

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
87th General Assembly
Regular Session, 2009

As Engrossed: H3/17/09

A Bill

HOUSE BILL 1968

By: Representatives Webb, Dismang, Greenberg

For An Act To Be Entitled

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.

Subtitle

THE CONFLICT OF INTEREST PROHIBITION ACT
OF 2009.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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;



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

6 (3) Under existing state law, members of state boards and
7 commissions and board members of entities receiving state funds are permitted
8 to vote on and participate in official decisions that their employers, their
9 prospective employers, or other organizations with which the members are
10 associated have a pecuniary interest and are permitted to vote on and
11 participate in official decisions in which their close relatives have a
12 pecuniary interest. Members of state boards and commissions and board
13 members of entities receiving state funds are not required to disclose to
14 other board and commission members or to the public the existence of their
15 close relatives' employment and ownership positions in businesses regulated
16 by the state boards and commissions or entities receiving state funds;

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

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

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

31 (B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-
32 409, 21-8-403, ~~and~~ 21-8-903, and 21-8-1004, impose a fine of not less than
33 fifty dollars (\$50.00) nor more than two thousand dollars (\$2,000) for
34 negligent or intentional violation of this subchapter or § 21-8-301 et seq.,
35 § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et
36 seq., ~~and~~ § 21-8-901 et seq., and 21-8-1001 et seq.

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

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

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

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

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

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

27 (4)(A) The name of every business in which the public servant or
28 candidate and his or her ~~spouse~~ family, or any other person for the use or
29 benefit of the public servant or candidate or his or her ~~spouse~~ family, have
30 an investment or holdings of over one thousand dollars (\$1,000) at fair
31 market value as of the last day of the previous calendar year, ~~and.~~

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

36 (5) Every office or directorship held by the public servant or

1 candidate or his or her ~~spouse~~ family in any business, corporation, firm, or
2 enterprise subject to jurisdiction of a regulatory agency of this state or of
3 any of its political subdivisions;

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

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

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

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

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

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

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

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

32 (9) Each monetary or other award of more than one hundred
33 dollars (\$100) received by the public servant or candidate in his or her
34 capacity as an employee of a public school district, the Arkansas School for
35 the Blind, the Arkansas School for the Deaf, the Arkansas School for
36 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

1 consideration by the board, commission, or entity;

2 (A) The member;

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

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

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

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

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

23 (c) For purposes of this section, a pecuniary interest or reasonably
24 foreseeable substantial benefit includes a detriment to a business competitor
25 of the member, the member's family, or an organization with which the member
26 or his or her family is associated as described in subdivisions (a)(3) or
27 (a)(4) of this section.

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29 SECTION 6. Arkansas Code § 21-8-1004 is amended to read as follows:

30 21-8-1004. Penalties – Investigation by Arkansas Ethics Commission.

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

36 (b) The Arkansas Ethics Commission, under the power and authority

1 granted to it by §§ 7-6-217 and 7-6-218, may investigate complaints alleging
2 a violation of this subchapter and may make recommendations to the appointing
3 authority.

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

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

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

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

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25 /s/ Webb
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