S T A T E O F N E W Y O R K

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I N A S S E M B L Y

March 11, 2016

Introduced by M. of A. HEASTIE, MORELLE, PEOPLES-STOKES, LENTOL, CUSICK, LAVINE, FARRELL, DINOWITZ, FAHY -- Multi-Sponsored by -- M. of A. ABINANTI, ARROYO, BARRETT, BENEDETTO, BICHOTTE, BRAUNSTEIN, BRENNAN, BRINDISI, BRONSON, BUCHWALD, CAHILL, CERETTO, COLTON, COOK, CRESPO, CYMBROWITZ, DAVILA, DenDEKKER, ENGLEBRIGHT, GALEF, GANTT, GLICK, GOTTFRIED, GUNTHER, HARRIS, HEVESI, HIKIND, HOOPER, HUNTER, HYNDMAN, JAFFEE, JEAN-PIERRE, JOYNER, KAVANAGH, KEARNS, KIM, LIFTON, LINARES, LUPARDO, MAGEE, MAGNARELLI, MARKEY, MAYER, McDONALD, MILLER, MOSLEY, MOYA, NOLAN, O'DONNELL, OTIS, PAULIN, PERRY, PICHARDO, RAMOS, RODRIGUEZ, ROSENTHAL, ROZIC, RUSSELL, RYAN, SCHIMEL, SEAWRIGHT, SEPULVEDA, SIMANOWITZ, SIMON, SIMOTAS, SKARTADOS, SOLAGES, STECK, STIRPE, THIELE, TITONE, TITUS, WALKER, WEINSTEIN, WOERNER, ZEBROWSKI -- read once and referred to the Committee on Codes

AN ACT to amend the legislative law, in relation to limitations on outside income for members; to amend the election law, in relation to campaign contributions by limited liability companies; to amend the legislative law, in relation to communications with professional journalists and newscasters; and in relation to reporting of certain funding by lobbyists; and to amend the election law, in relation to monies received and expenditures made by a party committee or constituted committee

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

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

S 5-B. LIMIT ON OUTSIDE INCOME FOR MEMBERS. 1. A MEMBER OF THE LEGISLATURE RECEIVING A SALARY FOR LEGISLATIVE WORK FROM THE STATE OF NEW YORK SHALL NOT, IN A CALENDAR YEAR, EARN OUTSIDE INCOME FOR PERSONAL SERVICES ACTUALLY RENDERED IN AN AMOUNT GREATER THAN FORTY PERCENT OF THE ANNUAL SALARY, AS PROVIDED BY LAW, OF STATE JUSTICES OF THE SUPREME COURT.

2. (A) FOR PURPOSES OF THIS SECTION, THE TERM "OUTSIDE INCOME" SHALL INCLUDE WAGES, SALARIES, FEES, COMMISSIONS AND OTHER FORMS OF COMPENSATION FOR SERVICES ACTUALLY RENDERED.

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

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(B) FOR THE PURPOSES OF THIS SECTION, THE TERM "OUTSIDE INCOME" SHALL NOT INCLUDE:

(1) SALARY, BENEFITS, AND ALLOWANCES PAID BY THE STATE;

(2) INCOME AND ALLOWANCES ATTRIBUTABLE TO SERVICE IN THE RESERVES OF THE ARMED FORCES OF THE UNITED STATES, NATIONAL GUARD, OR OTHER ACTIVE MILITARY SERVICE;

(3) CAPITAL GAINS OR PAYMENTS FROM A PENSION, DEFERRED COMPENSATION, OR RETIREMENT PLAN;

(4) EARNINGS ACCRUED FROM PRIOR EMPLOYMENT OR ACTUAL SERVICE RENDERED PRIOR TO THE MEMBER TAKING OFFICE, EVEN IF THE EARNINGS ARE NOT PAID OR DO NOT BECOME DUE UNTIL AFTER THE PERSON BECOMES A MEMBER;

(5) INCOME DERIVED FROM INVESTMENT ACTIVITIES, INCLUDING INVESTMENT IN REAL ESTATE, WHERE THE MEMBER'S SERVICES ARE NOT A MATERIAL FACTOR IN THE PRODUCTION OF INCOME;

(6) INCOME DERIVED FROM THE PROFITS OF A BUSINESS, FIRM, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR OTHER BUSINESS ENTITY, DUE TO THE MEMBER'S OWNERSHIP INTEREST;

(7) PAYMENTS FROM WORKERS' COMPENSATION BENEFITS, SOCIAL SECURITY BENEFITS, DEATH BENEFITS, OR OTHER GOVERNMENT OR PRIVATE INSURANCE PAYMENTS;

(8) INCOME OR BENEFITS FROM AN INHERITANCE, TRUST, OR OTHER TRANSFER PURSUANT TO A WILL OR SIMILAR INSTRUMENT OR BY OPERATION OF INTESTACY LAWS;

(9) ONE-TIME DISTRIBUTIONS, SUCH AS LOTTERY WINNINGS OR COURT AWARDS OR SETTLEMENTS, EVEN IF PAID IN INSTALLMENTS; OR

(10) ALIMONY, MAINTENANCE, OR CHILD SUPPORT.

(C) FOR PURPOSES OF DETERMINING WHETHER THE MEMBER'S YEARLY OUTSIDE INCOME EXCEEDS THE LIMIT ESTABLISHED IN SUBDIVISION ONE OF THIS SECTION, A MEMBER OF THE LEGISLATURE WHO EARNS INCOME, INCLUDING INCOME FROM COMMISSIONS OR CONTINGENCY FEES, PAID AT ONE TIME BUT BASED ON WORK PERFORMED ON A MATTER IN MORE THAN ONE YEAR MAY AT THE MEMBER'S ELECTION APPORTION THAT INCOME OVER THE SAME NUMBER OF YEARS GOING FORWARD FROM THE DATE THE INCOME WAS RECEIVED AS THE NUMBER OF YEARS IN WHICH THE WORK WAS PERFORMED.

3. A MEMBER OF THE LEGISLATURE SHALL NOT RECEIVE A SALARY OR ANY OTHER FORM OF PAYMENT OR COMPENSATION FROM A FIRM, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY ("FIRM") FOR USE OF HIS OR HER NAME IN THE NAME OF THE FIRM OR ON SUCH FIRM'S LETTERHEAD, WEBSITE OR PROMOTIONAL MATERIALS UNLESS THE AMOUNT OF SUCH PAYMENT OR COMPENSATION IS DIRECTLY RELATED TO WORK ACTUALLY PERFORMED BY THE MEMBER AND THE AMOUNT IS REASONABLE WHEN COMPARED TO SIMILAR PAYMENTS CUSTOMARILY CHARGED IN THE LOCALITY FOR SIMILAR SERVICES OR SUCH PAYMENT OR COMPENSATION IS PROPORTIONALLY BASED ON AN OWNERSHIP INTEREST IN THE FIRM HELD BY THE MEMBER.

4. FOR MEMBERS ENGAGED IN THE PRACTICE OF LAW IN THE STATE, THE FOLLOWING SHALL APPLY:

(A) DIVISION OF FEES. A MEMBER WHO IS ENGAGED IN THE PRACTICE OF LAW IN THE STATE SHALL NOT DIVIDE A FEE FOR LEGAL SERVICES WITH ANOTHER LAWYER WHO IS NOT ASSOCIATED IN THE SAME LAW FIRM UNLESS SUCH LAWYER PERFORMS LEGAL SERVICES AND THE DIVISION OF FEES IS IN PROPORTION TO THE SERVICES PERFORMED BY EACH LAWYER; AND

(B) PAYMENT FOR REFERRALS. (1) A MEMBER WHO IS A LAWYER WHO IS ENGAGED IN THE PRACTICE OF LAW IN THE STATE SHALL NOT COMPENSATE OR GIVE ANYTHING OF VALUE TO A PERSON OR ORGANIZATION TO RECOMMEND OR OBTAIN EMPLOYMENT BY A CLIENT, OR AS A REWARD FOR HAVING MADE A RECOMMENDATION RESULTING IN EMPLOYMENT BY A CLIENT; (2) A MEMBER WHO IS A LAWYER

ENGAGED IN THE PRACTICE OF LAW IN THE STATE MAY BE RECOMMENDED, EMPLOYED OR PAID BY THE FOLLOWING OFFICES OR ORGANIZATIONS IF THERE IS NO INTERFERENCE WITH THE EXERCISE OF INDEPENDENT PROFESSIONAL JUDGMENT ON BEHALF OF THE CLIENT: A LEGAL AID OR PUBLIC DEFENDER OFFICE; A MILITARY LEGAL ASSISTANCE OFFICE; A LAWYER REFERRAL SERVICE OPERATED BY A BAR ASSOCIATION OR AS AUTHORIZED BY LAW; AND ANY BONA FIDE ORGANIZATION THAT RECOMMENDS OR PAYS FOR LEGAL SERVICES, IN ACCORDANCE WITH THE RULES OF PROFESSIONAL CONDUCT PROMULGATED BY THE APPELLATE DIVISIONS OF THE SUPREME COURT.

S 2. The legislative law is amended by adding a new section 5-c to read as follows:

S 5-C. CONFLICTS RESTRICTIONS. 1. A MEMBER OF THE LEGISLATURE MAY NOT RECEIVE INCOME FROM AN OWNERSHIP INTEREST IN ANY FIRM, CORPORATION, LIMITED LIABILITY CORPORATION, OR PARTNERSHIP THAT ENGAGES IN LOBBYING, AS DEFINED IN ARTICLE ONE-A OF THIS CHAPTER, THAT REPRESENTS CLIENTS IN LITIGATION AGAINST THE STATE, THAT ENTERS INTO CONTRACTS WITH THE STATE, OR THAT APPEARS IN MATTERS BEFORE THE STATE IF THE MEMBER OF THE LEGISLATURE IS PROHIBITED BY SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW FROM ENGAGING IN SUCH ACTIVITY, UNLESS THE MEMBER OF THE LEGISLATURE HAS RECEIVED AN OPINION FROM THE LEGISLATIVE ETHICS COMMISSION, PURSUANT TO ARTICLE FIVE OF THIS CHAPTER, THAT DIRECTS THE MEMBER OF THE LEGISLATURE TO TAKE ACTIONS TO PREVENT INCOME FROM THE PROHIBITED ACTIVITIES BEING PAID TO THE MEMBER OF THE LEGISLATURE AS PART OF THE INCOME FROM SUCH OWNERSHIP INTEREST AND THE LEGISLATOR FULLY COMPLIES WITH THOSE DIRECTIONS.

2. ANY MEMBER OF THE LEGISLATURE WHO RECEIVES INCOME FROM AN OWNERSHIP INTEREST IN A FIRM, CORPORATION, LIMITED LIABILITY CORPORATION, OR PARTNERSHIP SHALL, WITHIN THIRTY DAYS OF TAKING OFFICE OR WITHIN FIFTEEN DAYS OF BECOME AWARE OF SUCH INCOME, WHICHEVER IS LATER, SUBMIT INFORMATION TO THE LEGISLATIVE ETHICS COMMISSION THAT WOULD ALLOW THE COMMISSION TO EVALUATE SUCH INCOME AND GIVE THE LEGISLATOR ADVICE TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF SECTIONS SEVENTY-THREE, SEVENTY-THREE-A, AND SEVENTY-FOUR OF THE PUBLIC OFFICERS LAW. THE COMMISSION MAY REQUEST FURTHER INFORMATION BEFORE ISSUING ITS ADVICE. THE MEMBER OF THE LEGISLATURE MAY ONLY RETAIN SUCH INTEREST IF THE MEMBER FULLY COMPLIES WITH THE ADVICE OF THE COMMISSION.

S 3. Section 14-116 of the election law, subdivision 1 as redesignated by chapter 9 of the laws of 1978 and subdivision 2 as amended by chapter 260 of the laws of 1981, is amended to read as follows:

S 14-116. Political contributions by certain organizations. 1. No corporation [or], LIMITED LIABILITY COMPANY, joint-stock association OR OTHER CORPORATE ENTITY doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, LIMITED LIABILITY COMPANY, joint-stock [or], other association, OR OTHER CORPORATE ENTITY organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stock-holder, MEMBER, OWNER, attorney or agent of any corporation [or], LIMITED LIABILITY COMPANY, joint-stock association OR OTHER CORPORATE ENTITY which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violations, and any person who solicits or know-

ingly receives any money or property in violation of this section, shall be guilty of a misdemeanor.

2. Notwithstanding the provisions of subdivision one of this section, any corporation or an organization financially supported in whole or in part, by such corporation, ANY LIMITED LIABILITY COMPANY OR OTHER CORPORATE ENTITY may make expenditures, including contributions, not otherwise prohibited by law, for political purposes, in an amount not to exceed five thousand dollars in the aggregate in any calendar year; provided that no public utility shall use revenues received from the rendition of public service within the state for contributions for political purposes unless such cost is charged to the shareholders of such a public service corporation.

3. EACH LIMITED LIABILITY COMPANY THAT MAKES A CONTRIBUTION FOR POLITICAL PURPOSES SHALL FILE WITH THE STATE BOARD OF ELECTIONS, BY DECEMBER THIRTY-FIRST OF THE YEAR IN WHICH THE CONTRIBUTION IS MADE, ON THE FORM PRESCRIBED BY THE STATE BOARD OF ELECTIONS, THE IDENTITY OF ALL DIRECT AND INDIRECT OWNERS OF THE MEMBERSHIP INTERESTS IN THE LIMITED LIABILITY COMPANY AND THE PROPORTION OF EACH DIRECT OR INDIRECT MEMBER'S OWNERSHIP INTEREST IN THE LIMITED LIABILITY COMPANY. PROVIDED THAT, IF BY APPLICATION OF THIS SUBDIVISION, ANY DIRECT OR INDIRECT OWNER OF ANY MEMBERSHIP INTEREST IS A LIMITED LIABILITY COMPANY, ALL OWNERS AND THE PROPORTION OF THEIR MEMBERSHIP INTERESTS IN ANY SUCH LIMITED LIABILITY COMPANY SHALL BE FURTHER IDENTIFIED.

S 4. Section 14-120 of the election law is amended by adding a new subdivision 3 to read as follows:

3. (A) NOTWITHSTANDING ANY LAW TO THE CONTRARY, ALL CONTRIBUTIONS MADE TO A CAMPAIGN OR POLITICAL COMMITTEE BY A LIMITED LIABILITY COMPANY SHALL BE ATTRIBUTED TO EACH MEMBER OF THE LIMITED LIABILITY COMPANY IN PROPORTION TO THE MEMBER'S OWNERSHIP INTEREST IN THE LIMITED LIABILITY COMPANY. PROVIDED THAT, IF, BY APPLICATION OF THIS PARAGRAPH, A CAMPAIGN CONTRIBUTION IS ATTRIBUTED TO ANY LIMITED LIABILITY COMPANY, THE CONTRIBUTIONS SHALL BE FURTHER ATTRIBUTED PROPORTIONALLY TO EACH DIRECT OR INDIRECT OWNER OF THE MEMBERSHIP INTERESTS OF SUCH LIMITED LIABILITY COMPANY.

(B) THE STATE BOARD OF ELECTIONS SHALL ENACT REGULATIONS THAT PREVENT THE AVOIDANCE OF THE RULES SET FORTH IN THIS SUBDIVISION.

S 5. The second undesignated paragraph of subdivision (c) of section 1-c of the legislative law is amended by adding a new subparagraph (R) to read as follows:

(R) COMMUNICATIONS WITH A PROFESSIONAL JOURNALIST OR NEWSCASTER RELATING TO NEWS, AS THESE TERMS ARE DEFINED IN SECTION SEVENTY-NINE-H OF THE CIVIL RIGHTS LAW, AND COMMUNICATIONS RELATING TO CONFIDENTIAL AND NON-CONFIDENTIAL NEWS AS DESCRIBED IN SUBDIVISIONS (B) AND (C) OF SECTION SEVENTY-NINE-H OF THE CIVIL RIGHTS LAW RESPECTIVELY.

S 6. Paragraph 4 of subdivision (c) of section 1-h of the legislative law, as added by section 1 of part B of chapter 399 of the laws of 2011, is amended to read as follows:

(4) Any lobbyist registered pursuant to section one-e of this article whose lobbying activity is performed on its own behalf and not pursuant to retention by a client[:

(i)] that has spent over [fifty] FIVE thousand dollars for reportable compensation and expenses for lobbying either during the calendar year, or during the twelve-month period, prior to the date of this bi-monthly report[, and

(ii) at least three percent of whose total expenditures during the same period were devoted to lobbying in New York]

shall report to the commission the names of each source of funding over [five] ONE thousand dollars from a single source that were used to fund the lobbying activities reported and the amounts received from each identified source of funding.

This disclosure shall not require disclosure of the sources of funding whose disclosure, in the determination of the commission based upon a review of the relevant facts presented by the reporting lobbyist, may cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source. The reporting lobbyist may appeal the commission's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the commission, pursuant to regulations promulgated by the commission. The reporting lobbyist shall not be required to disclose the sources of funding that are the subject of such appeal pending final judgment on appeal.

The disclosure shall not apply to:

(i) any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. S 501(c)(3);

(ii) any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. S 501(c)(4) and whose primary activities concern any area of public concern determined by the commission to create a substantial likelihood that application of this disclosure requirement would lead to harm, threats, harassment, or reprisals to a source of funding or to individuals or property affiliated with such source, including but not limited to the area of civil rights and civil liberties and any other area of public concern determined pursuant to regulations promulgated by the commission to form a proper basis for exemption on this basis from this disclosure requirement; or

(iii) any governmental entity.

The joint commission on public ethics shall promulgate regulations to implement these requirements.

S 7. Paragraph 4 of subdivision (c) of section 1-j of the legislative law, as added by section 2 of part B of chapter 399 of the laws of 2011, is amended to read as follows:

(4) Any client of a lobbyist that is required to file a semi-annual report and[:

(i) that] has spent over [fifty] FIVE thousand dollars for reportable compensation and expenses for lobbying either during the calendar year, or during the twelve-month period, prior to the date of this semi-annual report[, and

(ii) at least three percent of whose total expenditures during the same period were devoted to lobbying in New York]

shall report to the commission the names of each source of funding over [five] ONE thousand dollars from a single source that were used to fund the lobbying activities reported and the amounts received from each identified source of funding.

This disclosure shall not require disclosure of the sources of funding whose disclosure, in the determination of the commission based upon a review of the relevant facts presented by the reporting client or lobbyist, may cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source. The reporting lobbyist may appeal the commission's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affil-

iated with or employed by the commission, pursuant to regulations promulgated by the commission. The reporting lobbyist shall not be required to disclose the sources of funding that are the subject of such appeal pending final judgment on appeal.

The disclosure shall not apply to:

(i) any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. S 501(c)(3);

(ii) any corporation registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. S 501(c)(4) and whose primary activities concern any area of public concern determined by the commission to create a substantial likelihood that application of this disclosure requirement would lead to harm, threats, harassment, or reprisals to a source of funding or to individuals or property affiliated with such source, including but not limited to the area of civil rights and civil liberties and any other area of public concern determined pursuant to regulations promulgated by the commission to form a proper basis for exemption on this basis from this disclosure requirement; or

(iii) any governmental entity.

The joint commission on public ethics shall promulgate regulations to implement these requirements.

S 8. Subdivision 3 of section 14-124 of the election law, as amended by chapter 71 of the laws of 1988, is amended to read as follows:

3. The contribution and receipt limits of this article shall not apply to monies received and expenditures made by a party committee or constituted committee to maintain a permanent headquarters and staff and carry on ordinary activities which are not for the express purpose of promoting OR OPPOSING the candidacy of specific candidates. PROVIDED THAT SUCH MONIES DESCRIBED IN THIS SUBDIVISION SHALL BE KEPT IN A SEGREGATED ACCOUNT AND SHALL NOT BE CONTRIBUTED, UNLESS SUCH CONTRIBUTION IS TO THE SEGREGATED ACCOUNT OF ANOTHER PARTY COMMITTEE OR CONSTITUTED COMMITTEE TO BE USED ONLY FOR NON-CANDIDATE EXPENDITURES. PROVIDED, FURTHER, THAT SUCH MONIES MAY NOT BE USED TO PAY FOR ANY POLITICAL COMMUNICATION THAT INCLUDES OR REFERENCES THE NAME, LIKENESS OR VOICE OF ANY CLEARLY IDENTIFIED CANDIDATE OR ELECTED OFFICIAL.

S 9. This act shall take effect immediately; provided that sections one and two of this act shall take effect January 1, 2017; provided, further, that any income or other compensation earned prior to the effective date of sections one and two of this act shall not be subject to the provisions of sections one and two of this act, and provided, further, any services actually rendered prior to the effective date of sections one and two of this act for which payment is made after the effective date of sections one and two of this act shall not be subject to the provisions of sections one and two of this act.