

# Hall of the House of Representatives

87th General Assembly - Regular Session, 2009

## Amendment Form

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### Subtitle of House Bill No. 1968

"THE CONFLICT OF INTEREST PROHIBITION ACT OF 2009."

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### Amendment No. 1 to House Bill No. 1968.

Amend House Bill No. 1968 as originally introduced:

Page 1, delete lines 9 through 13 and substitute the following:

"AN ACT TO PROHIBIT CONFLICT OF INTEREST VOTING BY MEMBERS OF STATE BOARDS AND COMMISSIONS; TO AMEND VARIOUS PROVISIONS OF ARKANSAS CODE TITLES 7 AND 21 PERTAINING TO CONFLICTS OF INTEREST FOR PUBLIC SERVANTS; TO AMEND A PORTION OF ARKANSAS CODE THAT RESULTED FROM INITIATED ACT 1 OF 1990; TO AMEND A PORTION OF ARKANSAS CODE THAT RESULTED FROM INITIATED ACT 1 OF 1988; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 22 through 28 and substitute the following:

"SECTION 1. DO NOT CODIFY. Title. This act shall be known and may be cited as the "Conflict of Interest Prohibition Act of 2009".

SECTION 2. DO NOT CODIFY. Legislative intent. The General Assembly finds and declares that:

(1) Effective citizen participation in government is an essential element of a working democracy and that effective citizen participation should include assurances that members of state boards and commissions and board members of entities receiving state funds, before whom citizens appear, will be impartial and untainted by personal or family conflicts of interest;

(2) It is the public policy of the State of Arkansas that members of state boards and commissions and board members of entities receiving state funds shall work for the benefit of the people of Arkansas and not to advance the pecuniary interests of themselves, their employers, or their families;

(3) Under existing state law, members of state boards and commissions and board members of entities receiving state funds are permitted to vote on and participate in official decisions that their employers, their prospective employers, or other organizations with which the members are associated have a pecuniary interest and are permitted to vote on and participate in official decisions in which their close relatives have a pecuniary interest. Members of state boards and commissions and board



members of entities receiving state funds are not required to disclose to other board and commission members or to the public the existence of their close relatives' employment and ownership positions in businesses regulated by the state boards and commissions or entities receiving state funds;

(4) Unlike violations of other ethics and conflicts of interest provisions of state law that are treated as misdemeanors or felonies and subject the violator to fines, the only penalty currently attached to violations of existing conflict of interest provisions relating to state board or commission members and board members of entities receiving state funds is removal from office; and

(5) These weaknesses and omissions in existing laws create opportunities for conflicts of interest corrupting the operation of state government and to the detriment of the people of Arkansas.

SECTION 3. Arkansas Code § 7-6-218(b)(4)(B)(i), resulting from Initiated Act 1 of 1990, concerning possible actions of the Arkansas Ethics Commission if there is a violation of campaign practices, is amended to read as follows:

(B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-409, 21-8-403, ~~and~~ 21-8-903, and 21-8-1004, impose a fine of not less than fifty dollars (\$50.00) nor more than two thousand dollars (\$2,000) for negligent or intentional violation of this subchapter or § 21-8-301 et seq., § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., ~~and~~ § 21-8-901 et seq., and 21-8-1001 et seq.

SECTION 4. Arkansas Code § 21-8-701(d), resulting from Initiated Act 1 of 1988, concerning the contents of the statement of financial interest, is amended to read as follows:

(d) The statement of financial interest shall include the following:

(1) The name of the public servant or candidate and his or her ~~spouse~~ family as defined in § 21-8-402(4) and all names under which they do business;

(2) The reasons for filing the statement of financial interest;

(3)(A) Identification of each employer and of each other source of gross income amounting to more than one thousand dollars (\$1,000) annually received by the person or his or her ~~spouse~~ family in their own names, or by any other person for the use or benefit of the public servant or candidate or his or her ~~spouse~~ family, and a brief description of the nature of the services for which the compensation was received, except that this subdivision (d)(3) shall not ~~be construed to~~ require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the public servant or candidate or his or her ~~spouse~~ family derives income; and

(B) In addition thereto, identification of each source of gross income as described ~~above~~ under subdivision (d)(3)(A) of this section of more than twelve thousand five hundred dollars (\$12,500), except that this shall not ~~be construed to~~ require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the public servant or candidate or his or her ~~spouse~~ family derives income;

(4)(A) The name of every business in which the public servant or candidate and his or her ~~spouse~~ family, or any other person for the use or

benefit of the public servant or candidate or his or her ~~spouse~~ family, have an investment or holdings of over one thousand dollars (\$1,000) at fair market value as of the last day of the previous calendar year; ~~and.~~

(B) In addition thereto, identification of each source as described ~~above~~ under subdivision (d)(4)(A) of this section that has a fair market value of over twelve thousand five hundred dollars (\$12,500) as of the last day of the previous calendar year;

(5) Every office or directorship held by the public servant or candidate or his or her ~~spouse~~ family in any business, corporation, firm, or enterprise subject to jurisdiction of a regulatory agency of this state or of any of its political subdivisions;

(6)(A) The name and address of each creditor to whom the value of five thousand dollars (\$5,000) or more was personally owed or personally obligated and is still outstanding by the public servant or candidate.

(B)(i) Loans made in the ordinary course of business by either a financial institution or a person who regularly and customarily extends credit shall not be required to be disclosed.

(ii) Debts owed by the public servant or candidate to the members of the public servant's or candidate's family need not be included;

(7)(A) The name and address of each guarantor or co-maker, other than a member of the public servant's or candidate's family, who has guaranteed a debt of the public servant or candidate that is still outstanding.

(B)(i) This requirement shall be applicable only to debt guaranties for debts assumed or arising after January 1, 1989.

(ii) Guaranteed debts existing ~~prior to~~ before January 1, 1989, ~~which~~ that are extended or refinanced shall become subject to disclosure in the annual financing statement due to be filed after the conclusion of the year in which ~~such~~ the extension or refinancing occurred;

(8)(A) The source, date, description, and a reasonable estimate of the fair market value of each gift of more than one hundred dollars (\$100) received by the public servant or candidate or his or her ~~spouse~~ family ~~or more than two hundred fifty dollars (\$250) received by his or her dependent children.~~

(B) The information required under subdivision (d)(8)(A) of this section is only required for gifts received by the public servant's or candidate's dependent children if the fair market value of each gift is more than two hundred fifty dollars (\$250);

(9) Each monetary or other award of more than one hundred dollars (\$100) received by the public servant or candidate in his or her capacity as an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Sciences, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of his or her contribution to education;

(10)(A) Each nongovernmental source of payment of the public servant's expenses for food, lodging, or travel that bears a relationship to the public servant's office when the public servant is appearing in his or her official capacity when the expenses incurred exceed one hundred fifty dollars (\$150).

(B) The public servant shall identify the name and

business address of the person or organization paying the public servant's expenses and the date, nature, and amount of that expenditure if not compensated by the entity for which the public servant serves;

(11) Any public servant who is employed by ~~any~~ a business that is under direct regulation or subject to direct control by the governmental body ~~which~~ that he or she serves shall set out this employment and the fact that the business is regulated by or subject to control of the governmental body on the statement of financial interest; and

(12) If a public servant or any business in which he or she or a member of his or her ~~spouse~~ family is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, and the owner, trustee, or partner shall sell any goods or services having a total annual value in excess of one thousand dollars (\$1,000) to the governmental body in which the public servant serves or is employed, then the public servant shall set out in detail the:

(A) ~~goods~~ Goods or services sold;

(B) ~~the governmental~~ Governmental body to which they were sold; and

(C) ~~the compensation~~ Compensation paid for each category of goods or services sold.

SECTION 5. Arkansas Code § 21-8-1001 is amended to read as follows:  
21-8-1001. Conflicts of interest.

(a)(1) No member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if ~~the member~~ any of the following persons or organizations has a pecuniary interest or a reasonably foreseeable substantial benefit that is known to the member in the matter under consideration by the board, commission, or entity:

(A) The member;

(B) A person in the member's family, as defined in § 21-8-402(4);

(C) A person from whom or an organization from which the member has received remuneration in an amount greater than one thousand dollars (\$1,000) in the previous calendar year; or

(D) A person or organization with which the member is negotiating or has a current arrangement concerning prospective employment.

(2) A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest or benefit that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest or benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(b) No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a ~~rule or regulation~~ matter that exclusively benefits ~~the member~~ a person or organization listed in subsection (a) of this section.

(c) For purposes of this section, a pecuniary interest or reasonably foreseeable substantial benefit includes a detriment to a business competitor

of the member, the member's family, or an organization with which the member or his or her family is associated as described in subdivisions (a)(3) or (a)(4) of this section.

SECTION 6. Arkansas Code § 21-8-1004 is amended to read as follows:  
21-8-1004. Penalties – Investigation by Arkansas Ethics Commission.

(a) In addition to any penalty contained in any other provision of law, any member of a state board or commission or board member of an entity receiving state funds who knowingly and intentionally violates any of the provisions of this subchapter is guilty of a Class A misdemeanor and may also be removed from office by the appointing authority.

(b) The Arkansas Ethics Commission, under the power and authority granted to it by §§ 7-6-217 and 7-6-218, may investigate complaints alleging a violation of this subchapter and may make recommendations to the appointing authority.

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the existing conflicts of interest provisions of Arkansas law are inadequate to protect the public from the possibility that members of state boards and commissions and board members of entities receiving state funds will act in furtherance of their private pecuniary interests rather than the public interest; and that there is a discrepancy in existing law in that the penalties to which state board and commission members and members of public entities receiving state funds are subject are not the same penalties as those to which other violators of ethical and conflicts of interest laws are subject. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read \_\_\_\_\_  
By: Representative Webb  
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Chief Clerk