

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:

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

3 § 5-b. Prohibition on outside earned income for members. 1. Starting
4 in calendar year two thousand twenty-three, a member of the legislature
5 may not have outside earned income attributable to such year which
6 exceeds fifteen percent of the gross annual salary of members of the
7 legislature, pursuant to section five of this article.

8 2. a. For the purposes of this section, the term "outside earned
9 income" includes, but is not limited to, wages, salaries, fees, and
10 other forms of compensation for services actually rendered.

11 b. For the purposes of this section, the term "outside earned income"
12 does not include:

13 (1) salary, benefits, and allowances paid by New York state;

14 (2) income attributable to service with the military reserves or
15 national guard;

16 (3) income from pensions and other continuing benefits attributable to
17 previous employment or services;

18 (4) income from investment activities, where the member's services are
19 not a material factor in the production of income;

20 (5) income from a trade or business in which the member or their fami-
21 ly holds a controlling interest, where the member's services are not a
22 material factor in the production of income;

23 (6) copyright royalties, fees, and their functional equivalent, from
24 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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1 property rights, when received from established users or purchasers of
2 those rights; and

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

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

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

12 b. permitting their name to be used by such a firm, partnership, asso-
13 ciation, corporation, or other entity;

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

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

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

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

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

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

33 f-1. Promulgate guidelines for members of the legislature to request
34 permission from the commission to accept compensation for teaching, and
35 promulgate guidelines for the commission to evaluate and issue a deter-
36 mination for such requests.

37 § 3. Paragraph (a) of subdivision 9 of section 80 of the legislative
38 law, as amended by section 9 of part A of chapter 399 of the laws of
39 2011, is amended to read as follows:

40 (a) An individual subject to the jurisdiction of the commission with
41 respect to the imposition of penalties who knowingly and intentionally
42 violates the provisions of subdivisions two through five-a, seven,
43 eight, twelve, fourteen or fifteen of section seventy-three of the
44 public officers law or section five-b of this chapter or a reporting
45 individual who knowingly and wilfully fails to file an annual statement
46 of financial disclosure or who knowingly and wilfully with intent to
47 deceive makes a false statement or gives information which such individ-
48 ual knows to be false on such statement of financial disclosure filed
49 pursuant to section seventy-three-a of the public officers law shall be
50 subject to a civil penalty in an amount not to exceed forty thousand
51 dollars and the value of any gift, compensation or benefit received as a
52 result of such violation. Any such individual who knowingly and inten-
53 tionally violates the provisions of paragraph a, b, c, d, e, g, or i of
54 subdivision three of section seventy-four of the public officers law
55 shall be subject to a civil penalty in an amount not to exceed ten thou-
56 sand 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;

1 (4) income from investment activities, where the member's services are
2 not a material factor in the production of income;

3 (5) income from a trade or business in which the officer or their
4 family holds a controlling interest, where the officer's services are
5 not a material factor in the production of income;

6 (6) copyright royalties, fees, and their functional equivalent, from
7 the use or sale of copyright, patent and similar forms of intellectual
8 property rights, when received from established users or purchasers of
9 those rights; and

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

13 (C) Notwithstanding any other provisions of law to the contrary, offi-
14 cers elected to a statewide office within the state are prohibited from:

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

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

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

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

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

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

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

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

39 (o) Promulgate guidelines for statewide elected officials to request
40 permission from the commission to accept compensation for teaching, and
41 promulgate guidelines for the commission to evaluate and issue a deter-
42 mination for such requests.

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

46 14. An individual subject to the jurisdiction of the commission who
47 knowingly and intentionally violates the provisions of subdivisions two
48 through five-a, seven, eight, twelve or fourteen through seventeen of
49 section seventy-three of the public officers law, section one hundred
50 seven of the civil service law, or a reporting individual who knowingly
51 and wilfully fails to file an annual statement of financial disclosure
52 or who knowingly and wilfully with intent to deceive makes a false
53 statement or fraudulent omission or gives information which such indi-
54 vidual knows to be false on such statement of financial disclosure filed
55 pursuant to section seventy-three-a of the public officers law shall be
56 subject to a civil penalty in an amount not to exceed forty thousand

1 dollars and the value of any gift, compensation or benefit received as a
2 result of such violation. An individual who knowingly and intentionally
3 violates the provisions of paragraph a, b, c, d, e, g, or i of subdivi-
4 sion three of section seventy-four of the public officers law shall be
5 subject to a civil penalty in an amount not to exceed ten thousand
6 dollars and the value of any gift, compensation or benefit received as a
7 result of such violation.

8 An individual who knowingly and intentionally
9 violates the provisions of paragraph j of subdivision three of section
10 seventy-four of the public officers law shall be subject to a civil
11 penalty in an amount not to exceed forty thousand dollars and the value
12 of any gift, compensation or benefit received as a result of such

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

1 substantially similar to those set forth in article three of the state
2 administrative procedure act but such mechanisms need not be identical
3 in terms or scope. Assessment of a civil penalty or commission denial of
4 such a request shall be final unless modified, suspended or vacated
5 within thirty days of imposition, with respect to the assessment of such
6 penalty, or unless such denial of request is reversed within such time
7 period, and upon becoming final shall be subject to review at the
8 instance of the affected reporting individuals in a proceeding commenced
9 against the commission, pursuant to article seventy-eight of the civil
10 practice law and rules.
11 § 7. This act shall take effect January 1, 2023.