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BY SEN. POURCHOT BY REQUEST OF THE SELECT COMMITTEE ON LEGISLATIVE ETHICS

1 IN THE SENATE

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SENATE BILL NO. 415

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to conduct of legislators, legis-  
lative employees, former legislators and legislative  
employees, and to the Select Committee on Legislative  
Ethics."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. AS 24.45.121 is amended by adding a new subsection to  
12 read:

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(c) A former member of the legislature may not engage in activ-  
ity as a lobbyist before the legislature for a period of one year  
after the former member has left the legislature.

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\* Sec. 2. AS 24.60.030 is repealed and reenacted to read:

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Sec. 24.60.030. CONFLICTS OF INTEREST. (a) A person to whom  
this chapter applies may not have a conflict of interest. A person  
has a conflict of interest when the person

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(1) uses public office for private advancement or gain;

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(2) takes or withholds official action or exerts official  
influence that could substantially benefit or harm a financial matter  
in which the person has a direct or indirect private interest;

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(3) solicits or accepts a benefit beyond that which may  
accrue uniformly to members of the profession, occupation, or group to  
which the person belongs, or to the public at large;

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(4) wilfully discloses, or knowingly uses, for personal  
gain or the gain of another, information that by law is not available  
to the public and that the person acquired in the course of official

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1 duties; or

2 (5) uses state funds or state property, except property  
3 under lease from the state, for private advancement or gain.

4 (b) Notwithstanding (a) of this section, a person covered by  
5 this chapter does not have a conflict of interest if, as to a specific  
6 matter, there is no substantial impropriety or appearance of improp-  
7 priety because

8 (1) the person's interest is relatively insignificant; or

9 (2) the person's authority is relatively far removed from  
10 an official action that could reasonably be affected by the potential  
11 conflict of interest, provided that no attempt has been made to remove  
12 the appearance of impropriety by delegating responsibility for offi-  
13 cial action.

14 \* Sec. 3. AS 24.60 is amended by adding a new section to read:

15 Sec. 24.60.035. PROHIBITED FUND RAISING. A member of the legis-  
16 lature may not accept money from an event held within the capital city  
17 during a legislative session if a substantial purpose of the event is  
18 either to raise money on behalf of the member for campaign purposes or  
19 to raise money for state legislative political purposes.

20 \* Sec. 4. AS 24.60.080(a) is amended to read:

21 (a) A person to whom this chapter applies may not solicit,  
22 accept, or receive, directly or indirectly, a gift worth \$100 or more  
23 [IN ANY AMOUNT], whether in the form of money, services, a loan,  
24 travel, entertainment, hospitality, promise, or other form [UNDER  
25 CIRCUMSTANCES IN WHICH IT COULD REASONABLY BE INFERRED THAT THE GIFT  
26 IS INTENDED TO INFLUENCE THE PERFORMANCE OF OFFICIAL DUTIES, ACTIONS,  
27 OR JUDGMENT].

28 \* Sec. 5. AS 24.60.080(c) is amended to read:

29 (c) Notwithstanding (a) [(b)] of this section, it is not a

1 violation of this section for a person to whom this chapter applies to  
2 accept

3 (1) hospitality, other than hospitality described in (4) of  
4 this subsection

5 (A) with incidental transportation at the residence of  
6 a person; or

7 (B) at a social event or meal;

8 (2) discounts that are available generally to the public or  
9 to a large class of persons to which the person belongs;

10 (3) food or foodstuffs indigenous to the state that are  
11 shared generally as a cultural or social norm;

12 (4) travel and hospitality primarily for the purpose of  
13 obtaining information on matters of legislative concern;

14 (5) gifts from the family of the person;

15 (6) gifts from a foreign government, when the person to  
16 whom this chapter applies is traveling in the foreign country on  
17 matters of legislative concern; or

18 (7) gifts that are not connected with the recipient's  
19 legislative status.

20 \* Sec. 6. AS 24.60.080(d) is amended to read:

21 (d) A person to whom this chapter applies who accepts a gift  
22 under (c)(4), (6), or (7) of this section [OF TRAVEL AND HOSPITALITY  
23 PRIMARILY FOR THE PURPOSE OF OBTAINING INFORMATION ON MATTERS OF  
24 LEGISLATIVE CONCERN] shall disclose the gift if it has a value of \$100  
25 or more. The disclosure must include the name and occupation of the  
26 person making the gift and the approximate value of the gift. Each  
27 gift required to be disclosed under this subsection shall be disclosed  
28 within 30 days of the receipt of the gift in the journal of the appro-  
29 priate body or, if the legislature is not in session, to the

1 committee. The committee shall maintain a public record of the dis-  
2 closure it receives and shall forward the disclosure to the appropri-  
3 ate house for inclusion in the journal by the fifth day of the next  
4 regular session.

5 \* Sec. 7. AS 24.60 is amended by adding a new section to read:

6 Sec. 24.60.085. HONORARIA PROHIBITED. (a) A person to whom  
7 this chapter applies may not accept a payment of money or anything of  
8 value for an appearance or speech by the person, except that the  
9 person may accept payment of actual and necessary travel expenses  
10 incurred by the person in making the appearance or speech.

11 (b) Notwithstanding (a) of this section, a person to whom this  
12 chapter applies may accept a payment for an appearance or speech if  
13 the appearance or speech is not connected with the person's legisla-  
14 tive status.

15 \* Sec. 8. AS 24.60.100 is amended to read:

16 Sec. 24.60.100. REPRESENTATION PROHIBITED. A person to whom  
17 this chapter applies may not represent [WHO REPRESENTS] another person  
18 for compensation before an agency, board, or commission of the state,  
19 or before an officer or employee of the agency, board, or commission  
20 of the state [SHALL DISCLOSE THE NAME OF THE PERSON REPRESENTED, THE  
21 SUBJECT MATTER OF THE REPRESENTATION, AND THE BODY BEFORE WHICH THE  
22 REPRESENTATION IS TO TAKE PLACE IN THE JOURNAL OF THE APPROPRIATE BODY  
23 OR IF THE LEGISLATURE IS NOT IN SESSION TO THE COMMITTEE. THE COMMIT-  
24 TEE SHALL MAINTAIN A PUBLIC RECORD OF THE DISCLOSURE AND FORWARD THE  
25 DISCLOSURE TO THE RESPECTIVE HOUSE FOR INCLUSION IN THE JOURNAL BY THE  
26 FIFTH DAY OF THE SESSION].

27 \* Sec. 9. AS 24.60.130(a) is amended to read:

28 (a) There is established as a permanent interim committee within  
29 the legislative branch of state government the Select Committee on

1 Legislative Ethics.

2 \* Sec. 10. AS 24.60.130 is amended by adding a new paragraph to read:

3 (j) The committee is not subject to AS 44.62.310 - 44.62.312, to  
4 the procurement provisions adopted by the legislative council under  
5 AS 36.30.020, and to the Uniform Rules of the Alaska State Legislature  
6 to the extent that those provisions would prevent the committee from  
7 complying with the confidentiality provisions of this chapter. The  
8 committee may adopt rules to implement this subsection.

9 \* Sec. 11. AS 24.60.160 is amended to read:

10 Sec. 24.60.160. ADVISORY OPINIONS. The committee shall issue an  
11 advisory opinion [WITHIN 30 DAYS] on the request of a person to whom  
12 the chapter applies or a person elected to the legislature who at the  
13 time of election is not a member of the legislature as to whether the  
14 facts and circumstances of a particular case constitute a violation of  
15 ethical standards. The committee shall issue the advisory opinion  
16 within 30 days of receiving the request if the request is received  
17 during the first 100 days of the legislative session, or within 60  
18 days of the request if the request is received at any other time. The  
19 [30-DAY] period for issuing an opinion may be extended by the commit-  
20 tee [FOR NOT MORE THAN AN ADDITIONAL 10 DAYS] if the person requesting  
21 the opinion consents. The opinion issued is binding on the committee  
22 in any subsequent proceedings concerning the facts and circumstances  
23 of the particular case unless material facts were omitted or misstated  
24 in the request for the advisory opinion. Except as provided in this  
25 chapter an advisory opinion is confidential but shall [MAY] be made  
26 public if a written request by the person who requested the opinion is  
27 filed with the committee.

28 \* Sec. 12. AS 24.60.170 is repealed and reenacted to read:

29 Sec. 24.60.170. PROCEEDINGS BEFORE THE COMMITTEE. (a) The

1 committee shall consider a complaint alleging a violation of this  
2 chapter if the alleged violation occurred within five years of the  
3 date that the complaint is filed with the committee and, when the  
4 subject of the complaint is a former member of the legislature, the  
5 complaint is filed within one year of the subject's departure from the  
6 legislature. The committee shall not consider a complaint filed  
7 against a person employed by the legislative branch of government  
8 after the person has terminated legislative service. The committee  
9 may also initiate complaints on its own motion, subject to the same  
10 time limitations. The time limitations of this subsection do not bar  
11 proceedings against a person who intentionally prevents discovery of a  
12 violation of this chapter.

13 (b) A complaint may be initiated by any person. The complaint  
14 must be in writing and signed under oath by the person making the  
15 complaint. The committee shall upon request provide a form for a  
16 complaint to a person wishing to file a complaint. The committee  
17 shall immediately provide a copy of the complaint to the person who is  
18 the subject of the complaint.

19 (c) When the committee receives a complaint under (a) of this  
20 section, it shall determine whether the allegations of the complaint,  
21 if true, constitute a violation of this chapter. If the committee  
22 determines that the allegations, if proven, would not give rise to a  
23 violation, or if the committee's lack of jurisdiction is apparent on  
24 the face of the complaint, the committee shall dismiss the complaint,  
25 and shall notify the complainant and the subject of the complaint of  
26 the dismissal.

27 (d) If the committee determines that some or all of the alle-  
28 gations of a complaint, if proven, would constitute a violation of  
29 this chapter, or if the committee has initiated a complaint, the

1 committee shall investigate the complaint, on a confidential basis.  
2 Before beginning an investigation of a complaint not initiated by the  
3 committee, the committee shall adopt a resolution defining the scope  
4 of the investigation. A copy of this resolution shall be provided to  
5 the complainant and to the subject of the complaint. As part of its  
6 investigation, the committee shall afford the subject of the complaint  
7 an opportunity to explain the conduct alleged to be a violation of  
8 this chapter.

9 (e) If the committee determines after investigation that there  
10 is not probable cause to believe that the subject of the complaint has  
11 violated this chapter, the committee shall dismiss the complaint. The  
12 committee may also dismiss portions of a complaint if it finds no  
13 probable cause to believe that the subject of the complaint has vio-  
14 lated this chapter as alleged in those portions. The committee may  
15 issue a decision explaining its dismissal. A copy of the dismissal  
16 order and decision shall be sent to the complainant and to the subject  
17 of the complaint.

18 (f) If the committee investigation determines that a probable  
19 violation of this chapter exists that may be corrected by action of  
20 the subject of the complaint and that does not warrant sanctions other  
21 than correction, the committee may issue an opinion recommending  
22 corrective action. This opinion shall be provided to the complainant  
23 and to the subject of the complaint, and is open to inspection by the  
24 public. The subject of the complaint may comply with the opinion or  
25 may request a hearing before the committee under (h) of this section.  
26 After the hearing the committee may amend or affirm the opinion.

27 (g) If the subject of a complaint fails to comply with an opin-  
28 ion issued under (f) of this section, or if the committee determines  
29 after investigation that there is probable cause to believe that the

1 subject of the complaint has committed a violation of this chapter  
2 that may require sanctions instead of or in addition to corrective  
3 action, the committee shall formally charge the person. The charge  
4 shall be served on the person charged, in a manner consistent with the  
5 service of summons under the rules of civil procedure, and a copy of  
6 the charge shall be sent to the complainant. The person charged may  
7 file a responsive pleading to the committee admitting or denying some  
8 or all of the allegations of the charge.

9 (h) If the committee has issued a formal charge under (g) of  
10 this section, and if the person charged has not admitted the alle-  
11 gations of the charge, the committee shall schedule a hearing on the  
12 charge. The hearing shall be scheduled for a date more than 20 days  
13 after service of the charge on the person charged, unless the person  
14 agrees to an earlier hearing date. At the hearing, the person charged  
15 shall have the right to appear personally before the committee, to  
16 subpoena witnesses and require the production of books or papers re-  
17 lating to the proceedings, to be represented by counsel, and to cross-  
18 examine witnesses. A witness shall testify under oath. The committee  
19 is not bound by the rules of evidence but the committee's findings  
20 must be based upon competent and substantial evidence. Testimony  
21 taken at the hearing shall be recorded and evidence shall be main-  
22 tained.

23 (i) Following the hearing, the committee shall issue a decision  
24 stating whether or not the subject of the complaint violated this  
25 chapter, and explaining the reasons for the determination. The com-  
26 mittee's decision may also indicate whether the subject cooperated  
27 with the committee in its proceedings. If the committee finds a  
28 violation, or lack of cooperation by the subject, the decision shall  
29 recommend what sanctions, if any, the committee believes are

1 appropriate. If there has not been a hearing because the person  
2 charged admitted to the allegations of the charge, the committee shall  
3 issue a decision outlining the facts of the violation and containing a  
4 sanctions recommendation.

5 (j) If the committee issues a decision finding that a member of  
6 the legislature has violated a provision of this chapter or that the  
7 member has failed to cooperate with the committee, it shall refer the  
8 decision to the presiding officer of the house of the legislature to  
9 which the member belongs. The legislature shall act on the decision  
10 as it considers appropriate.

11 (k) If the committee issues a decision finding that an employee  
12 of the legislative branch of government has violated a provision of  
13 this chapter, or that the employee has failed to cooperate with the  
14 committee, it shall refer the decision to the chair of the legislative  
15 council. The legislative council shall act on the decision as it  
16 considers appropriate.

17 (l) Proceedings of the committee relating to complaints before  
18 it are confidential until the committee determines that there is  
19 probable cause to believe that a violation of this chapter has oc-  
20 curred. The complaint and all documents produced or disclosed as a  
21 result of the committee investigation are confidential and not subject  
22 to inspection by the public, except that the committee may transmit a  
23 report of its investigation, including documents disclosed by the  
24 investigation, to a law enforcement agency, including the Alaska  
25 Public Offices Commission. All meetings of the committee before the  
26 determination of probable cause are closed to the public. The confi-  
27 dentiality provisions of this subsection may be waived by the subject  
28 of the complaint.

29 (m) All documents issued by the committee after a determination

1 of probable cause to believe that the subject of a complaint has  
2 violated this chapter, including an opinion recommending corrective  
3 action under (f) of this section and a formal charge under (g) of this  
4 section, are subject to public inspection. All hearings of the com-  
5 mittee under (h) of this section are open to the public, and all  
6 documents presented at a hearing, and all motions filed in connection  
7 with the hearing, are subject to inspection by the public. Delibera-  
8 tions of the committee following a hearing, deliberations on motions  
9 filed by the subject of a charge under (g) of this section, and delib-  
10 erations concerning appropriate sanctions are confidential.

11 (n) The committee shall dismiss a complaint against a person  
12 employed by the legislative branch of government if the person termi-  
13 nates legislative service. The committee may in its discretion dis-  
14 miss a complaint against a former member of the legislature whether  
15 the complaint was filed before or after the former member departed  
16 from the legislature.

17 (o) A committee member or member of the committee staff who  
18 divulges information concerning a proceeding, except as permitted by  
19 this chapter, is guilty of a class A misdemeanor.

20 \* Sec. 13. AS 24.60.060, 24.60.080(b), and 24.60.120 are repealed.