

S B

185

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO: SB 185

Revision Date: _____
Title: "An Act relating to conduct of
Legislators... and to the Select Comm. on Leg. Ethics."
Sponsor: Senate Judiciary
Requestor: Senate Special Committee on Ethics

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Council & Subcommittees

COMPONENT SERIAL NO: 783

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director
Division: Administrative Services

Pamela A. Stoops

Phone: 465-3850
Date: 3/14/91

Approved By: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren W. Endicott

Date: 3/14/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

DIVISION OF LEGAL SERVICES

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MEMORANDUM

April 30, 1991

SUBJECT: Comments on Senator Adams' proposed amendments to SB 185

TO: Senator Virginia Collins
Chair, Special Committee on Ethics Reform
Attn: S. Armstrong

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have asked for my comments on Senator Adams' proposed amendments to SB 185, contained in an April 28 memorandum to Judiciary Committee Chair Senator Halford. Here they are.

OK Amendment #1: I think this is an excellent clarification.

No Amendment #2: If the committee initiates a complaint, I do not think that it is necessary for the committee to adopt a resolution on the scope of the investigation, since the committee presumably will not initiate a complaint that is outside of the scope of the ethics law. The main point of the scope requirement now is to throw out at an early stage any allegations in a complaint that are clearly outside of the committee's jurisdiction, either because they allege wrongdoing that is not covered by the ethics law (e.g., being rude to a constituent) or that is clearly outside of the statute of limitations (e.g., a well-publicized act of misconduct ten years ago). However, amendment #2 is not going to cause any great hardship to the committee if it is adopted, only a little paperwork that is (in my opinion) unnecessary.

OK Amendment #3: I agree with this proposal, and think that it would fit appropriately as a new subsection (e), following page 9, line 25.

OK Amendment #4: I also agree with this proposal, as well as with Senator Adams' suggestion that discovery should be automatic, and not at the discretion of the committee. I would recommend a new subsection (h), on page 10, following line 17: "A person charged under (g) of this section may engage in discovery in a manner consistent with the Alaska Rules of Civil Procedure. The committee may impose reasonable restrictions on the time for this discovery and on the materials that may

Senator Virginia Collins
April 30, 1991
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be discovered." I would hope that this language would meet Senator Adams' concerns but would also allow the committee to prevent a respondent from unnecessarily delaying a hearing and from obtaining inappropriate materials (e.g., committee counsel's legal theories of the case, or confidential information that is not to be presented as evidence).

No
Amendment #5: The language that Senator Adams wants to delete is in the bill because some people want to waive confidentiality, and want to make sure that they have the right to do so. Representative Martin raised this exact point before the House Judiciary Committee, and accordingly HB 4 was amended to specifically include it. Frankly, I don't think that the language is necessary - I believe that, since the confidentiality provisions are in the bill to protect the subject of a complaint, the subject can waive them, whether or not the bill specifically provides for this.

Note that Senator Adams' analogy to criminal proceedings is incomplete. It is true, as he notes, that grand jury proceedings are closed, even if the subject of a grand jury hearing wants it opened. However, other aspects of a criminal case, such as the charging document and the arraignment, are open to the public, whereas their counterparts under the ethics procedures are closed. These are usually the hearings that the subject of an ethics complaint would want open.

No
Amendment #6: This is a policy call. Michael Josephson, the ethics "guru", included the legal defense fund concept in his bill last year, so he sees nothing wrong with it. I have no big problems with it in the narrow form that Senator Adams proposes (his proposal comes from HB 4), although I still wonder why allowing a lobbyist to give you \$1,000 to defend a lawsuit is really any different from allowing the lobbyist to give you \$1,000 to repair your house, or to go to Hawaii. \$1,000 is \$1,000, regardless of the purpose for which it is given.

yes with recommendation
Amendment #7: I have no major disagreement with this suggestion. I would, however, recommend deleting the requirement that the subject of a complaint be notified when the committee turns over information to a law enforcement agency or to APOC. Since the subject of a criminal investigation is not generally put on notice that he or she is being investigated, I do not see why that should be done here.

If I may be of further assistance, please advise.

JBG:mi
91-083.mai

DIVISION OF LEGAL SERVICES

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MEMORANDUM

April 12, 1991

SUBJECT: Constitutionality of nepotism law (SB 185)

TO: Senator Rick Halford
Chair, Senate Judiciary Committee

FROM: John B. Gaguine *JBG*
Legislative Counsel

During the committee hearing yesterday on SB 185, you raised some questions as to the constitutionality of nepotism laws. I indicated to you that I had never heard of a court rejecting such a law. My research has pretty much confirmed what I said.

I am enclosing a portion of a general legal treatise on the issue of nepotism. As you will note, under section 102 of the treatise, the courts have generally upheld the laws against a variety of attacks. A 1933 Florida case noted that anti-nepotism acts have either been definitively sustained as constitutional or have been enforced without serious controversy as to their validity. State ex rel. Robinson v. Keefe, 149 So. 638 (Fla. 1933). There is virtually no recent authority on this issue, indicating, as the Florida court noted, that the constitutional issue is well-settled.^{1/}

You also noted that the nepotism laws discriminate against married people as opposed to cohabiting couples, since spouses are covered but live-in lovers are not. The same discrimination exists with regard to the tax laws: married two-income couples generally pay higher taxes than cohabiting two-income couples. However, the courts have uniformly rejected constitutional challenges raising this claim of discrimination. Johnson v. United States, 422 F.Supp. 958 (N.D.Ind. 1976), affirmed, 550 F.2d 1239 (7th Cir. 1977), cert. denied, 434 U.S. 1012 (1978); Mapes v. United States, 576 F.2d 896 (Ct.Cl.), cert. denied, 439 U.S. 1046 (1978); Druker v. Commissioner of Internal Revenue, 697 F.2d 46 (2d Cir.), cert. denied, 461 U.S. 957 (1982).

^{1/}In Lee v. Blount, 345 F.Supp. 585 (N.D.Cal. 1972), the plaintiff raised an unsuccessful constitutional challenge to the application of the federal nepotism law to an uncle-nephew relationship, but did not challenge the constitutionality of the law on its face.

Senator Rick Halford

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I think that the Alaska courts would reach the same conclusion with regard to a nepotism claim. As I mentioned yesterday, the Alaska equal protection clause, like the federal clause, does not require perfection in classifications. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980). Thus I do not believe that the courts would invalidate the nepotism laws, even though some instances of the laws working in an apparently unfair manner can be showed.

If I may be of further assistance, please advise.

JBG:gc
91-213.glc

Alaska State Legislature

During Session
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During Interim
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Senator Virginia Collins

March 14, 1991

MEMORANDUM

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Senator Virginia Collins, Chair
Special Committee on Ethics Reform

SUBJECT: Committee Hearing for SB 185 - Legislative Ethics

I respectfully request that you schedule SB 185 for a committee hearing at your earliest opportunity. We need to expedite the public hearing process if we plan to pass an ethics reform bill this session. It would be nice to pass our bill across to the House.

SB 185 is a good compromise between HB 4 and the old Josephson bill. The Special Committee on Ethics Reform started with the bill that the Select Committee on Ethics passed out of their committee last year. SB 185 includes some of the COGEL model bill's suggestion on ethics reform as well as some items from the Common Cause model bill.

Attached is a copy of the fiscal note and a sectional analysis we received from legal services.

Thank you for your consideration of this request.

Attachments

Rick got my copy Sec Analysis.

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MAR 20 1991

MEMORANDUM

March 11, 1991

SUBJECT: Sectional analysis of legislative ethics bill (SB 185)

TO: Senator Virginia Collins
Chair, Senate Special Committee on Ethics Reform

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 adds several prohibitions to the current list of prohibited conduct by a lobbyist. It would prohibit a lobbyist from serving as a campaign treasurer or deputy campaign treasurer for a legislative candidate, from offering gifts (except for food or beverages), loans, and campaign contributions to persons covered by the ethics act during session, and from making a gift or campaign contribution in violation of the ethics act.

Section 2 prohibits a former legislator from lobbying the legislature for one year after the former legislator leaves office.

Section 3 amends and expands the findings and purposes section of the Legislative Ethics Act, AS 24.60

Section 4 extends the coverage of the Legislative Ethics Act to all employees Range 15 and above (instead of current Range 18) and to the public members of the Select Committee on Legislative Ethics.

Section 5 essentially gathers in one place all of the prohibitions that are currently spread throughout AS 24.60, and adds a couple of new prohibitions, relating to use of state property and funds for political purposes and to taking action that could

substantially affect a person with whom the action-taker is negotiating employment. It retains the provision in current law that an action does not constitute a conflict of interest unless the impact on the legislator or legislative employee is substantial; e.g., a legislator does not need to worry if he or she owns a couple of shares of Exxon.

Section 6 prohibits a legislator from soliciting or accepting campaign contributions during a session and from accepting money from an event during a session that is designed to raise money for candidates (such as a political party fundraiser).

Section 7 provides that disclosures of close economic associations must be reasonably specific; it would no longer suffice to just state that a close economic association exists, and provide no details.

Sections 8-11 rework the gift provisions of the ethics law. Section 7 raises the allowable limit from \$50 to \$100, and essentially provides that gifts worth less than \$100 are conclusively presumed to be proper. However, the section also prohibits the acceptance of any gift, except for the ones listed in AS 24.60.080(c), from a lobbyist or employer of a lobbyist during a legislative session. Section 8 broadens AS 24.60.080(c), the exception to the gift prohibition, to include gifts not connected to the recipient's legislative status; this change codifies an ethics committee advisory opinion. Section 9 requires the disclosure of gifts now allowed by Section 8. And Section 10 deals with gifts from foreign governments; it allows their receipt, but only on behalf of the legislature.

Section 12 prohibits honoraria; this section too codifies an ethics committee advisory opinion. The payment of actual travel expenses is allowed. There is an exception where the honorarium is not related to the recipient's legislative status, so that, for instance, a legislator who is a professor of biology could accept an honorarium for speaking at a biology symposium. The section also specifically authorizes teaching for compensation at a state-funded school or university.

Section 13 slightly modifies the nepotism prohibition, to allow a legislator's relatives who may be employed in the other house during session to begin employment one week before session and to keep working for one week after session.

Section 14 places a flat ban on representing clients for compensation before an agency, board, or commission (but not a court) of the state. It also makes clear that appearing before an officer or employee of an agency, board, or commission is prohibited. The section would replace existing law allowing such representation, as long as it is disclosed.

Section 15 states, in order to avoid any possible problems, that the Select Committee on Legislative Ethics is a permanent interim committee.

Senator Virginia Collins

March 11, 1991

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Section 16 changes the terms of public members of the committee from two years (the duration of one legislature) to three, in order to provide greater stability in the committee's membership.

Section 17 reduces the number of both total members and legislative members necessary to make a quorum of the committee.

Section 18 provides that open meetings and public procurement provisions do not apply when their application would be inconsistent with the confidentiality provisions of AS 24.60. (The procurement provisions are included because the committee may need to hire investigators to investigate complaints which are not public during the investigation.)

Section 19 changes the statute relating to advisory opinions to give the committee, when the opinion requestor consents, more time to respond to the request. During the interim it is often difficult to assemble a quorum to act on a request.

Section 20 totally overhauls the committee's complaint procedures. Under current law the procedures are totally closed to the public virtually from beginning to end, including the hearing on a complaint. As overhauled, the procedures would be closed to the public during the initial and investigation stages, but would be open if the investigation disclosed probable cause to proceed. This change would bring AS 24.60 into line with the vast majority of ethics statutes in the United States.

Section 21 would establish the Select Committee on Legislative Ethics as the body adjudicating equal employment opportunity grievances by legislative employees.

Section 22 adds a new provision that a person who was covered by the legislative ethics act (legislators and most aides and legislative employees) may not, for one year after leaving service, represent a client for compensation in any forum on a matter that the person personally and substantially participated in while a legislator or legislative employee.

Section 23 states that persons covered by AS 24.60 are not covered by the total ban in AS 39.50.090(c) (part of the 1974 conflict-of-interest initiative) on representing clients for compensation before state agencies, boards, and commissions. This statute is inconsistent with current AS 24.60.100, and our office has expressed its opinion that AS 24.60.100 was intended to supersede AS 39.50.090(c) with regard to legislators and legislative employees. Note, though, that AS 24.60.100 as amended by this bill would have the same effect as AS 39.50.090(c).

Section 24 repeals two statutes (AS 24.60.060 and 24.60.120) that were incorporated into new AS 24.60.030, and AS 24.60.080(b), that was incorporated into AS 24.60.-080(a).

Senator Virginia Collins

March 11, 1991

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Section 25 provides that the three current members of the ethics committee just confirmed would serve one, two, and three year terms, with the term length to be determined by lot. The purpose of this is to stagger the three-year terms for public members, so that each year one, and only one, new member would be appointed.

JBG:mi

91-050.mai

4-11-91

SB185 Ethics -

Sec (2) a (4) Should be "solely" for
Sec (5) add a rule of necessity where all legislators
have the same conflict

Sec 8 -

Sec 13 - Constitutional Problem - Discrimination Because
your dad is in legislature.

Rich requests opinion. Particularly where relatives
works for legislature before dad is elected.
What about couple living together.

Sec 14 Very Strict.

Sec 70 - Adam wants APOC Bound by Same
Confidentiality as Ethics Committee. p 11 line 18

See Sec 2 A 5 24, 60

Asl

Adams will have amendments - Secs 1 & 20 -

Ethics -

Draft of 5/2-91 is adopted as Working Draft.

Next April 30, 1991 Memo re Admn. Proposals -
1 OK it is in 5/2 draft.

2 Admn # 2 is not in draft.

Admn moved p 9 line 25 in Admn # 2 -
not initiated by the committee -

Amend # 3 is in Draft -

Amend # 5 - Not in Draft.

Admn 5 is Moved - Defeated -

Amend # 6 - Moved - Not in Draft -
Defeated -

Amend # 7 in Draft.

New Admn Amendment -
failed -

add.
this -

7-LS0799D
Gaguine
5/2/91

CS FOR SENATE BILL NO. 185 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON ETHICS REFORM

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to conduct of legislators, legislative employees, former legislators, former
2 legislative employees, and lobbyists, and to the Select Committee on Legislative Ethics."

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

4 * Section 1. AS 24.45.121(a) is amended to read:

5 (a) A lobbyist may not

6 (1) engage in any activity as a lobbyist before registering under AS 24.45.041;

7 (2) do anything with the intent of placing a public official under personal
8 obligation to the lobbyist or to the lobbyist's employer;

9 (3) intentionally deceive or attempt to deceive any public official with regard to
10 any material fact pertinent to pending or proposed legislative or administrative action;

11 (4) cause or influence the introduction of a legislative measure solely for the
12 purpose of thereafter being employed to secure its passage or its defeat;

13 (5) cause a communication to be sent to a public official in the name of any
14 fictitious person or in the name of any real person, except with the consent of that person;

OK
Add
#1

1 (6) accept or agree to accept any payment in any way contingent upon the defeat,
2 enactment or outcome of any proposed legislative or administrative action;

3 (7) serve as a member of a state board, or commission, if the lobbyist's employer
4 may receive direct economic benefit from a decision of that board or commission;

5 (8) serve as a campaign manager or director, serve as a campaign treasurer
6 or deputy campaign treasurer on a finance or fundraising committee, host a fundraising
7 event, or otherwise actively engage in the fundraising activity of a legislative campaign if
8 the lobbyist has registered during the calendar year; this paragraph does not apply to a
9 representational lobbyist as defined in the regulations of the Alaska Public Offices
10 Commission, and does not prohibit a lobbyist from making personal contributions to or
11 personally advocating on behalf of a candidate;

12 (9) offer, solicit, initiate, facilitate, or provide to or on behalf of a person
13 covered by AS 24.60, during a legislative session.

14 (A) a gift, other than food or beverage for immediate consumption;

15 (B) a loan, other than a loan made in the ordinary course of business
16 by a person authorized to transact business in this state at terms and interest rates
17 generally available to a member of the public; or

18 (C) a campaign contribution;

19 (10) make or offer a gift or a campaign contribution whose acceptance by the
20 person to whom it is offered would violate AS 24.60.

21 * Sec. 2. AS 24.45.121 is amended by adding a new subsection to read:

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

24 * Sec. 3. AS 24.60.010 is repealed and reenacted to read:

25 Sec. 24.60.010. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that

26 (1) high moral and ethical standards among public servants in the legislative
27 branch of government are essential to assure the trust, respect, and confidence of the people of
28 this state;

29 (2) a fair and open government requires that legislators and legislative employees
30 conduct the public's business in a manner that preserves the integrity of the legislative process
31 and avoids conflicts of interest or even appearances of conflicts of interest;

1 (3) the public's commitment to a part-time citizen legislature requires legislators
2 be drawn from all parts of society and the best way to attract competent people is to
3 acknowledge that they provide their time and energy to the state, often at substantial personal and
4 financial sacrifice;

5 (4) a part-time citizen legislature implies that legislators are expected and
6 permitted to earn outside income and that the rules governing legislators' conduct during and
7 after leaving public service must be clear, fair, and as complete as possible; the rules, however,
8 should not impose unreasonable or unnecessary burdens that will discourage citizens from
9 entering or staying in government service;

10 (5) in order for the rules governing conduct to be respected both during and after
11 leaving public service, the code must be administered fairly without bias or favoritism;

12 (6) no code of conduct, however comprehensive, can anticipate all situations in
13 which violations may occur nor can it prescribe behaviors that are appropriate to every situation;
14 in addition, laws and regulations regarding ethical responsibilities cannot legislate morality,
15 eradicate corruption, or eliminate bad judgment;

16 (7) compliance with a code of ethics is an individual responsibility; thus all who
17 serve the legislature have a solemn responsibility to avoid improper conduct and prevent
18 improper behavior by colleagues and subordinates;

19 (8) the purpose of this chapter is to establish standards of conduct for state
20 legislators and legislative employees and to establish the Select Committee on Legislative Ethics
21 to consider alleged violations of this chapter and to render advisory opinions to persons affected
22 by this chapter.

23 * Sec. 4. AS 24.60.020(a) is amended to read:

24 (a) Except as otherwise provided in this subsection, this chapter applies to a member of
25 the legislature, [AND] to a person employed by the legislative branch of government, and to
26 public members of the Select Committee on Legislative Ethics. This chapter does not apply
27 to

28 (1) a former member of the legislature or to a person formerly employed by the
29 legislative branch of government unless the provision specifically states that it [SO] applies;

30 (2) a person elected to the legislature who at the time of election is not a member
31 of the legislature;

1 (3) a person employed by the legislative branch of government whose position
2 is established below Range 15 [18] of the state salary schedule established in AS 39.27.011(a).

3 * Sec. 5. AS 24.60.030 is repealed and reenacted to read:

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

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

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

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

13 (4) wilfully discloses, or knowingly uses, for personal gain or the gain of another,
14 information that by law is not available to the public and that the person acquired in the course
15 of official duties; a person who violates this paragraph may be subject to prosecution under
16 AS 11.56.860;

17 (5) uses state funds or state property, except property under lease from the state,
18 for private advancement or gain;

19 (6) knowingly uses or authorizes the use of the facilities of a public office,
20 including office space, stationery, postage, office machines and equipment, vehicles, and official
21 publications, or knowingly uses or authorizes the use of state-paid employees, with the intent to
22 affect a candidate or campaign for elective office; or

23 (7) takes or withholds official action or exerts official influence that could
24 substantially benefit or harm the financial interest of another person with whom the person to
25 whom this chapter applies is negotiating for employment.

26 (b) Notwithstanding (a) of this section, a person covered by this chapter does not have
27 a conflict of interest if, as to a specific matter, there is no substantial impropriety or appearance
28 of impropriety because

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

30 (2) the person's authority is relatively far removed from an official action that
31 could reasonably be affected by the potential conflict of interest, provided that no attempt has

1 been made to remove the appearance of impropriety by delegating responsibility for official
2 action.

3 (c) This section does not prohibit customary constituent contacts by a legislator, including
4 newsletters and other constituent correspondence that express the legislator's opinions or views
5 on issues before the legislature, or that describe the legislator's votes, legislative proposals, or
6 other legislative actions.

7 * Sec. 6. AS 24.60 is amended by adding a new section to read:

8 Sec. 24.60.035. PROHIBITED FUND RAISING. (a) A member of the legislature may
9 not

10 (1) solicit or accept a contribution during a legislative session; or

11 (2) accept money from an event held during a legislative session if a substantial
12 purpose of the event is either to raise money on behalf of the member for campaign purposes or
13 to raise money for state legislative political purposes.

14 (b) In this section, "contribution" has the meaning given in AS 15.13.130.

15 * Sec. 7. AS 24.60.070 is amended by adding a new subsection to read:

16 (b) A disclosure under this section must be sufficiently detailed that a reader of the
17 disclosure can ascertain the nature of the association.

18 * Sec. 8. AS 24.60.080(a) is amended to read:

19 (a) A person to whom this chapter applies may not solicit, accept, or receive, directly or
20 indirectly, a gift worth \$100 or more [IN ANY AMOUNT], whether in the form of money,
21 services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same
22 person worth less than \$100 that in a calendar year aggregate to \$100 or more in value, and
23 may not solicit, accept, or receive a gift with any monetary value from lobbyist, the client
24 of a lobbyist, or a person acting on behalf of a lobbyist or the lobbyist during a
25 legislative session [UNDER CIRCUMSTANCES IN WHICH IT COULD REASONABLY BE
26 INFERRED THAT THE GIFT IS INTENDED TO INFLUENCE THE PERFORMANCE OF
27 OFFICIAL DUTIES, ACTIONS, OR JUDGMENT].

28 * Sec. 9. AS 24.60.080(c) is amended to read:

29 (c) Notwithstanding (a) [(b)] of this section, it is not a violation of this section for a
30 person to whom this chapter applies to accept

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

- 1 (A) with incidental transportation at the residence of a person; or
2 (B) at a social event or meal;
- 3 (2) discounts that are available generally to the public or to a large class of
4 persons to which the person belongs;
- 5 (3) food or foodstuffs indigenous to the state that are shared generally as a
6 cultural or social norm;
- 7 (4) travel and hospitality primarily for the purpose of obtaining information on
8 matters of legislative concern;
- 9 (5) gifts from the family of the person; or
10 (6) gifts that are not connected with the recipient's legislative status.

11 * Sec. 10. AS 24.60.080(d) is amended to read:

12 (d) A person to whom this chapter applies who accepts a gift under (c)(4) or (6) of this
13 section [OF TRAVEL AND HOSPITALITY PRIMARILY FOR THE PURPOSE OF
14 OBTAINING INFORMATION ON MATTERS OF LEGISLATIVE CONCERN] shall disclose
15 the gift if it has a value of \$100 or more. The disclosure must include the name and occupation
16 of the person making the gift and the approximate value of the gift. Each gift required to be
17 disclosed under this subsection shall be disclosed within 30 days of the receipt of the gift in the
18 journal of the appropriate body or, if the legislature is not in session, to the committee. The
19 committee shall maintain a public record of the disclosure it receives and shall forward the
20 disclosure to the appropriate house for inclusion in the journal by the fifth day of the next regular
21 session.

22 * Sec. 11. AS 24.60.080 is amended by adding a new subsection to read:

23 (f) Notwithstanding (a) of this section, a person to whom this chapter applies may accept
24 a gift of property worth \$100 or more, other than money, from a foreign government or from an
25 official of a foreign government if the person accepts the gift on behalf of the legislature. The
26 person shall, within 60 days of receiving the gift, deliver the gift to the legislative council, which
27 shall determine the appropriate disposition of the gift.

28 * Sec. 12. AS 24.60 is amended by adding a new section to read:

29 Sec. 24.60.085. HONORARIA PROHIBITED. (a) A person to whom this chapter
30 applies may not accept a payment of money or anything of value for an appearance or speech
31 by the person, except that the person may accept payment of actual and necessary travel expenses

1 incurred by the person in making the appearance or speech.

2 (b) Notwithstanding (a) of this section, a person to whom this chapter applies may accept
3 a payment for an appearance or speech if the appearance or speech is not connected with the
4 person's legislative status, and for teaching at a state-funded school or university, provided that
5 influence was not used to obtain the position.

6 * Sec. 13. AS 24.60.090(a) is amended to read:

7 (a) An [A SPOUSE OR AN] individual [OTHER THAN A SPOUSE] who is related to
8 a member of the legislature may not be employed in the house in which the legislator is a
9 member, by an agency of the legislature established under AS 24.20, or in either house during
10 the interim between sessions. An individual who is related to an employee of the legislature may
11 not be employed in a position over which the employee has supervisory authority. In this
12 subsection, "an individual who is related to" means a child, stepchild, husband, wife, mother,
13 father, sister, or brother, and "interim between sessions" means the period beginning on the
14 eighth day after the legislature adjourns from a regular session, and ending eight days
15 before the date that the legislature shall convene under AS 24.05.090.

16 * Sec. 14. AS 24.60.100 is amended to read:

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

27 * Sec. 15. AS 24.60.130(a) is amended to read:

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

30 * Sec. 16. AS 24.60.130(g) is amended to read:

31 (g) Each legislative member serves for the duration of the legislature during which the

1 member is appointed. Each public member serves for a three-year term.

2 * Sec. 17. AS 24.60.130(i) is amended to read:

3 (i) A quorum of a committee established under this section consists of a majority of the
4 members of the committee and must include at least two legislative members and two public
5 members. A quorum of a subcommittee established under this section consists of a majority of
6 the members of the subcommittee and must include at least one legislative member and two
7 public members. [NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION, A
8 COMMITTEE DOES NOT HAVE A QUORUM UNLESS THREE LEGISLATIVE MEMBERS
9 ARE PRESENT AND A SUBCOMMITTEE DOES NOT HAVE A QUORUM UNLESS TWO
10 LEGISLATIVE MEMBERS ARE PRESENT.]

11 * Sec. 18. AS 24.60.130 is amended by adding new subsections to read:

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

17 (k) A member of the committee or of the committee staff may obtain access to closed
18 committee files containing information that is confidential under AS 24.60.160 or 24.60.170 only
19 if the full committee determines, by a majority vote, that the member has a need to obtain access
20 to the closed files.

21 * Sec. 19. AS 24.60.160 is amended to read:

22 Sec. 24.60.160. ADVISORY OPINIONS. The committee shall issue an advisory opinion
23 within 30 days on the request of a person to whom the chapter applies or a person elected to the
24 legislature who at the time of election is not a member of the legislature as to whether the facts
25 and circumstances of a particular case constitute a violation of ethical standards. The 30-day
26 period for issuing an opinion may be extended by the committee [FOR NOT MORE THAN AN
27 ADDITIONAL 10 DAYS] if the person requesting the opinion consents. The opinion issued is
28 binding on the committee in any subsequent proceedings concerning the facts and circumstances
29 of the particular case unless material facts were omitted or misstated in the request for the
30 advisory opinion. Except as provided in this chapter an advisory opinion is confidential but shall
31 [MAY] be made public if a written request by the person who requested the opinion is filed with

1 the committee.

2 * **Sec. 20.** AS 24.60.170 is repealed and reenacted to read:

3 Sec. 24.60.170. PROCEEDINGS BEFORE THE COMMITTEE. (a) The committee
4 shall consider a complaint alleging a violation of this chapter if the alleged violation occurred
5 within five years of the date that the complaint is filed with the committee and, when the subject
6 of the complaint is a former member of the legislature, the complaint is filed within one year of
7 the subject's departure from the legislature. The committee may not consider a complaint filed
8 against a person employed by the legislative branch of government after the person has
9 terminated legislative service. The committee may also initiate complaints on its own motion,
10 subject to the same time limitations. The time limitations of this subsection do not bar
11 proceedings against a person who intentionally prevents discovery of a violation of this chapter.

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

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

22 (d) If the committee determines that some or all of the allegations of a complaint, if
23 proven, would constitute a violation of this chapter, or if the committee has initiated a complaint,
24 the committee shall investigate the complaint, on a confidential basis. Before beginning an
25 investigation of a complaint not initiated by the committee, the committee shall adopt a resolution
26 defining the scope of the investigation. A copy of this resolution shall be provided to the
27 complainant and to the subject of the complaint. As part of its investigation, the committee shall
28 afford the subject of the complaint an opportunity to explain the conduct alleged to be a violation
29 of this chapter.

30 (e) If during the investigation under (d) of this section, the committee discovers facts that
31 justify an expansion of the investigation and the possibility of additional charges beyond those

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1 contained in the complaint, the resolution described in (d) of this section shall be amended
2 accordingly and a copy of the amended resolution shall be provided to the subject of the
3 complaint.

4 (f) If the committee determines after investigation that there is not probable cause to
5 believe that the subject of the complaint has violated this chapter, the committee shall dismiss
6 the complaint. The committee may also dismiss portions of a complaint if it finds no probable
7 cause to believe that the subject of the complaint has violated this chapter as alleged in those
8 portions. The committee shall issue a decision explaining its dismissal. A copy of the dismissal
9 order and decision shall be sent to the complainant and to the subject of the complaint.
10 Notwithstanding (n) of this section, a dismissal order and decision is open to inspection and
11 copying by the public.

12 (g) If the committee investigation determines that a probable violation of this chapter
13 exists that may be corrected by action of the subject of the complaint and that does not warrant
14 sanctions other than correction, the committee may issue an opinion recommending corrective
15 action. This opinion shall be provided to the complainant and to the subject of the complaint,
16 and is open to inspection by the public. The subject of the complaint may comply with the
17 opinion or may request a hearing before the committee under (j) of this section. After the
18 hearing the committee may amend or affirm the opinion.

19 (h) If the subject of a complaint fails to comply with an opinion issued under (g) of this
20 section, or if the committee determines after investigation that there is probable cause to believe
21 that the subject of the complaint has committed a violation of this chapter that may require
22 sanctions instead of or in addition to corrective action, the committee shall formally charge the
23 person. The charge shall be served on the person charged, in a manner consistent with the
24 service of summons under the rules of civil procedure, and a copy of the charge shall be sent to
25 the complainant. The person charged may file a responsive pleading to the committee admitting
26 or denying some or all of the allegations of the charge.

27 (i) A person charged under (b) of this section may engage in discovery in a manner
28 consistent with the Alaska Rules of Civil Procedure. The committee may impose reasonable
29 restrictions on the time for this discovery and on the materials that may be discovered.

30 (j) If the committee has issued a formal charge under (h) of this section, and if the person
31 charged has not admitted the allegations of the charge, the committee shall schedule a hearing

1 on the charge. The hearing shall be scheduled for a date more than 20 days after service of the
2 charge on the person charged, unless the person agrees to an earlier hearing date. At the hearing,
3 the person charged shall have the right to appear personally before the committee, to subpoena
4 witnesses and require the production of books or papers relating to the proceedings, to be
5 represented by counsel, and to cross-examine witnesses. A witness shall testify under oath. The
6 committee is not bound by the rules of evidence but the committee's findings must be based
7 upon clear and convincing evidence. Testimony taken at the hearing shall be recorded and
8 evidence shall be maintained.

9 (k) Following the hearing, the committee shall issue a decision stating whether or not the
10 subject of the complaint violated this chapter, and explaining the reasons for the determination.
11 The committee's decision may also indicate whether the subject cooperated with the committee
12 in its proceedings. If the committee finds a violation, or lack of cooperation by the subject, the
13 decision shall recommend what sanctions, if any, the committee believes are appropriate. If there
14 has not been a hearing because the person charged admitted to the allegations of the charge, the
15 committee shall issue a decision outlining the facts of the violation and containing a sanctions
16 recommendation.

17 (l) If the committee issues a decision finding that a member of the legislature has
18 violated a provision of this chapter or that the member has failed to cooperate with the
19 committee, it shall refer the decision to the presiding officer of the house of the legislature to
20 which the member belongs. The legislature shall act on the decision as it considers appropriate.

21 (m) If the committee issues a decision finding that an employee of the legislative branch
22 of government has violated a provision of this chapter, or that the employee has failed to
23 cooperate with the committee, it shall refer the decision to the chair of the legislative council.
24 The legislative council shall act on the decision as it considers appropriate.

25 (n) Proceedings of the committee relating to complaints before it are confidential until
26 the committee determines that there is probable cause to believe that a violation of this chapter
27 has occurred. The complaint and all documents produced or disclosed as a result of the
28 committee investigation are confidential and not subject to inspection by the public. If in the
29 course of an investigation or probable cause determination the committee finds evidence of
30 probable criminal activity, the committee shall transmit a statement and factual findings limited
31 to that activity to the appropriate law enforcement agency. If the committee finds evidence of

1 a probable violation of AS 15.13, the committee shall transmit a statement to that effect and
2 factual findings limited to the probable violation to the Alaska Public Offices Commission. All
3 meetings of the committee before the determination of probable cause are closed to the public.
4 The confidentiality provisions of this subsection may be waived by the subject of the complaint.

5 (o) All documents issued by the committee after a determination of probable cause to
6 believe that the subject of a complaint has violated this chapter, including an opinion
7 recommending corrective action under (g) of this section and a formal charge under (h) of this
8 section, are subject to public inspection. All hearings of the committee under (j) of this section
9 are open to the public, and all documents presented at a hearing, and all motions filed in
10 connection with the hearing, are subject to inspection by the public. Deliberations of the
11 committee following a hearing, deliberations on motions filed by the subject of a charge under
12 (h) of this section, and deliberations concerning appropriate sanctions are confidential.

13 (p) The committee shall dismiss a complaint against a person employed by the legislative
14 branch of government if the person terminates legislative service. The committee may in its
15 discretion dismiss a complaint against a former member of the legislature whether the complaint
16 was filed before or after the former member departed from the legislature.

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

19 * Sec. 21. AS 24.60 is amended by adding a new section to read:

20 Sec. 24.60.175. EMPLOYMENT DISCRIMINATION GRIEVANCES. (a) A person
21 employed or formerly employed by the legislative branch of government may file a grievance
22 with the committee alleging a violation of AS 18.80.220 by the person's employer or former
23 employer. The committee shall adopt procedures concerning the filing, the investigation, the
24 mediation, and the hearing of grievances under this subsection. In adopting procedures, the
25 committee shall consider regulations of the office of equal employment opportunity adopted
26 under AS 44.19.443 and shall protect the confidentiality of grievances.

27 (b) In accordance with the procedures established under (a) of this section the committee
28 may

- 29 (1) provide for mediation of a grievance;
30 (2) dismiss a grievance without prejudice; or
31 (3) after a hearing, make appropriate recommendations concerning a grievance

1 to the president of the senate, the speaker of the house, or the head of the legislative agency
2 where the grievant is or was employed.

3 (c) This section does not diminish rights under other state or federal law relating to
4 employment discrimination.

5 (d) In this section, "committee" means the legislative members of the house
6 subcommittee when the grievant is or was employed by a member or a committee of the house,
7 the legislative members of the senate subcommittee when the grievant is or was employed by a
8 member or a committee of the senate, and the legislative members of the full committee when
9 the grievant is or was an employee of an agency of the legislature.

10 * Sec. 22. AS 24.60 is amended by adding a new section to read:

11 ARTICLE 2. RESTRICTIONS ON FORMER LEGISLATORS
12 AND LEGISLATIVE EMPLOYEES.

13 Sec. 24.60.200. RESTRICTIONS ON FORMER LEGISLATORS AND LEGISLATIVE
14 EMPLOYEES. (a) A person to whom this chapter applied may not, for a period of one year
15 after this chapter ceased to apply to the person, represent another person for compensation before
16 a court, agency, board, or commission of the state with regard to a matter in which the person
17 participated personally and substantially while this chapter applied to the person.

18 (b) A person who violates this section may be enjoined from continuing to violate it, and
19 is subject to a civil penalty of up to \$5,000.

20 * Sec. 23. AS 39.50.090(c) is amended to read:

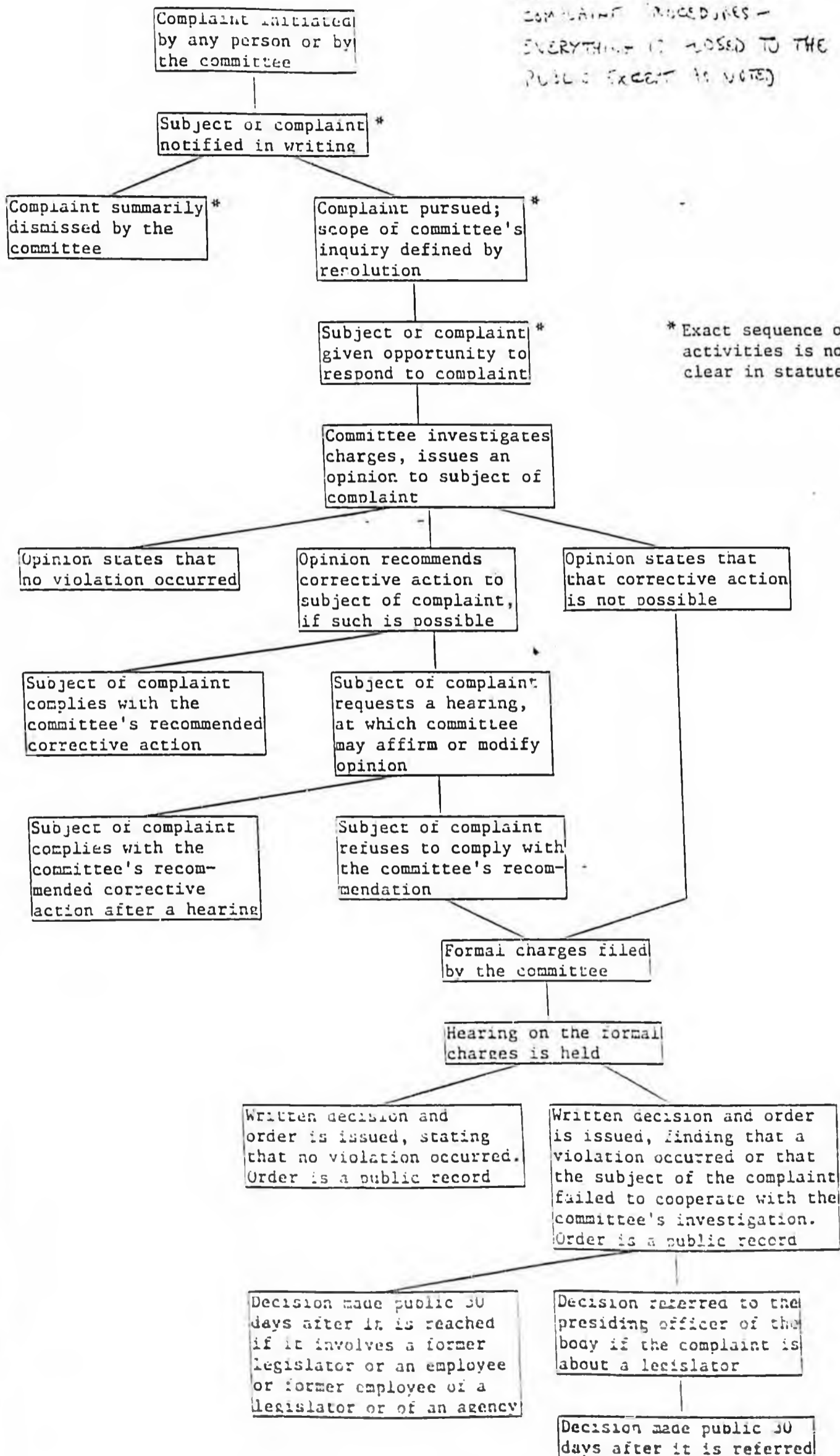
21 (c) A public official may not represent a client before a state agency for a fee. However,
22 this prohibition does not apply to a person to whom AS 24.60 applies, to a municipal officer,
23 or to the chair [CHAIRMAN] or a member of a state commission or board except with regard
24 to representation before that commission or board; this exception from the general prohibition
25 does not apply to one whose service on the commission or board constitutes the person as a full-
26 time state employee under this title.

27 * Sec. 24. AS 24.60.060, 24.60.080(b), and 24.60.120 are repealed.

28 * Sec. 25. TRANSITIONAL PROVISIONS RELATING TO PUBLIC MEMBERS OF SELECT
29 COMMITTEE ON LEGISLATIVE ETHICS. Notwithstanding AS 24.61.130(g), as amended by sec. 16
30 of this Act, one of the public members of the Select Committee on Legislative Ethics shall serve until
31 the commencement of the 1992 regular session of the Alaska State Legislature; one of the public

- 1 members shall serve until the commencement of the 1993 regular session; and the remaining public
- 2 member shall serve until the commencement of the 1994 regular session. The length of each public
- 3 member's term under this section shall be determined by lot.

CURRENT ETHICS COMMITTEE
 COMPLAINT PROCEDURES -
 EVERYTHING IS CLOSED TO THE
 PUBLIC EXCEPT AS NOTED



* Exact sequence of these activities is not made clear in statute

ETHICS COMMITTEE COMPLAINT PROCESS

PROPOSED FOR
MODIFICATION BY
ETHICS COMMITTEE IN
1991 AFTER FINDING OF
PROBABLE CAUSE, EVERYTHING
IS PUBLIC EXCEPT AS NOTED

COMPLAINT FILED OR INITIATED
BY COMMITTEE (CONFIDENTIAL);
SENT TO SUBJECT OF COMPLAINT

INITIAL CONSIDERATION

COMPLAINT DISMISSED IF NOT PROCEDURALLY
CORRECT, OR IF COMPLAINT ON ITS FACE
DOES NOT ALLEGE VIOLATION OF ETHICS
LAW, OR IF LACK OF JURISDICTION (E.G.
STATUTE OF LIMITATIONS) IS APPARENT;
COMMITTEE MAY ISSUE CONFIDENTIAL
STATEMENT, SENT TO COMPLAINANT &
SUBJECT

ALLEGATIONS OF COMPLAINT,
IF TRUE, WOULD CONSTITUTE
ETHICS LAW VIOLATION;
COMMITTEE ADOPTS CONFIDENTIAL
RESOLUTION ON SCOPE OF
INVESTIGATION, SENT TO
COMPLAINANT & SUBJECT

INVESTIGATION

COMPLAINT DISMISSED IF INVESTIGATION
DOES NOT ESTABLISH PROBABLE CAUSE TO
BELIEVE THAT SUBJECT VIOLATED ETHICS
LAW; COMMITTEE MAY ISSUE CONFIDENTIAL
STATEMENT EXPLAINING DISMISSAL, SENT
TO COMPLAINANT & SUBJECT

INVESTIGATION ESTABLISHES
PROBABLE CAUSE TO BELIEVE
VIOLATION EXISTS

IF VIOLATION MINOR, COMMITTEE ISSUES
PUBLIC OPINION FINDING PROBABLE CAUSE
& RECOMMENDING CORRECTIVE ACTION;
IF SUBJECT COMPLIES, PROCEEDINGS END

IF PROBABLE VIOLATION MAY WARRANT
SANCTIONS, OR IF SUBJECT DOES NOT
UNDERTAKE RECOMMENDED CORRECTIVE
ACTION

FORMAL CHARGE ISSUED; PUBLIC
DOCUMENT SENT TO COMPLAINANT
& SUBJECT

SUBJECT ADMITS
ALLEGATIONS OF
CHARGE

SUBJECT DENIES SOME OR ALL
ALLEGATIONS OF CHARGE

MEETING OF COMMITTEE
TO DETERMINE SANCTIONS
(CONFIDENTIAL)

PUBLIC HEARING
(DELIBERATIONS
CONFIDENTIAL)

IF ALLEGATIONS NOT
PROVEN, COMPLAINT
DISMISSED; COMMITTEE
MAY ISSUE PUBLIC
DECISION EXPLAINING
DISMISSAL

ALLEGATIONS PROVEN

FINAL DISPOSITION; IF
SANCTIONS FOUND WARRANTED,
RECOMMENDATIONS SENT TO
SENATE PRESIDENT, HOUSE
SPEAKER OR LAA EXEC. DIRECTOR.
RECOMMENDATIONS ARE PUBLIC.

NOTE: IF COMPLAINT IS AGAINST LEGISLATIVE EMPLOYEE, AND EMPLOYEE
QUITS, COMPLAINT IS DISMISSED AT ANY STAGE. IF COMPLAINT IS
AGAINST FORMER LEGISLATOR, OR IS AGAINST LEGISLATOR WHO QUILTS
OR WHOSE TERM EXPIRES (AND IS NOT RE-ELECTED), COMMITTEE MAY
AT ITS DISCRETION DISMISS COMPLAINT.

§ 101. Restrictions on appointment of relatives; nepotism.

Sometimes, constitutional provisions²⁷ or statutes²⁸ are aimed against nepotism in the appointment of public officers. They prohibit the appointment of persons who are related, within a prescribed degree, to the appointing officer or his associates in office,²⁹ and provide checks against appointments of this character, such as making it a penal offense to appoint relatives in violation of the prohibition,³⁰ or to pay the salary or compensation of the appointed relative.³¹ Moreover, it is sometimes provided that the officer making an appointment in violation of the prohibition must forfeit his office.³² Antinepotism provisions are sometimes by their express terms made applicable to counties, districts, cities, or other political subdivisions of the state.³³ It is not permissible under nepotism acts for certain members of a board, acting without the concurrence of a third member, to appoint to office a person related within the prohibited degree to such third member.³⁴

§ 102. —Validity.

The courts have generally recognized or assumed that legislation may be legitimately aimed at discouraging, minimizing, or eliminating the practice of nepotism in the public service, as a proper exercise of the police power.³⁵ Thus, challenges to the validity of such laws have usually focused on the particular manner in which their objective was sought to be achieved, or on a particular effect. Such challenges have been predicated upon federal and state constitutional guaranties of due process,³⁶ including contentions that constitutional or statutory provisions are impermissibly vague,³⁷ and equal protection,³⁸ as well as upon other grounds, including other state constitutional and statutory provisions,³⁹ the Ninth Amendment right to privacy,⁴⁰ and the privi-

27. State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099.

28. Barton v Alexander, 27 Idaho 286, 148 P 471.

29. State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099.

30. Barton v Alexander, 27 Idaho 286, 148 P 471.

31. § 482.

Annotation: 11 ALR4th 826.

32. Barton v Alexander, 27 Idaho 286, 148 P 471.

33. State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099.

34. Barton v Alexander, 27 Idaho 286, 148 P 471.

35. Backman v Bateman, 1 Utah 2d 153, 263 P2d 561.

Annotation: 11 ALR4th 826, 838, § 3[b].

36. Lewis v Spencer (CA5 Tex) 468 F2d 553, *conformed to* (SD Tex) 369 F Supp 1219, *aff'd* (CA5 Tex) 490 F2d 93; Rosenstock v Scaringe (3d Dept) 54 App Div 2d 779, 387 NYS2d 716, *aff'd* 40 NY2d 563, 388 NYS2d 876, 357 NE2d 347; State ex rel. Hamby v Cummings, 166 Tenn 460, 63 SW2d 515; Backman v Bateman, 1 Utah 2d 153, 263 P2d 561.

Annotation: 11 ALR4th 826, 836 § 3.

37. Espinoza v Thoma (CA8 Neb) 580 F2d 346, 17 BNA FEP Cas 1362, 17 CCH EPD ¶ 8500; Bailey v Turner, 108 Kan 856, 197 P 214; State ex rel. Roberts v Buckley (Mo) 333 SW2d 551.

Annotation: 11 ALR4th 826, 838, § 4.

38. Espinoza v Thoma (CA8 Neb) 580 F2d 346, 17 BNA FEP Cas 1362, 17 CCH EPD ¶ 8500; Keckeisen v Independent School Dist. (CA8 Minn) 509 F2d 1062, *cert den* 423 US 833, 46 L Ed 2d 51, 96 S Ct 57; Bradford v Hammond, 179 Ga 40, 175 SE 18; Winrick v Warren, 99 Mich App 770, 299 NW2d 27; Rosenstock v Scaringe (3d Dept) 54 App Div 2d 779, 387 NYS2d 716, *aff'd* 40 NY2d 563, 388 NYS2d 876, 357 NE2d 347; Opinion to House of Representatives, 80 RI 281, 96 A2d 623.

Annotation: 11 ALR4th 826, 840 § 5.

39. French v Board of Education, 54 Cal App 2d 148, 128 P2d 722; Bradford v Hammond, 179 Ga 40, 175 SE 18; Whateley v Leonia Bd. of Education, 141 NJ Super 476, 358 A2d 826, 12 CCH EPD ¶ 11029.

Annotation: 11 ALR4th 826, 843 § 6.

One court has held that if a nepotism law were construed so as to make an official guilty of a misdemeanor for acts done prior to the date of the enactment of the law, even though such acts were not crimes at the time they were

leges and immunities clause of the Federal Constitution.⁴¹

While in most cases, the courts have upheld the validity of laws regulating nepotism in the public service, invalidity has been found where the law had the effect of depriving of employment a person who had been lawfully appointed prior to the occurrence of an alleged nepotism violation,⁴² where the law was considered to be a bill of attainder,⁴³ where it went further than was deemed reasonably necessary to accomplish its purpose,⁴⁴ and where it constituted special⁴⁵ or class legislation.⁴⁶

Where a law had the effect of penalizing persons who were first employed prior to its enactment,⁴⁷ or prior to appointment or election of a relative whose appointment was alleged to have triggered a nepotism violation,⁴⁸ notwithstanding that the first appointed relative had no control over the violation, due process problems have been recognized, though some courts have declined or failed to hold that such effect rendered a policy prohibiting nepotism invalid or unenforceable,⁴⁹ while in other cases, the courts have construed particular nepotism provisions so as not to apply to such situations.⁵⁰

§ 103.—Construction.

A task often confronted by courts has been that of identifying the classes of relatives to which a law aimed at nepotism in the public service applies. Typically, such an issue is presented when the law prohibits an official from employing a relative within a certain numerical degree, by consanguinity or affinity, but fails to indicate how such degree is to be computed. Many courts have elected to use the so-called "civil-law" method, whereby, in general, one counts, beginning with one of the relatives, one degree for each level of the genealogical chart up to the common ancestor, and then one degree for each level downward until the other relative is reached.⁵¹ Statutes may, of course,

done, the law would be absolutely void for attempting to make an act a crime when it was not a crime at the time the act was performed, in violation of a prohibition against ex post factor laws contained in both the state and federal constitution. *Barton v Alexander*, 27 Idaho 286, 148 P 471.

40. *Keckeisen v Independent School Dist.* (CA8 Minn) 509 F2d 1052, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57.

Annotation: 11 ALR4th 826, 843 § 6[a].

41. Opinion to House of Representatives, 80 RI 281, 96 A2d 623.

Annotation: 11 ALR4th 826, 845 § 6[b].

42. *Backman v Bateman*, 1 Utah 2d 153, 263 P2d 561.

Annotation: 11 ALR4th 826, 837 § 3[b].

43. Opinion to House of Representatives, 80 RI 281, 92 A2d 623.

Annotation: 11 ALR4th 826, 845 § 6[b].

44. *Bretz v Center Line*, 88 Mich App 451, 276 NW2d 617.

Annotation: 11 ALR4th 826, 842 § 5[b].

45. *Bradford v Hammond*, 179 Ga 40, 175 SE 18.

Annotation: 11 ALR4th 826, 845 § 6[b].

46. Opinion to House of Representatives, 80 RI 281, 96 A2d 623.

Annotation: 11 ALR4th 826, 842 § 5[b].

47. *Backman v Bateman*, 1 Utah 2d 153, 263 P2d 561.

Annotation: 11 ALR4th 826, 837 § 3[b].

48. *Hinek v Bowman Public School Dist.* (ND) 232 NW2d 72.

Annotation: 11 ALR4th 826, 837 § 3[b].

49. *Lewis v Spencer* (CA5 Tex) 468 F2d 553, affirmed to (SD Tex) 369 F Supp 1219, aff'd (CA5 Tex) 490 F2d 93.

Annotation: 11 ALR4th 826, 836 § 3[a].

50. *State ex rel. Stephens v Fletchall* (Mo) 412 SW2d 423; *New Mexico State Bd. of Education v Board of Education*, 95 NM 588, 624 P2d 530; *Hinek v Bowman Public School Dist.* (ND) 232 NW2d 72.

Annotation: 11 ALR4th 826, 853 § 10[b].

51. Opinion of Justices, 291 Ala 581, 285 So 2d 87; *Barton v Alexander*, 27 Idaho 286, 148 P 471; *Bailey v Turner*, 108 Kan 856, 197 P 214.

Annotation: 11 ALR4th 826, 856 § 12.

specifically provide for computation by the civil law method.⁵² Under the so-called "canon" or "common-law" method, which sometimes has been used, the computation begins with the common ancestor, counting one step for each level down the genealogical chart until reaching the relative who is the most remote from the common ancestor.⁵³ Although such definitions would technically fail to encompass as a relative one's spouse, in cases in which the issue has arisen, the spouse has been considered a relative within the nearest degree.⁵⁴ Moreover, interpretation of a "no-spouse" policy as including unmarried cohabitators living in an "espoused relationship" has been approved.⁵⁵ And where a nepotism law failed to specify any prohibited degree of relationship, the common-law rule pertaining to recusal of jurors, prohibiting relationships within the ninth degree according to the "civil-law" method, has been applied.⁵⁶

It should be noted that courts in many cases have applied a nepotism law to an appointee or employee who had been first employed prior to any alleged act of nepotism.⁵⁷ However, an employee may not be terminated pursuant to a nepotism statute upon the election of her father to the local supervising board where the terms of the statute relate only to the initial hiring of such employees.⁵⁸

Although it has been held that an anti-nepotism statute is penal in character and therefore to be strictly construed,⁵⁹ this common-law rule of construction has not been followed where the anti-nepotism statute itself makes the rule expressly inapplicable.⁶⁰

52. Where a statute provides for computation by the civil law method, it has been held that two men who lacked a common ancestor but who married sisters were brothers-in-law who were related to each other in the second degree. *State ex rel. Sumner v Denton (Miss)* 382 So 2d 461, 11 ALR4th 813.

53. *Holt v Watson*, 71 Ark 87, 71 SW 262.
Annotation: 11 ALR4th 826, 856 § 12.

54. *State ex rel. Norman v Ellis*, 325 Mo 154, 28 SW2d 363; *State ex rel. Hoagland v School Dist.*, 116 Mont 294, 151 P2d 168.

Annotation: 11 ALR4th 826, 859 § 13[a].

However, where a state nepotism law prohibited a school board member from participating in contract decisions pertaining to persons to whom such member was related as father or brother, mother or sister, a court has held that it did not apply to spouses; reasoning from the rule that the expression of one thing implies the exclusion of another, the court rejected the argument that the rationale of the nepotism law required extension of its restrictions to the husband and wife relationship, remarking that the legislature did not so provide; the court said that it was not its province to legislate but only to interpret and apply the provisions of a law, and that where the language of such provision was clear and free from ambiguity, there was nothing to interpret or construe. *Board of Education v Boal*, 104 Ohio St 482, 135 NE 540.

55. *Espinoza v Thoma (CA8 Neb)* 580 F2d 346, 17 BNA FEP Cas 1362, 17 CCH EPD ¶ 8500.

Annotation: 11 ALR4th 826, 860 § 13[b].

56. *Bailey v Turner*, 108 Kan 856, 197 P 214.

Annotation: 11 ALR4th 826, 856 § 12.

57. *Keckeisen v Independent School Dist. (CA8 Minn)* 509 F2d 1062, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57; *Lewis v Spencer (CA5 Tex)* 468 F2d 553, conformed to (SD Tex) 369 F Supp 1219, aff'd (CA5 Tex) 490 F2d 93; *Corbin v Special School Dist.*, 250 Ark 357, 465 SW2d 342; *Bailey v Turner*, 108 Kan 856, 197 P 214.

Annotation: 11 ALR4th 826, 850 § 10[a].

A tenured schoolteacher was properly denied re-employment under a nepotism statute providing that "no local school board shall employ or approve the employment of any person" within a prohibited degree of consanguinity or relationship to a local school board member, following the election of the teacher's father to the school board where the statute was not ambiguous, did not refer to re-employment as an exception, did not exempt tenured personnel from its provision and there was no evidence to indicate a legislative intent that the legislature had meant to so restrict the application of the statute. *Board of Education v Bryant (App)* 95 NM 620, 624 P2d 1017.

58. *New Mexico State Bd. of Education v Board of Education*, 95 NM 588, 624 P2d 530.

Annotation: 11 ALR4th 826, 853 § 10[b].

59. *Baillie v Medley (Fla App D3)* 262 So 2d 693, cause dismd (Fla) 279 So 2d 381.

60. *State ex rel. Kurth v Grinde*, 96 Mont 608, 32 P2d 15.

§ 104. —Effect.

Courts have on various occasions considered whether, where a public official did not act alone in appointing a relative to a public position and the law did not specifically indicate the effect of such joint action, the official's participation in employing or appointing his relative was sufficient to be a violation of the law. Such cases have been decided both with respect to a particular provision and with respect to a particular set of facts, with some cases holding that the official's participation was sufficient to establish a violation,⁶¹ and other cases holding it was not.⁶² In cases involving the effect of laws prohibiting nepotism, courts have determined that an appointing official was⁶³ or was not⁶⁴ required to be removed from office, or was⁶⁵ or was not⁶⁶ burdened with other sanctions. In such cases, courts have determined that an appointee or employee was⁶⁷ or was not⁶⁸ entitled to assume or to be reinstated to his position, or was⁶⁹ or was not⁷⁰ allowed to recover compensation. The results reached by the courts have depended upon such considerations as their

61. State ex rel. Graham v Hurley (Mo) 540 SW2d 20; State ex rel. Roberts v Buckley (Mo) 533 SW2d 551; State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099; State v Raedecker, 158 Okla 248, 13 P2d 148.

Annotation: 11 ALR4th 826, 860, 864 §§ 14[a], 15[a].

62. State ex rel. McKittrick v Becker, 336 Mo 815, 81 SW2d 948; State ex rel. Kurth v Grinde, 96 Mont 608, 32 P2d 15; Board of Education v Boal, 104 Ohio St 482, 135 NE 540; State ex rel. Hale v O'Meara (Tex Civ App) 74 SW2d 146.

Annotation: 11 ALR4th 826, 864, 867, 875 §§ 14[b], 16[a], 17[a].

63. Commonwealth ex rel. Stephens v Stephenson (Ky App) 574 SW2d 328; State ex rel. Roberts v Buckley (Mo) 533 SW2d 551; White v Gainer, 112 W Va 221, 164 SE 247.

Annotation: 11 ALR4th 826, 860 § 14[a].

Judge who voted for appointment of his son-in-law as director of county court's ambulance service was liable to ouster for having violated constitutional provision prohibiting nepotism even though his vote was not crucial in outcome. State ex rel. Graham v Hurley (Mo) 540 SW2d 20.

64. State ex rel. Hale v O'Meara (Tex Civ App) 74 SW2d 146.

Annotation: 11 ALR4th 826, 864 § 14[b].

Where worker had been employed in public service as bulldozer operator long prior to his brother's assumption of office of judge, nepotism law did not apply. State ex rel. Stephens v Fletchall (Mo) 412 SW2d 423.

65. State ex rel. Summer v Denton (Miss) 382 So 2d 461, 11 ALR4th 813; State v Raedecker, 158 Okla 248, 13 P2d 148.

Annotation: 11 ALR4th 826, 864 § 15[a].

66. Ex parte Rogers, 56 Idaho 521, 57 P2d

342; State ex rel. Summer v Denton (Miss) 382 So 2d 461, 11 ALR4th 813; Wayne County v Steele, 121 Neb 438, 237 NW 288; State v Raedecker, 158 Okla 248, 13 P2d 148.

Annotation: 11 ALR4th 826, 865 § 15[b].

67. Neal v Bethea, 158 Ark 403, 250 SW 336; State ex rel. Robinson v Keefe, 111 Fla 701, 149 So 638; State ex rel. McKittrick v Becker, 336 Mo 815, 81 SW2d 948; State ex rel. Kurth v Grinde, 96 Mont 608, 32 P2d 15; Hinek v Bowman Public School Dist. (ND) 232 NW2d 72.

Annotation: 11 ALR4th 826, 867 § 16[a].

68. Keckeisen v Independent School Dist. (CA8 Minn) 509 F2d 1062, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57; Lewis v Spencer (CA5 Tex) 468 F2d 553, conformed to (SD Tex) 369 F Supp 1219, affd (CA5 Tex) 490 F2d 93; Corbin v Special School Dist., 250 Ark 357, 465 SW2d 342; French v Board of Education, 54 Cal App 2d 148, 128 P2d 722; Whateley v Leonia Bd. of Education, 141 NJ Super 476, 358 A2d 826, 12 CCH EPD ¶ 11029; Rosenstock v Scaringe (3d Dept) 54 App Div 2d 779, 387 NYS2d 716, affd 40 NY2d 563, 388 NYS2d 876, 357 NE2d 347.

Annotation: 11 ALR4th 826, 870 § 16[b].

69. Garrison v Sumners, 24 Ala App 281, 134 So 672; Graham County v Buhl, 76 Ariz 275, 263 P2d 537; Brewer v Howell, 227 Ark 517, 299 SW2d 851; Board of Education v Boal, 104 Ohio St 482, 135 NE 540; State ex rel. Hamby v Cummings, 166 Tenn 460, 63 SW2d 515.

Annotation: 11 ALR4th 826, 875 § 17[a].

70. Corbin v Special School Dist., 250 Ark 357, 465 SW2d 342; Bailey v Turner, 108 Kan 856, 197 P 214; State ex rel. Hoagland v School Dist., 116 Mont 294, 151 P2d 168; Fairless v Cameron County Water Imp. Dist. (Tex Civ App) 25 SW2d 651.

Annotation: 11 ALR4th 826, 878 § 17[b].

determination whether the applicable nepotism law was constitutional,⁷¹ whether its prohibitory provisions were applicable to the particular appointing official⁷² or appointee⁷³ or employee⁷⁴ involved, as well as whether the circumstances of the case, including, for example, the extent of participation of the appointing official in the act of nepotism,⁷⁵ did⁷⁶ or did not⁷⁷ establish a violation of the applicable nepotism law.

In a number of other cases, courts have refused, when confronted with an appointment or employment violating a nepotism law, to declare invalid the official acts of the appointee,⁷⁸ or to preclude an employee from maintaining a common-law action against his employer for damages for personal injury.⁷⁹

§ 105. Appointments made beyond term of appointer; prospective appointments.

A public officer or board holding over under a constitutional or statutory provision empowering public officers to hold, or discharge the duties of, the office until a successor has been elected and appointed and qualified, may validly make an appointment that will immediately take effect, notwithstanding that the appointing officer or board's own term of office has expired.⁸⁰ It has been held or recognized that a public officer, or public body, having a power of appointment may validly make a prospective appointment to fill a vacancy sure to occur in a public office where the appointing officer, or the board as then constituted, is empowered to fill the vacancy when it actually occurs, in

71. State ex rel. Hamby v Cummings, 166 Tenn 460, 63 SW2d 515.

Annotation: 11 ALR4th 826, 875 § 17[a].

A state constitutional provision that any public officer or employee who named or appointed to public office or employment any relative within fourth degree whether by blood or by marriage should forfeit his office was not impermissibly vague. State ex rel. Roberts v Buckley (Mo) 533 SW2d 551.

A city charter provision that no two or more persons who were related within second degree of consanguinity or affinity should be employed within same department of city was held not to violate state and federal constitutional guaranties of equal protection. Winrick v Warren, 99 Mich App 770, 299 NW2d 27.

72. Ex parte Rogers, 56 Idaho 521, 57 P2d 342.

Annotation: 11 ALR4th 826, 865 § 15[b].

73. Bailev v Turner, 108 Kan 856, 197 P 214; Perry Township School Dist. v Martin, 43 Pa Co 434.

Annotation: 11 ALR4th 826, 867, 878 §§ 16[a], 17[b].

State antinepotism law which by its terms was applicable to any "city official or his appointee," was not applicable to town officials or their appointees. Baillie v Medley (Fla App D3) 262 So 2d 693, cause dismd (Fla) 279 So 2d 881.

74. State ex rel. Robinson v Keefe, 111 Fla 701, 149 So 639; Hilbert v Conlon, 40 Pa Co 281.

Annotation: 11 ALR4th 826, 867 § 16[a].

75. State ex rel. Roberts v Buckley (Mo) 533 SW2d 551; State ex rel. McKittrick v Whittle, 333 Mo 705, 63 SW2d 100, 88 ALR 1099.

Annotation: 11 ALR4th 826, 860, § 14[a].

76. Keckeisen v Independent School Dist. (CA8 Minn) 509 F2d 1062, cert den 423 US 833, 46 L Ed 2d 51, 96 S Ct 57; Brewer v Howell, 227 Ark 517, 299 SW2d 851; Commonwealth ex rel. Stephens v Stephenson (Ky App) 574 SW2d 328; State ex rel. Graham v Hurley (Mo) 540 SW2d 20; White v Gainer, 112 W Va 221, 164 SE 247.

Annotation: 11 ALR4th 826, 860, 870 §§ 14[a], 16[b].

77. State ex rel. Stephens v Fletchall (Mo) 412 SW2d 423; State ex rel. Kurth v Grinde, 96 Mont 608, 32 P2d 15; Hinek v Bowman Public School Dist. (ND) 232 NW2d 72; State ex rel. Hale v O'Meara (Tex Civ App) 74 SW2d 146.

Annotation: 11 ALR4th 826, 864, 867 §§ 14[b], 16[a].

78. Jackson v Maypearl Independent School Dist. (Tex Civ App Waco) 392 SW2d 892.

Annotation: 11 ALR4th 826, 879 § 18.

79. Hallett v Stephens, 125 Okla 157, 256 P 921.

Annotation: 11 ALR4th 826, 879 § 18.

80. Tappv v State (Fla) 82 So 2d 161.

Annotation: 75 ALR2d 1277, 1280 § 2[a].