUBPOENA WITNESSES,
31 COMPEL THEIR ATTENDANCE AND TESTIMONY AND ADMINISTER OATHS OR AFFIRMA-
32 TIONS, TO THE EXTENT THE COMMISSION DETERMINES SUCH ACTIONS ARE NECES-
33 SARY TO OBTAIN INFORMATION RELEVANT AND MATERIAL TO INVESTIGATING SUCH
34 INACCURACIES OR OMISSIONS.

35 (V) IN THE EVENT THAT THE COMMISSION FAILS TO CONDUCT RANDOM AUDITS AS
36 REQUIRED BY THIS SUBDIVISION, EACH MEMBER OF THE COMMISSION SHALL BE
37 ASSESSED A CIVIL PENALTY OF FIVE HUNDRED DOLLARS;

38 S 12. Paragraph i of subdivision 7 of section 80 of the legislative
39 law, as amended by chapter 14 of the laws of 2007, is amended to read as
40 follows:

41 i. Permit any person required to file a financial disclosure statement
42 to request the commission to delete from the copy thereof made available
43 for public inspection and copying one or more items of information,
44 which may be deleted by the commission upon a finding that the informa-
45 tion which would otherwise be required to be disclosed will RESULT IN
46 ECONOMIC OR PERSONAL HARDSHIP TO THE REPORTING PERSON AND WILL have no
47 material bearing on the discharge of the reporting person's official
48 duties;

49 S 13. Subdivision 1 of section 14-126 of the election law, as amended
50 by chapter 128 of the laws of 1994, is amended to read as follows:

51 1. Any person who fails to file a statement required to be filed by
52 this article shall be subject to a civil penalty, not [in excess of]
53 LESS THAN five hundred dollars AND NOT TO EXCEED TEN THOUSAND DOLLARS,
54 to be recoverable in a special proceeding or civil action to be brought
55 by the state board of elections or other board of elections.

1 S 14. The provisions of this act shall apply to the commission on
2 public integrity, the legislative ethics commission and to the state
3 board of elections and to any successor body to any of such entities.

4 S 15. Separability clause. If any clause, sentence, paragraph, section
5 or part of this act shall be adjudged by any court of competent juris-
6 diction to be invalid, such judgment shall not affect, impair or invali-
7 date the remainder thereof, but shall be confined in its operation to
8 the clause, sentence, paragraph, section or part thereof directly
9 involved in the controversy in which such judgment shall have been
10 rendered.

11 S 16. This act shall take effect January 1, 2010.