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:

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

14. An individual subject to the jurisdiction of the commission who knowingly and intentionally violates the provisions of subdivisions two through five-a, seven, eight, twelve or fourteen through seventeen of section seventy-three of the public officers law, section one hundred seven of the civil service law, or a reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or fraudulent omission or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law**, or an individual, acting with the mental culpability required for the commission thereof, who solicits, requests, commands, importunes, or intentionally aids another person to engage in any of the abovementioned conduct,** shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. An individual **or entity** who knowingly and intentionally violates the provisions of paragraph a, b, c, d, e, g, or i of subdivision three of section seventy-four of the public officers law**, or an individual, acting with the mental culpability required for the commission thereof, who solicits, requests, 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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any of the abovementioned conduct, shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. An individual subject to the jurisdiction of the commission who knowingly and willfully violates article one-A of the legislative law, or an individual, acting with the mental culpability required for the commission thereof, who solicits, requests, commands, importunes, or intentionally aids another person or entity to engage in any of the abovementioned conduct, shall be subject to civil penalty as provided for in that article. Except with respect to members of the legislature and legislative employees, assessment of a civil penalty hereunder shall be made by the commission with respect to persons subject to its jurisdiction. With respect to a violation of any law other than sections seventy-three, seventy-three-a, and seventy-four of the public officers law, where the commission finds sufficient cause by a vote held in the same manner as set forth in paragraph (b) of subdivision thirteen of this section, it shall refer such matter to the appropriate prosecutor for further investigation. In assessing the amount of the civil penalties to be imposed, the commission shall consider the seriousness of the violation, the amount of gain to the individual and whether the individual previously had any civil or criminal penalties imposed pursuant to this section, and any other factors the commission deems appropriate. Except with respect to members of the legislature and legislative employees, for a violation of this subdivision, other than for conduct which constitutes a violation of section one hundred seven of the civil service law, subdivisions twelve or fourteen through seventeen of section seventy-three or section seventy-four of the public officers law or article one-A of the legislative law, the commission may, in lieu of or in addition to a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, such violation shall be punishable as a class A misdemeanor. A civil penalty for false filing may not be imposed hereunder in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported information is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, or a violation of subdivision six of section seventy-three of the public officers law, except that the appointing authority may impose disciplinary action as otherwise provided by law. The commission may refer violations of this subdivision to the appointing authority for disciplinary action as otherwise provided by law. The commission shall be deemed to be an agency within the meaning of article three of the state administrative procedure act and shall adopt rules governing the conduct of adjudicatory proceedings and appeals taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of the civil penalties herein authorized and commission denials of requests for certain deletions or exemptions to be made from a financial disclosure statement as authorized in paragraph (h) or paragraph (i) of subdivision nine of this section. Such rules, which shall not be subject to the approval requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in article three of the state administrative procedure act but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty or commission denial of such a request shall be final unless modified, suspended or vacated within thirty days of imposition, with respect to the assessment of such

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

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