STATE OF NEW YORK

8232

2021-2022 Regular Sessions

IN ASSEMBLY

August 25, 2021

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

AN ACT to amend the legislative law, the public officers law and the executive law, in relation to prohibiting members of the legislature and statewide elected officials from receiving certain income

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:

§ 5-b. Prohibition on outside earned income for members. 1. Starting in calendar year two thousand twenty-three, 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 legislature, 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 family 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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property rights, when received from established users or purchasers of those rights; and

(7) compensation for services actually rendered prior to January first, two thousand twenty-three, or prior to being sworn in as a member of the legislature.

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

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

b. permitting their name to be used by such a firm, partnership, association, corporation, or other entity;

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

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

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

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

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

§ 2. Subdivision 7 of section 80 of the legislative law is amended by adding a new paragraph f-1 to read as follows:

f-1. Promulgate guidelines for members of the legislature to request permission from the commission to accept compensation for teaching, and promulgate guidelines for the commission to evaluate and issue a determination for such requests.

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

(a) An individual subject to the jurisdiction of the commission with respect to the imposition of penalties who knowingly and intentionally violates the provisions of subdivisions two through five-a, seven, eight, twelve, fourteen or fifteen of section seventy-three of the public officers law or section five-b of this chapter 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 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 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. Any such individual 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 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. Assessment of a civil penalty hereunder shall be made by the commission with respect to persons subject to its jurisdiction. 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. For a violation of this section, other than for conduct which constitutes a violation of subdivision twelve, fourteen or fifteen of section seventy-three or section seventy-four of the public officers law, the legislative ethics commission may, in lieu of or in addition to a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor. Where the commission finds sufficient cause, it shall refer such matter to the appropriate prosecutor. 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 legislative ethics 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. Such rules, which shall not be subject to the promulgation and hearing requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in such article three but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty 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 legislative ethics commission, pursuant to article seventy-eight of the civil practice law and rules.

§ 4. Subdivision 3 of section 74 of the public officers law is amended by adding a new paragraph j to read as follows:

j. (i) Starting in calendar year two thousand twenty-three, no officer elected to a statewide office within the state may have outside earned income attributable to such year which exceeds fifteen percent of their gross annual salary.

(ii) (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 officer or their family holds a controlling interest, where the officer'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 property rights, when received from established users or purchasers of those rights; and

(7) compensation for services actually rendered prior to January first, two thousand twenty-three, or prior to being sworn in as a statewide elected officer.

(C) Notwithstanding any other provisions of law to the contrary, officers elected to a statewide office within the state are prohibited from:

(1) receiving compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship, except for the practice of medicine;

(2) permitting their name to be used by such a firm, partnership, association, corporation, or other entity;

(3) receiving compensation for practicing a profession that involves a fiduciary relationship except for the practice of medicine;

(4) receiving compensation as an officer or member of the board of an association, corporation, or other entity;

(5) receiving compensation for teaching, without prior notification to and approval from the joint commission on public ethics; and

(6) receiving advance payments on copyright royalties, fees, and their functional equivalents.

(D) An officer elected to a statewide office within the state who knowingly and willfully violates the provisions of this section shall be subject to a civil penalty in an amount not to exceed forty thousand dollars. Assessment of a civil penalty shall be made by the joint commission on public ethics. The joint commission on public ethics, may, in lieu of or in addition to a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

§ 5. Subdivision 9 of section 94 of the executive law is amended by adding a new paragraph (o) to read as follows:

(o) Promulgate guidelines for statewide elected officials to request permission from the commission to accept compensation for teaching, and promulgate guidelines for the commission to evaluate and issue a determination for such requests.

§ 6. 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 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 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 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 who knowingly and intentionally violates the provisions of paragraph j of subdivision three of section seventy-four of the public officers law 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 subject to the jurisdiction of the commission who knowingly and willfully violates article one-A of the legislative law 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.

§ 7. This act shall take effect January 1, 2023.