

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5923 HOUSE LABOR & COMMERCE

327

HB

434

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 22, 1990

FURTHER REFERRALS: STATE AFFAIRS
JUDICIARY

Date of Committee Action: 3/06/90

The LABOR & COMMERCE Committee considered:

HB 434

HOUSE BILL NO. 434

WORK RESTRICTIONS/CERTAIN STATE EMPLOYEES

"An Act establishing certain restrictions on certain state employees before, during, and after state service."

RECOMMENDATIONS:

- be replaced with CSHB 434 (L+C) [] the same title
- have attached amendment(s) [] a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): (Dept) **APPROVES PREVIOUS:** (Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note C+ED zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

<u>Mark Boyer</u> Boyer	<u>Wren A. Leman</u> Leman		
<u>Paul Finkelstein</u> Finkelstein			
<u>Paul Boucher</u> Boucher			
<u>Mark Greenberg</u> Greenberg			
<u>David Donley</u> Donley			

David Donley
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Establishing certain restric-
tions . . . certain state employees
 Sponsor: House Labor & Commerce
 Requestor: House Labor & Commerce

Agency Affected: Commerce & Economic Dev.
 BRU: Insurance
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact for FY 90.

Prepared by: David J. Walsh, Director Phone: 465-2515
 Division: Insurance Date: 3/7/90

Approved by Commissioner: Larry Mercurieff Date: 3/7/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

6-1584E
Bannister
3/9/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 434 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing certain restrictions on insur-
7 ance directors and acting directors before, during,
8 and after state service."

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

10 * Section 1. AS 39.52 is amended by adding a new section to read:

11 Sec. 39.52.175. RESTRICTIONS ON INSURANCE DIRECTOR. (a) A
12 person may not hold the position of director or acting director of the
13 division of insurance in the Department of Commerce and Economic
14 Development if at any time during the preceding year the person has
15 owned and controlled stock or other equity interest

16 (1) in an insurer or insurance brokerage if the value of
17 the stock or equity interest was over \$5,000; or

18 (2) in a mutual fund if more than five percent of the stock
19 or other equity interests that constitute the fund are stock or other
20 equity interests in insurers or insurance brokerages.

21 (b) While holding the position, the director or acting director
22 of the division of insurance may not knowingly own and control stock
23 or other equity interest

24 (1) in an insurer or an insurance broker if the value of
25 the stock or equity interest is over \$5,000; or

26 (2) in a mutual fund in which more than five percent of the
27 stock or other equity interests that comprise the fund are stock or
28 other equity interests in insurers or insurance brokerages.

29 (c) For one year after leaving the position a former director or

1 acting director of the division of insurance may not knowingly own and
2 control stock or other equity interest

3 (1) in an insurer or insurance brokerage if the value of
4 the stock or equity interest is over \$5,000; or

5 (2) in a mutual fund if more than five percent of the stock
6 or other equity interests that constitute the fund are stock or other
7 equity interests in insurers or insurance brokerages.

8 * Sec. 2. APPLICATION. (a) AS 39.52.175(a), as enacted by sec. 1 of
9 this Act, applies to a person who assumes the position of director or
10 acting director of the division of insurance on or after the effective date
11 of this Act.

12 (b) AS 39.52.175(c), as enacted by sec. 1 of this Act, applies to a
13 person who leaves the position of director or acting director of the divi-
14 sion of insurance on or after the effective date of this Act.

*Expand to include
brokers
+ \$5000 cap on
unit fund*

6-1584E
Bannister
3/5/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 434 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing certain restrictions on certain
7 state employees before, during, and after state
8 service."

*amend to
be just Ins. director*

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12 person may not hold the position of director or acting director of the
13 division of insurance in the Department of Commerce and Economic
14 Development if at any time during the preceding year the person has
15 owned and controlled stock or other equity interest in an insurer.†

16 (b) While holding the position, the director or acting director
17 of the division of insurance may not own and control stock or other
18 equity interest in an insurer.

19 ~~X~~ (c) For one year after leaving the position a former director or
20 acting director of the division of insurance may not own and control
21 stock or other equity interest in an insurer.

22 * Sec. 2. APPLICATION. (a) AS 39.52.175(a), as enacted by sec. 1 of
23 this Act, applies to a person who assumes the position of director or
24 acting director of the division of insurance on or after the effective date
25 of this Act.

26 (b) AS 39.52.175(c), as enacted by sec. 1 of this Act, applies to a
27 person who leaves the position of director or acting director of the divi-
28 sion of insurance on or after the effective date of this Act.

6-1584A
Bannister
1/18/90

BY REP. DONLEY

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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11 Sec. 39.52.175. RESTRICTIONS ON INSURANCE DIRECTOR. (a) A
12 person may not hold the position of director of the division of insur-
13 ance in the Department of Commerce and Economic Development if at any
14 time during the preceding year the person has owned stock or other
15 equity interest in an insurer.

16 (b) While holding the position, the director of the division of
17 insurance may not own stock or other equity interest in an insurer.

18 (c) For one year after leaving the position a former director of
19 the division of insurance may not own stock or other equity interest
20 in an insurer.

21 * Sec. 2. AS 39.52.180 is amended by adding a new subsection to read:

22 (d) A person may not become a lobbyist for at least two years
23 after leaving the state office if the person served as commissioner or
24 deputy commissioner of a department in the executive branch, or direc-
25 tor of a division within a department of the executive branch. For
26 purposes of this subsection, "lobbyist" has the meaning given in
27 AS 24.45.171.

28 * Sec. 3. AS 39.90 is amended by adding a new section to read:

29 Sec. 39.90.030. RESTRICTION ON EMPLOYMENT AND CONTRACTS AFTER

1 LEAVING STATE SERVICE. (a) In addition to any other provision of
2 law, for one year after leaving state service, an employee of a state
3 agency may not be employed by or work under contract for a person who
4 was awarded a contract with the state during the employee's state
5 service, if the employee was directly involved in the state's procure-
6 ment procedures that resulted in the contract. In this subsection,
7 "state agency" means a department, institution, board, commission,
8 division, authority, public corporation, or other administrative unit
9 of the executive or judicial branch, and includes the University of
10 Alaska and the Alaska State Housing Authority.

11 (b) A person who violates this section subject to a civil
12 penalty not to exceed \$5,000 for each violation. A penalty imposed
13 under this section is in addition to and not instead of other penal-
14 ties that may be imposed according to law, including criminal penal-
15 ties.

16 * Sec. 4. APPLICATION. (a) AS 39.52.175(a), as enacted by sec. 1 of
17 this Act, applies to a person who assumes the position of director of the
18 division of insurance on or after the effective date of this Act.

19 (b) AS 39.52.175(c), as enacted by sec. 1 of this Act, applies to a
20 person who leaves the position of director of the division of insurance on
21 or after the effective date of this Act.

22 (c) AS 39.52.180(d), as enacted by sec. 2 of this Act, applies to a
23 person who leaves the position of commissioner or deputy commissioner of a
24 department in the executive branch, or director of a division within a
25 department of the executive branch, on or after the effective date of this
26 Act.

27 (d) AS 39.90.030, as enacted by sec. 3 of this Act, applies to state
28 agency employees who leave state service on or after the effective date of
29 this Act.



Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: November 28, 1989

PLACE: Groundfloor Conf. Rm.
Anchorage LIO

SUBJECT OF MEETING:
HB 309 - Amendments to Alaska's Landlord/
Tenant Act
HB 355 - Uniform Premium Tax
Proposed Legislation - "Revolving Door"
" " - "Auto Insurance Issues"

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Alice Brewer	ALPMA	1201 W. 45 th Ave	99503	563-6734	<i>None</i>	<input checked="" type="radio"/>	N HB 309
Robert Hickerson	ALSC	1016 W. 6th Ave, Ste 200	99503	272-7170	2166252	<input checked="" type="radio"/>	N HB 309
EUGENE DEVINE	ALPMA	2115 TURNAGAIN PKWY	99517	248-0158	279-6471	<input checked="" type="radio"/>	N HB 309
Jerry Lee Gottschalk	-	P.O. BOX 152628	99510	338-1127	338-0627	<input checked="" type="radio"/>	N HB 309
CHARLES LIPPI TT	-	2203 MAHINLEY AVE		248-4770		<input checked="" type="radio"/>	N " "
						<input type="radio"/>	N
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						<input type="radio"/>	N
						<input type="radio"/>	N
						<input type="radio"/>	N
						<input type="radio"/>	N

9:10 AM
9:25 AM
10:00 AM
10:10 AM
10:30 AM

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. BOYER

TO: CSHB 434 (L&C) (draft 6-1584E, dated 2-13-90)

Page 1, line 22:

Delete "a new subsection"

Insert "new subsections"

Page 1, lines 23 - 29:

Delete all material

Insert the following new subsection.. to read:

"(d) A person may not become a lobbyist for at least two years after leaving a state position

(1) in the executive branch with a salary level of Range 21 or higher, as determined under AS 39.27.011;

(2) as commissioner, acting commissioner, deputy commissioner, or acting deputy commissioner of a department in the executive branch;

(3) as a special assistant to a commissioner or acting commissioner in a department of the executive branch;

(4) as a special staff assistant or legislative staff assistant in the Office of the Governor; or

(5) as a director or acting director of a division within a department of the executive branch or within the office of management and budget in the Office of the Governor.

(e) In (d) of this section, "lobbyist" has the meaning given in AS 24.45.171."

Page 2, line 28, following "who", through page 3, line 3:

Delete all material and insert:

", on or after the effective date of this Act, leaves a position

(1) in the executive branch with a salary level of Range 21 or higher, as determined under AS 39.27.011;

(2) as commissioner, acting commissioner, deputy commissioner, or acting deputy commissioner of a department in the executive branch;

(3) as a special assistant to a commissioner or acting commissioner in a department of the executive branch;

(4) as a staff assistant in the Office of the Governor;

(5) as a director or acting director of a division within a department of the executive branch or within the office of management and budget in the Office of the Governor."

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 434 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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12 person may not hold the position of director or acting director of the
13 division of insurance in the Department of Commerce and Economic
14 Development if at any time during the preceding year the person has
15 owned and controlled stock or other equity interest in an insurer.

16 (b) While holding the position, the director or acting director
17 of the division of insurance may not own and control stock or other
18 equity interest in an insurer.

19 (c) For one year after leaving the position a former director or
20 acting director of the division of insurance may not own and control
21 stock or other equity interest in an insurer.

22 * Sec. 2. AS 39.52.180 is amended by adding a new subsection to read:

23 (d) A person may not become a lobbyist for at least two years
24 after leaving the state office if the person served as commissioner,
25 acting commissioner, deputy commissioner, or acting deputy commission-
26 er of a department in the executive branch, or director or acting
27 director of a division within a department of the executive branch.
28 For purposes of this subsection, "lobbyist" has the meaning given in
29 AS 24.45.171.

* Sec. 3. AS 39.90 is amended by adding a new section to read:

2 Sec. 39.90.030. RESTRICTION ON EMPLOYMENT AND CONTRACTS AFTER
3 LEAVING STATE SERVICE. (a) In addition to any other provision of
4 law, for one year after leaving state service, an employee of a state
5 agency may not be employed by or work under contract for a person who
6 was awarded a contract with the state during the employee's state
7 service, if the employee was directly, personally, or substantially
8 involved in the state's procurement procedures that resulted in or
9 contributed to the award of the contract. In this subsection, "state
10 agency" means a department, institution, board, commission, division,
11 authority, public corporation, or other administrative unit of the
12 executive or judicial branch, and includes the University of Alaska
13 and the Alaska State Housing Authority.

14 (b) A person who violates (a) of this section is subject to a
15 civil penalty not to exceed \$5,000 for each violation. A penalty
16 imposed under this subsection is in addition to and not instead of the
17 penalty that may be imposed under (c) of this section.

18 (c) A person who violates (a) of this section is guilty of a
19 class B misdemeanor.

20 * Sec. 4. APPLICATION. (a) AS 39.52.175(a), as enacted by sec. 1 of
21 this Act, applies to a person who assumes the position of director or
22 acting director of the division of insurance on or after the effective date
23 of this Act.

24 (b) AS 39.52.175(c), as enacted by sec. 1 of this Act, applies to a
25 person who leaves the position of director or acting director of the divi-
26 sion of insurance on or after the effective date of this Act.

27 (c) AS 39.52.180(d), as enacted by sec. 2 of this Act, applies to a
28 person who leaves the position of commissioner, acting commissioner, deputy
29 commissioner, or acting deputy commissioner of a department in the

1 executive branch, or director or acting director of a division within a
2 department of the executive branch, on or after the effective date of this
3 Act.

4 (d) AS 39.90.030, as enacted by sec. 3 of this Act, applies to state
5 agency employees who leave state service on or after the effective date of
6 this Act.
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FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Establishing certain restric-
tions . . . certain state employees
Sponsor: House Labor & Commerce
Requestor: House Labor & Commerce

Agency Affected: Commerce & Economic Dev.
BRU: Insurance
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact for FY 90.

Prepared by: James J. Jordan, Acting Director Phone: 465-2515
Division: Insurance Date: 1/30/90

Approved by Commissioner: Larry Mercurieff Date: 1/30/90
Agency: Department of Commerce & Economic Development

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

February 13, 1990

SUBJECT: Vagueness of language underlying criminal
provision (draft CSHB 434 (L&C))

TO: Representative Dave Donley
Chair, Labor & Commerce Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft that you requested of a
Labor and Commerce committee substitute for HB 434.

Please be aware that the addition of a criminal penalty to
sec. 3 of the draft subjects the section to stricter scrutiny.
Under this scrutiny the description of the prohibited
activity may be considered vague and may not survive constitutional
scrutiny under the due process provisions of the federal and state
constitutions. The problem is that the conduct to be prohibited
is not determined by sufficiently specific standards. The average
state employee may not have adequate notice of when the employee
is prohibited from working for a person after leaving state service.
The use of indefinite words like "directly" and "substantially",
and indefinite phrases such as "that resulted in or contributed
to the award of the contract" create a vagueness in the prohibition.
Vagueness would also give government officials too much discretion
in the enforcement of the provision, which could result in uneven
and discriminatory enforcement.

If you want to retain the criminal provision, I suggest re-
working the language so as to be very specific.

If I may be of further assistance, please advise.

TLB:pl
WKP2/038

HB434



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEER STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 6, 1990

House Labor & Commerce Committee
Alaska State Legislature
P. O. Box Y
Juneau, AK 99811

Attn: Chairman Dave Donley


Re: HB 434 "An Act establishing certain restrictions on certain state employees before, during, and after state service."

Dear Mr. Donley:

Although the court system agrees with the restrictions on employment for state employees set forth in Sec. 39.90.030 of this bill, the court system would prefer to restrict judicial branch employees' employment by court rule. Because the judicial branch has its own personnel rules that restrict the outside employment of current employees, enactment of Sec. 39.90.030 by court rule would enable the supreme court to maintain consistency in its personnel rules.

Thank you for this opportunity to comment on HB 434. Please call me if I can answer questions about the court system's position.

Sincerely,


Jan Strandberg
Staff Counsel

JS:gb

cc: Representative Gruenberg
Representative Boucher
Representative Boyer
Representative Spohnholz

HB 434: "An Act establishing certain restrictions on certain state employees before, during and after state service."

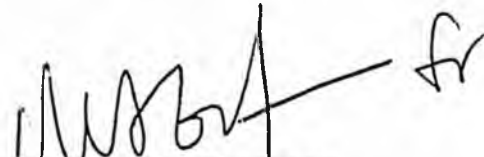
This department supports Section 1 of HB 434, if amended. The bill prohibits the Director of Insurance from holding equity ownership in an insurance company for one year before or after his or her tenure as Director. This appears to address the concern that the position not be subject to unreasonable influence or conflicts of interest potentially related to such holdings. It also addresses the "revolving door" concern.

While not covered by the proposal, similar concerns also exist for insurance agents, insurance brokers, insurance adjusters, insurance lobbyists, and attorneys with a significant insurance related practice.

An exception should be allowed for investments over which the Director has no exercise of control. Examples of this include IRA funds invested in a mutual fund which may contain insurance stock in its portfolio, or the PERS funds which could also contain such investments. To resolve this concern, we would recommend the addition of a new subsection on page 1, following line 21, to read:

"(d) As used in this section, 'stock or other equity interest' does not include investments over which the Director or Acting Director has no exercise of control."

The department takes no position on the remainder of the bill.



Larry Merchliëff, Commissioner
Date: 2/2/90

LM/LW/dg16235D
2290b

HB434

BOYKO, BREEZE & FLANSBURG
LAW OFFICES

EDGAR PAUL BOYKO
ROBERT A. BREEZE
RONALD D. FLANSBURG
ROBERT L. BRECKENRICH

OF COUNSEL:
JOHN W. BREEZE
MIGUEL EIRO
JON P. JOSEPHSON
J. JOO SHIN, PH.D.

FAX COVER SHEET

FOR: Linger
FIRM: Donnelly's office
FAX NO: (463) 5061
FROM: Judi
FIRM: BOYKO, BREEZE & FLANSBURG
FAX NO: (907) 279-8944
DATE: 1-25-90
3 PAGES TO FOLLOW
TITLE: _____

IF ANY PAGES ARE NOT RECEIVED, PLEASE CALL

(907) 279-1000

SPECIAL INSTRUCTIONS:

HOUSE BILL NO.
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing certain restrictions on certain state employees before, during, and after state service."

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(a) A person may not hold the position of director of the division of insurance in the Department of Commerce and Economic Development if at any time during the preceding year the person has owned stock or other equity interest in an insurer.

(b) While holding the position, the director of the division of insurance may not own stock or other equity interest in an insurer.

(c) For one year after leaving the position a former director of the division of insurance may not own stock or other equity interest in an insurer.

* Sec. 2. AS 39.90 is amended by adding a new section to read:

Sec. 39.90.030. RESTRICTION ON EMPLOYMENT AND CONTRACTS AFTER LEAVING STATE SERVICE. (a) In addition to any other provision of law, for ~~one~~ TWO years after leaving state service, a

public officer may not be employed by or work under contract for a person OR ENTITY who was awarded a contract with the state during the officer's state service, if the public officer was ~~directly~~ PERSONALLY AND SUBSTANTIALLY involved in the state's procurement procedures that resulted in OR CONTRIBUTED TO THE AWARD OF the contract. In this subsection, "public officer" means

(1) an employee of a state agency; in this paragraph "state agency" means a department, institution, board, commission, division, authority, public corporation, or other administrative unit of the executive, legislative, or judicial branch, and includes the University of Alaska and the Alaska State Housing Authority;

(2) a legislator; and

(3) a member of a state board or commission.

(b) A person who violates this section is subject to a civil penalty not to exceed \$5,000 for each violation. A penalty imposed under this section is in addition to and not instead of other penalties that may be imposed according to law, including criminal penalties.

(c) A violation of this section is a Class A misdemeanor.

* Sec. 3. APPLICATION. (a) AS 39.52.175(a), as enacted by sec. 1 of this Act, applied to a person who assumes the position of director of the division of insurance on or after the effective date of this Act.

(b) AS 39.52.175(c), as enacted by sec. 1 of this Act, applied to a person who leaves the position of director of the division of insurance on or after the effective date of this Act.

(c) AS 39.90.030, as enacted by sec. 2 of this Act, applies to public officers who leave state service on or after the effective date of this Act.

HB434

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



September 26, 1989

Jim Jordan, Acting Director
Division of Insurance - DCED
3501 C Street, Suite 722
Anchorage, Alaska 99503

Dear Mr. Jordan:

As per your conversation with Ginger Baim last week, enclosed is material and draft legislation on various insurance issues from Robert Hunter at the National Insurance Consumer Organization (NICO).

The House Labor and Commerce Committee will consider introduction of some of the suggested legislation and I'd like your response and comments as to whether they are workable and appropriate for Alaska. Specific legislation we will likely pursue includes:

1. Disclosure - I've requested a draft bill mandating insurer disclosure as described in pages 6 and 7 of the enclosed material. What information would the Division have if these disclosure statutes were enacted that we do not have now? Do you have any suggestions that would make these reporting requirements easier for insurers to comply with and easier for the Division to assimilate? Do you believe that the additional information will be useful enough to justify the increased paperwork requirements on both the insurers and the Division?
2. Require experience rating - I'd appreciate your specific suggestions as to how legislation mandating that all professional and commercial risks in Alaska be experience rated should be drafted.
3. Require risk management - It seems both appropriate and necessary that we require insurance purchasers and self insureds to set up risk management programs. Can you shed some light on the reasons why Alaska statutes don't already mandate risk management programs and how we can go about drafting legislation to accomplish it?
4. Allocation of medical malpractice costs - I'm particularly interested in legislation that would limit the number of "categories" insurance companies can set for physicians licensed in the state for the purposes of setting malpractice insurance rates to no more than four (see enclosed exhibit N1). What, if any, pitfalls do you see in this approach?
5. Closing the "revolving door" - I've requested draft legislation addressing the "revolving door" issue for all state employees with

specific language that would prohibit the director of the Division of Insurance from holding any stock or equity ownership in an insurance company for one year before and after employment with the state. Comments please?

Your immediate review of the enclosed material and response to this inquiry is needed in order to have legislation drafted and ready to go for Committee consideration early in the session. I have requested Legislative Legal Services to prepare draft legislation on the above issues after further consultation with you and your staff.

In addition, and at your leisure (ha!), I'd like your comments and suggestions on the following issues: permitting banks to act as insurers, establishing interstate insurance compacts, any amendments to existing statutes that may be needed to protect consumers from arbitrary cancellations, establishing JUA's, and prohibiting the "pass through" of lobbying and other non-appropriate expenses.

Thanks for your attention to this request. I look forward to your earliest response.

Sincerely,

Representative Dave Donley, Chair
House Labor and Commerce Committee

PS: Welcome aboard!

Enclosure

dd/gbi89
c/jordan

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

7th FLOOR FRONTIER BLDG.
3601 C STREET, SUITE 740
ANCHORAGE, ALASKA 99503-5934
PHONE: (907) 562-3626

DIVISION OF INSURANCE

November 22, 1989

Honorable Dave Donley
Chair, House Labor and Commerce Committee
State of Alaska
House of Representation
P. O. Box Y
Juneau, AK 99811

Dear Representative Donley:

This letter is to respond to your letter dated September 26, 1989 in which you requested my comments on a number of topics for which legislation is being contemplated. I will respond to those topics as identified in your letter.

1. Disclosure

The need for more and better data is well recognized by all. The data collected needs to be "fit" to the particular purpose for which it is collected. Those purposes include insurer solvency analysis, rate approval/disapproval, market conduct (eg - unfair claim settlement practices enforcement, availability and affordability analysis, and analysis of the expected outcomes related to legislative proposals).

Generally, the information developed by the disclosure proposed by the National Insurance Consumer Organization (NICO) will not provide meaningful information to the Division of Insurance nor to the Legislature on a macro economic scale. The basic reasons for this relate to the statistical credibility of the data. We could not practically require that the surplus lines insurers report such data (Alaska has significant amount of coverage categorized by NICO as "other liability" placed in this marketplace). Additionally, large self-insurers (eg. State of Alaska, Municipality of Anchorage) would not have its data in this data base. Finally, due to the small size of our population relative to the United States as a whole, the frequency of loss will be low, and with the dollar amounts of claims being subject to a great degree of variance, the data will be statistically questionable.

Certain items identified on pages 6 and 7 of the material included with your letter would be informative and useful. Specifically items 2, 3, 4, 6, 7, 9 and 10 would be informative. However, those items would only be of use if collected nationally by all states. The appropriate mechanism for accomplishing the collection of this data would be through amendments to the annual financial statement format as developed by the National Association of Insurance Commissioners (NAIC). (Alaska Statute 21.09.200 requires the filing with the Division of an annual financial statement by all licensed insurers in a format in current use generally throughout the various states. The format accepted in Alaska has generally been that adopted by the NAIC.) Attached as Exhibit 1 is a recent letter (and attachments) from NAIC president, David Gates (Nevada's Insurance Commissioner) to National Association of Attorney General (NAAG). This letter responded to NAAG's suggested data reporting recommendations. As you can see this is a detailed analysis involving the data collection spectrum which includes comment on items similar to those in NICO's recommendation. Exhibit 1 also identifies the information that is currently available to the Division. Data submission on a nationally uniform basis is imperative. Otherwise, comparisons with other jurisdictions would be difficult, if not impossible; and the cost implications to the insurers (and ultimately to the insurance consumer) and to the division would provide for adverse consequences. Such adverse consequences would embrace the willingness of insurers to participate in Alaska's insurance marketplace and for the Division to conduct meaningful analysis with limited and, in some instances, absent resources.

Therefore, I would suggest that we work toward adopting the various NAIC model laws and regulations pertaining to the various data collection and reporting schemes in conjunction with the various states. Furthermore, I would suggest that periodic closed claim studies be performed with the data elements being specifically tailored to the line, class, and subclass of coverage. Problem classes or subclasses could be targeted for such studies. The data would come from the information collected by the Division appointed examiners and therefore would also be audited data as contrasted to data coming from required submissions from insurers which would need to be audited to assure that the information is valid. Such studies would help to target problem areas and would provide the basis for analysis of any proposed legislative changes (eg - worker's compensation benefit configuration or various "tort reforms"). Such studies would need to be performed as a contractual basis due to limited Division staff resources.

As the insurance industry either abandons or is forced out of the advisory rate system, each insurer must develop its own rates. Each licensed insurer subject to our prior approval rate law (AS 21.39) will have to support its rates in terms of its loss experience, profit margins, and expenses. The NAIC is currently considering a new model rating law which I expect to be adopted in December of this year. Attached as Exhibit 2 is the most current version of the proposed model. If enacted by Alaska, this law would provide for the meaningful disclosure of data necessary for appropriate regulatory rate analysis. However, the Division will need sufficient resources to appropriately analyze this data such as actuaries and other rate analysts. The Insurance Services Office (ISO) as of January 1, 1990, voluntarily, will no longer file fully developed rates for its member and subscriber insurance companies. It will file only aggregated loss data and each member and subscriber insurer will need to file its own fully developed rates including its own margins for expenses, profit margins, and justification for its own

loss experience being reflective or not reflective of the aggregated loss experience filed by ISO. The impact in the number of rate filings requiring detailed review by the Division is dramatic. The number of rate filings received currently is approximately 50 and has been estimated to increase to as many as 2,000 per year. I believe this serves to underscore the need for additional Division staff in the form of a qualified actuary and rate analysts.

The examinations done of NCCI and the leading Alaska writers of automobile and homeowner's coverage are completed. I am currently awaiting the examination reports (other than for NCCI which has been delivered and is expected to become a public document in early December). These examinations will, I believe, provide direction concerning these areas in which enhanced data collection efforts are needed.

The following are comments concerning specific items found on pages 6 and 7 of the AICO report.

Item 1. A practical concern is expressed at the ability to determine what portion of a claim pay-out pertains to "economic damages", particularly non verdict directed claim payments involving prospective damages (eg. future wage loss or future medical care). Such determinations tend to be very subjective and based, no doubt, on guesswork related to what a jury would award. Analytical extrapolation of underlying data based on subjective determinations would be suspect.

Item 5. Investment income is developed on the aggregated invested assets of an insurer. An allocation of that investment income to a specific claim would be arbitrary and not very meaningful. (Of interest to note is that the Alaska's proscribed pre-judgment interest rate has in the last few years exceeded the rate of interest which can be generated by an insurer through prudent investments.)

Item 8. An allocation of unallocated loss adjustment expenses (which are expenses pertaining to the general overhead associated with the adjudication of all claims) by claim or claim classification would be arbitrary and would be of limited value. Different insurers would not necessarily allocate these expenses in a like manner which would limit the use of this data for comparative purposes.

Item 11. This item in its current form would be moot based on the passage of Initiative #2 last year.

2. Require Experience Ratings

The generic term, "scheduled rating plan," refers to rating mechanisms that adjust the rates for a specific insured's risk characteristics. Experience is but one of several significant elements in scheduled rating plans and can be utilized in scheduled rating plans on either a prospective or retrospective basis. In other words, good past loss experience may provide for a lower rate for a future period of time if it is predictive of future loss experience; and can provide for a retrospective rate credit or dividend if loss experience is

good and is statistically credible. Therefore, this element of scheduled rating is primarily applied by most insurers to the large commercial insureds and Alaska is no exception in this respect.

(Other elements that can provide for rate credits are risk management, and loss prevention programs.)

It is my belief that many professionals and small businesses pay a set rate without consideration of these individual characteristics. I believe this is primarily due to the small size and diversity of the typical Alaskan business, and that statistically credible loss data is not generated in Alaska. I would surmise that insurers generally feel it is not cost effective to develop rating plans that would be able to appropriately "Alaskanize" credible data from other states to form a basis to develop sophisticated scheduled rating plans for Alaska's small businesses. (Lack of appropriate, uniform existing data may also serve as an impediment.)

I would be reluctant to limit any requirement for scheduled rating plans to be limited only to one element based on claim free experience or relatively low loss experience based upon the above. It is not likely that small businesses would be entirely claim free. Additionally, physicians, like other professionals in Alaska, are relatively few in number and the circumstances of their practice vary significantly based upon the locale of the practice. This may result in unintended adverse impacts such as, in the absence of mandatory insurance coverage, increases in the number of uninsured professionals resulting in increased difficulty for an injured person to receive appropriate compensation. Those physicians located in small communities who provide a broad range of medical services would be most likely to be penalized by such a system due to the inherent increased risk (eg. providing care which in larger cities would be provided by a specialist who creates the standard of care).

An alternative would be to mandate well documented schedule rating plans. Risk management and loss elements being more significant elements than individual loss experience for the smaller risk. The Division would need to expand its market conduct examination activities to ensure that the application of such scheduled rating plans are being applied in an appropriate manner and are not unfairly discriminatory in their application. (Michigan, for example, allows scheduled rating plans for worker's compensation but establishes a rebuttable presumption that all such plans are unfairly discriminatory in their application.)

3. Require Risk Management

"Risk Management" is a developing profession and discipline. Attached as Exhibit 3 is a copy of "The Risk Management Audit" written by H. Felix Kloman, Principal and Vice President, Tillinghast, Nelson and Warren. Kloman outlines the risk management process as one that involves risk assessment, risk financing, and risk control. The process outlined, by Kloman is the classic risk management process which is time consuming, complex, and expensive--but potentially very rewarding to the client that undertakes the effort. It is only the large client that is able to utilize such a process on an economically feasible basis.

It is not practical to require that all insureds and self-insurers undertake risk management programs. Insufficient resources exist in Alaska to provide risk management services to Alaska's approximately 30,000 employers. According to testimony received at the Division's recent public hearing in regards to work place safety programs approximately 12 qualified in-state people and 6 out-of-state people are available to provide such services (and perhaps a "few" non-insurance professionals). Additionally, testimony indicated no established college curriculum exists in Alaska's universities pertaining to risk management and that the Pacific Northwest provides college degree programs graduating only 30 to 40 persons per year. Large insureds generally are able to secure risk management services. So, the problem primarily rests with Alaska's small enterprises and I believe we need to find a way to make risk management services available to them. (See Exhibits 4 and 5 for additional current articles pertaining to this subject.)

One possible alternative would be to utilize the expertise of Alaska's Department of Labor personnel to provide loss control/safety services on a fee basis. However, I would suspect that Alaska's businesses would not be receptive as the Department of Labor also is an enforcement agency -- "the fox in the henhouse".

Another possibility would be to require that all insurers be required to identify a separate element in their rate filings for risk management and loss control and require that such increment of the premium actually be spent to provide those services. Incentives could be provided such as allowing insurers to deduct from premiums the funds spent on loss control for purposes of premium tax computation. However, testimony received at the Division's public hearings on work place safety programs indicated that some insurers were curtailing their loss control and safety inspection efforts as the result of the Van Biene decision which is attached as Exhibit 6.

4. Allocation of Medical Malpractice Costs

You asked what pitfalls I see in the approach of limiting the number of rating "categories" to no more than four. I would expect, first of all, that those physicians whose premiums increase to protest loudly. Additionally, those physicians with increased premiums may be more inclined to go uninsured. It is also possible that physicians, who currently refer patients to specialists, would perform more of the services currently provided by the specialists. This is predicted on that physicians are allowed, by licensure, to perform medical care in all aspects and levels; and if a physician perceives that he or she is paying for the risk associated with the services provided by a specialist why not perform the service as long as he or she is paying premium for that risk anyway. (Under existing law AS 21.36.090(b) would provide a basis for a physician subsidizing other physicians to allege unfairly discriminatory treatment.)

Technically speaking, the rate categories should be such that they include all insureds with like risk characteristics. Limiting rating categories may be a way to accomplish other socially desirable objectives--such as to encourage specialists to practice in Alaska and in rural settings. However, I am wary that such a limitation would provide enough incentive to bring a sufficient number of specialists to rural Alaska. Other incentives may be more effective, such as a program to pay-off medical school debt in return for a certain number of years of practice in a rural setting.

5. Closing the "Revolving Door"

I personally have no problem with a prohibition of a director of the Division of Insurance from holding any stock or equity ownership in an insurance company for one year before or after employment with the state. However, I believe "safe harbor" provisions need to be considered in certain circumstances. For example, I personally have my IRA funds invested in a mutual fund which may or may not contain, in its portfolio, the stock of insurers. I exercise no direct control over the portfolio mix of investments and don't feel that I should be subject to some penalty for a mutual fund containing some insurance stock. Also, the PERS funds could be partially invested in insurance company stock. Again, a situation that neither I nor any future director would have control over.

I look forward to working with you on the above complex and in some instances inter-related issues. Frankly I've not been able to avail myself or my staff of the leisure time to seriously consider the other issues mentioned in your letter. However, briefly though not thoroughly considered:

Allow Banks to act as insurers--not a good idea, impossible to eliminate tying.

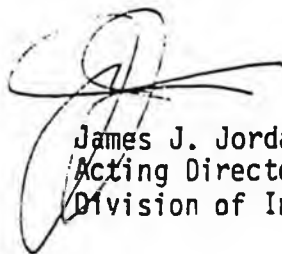
Interstate Insurance Compacts -- possible but difficult as states fight for insuring capacity to be expended in their own jurisdiction

Consumer Protection, Arbitrary Cancellations -- no current suggestions

Establishing JUA's -- no current suggestions or comments; but see Exhibit 7 for information on worker's compensation state funds; and

Prohibiting "Pass Through" of lobbying and other non-appropriate expenses -- we may have the authority currently to prevent such practices for those types of insurance for which rate filings are required.

Sincerely,



James J. Jordan
Acting Director
Division of Insurance

JJ/sh
2509

Backup Information
AVAILABLE IN HOUSE
Labor + Commerce
Committee Files
561-7629

P.O. Box 103628
Anchorage, AK 99510
26 November 1989

House Labor and Commerce Committee
Alaska State Legislature
P.O. Box Y
Juneau, AK 99811

Dear Sir:

Subject: House Bill 309 (landlord-tenant law changes)

This is a good bill, please enact it into law.

I own and manage 10 apartments in 3 buildings. I have had experience with the landlord-tenant law and I support the changes HB 309 makes. I especially like the following changes:

1. reducing the notice-to-quit time to seven days from ten days in an FED procedure
2. abandoned apartment and disposal of abandoned personal property obligations and procedures.
3. allowing the acceptance of partial payment in an FED procedure (with the time pro-rated).

If HB 309 is altered I would suggest reducing the notice-to-quit time in an FED procedure to five days. The current law is ten days which is too liberal. The current proposal is seven days which is better, but five days would be best.

The landlord-tenant law has not been revised for several years. The law should be revised to make it fair, effective and relevant to today's problems. Please enact House Bill 309.

Sincerely,



Jerry Lee Gottbehuet

MARY THRU

ex. Sec. Secretary

AK LANDLORD + PROPERTY
MANAGER'S ASSOC.

Services This AFTERNOON at 2p.m.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



HOUSE LABOR AND COMMERCE COMMITTEE

Public Hearing and Committee Worksession Schedule November 28 - 30, 1989

TUESDAY, NOVEMBER 28, 1989 (Groundfloor Conference Room - Anchorage L10)

- 9:30 a.m. to noon - Proposed "Revolving Door" Legislation
HB 309 - Amendments to Alaska's Landlord/Tenant Act
- 2:00 to 4:00 p.m. - Automobile Insurance Issues
HB 355 - Uniform Premium Tax

WEDNESDAY, NOVEMBER 29, 1989 (Groundfloor Conference Room - Anchorage L10)

- 9:30 a.m. to noon - Medical Malpractice/Liability Bills
Including:
HB 146 - Medical Board Licensing
HB 334 - Required Liability Insurance
HB 336 - Medical Malpractice Review panels
HB 337 - Hospitals as "also insureds"
HB 345 - "No Fault" Compensation Fund
HB 349 - Medical Malpractice Matching Fund
HB 350 - Funding Source for HB 349
- Proposed Medical Malpractice Liability Insurance
Legislation
- 2:00 to 4:00 p.m. - Continuation of Medical Liability Insurance Bills
and Issues

Thursday, November 30, 1989 (Fifth Floor Conference Room - Anchorage L10)

- 9:30 a.m. to noon - Wrap up testimony & consideration of Medical
Liability bills and Issues

Thursday, November 30, 1989 (Fifth Floor Conference Room - Anchorage L10)

- 5:00 to 6:00 p.m. - Workplace Safety Programs
HB 286 - Workplace Safety Violations
- Proposed Wage and Hour Legislation

For further information, contact Representative Dave Donley, Chair, House Labor and Commerce Committee, 3111 C Street, Suite 450, Anchorage, Alaska 99503 or call Ginger Baim at 561-7629.

November 24, 1989

M E M O R A N D U M

To: Representative Dave Donley, Chair
House Labor and Commerce Committee

From: Ginger Baim, Committee Assistant

Re: Suggested changes for HB 309 - Landlord Tenant Act

Michael Jungreis, a local attorney who often represents landlords in landlord/tenant disputes, called this morning with two suggested amendments to HB 309.

Specifically, Mr. Jungreis suggested that when there is evidence of a rental agreement between the landlord and tenant, the tenant should be prohibited from arguing during an action for possession that the landlord was not the true owner of the premises and therefore, had no right to evict.

Mr. Jungreis also said that it was unfair that a landlord may first hear of a complaint against the rental property when a tenant is defending against an eviction and suggested language that clearly requires a tenant to inform a landlord in writing of any complaints about the property and to show evidence that they have done so before the tenant can offer arguments based on those complaints during an eviction proceeding.

Mr. Jungreis went on to say that he felt the most important change we could make to Alaska's Landlord Tenant Act was to replace the overly vague language of the act with clear and certain language. He specifically applauded the provisions in HB 309 regarding small claims action and the clarification that partial payment does not excuse a tenant from the obligation to pay rent in full in order to "stop the clock" on certain actions.

Mr. Jungreis, 237 E. Fireweed, Suite #302, Anchorage, Alaska 99503 (276-0219), will not be able to attend the November 28 public hearing but will follow up his phone conversation with written testimony at a later date.

cc: Michael Jungreis

dd/gbi89
b/hb309-1

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



November 13, 1989

M E M O R A N D U M

To: Gordon Harrison, Director
Legislative Research Agency

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Research request - "Revolving door" legislation

The House Labor and Commerce Committee will be considering draft legislation dealing with the conditions under which a public employee can return to private sector work ("revolving door legislation") during a public hearing on Tuesday, November 28, 1989.

I am writing to request a Legislative Research report on other state and federal legislation concerning restrictions or conditions on public employee reemployment in the private sector including:

1. Employment with a private business by a former public employee who may have been involved with a public procurement awarded to the private business.
2. Employment with a private business where a former public employee had regulatory responsibility while serving as a public employee or may have been privy to information not generally available to the public that would be of personal monetary benefit to the employee or company for which they work.
3. Offers or acceptance of offers of private employment while a public employee.
4. Any restrictions or conditions on private employment before entering public employment. (i.e. prohibiting the Insurance Commissioner from having an ownership interest in an insurance company for one year prior to appointment as a Commissioner).

Your report should include a review of any existing state laws or regulations concerning this issue. A review of federal law regarding employment of former military personnel may be useful. In addition, the NCSL may have this information readily available.

I'll need this report by November 22 in order to include it with committee files so that members will have time to review the information prior to our hearing. Please call Ginger Baim at 561-7629 if you have any questions or need additional information.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

August 29, 1989

SUBJECT: Bill restricting employment and contracts after
leaving state service (Work Order No. 6-1584)

TO: Representative Dave Donley

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the bill that you requested to restrict the employment and contracts of public officers after they leave state service. Please note the following:

1. the restriction covers contracts as well as employment; otherwise a contractual arrangement might be used to circumvent the restriction;
2. the restriction will have little practical effect unless there is a penalty; you may wish to consider imposing a criminal penalty or a civil penalty; AS 39.52.410 - 39.52.460 contain the penalty provisions for the present restrictions on post-service employment in the executive branch (AS 39.52.180); I do not believe that those penalty provisions are particularly good ones, but they will show you what has been done in the past in this area;
3. the definition of state agency includes the University of Alaska and public corporations; however, if you want it to include the Alaska Railroad Corporation or the Alaska State Housing Authority, they should be listed in the definition;
4. I have added a transition section (sec. 2) to clarify which public officers this restriction applies to.

If you have questions about the provisions I have added or about the penalty section for the bill, or if you wish to make changes, please advise.

TB:mi
wkmi4/077
Enclosure

6-1584A -
Bannister
8/29/89

1 IN THE HOUSE

BY DONLEY

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to employment and contracts after
7 leaving state service."

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

9 * Section 1. AS 39.90 is amended by adding a new section to read:

10 Sec. 39.90.030. RESTRICTION ON EMPLOYMENT AND CONTRACTS AFTER
11 LEAVING STATE SERVICE. For one year after leaving state service, a
12 public officer may not be employed by or work under contract for a
13 person who was awarded a contract with the state during the officer's
14 state service, if the public officer was directly involved in the
15 state's procurement procedures that resulted in the contract. In this
16 section, "public officer" means

17 (1) an employee of a state agency; in this paragraph "state
18 agency" means a department, institution, board, commission, division,
19 authority, public corporation, or other administrative unit of the
20 executive, legislative, or judicial branch, and includes the Univer-
21 sity of Alaska;

22 (2) a legislator; and

23 (3) a member of a state board or commission.

24 * Sec. 2. This Act applies to public officers who leave state service
25 on or after the effective date of this Act.



NATIONAL INSURANCE
CONSUMER ORGANIZATION

How To

Tame the Insurance Industry Cycle
and
Make the Legal System More Efficient:

A Suggested Legislative Agenda for 1987

by

J. Robert Hunter, President
and
Jay Angoff, Counsel
National Insurance Consumer
Organization

Presented at the Annual
Meeting of the National
Conference of State
Legislatures
New Orleans, Louisiana
August 8, 1985

121 N. Payne Street
Alexandria, Virginia 22314
(703) 549-8050

them to independently recommend the appropriate level of insurance rates."

The states should pass legislation requiring insurance departments to have on staff a specified number of actuaries auditors, investigators and other professionals, and appropriating adequate funding for such positions.

5. Close the "revolving door"

While some insurance commissioners are dedicated to the public interest and do yeoman work with limited resources, others lack the will to stand up to the insurance industry. For example, the GAO study found that most regulators do not have an "arms-length relationship" with the industry, and that about half of all insurance regulators come from and return to the insurance industry.

Clearly, prior experience in the insurance industry yields expertise helpful in regulating the industry. Conversely, one can learn much about the industry from regulating it, and can use that knowledge productively within the industry after leaving the insurance department.

Yet regulators must always hold uppermost the broad public interest, not the narrow, albeit legitimate, private interests of insurance companies, and an insurance commissioner must never allow his vigilance in guarding the public interest to be compromised by his looking toward a future job within the industry. Therefore, to eliminate the appearance of any conflict of interest, states should pass

legislation that would require state insurance commissioners to wait five years before going to work for any company they had regulated.

States should also seriously consider as candidates for insurance commissioner qualified individuals who have not worked in the insurance industry.

A bill that has gathered substantial support in Congress in the wake of the Michael Deaver scandal, which can be adapted to apply to state insurance commissioners and the insurance industry, is attached as Exhibit K.

6. Establish an Office of Insurance Consumer Advocate

Perhaps because insurance is such an arcane and seemingly boring issue, the consumer is rarely if ever represented in insurance rate hearings. This lack of consumer presence is compounded by the lack of an "arms-length relationship", as the GAO study put it, between the insurance industry and insurance regulators.

An insurance consumer advocate would represent the consumer point of view at rate hearings and ensure that the insurance department does not rubber stamp insurance company rate requests. An insurance consumer advocate might also cause insurance companies to moderate their requests for rate increases. A handful of states (South Carolina, Maine, Oklahoma and New Jersey) have already established such offices. New Jersey's is particularly effective: the cost of the consumer advocate's intervening is billed back to the insurance company seeking the rate increase, thus creating an

99TH CONGRESS
2D SESSION **H. R. 5097**

To amend chapter 11 of title 18, United States Code, to prohibit the President, the Vice President, certain other former Federal civilian and military personnel, and Members of Congress from representing or advising certain foreign entities for a period of 4 years after leaving Government service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1986

Mr. GLICKMAN (for himself, Mr. WOLPE, Ms. KAPTOR, Mr. FRANK, Mrs. SCHROEDER, and Mr. FISH) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 11 of title 18, United States Code, to prohibit the President, the Vice President, certain other former Federal civilian and military personnel, and Members of Congress from representing or advising certain foreign entities for a period of 4 years after leaving Government service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Foreign Representation
5 Restrictions Act of 1986".

1 SEC. 2. LIMITATIONS ON REPRESENTING OR ADVISING CER-
2 TAIN FOREIGN ENTITIES.

3 (a) IN GENERAL.—Chapter 11 of title 18, United
4 States Code, is amended by inserting after section 207 the
5 following new section:

6 "§ 207a. Limitation on the representation or advising of
7 certain foreign entities by certain former
8 Federal officers and employees and members
9 of the uniformed services

10 "(a) Any person who serves as an officer or employee,
11 or a member of a uniformed service, described in subsection
12 (c), may not, during the 4-year period after that person's
13 service as such an officer or employee has ceased, in connec-
14 tion with any transaction with the United States Govern-
15 ment, act as an agent or attorney for or otherwise represent
16 or advise—

17 "(1) the government of a foreign country;

18 "(2) a foreign political party; or

19 "(3) a business enterprise the decisionmaking of
20 which is controlled, directly or indirectly, by a foreign
21 government or foreign governments.

22 "(b)(1) Any person described in subsection (c) who
23 knowingly and willfully violates subsection (a) shall be im-
24 prisoned for not more than two years and shall be subject to
25 a fine in the amount provided in this title.

1 “(2) Any person described in subsection (c) who know-
2 ingly and willfully violates subsection (a) shall be subject to a
3 civil penalty of \$50,000, or the amount of compensation
4 which the person received for the prohibited employment or
5 other activity, whichever amount is greater. The Attorney
6 General may bring an action under this paragraph in an ap-
7 propriate United States district court against any such
8 person. A violation under this paragraph must be established
9 by a preponderance of the evidence. The penalty under this
10 paragraph is in lieu of the penalty under paragraph (1).

11 “(c) The prohibitions set forth in subsection (a) apply
12 to—

13 “(1) the President of the United States;

14 “(2) the Vice President of the United States;

15 “(3) the head of each executive department as de-
16 fined in section 101 of title 5;

17 “(4) an individual who—

18 “(A) is appointed by the President under sec-
19 tion 105(a)(2)(A) of title 3;

20 “(B) is appointed by the Vice President
21 under section 106(a)(1)(A) of title 3;

22 “(C) is not described in paragraph (3) or sub-
23 paragraph (A) or (B) and serves in a position in
24 level I, level II, level III, level IV, or level V of
25 the Executive Schedule; or

1 “(D) is a member of a uniformed service in a
2 pay grade of O-7 or higher and is serving on
3 active duty; and

4 “(5) each Member of Congress.

5 “(d)(1) For purposes of subsection (c)(4)(D), the term
6 ‘uniformed services’ means the Army, Navy, Air Force,
7 Marine Corps, Coast Guard, National Oceanic and Atmos-
8 pheric Administration, and Public Health Service.

9 “(2) For purposes of this section, the service of a
10 member or former member of a uniformed service shall be
11 considered to have ceased upon such member’s discharge or
12 release from active duty.

13 “(e)(1) An individual described in subsection (c) may
14 apply—

15 “(A) to the Attorney General in the case of an in-
16 dividual described in paragraph (1), (2), (3), or (4) of
17 subsection (c), or

18 “(B) to the Committee on Standards of Official
19 Conduct of the House of Representatives, or the Select
20 Committee on Ethics of the Senate, as the case may
21 be, in the case of a Member of Congress,

22 for a waiver of the applicability of the prohibition contained
23 in subsection (a) with respect to employment or another ac-
24 tivity prohibited by subsection (a).

1 “(2) The Attorney General, or the appropriate commis-
2 tee referred to in paragraph (1)(B), as the case may be, may
3 grant a waiver under paragraph (1) if the applicant can dem-
4 onstrate that the proposed employment or other activity—

5 “(A) could not harm the security, trade, or other
6 national interests of the United States; and

7 “(E) would not create an undue appearance of
8 conflict of interest.

9 “(3) An individual who applies for a waiver under para-
10 graph (1) and who does not receive a determination under
11 paragraph (2) on the waiver within 90 days after the applica-
12 tion is made may accept the employment, or engage in the
13 activity, with respect to which the application is made.

14 “(4) Upon the filing of any application for a waiver
15 under this subsection, and upon the granting of any such
16 waiver, notice of such filing or granting shall be published—

17 “(A) in the Federal Register, in the case of appli-
18 cations to, and waivers granted by, the Attorney Gen-
19 eral; or

20 “(B) in the Congressional Record, in the case of
21 applications to, and waivers granted by, a committee
22 referred to in paragraph (1)(B).

23 “(f) If the Attorney General has reason to believe that a
24 person is engaging or is about to engage in employment or
25 another activity in violation of subsection (a), the Attorney

1 General may petition an appropriate United States district
2 court for an order prohibiting that person from engaging in
3 such employment or activity. The court may issue such order
4 if it finds that such employment or activity does or would
5 violate subsection (a). The filing of a petition under this sub-
6 section does not preclude any other remedy which is avail-
7 able by law to the United States or any other person."

8 (b) TECHNICAL AMENDMENT.—The table of sections
9 for chapter 11 of title 18, United States Code, is amended by
10 inserting after the item relating to section 207 the following
11 new item:

"207a. Limitation on the representation or advising of certain foreign entities by
certain former Federal officers and employees and members of the
uniformed services."

12 SEC. 3. OTHER CONFLICTS OF INTEREST.

13 (a) DESIGNATION OF SEPARATE AGENCIES AND BU-
14 REAUS.—Subsection (e) of section 207 of title 18, United
15 States Code, is amended to read as follows:

16 "(e)(1) For purposes of subsection (c) and except as pro-
17 vided in paragraph (2), whenever the Director of the Office of
18 Government Ethics determines that a separate statutory
19 agency or bureau within a department or agency exercises
20 functions which are distinct and separate from the remaining
21 functions of the department or agency, the Director shall by
22 rule designate such agency or bureau as a separate depart-
23 ment or agency.

1 “(2)(A) For purposes of subsection (c), a designation of
2 an agency or bureau under paragraph (1) shall not apply with
3 respect to—

4 “(i) a former head of that designated agency or
5 bureau; or

6 “(ii) any former officer or employee of the depart-
7 ment or agency within which the designated agency or
8 bureau exists, if the official responsibilities of the offi-
9 cer or employee included supervision of that designated
10 agency or bureau.

11 “(B) For purposes of paragraph (1), the Executive
12 Office of the President shall be considered a department or
13 agency without any separate agencies or bureaus.”.

14 (b) CIVIL PENALTY; ORDERS PROHIBITING AC-
15 TIVITY.—Section 207 of title 18, United States Code, is
16 amended by adding at the end the following:

17 “(k) Any person who violates subsection (a), (b), (c), or
18 (g) shall be subject to a civil penalty of \$50,000, or the
19 amount of compensation which the person received for the
20 prohibited employment or other activity, whichever amount is
21 greater. The Attorney General may bring an action under
22 this subsection in an appropriate United States district court
23 against any such person. A violation under this subsection
24 must be established by a preponderance of the evidence. The
25 penalty under this subsection is in lieu of the penalties other-

1 wise provided in this section for violations of subsection (a),
2 (b), (c), or (g).

3 “(1) If the Attorney General has reason to believe that a
4 person is engaging or is about to engage in employment or
5 another activity in violation of subsection (a), (b), (c), or (g),
6 the Attorney General may petition an appropriate United
7 States district court for an order prohibiting that person from
8 engaging in such employment or activity. The court may
9 issue such order if it finds that such employment or activity
10 does or would violate subsection (a), (b), (c), or (g). The filing
11 of a petition under this subsection does not preclude any
12 other remedy which is available by law to the United States
13 or any other person.”

14 **SEC. 4. EFFECTIVE DATE.**

15 (a) **IN GENERAL.**—Subject to subsections (b) and (c),
16 this Act and the amendments made by this Act take effect on
17 January 1, 1987.

18 (b) **FOR SECTION 3(a).**—Subject to subsection (c), the
19 amendment made by section 3(a) takes effect on the date of
20 the enactment of this Act.

21 (c) **EFFECT ON EMPLOYMENT.**—(1) The amendments
22 made by this Act do not, except as provided in paragraph (2),
23 apply to a person whose service as an officer or employee to
24 which such amendments apply terminated before the effective
25 date of such amendments.

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1 (2) Paragraph (1) does not preclude the application of
2 the amendments made by this Act to a person with respect to
3 service as an officer or employee by that person on or after
4 the effective date of such amendments.

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HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



November 23, 1989

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Draft "Revolving door" legislation

Attached is a copy of proposed "revolving door" legislation governing the conditions under which a public employee may return to private sector employment.

The current draft specifically addresses two circumstances:

1. The Director of the Division of Insurance cannot own stock or hold an equity interest in an insurance company for one year before or after serving as Director or during the time that they serve as Director.
2. A public employee may not be employed by or work under contract for a person who was awarded a contract with the state during the employee's service if the employee was directly involved in the state's procurement procedures that resulted in the contract.
3. Persons who violate these sections are subject to a civil penalty not to exceed \$5,000 for each violation in addition to any other penalties that may be imposed according to law, including criminal penalties.

Included in your files is a multi-state survey and information on revolving door legislation from the National Conference of State Legislatures. Also included is a copy of a National Insurance Consumer Organization report by Robert Hunter suggesting "revolving door" conditions on state insurance commissioners and directors.

The Committee may wish to consider other circumstances where some statutory change may better protect the public interest, such as restrictions on employees who may have had regulatory responsibility for a particular industry or who may have been privy to confidential information during the course of their public employment.

dd/gbi89
b/door

TABLE 20
 SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
 (As of January 1, 1988)

Sources of Substantive Restraints on State/Provincial Government Officials/Employees Concerning:

Jurisdiction	Use of Public Position to Obtain Personal Benefits	Providing Benefits to Influence Official Actions	Use of Confidential Government Information	Post-governmental Employment	Receipt of Gifts by Officials or Employees	Representation of Private Clients by Public Officials or Employees before Public Entities	Receipt of Fees or Honoraria by Public Officials or Employees	Nepotism	Competitive Bidding	Outside Employment or Business Activities of Public Officials or Employees
Alabama	S	S	S	S	S	S	S	S	—	S
Alaska	S	S	—	—	A	S	—	—	—	—
Arizona	S	S	S	—	S	S	S	S	S	S
Arkansas	S	S	S	—	—	—	—	—	—	—
California	S	S	—	S	S	S	S	—	—	S
Colorado	—	—	—	—	—	—	—	—	—	—
Connecticut	S	S	S	S,A	S,A	S	S	S	S	S
Delaware	S	S	—	—	—	—	*	R	S	*
Florida	S	S	S	S	S	S	—	S	S	S
Georgia	—	—	—	—	—	—	—	—	—	—
Hawaiï	S	S	S	S	S	S	S	—	S	S
Idaho	—	—	—	—	—	—	—	—	—	—
Illinois(a)	S	S	A,S	S	A,S	S	A	A,S	A,S	A,S
Indiana	A,S	A,S	A,S	S	A	A,S	A	S	S	A
Iowa	(b)	(b)	(b)	S	S	*	*	S	S	R
Kansas	S	S	S	S	S	S	S	A	S	S
Kentucky	S	S	S	—	S	S	S	R	R	R
Louisiana	S	S	S	S	S	S	S	S	S	S
Maine	S	S,L	S	S	S	S,A	—	S	S	—
Maryland	S	S	S	S	S	S	S	S	*	S
Massachusetts	S	S	S	S	S	S	S	S	—	S
Michigan	S	S	S	—	S	S	S	L	A,E,L,R,S	S
Minnesota(c)	—	—	—	—	—	—	—	—	—	—
Mississippi	S,R	S,L	S	S,R	—	S	—	S,L	S,L	S,L,R
Missouri	—	S	S	S	S	E	—	C	*	—
Montana	S	S	—	S	S	—	—	S	S	C(d)
Nebraska	S	S	S	—	S	S	—	S	S	—
Nevada	S	S	S	—	S	A	—	S	S	S
New Hampshire	S	S	S	—	S	S	S	—	A,S	S
New Jersey	S	S	S	S	S	S	A	—	R	R

TABLE 20 (continued)
SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES
(As of January 1, 1988)

Key:

-- No restraints/Not applicable

A Administrative regulation

C Constitutional

E Executive order

L Case law

R Agency ruling

S Statutory

* Restrictor's activity; source of restriction unavailable.

(a) The majority of the several hundred citations in the Illinois Revised Statutes which might be described as "conflict of interest" in character apply to specific agencies, officers or programs and are sometimes further implemented by agency rule or administrative regulation. A number carry civil penalties for violation, although a number encompass criminal sanctions. There are also a number of criminal statutes pertaining to bribery and official misconduct which are of generic application to officers and employees in state and local government. However, there is no separate statutory code of conduct applying evenly throughout Illinois state government.

(b) House and senate rules.

(c) No substantive restraints fall within the jurisdiction of the Ethical Practices Board.

(d) Judges only.

(e) Agency opinions.

(f) Not encompassed within the State Ethics Act.

(g) State employee contract also prohibits it.

(h) Statutory restraints for a few.

Ethics Codes and Commissions
Legislation and Litigation in 1988

by

R. Roth Judd*
Executive Director
Wisconsin Ethics Board

Prepared for the Council on Governmental Ethics Laws
Presented at Orlando, Florida
Monday, December 5, 1988

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- * With special appreciation for the contributions of Jaclyn Seigel, Cathy Halpin, and Linda Fumusa, all of the Wisconsin Ethics Board, and with thanks to my colleagues at the ethics boards and commissions of North America. Much of this material is drawn from *COGEL Guardian*.

Ethics Codes and Commissions:
Legislation and Litigation in 1988

by
R. Roth Judd
Executive Director, Wisconsin Ethics Board

ALABAMA

Alabama Ethics Commission
817 South Court Street, Suite 2B Annex
Montgomery, Alabama 36104
(205) 261-2997
Executive Director: Melvin G. Cooper

Legislation: No exemption for firemen. - In 1986, the Alabama Legislature amended the Ethics Law to bring all public officials and public employees at the state, county and municipal levels of government in Alabama within the standards of conduct embodied in the law. During the 1988 Regular Session of the Alabama Legislature, bills were introduced in both the House and Senate to exempt all firemen from the law. Some saw this legislative initiative as a subterfuge intended to lead to exemption of all law enforcement officers. The ethics commission opposed these bills. They did not pass.

Litigation: Violation requires actual conflict. - The Alabama Court of Criminal Appeals in the case of *Kirkland vs. State Ethics Commission* ruled that an actual conflict of interest must be shown to convict a public official for violating that section of the Ethics Law which reads as follows: "No public official or employee or his family shall solicit or receive any money in addition to that received by the official or employee in his official capacity for advice or assistance on matters concerning the Legislature, an executive department or any public regulatory board, commission or other body." The Alabama Ethics had contended that the aforementioned section set out a conflict whenever a public official solicits and accepts money for advising or assisting an individual in

a matter involving a regulatory agency of government. The Commission did not appeal.

Legislation: Postemployment bill fails. - A post employment bill drafted by and recommended by the Ethics Commission did not pass. It did not get out of committee.

Legislation: Voting Rights Act. - A 1986 act of Alabama's Legislature required, effective 1988, candidates for election to local offices to file statements of their financial interests with the Alabama Ethics Commission as a condition of having their names appear on the ballot. The Alabama Ethics Commission was in the process of removing 200 candidates from the ballot when 2 suits were filed. Before trial the Attorney General stepped in to say the United States Department of Justice had to clear this requirement before it could become effective. Clearance was received 3 weeks after the election. The lesson is that in those states affected by the Voting Rights Act of 1964 any law affecting an election must be examined by the U.S. Department of Justice for its effects.

Litigation: Cost of enforcement proceedings. - The Ethics Commission investigated 2 Alabama employees who were pilots for the Governor. The Commission cited the statute of limitations as its reason for clearing both of them. Each of the 2 employees then sought \$5,000 from the State Board of Adjustments for the costs they said they spent in defending themselves in this potential action by the Ethics Commission. This matter continues under review.

Litigation: No disclosure means no candidacy. - Julius Brown, a candidate for Circuit Court Clerk, a state position, did not file a Statement of Financial Interest with the Alabama Ethics Commission in a timely way. The Commission brought suit. It was ordered that the candidate's name not appear on the ballot because failure to file a Statement of Economic Interest was a prerequisite of candidacy. The would be candidate has appealed. The matter is still under review.

ALASKA

Alaska Public Offices Commission
2221 E Northern Lights Blvd.
Room 128
Anchorage, Alaska 99508
(907) 276-4176

Executive Director: Karla L. Forsythe

Legislation: Gifts to public officials. - This past June, the Governor signed into law a bill sponsored by Rep. Pat Pourchot (D-Anchorage), chair of the Legislative Ethics Committee, which addressed ambiguities and problems with Alaska's 1984 Legislative Ethics Act. Among other new provisions the bill clarified the state's gift restrictions and set a maximum allowable limit of \$50 for a gift to a lawmaker. No gift is permitted under circumstances in which it could be inferred that the gift is intended to influence the performance of official actions. While gifts of travel are still permitted for the purpose of ob-

taining information on matters of legislative concern, all travel with a value of \$100 or more must be publicly disclosed.

Legislation: Restrictions on lobbying by former officials to be proposed. - The word from Alaska is that the Legislature's 1989 session may get around to establishing restraints on lobbying activities of former legislators. For developments as the session progresses consult Alaska State Legislature, Charles Christensen, staff attorney, P.O. Box V, Juneau, Alaska 99811 (907) 561 7610.

ARIZONA

Secretary of State's Office
Capitol West Wing-7th Floor
Phoenix, Arizona 85007
(602) 542-4285
Secretary of State: Jim Shumway

Arizona reports no significant legislation or litigation.

ARKANSAS

Steve Clark, Attorney General
Office of the Attorney General
200 Tower Building
4th and Center Streets
Little Rock, Arkansas 72201
(501) 682-2007

Legislation: New ethics code for Arkansas. - Since 1979, Governor Bill Clinton has advocated Arkansas's adoption of an ethics code. During 1987 and 1988 Governor Clinton strongly advocated the state's adoption of such a code. Lobbyists, in particular, were the focus of Clinton's efforts.

Clinton appointed a special Code of Ethics Commission, which issued its report in the waning days of 1987, and called a special legislative session for January 1988 to consider those recommendations.

Under the Governor's proposal a public official was to disclose: businesses in which the official had invested; offices and directorships held by an official or spouse of an official in firms regulated by the state; each employer or source of income; name of members of the official's immediate family, and all names under which they do business; creditors to whom \$1,000 or more was owed, except loans made in the ordinary course of business; guarantors on outstanding debts; source and date of gifts over \$100 to official or to immediate family; food, lodging, and travel expenses over \$150 paid by a non-government source for an appearance by the public official in an official capacity.

When lawmakers adjourned on February 5, 1988 none of Clinton's ethics package had been approved.

After failing to pass the ethics reform package legislatively, Clinton announced that he would take his proposal to the voters and seek to place it on the November ballot as an initiative. Considerable controversy ensued over the adequacy of the petitions to place this subject on the ballot. In the week prior to the popular referendum the measure was threatened by a last-minute

media campaign of, by some estimates, \$100,000 worth of television ads in opposition to the proposed ethics law.

The measure passed by capturing 65% of the vote. The new law takes effect January 1, 1989 and will be administered by Arkansas's Attorney General.

CALIFORNIA

Fair Political Practices Commission
428 J Street, Suite 800, PO Box 807
Sacramento, California 95804
(916) 322-5901

Executive Director: Gregory Baugher

California reports no significant legislation or litigation.

COLORADO

Office of the Secretary of State
1560 Broadway, Suite 200
Denver, Colorado 80202
(303) 894-2211

Donetta Davidson: Elections Officer

Legislation: Contracts for municipal officials. - The Colorado Legislature passed legislation that removes the prohibition against city and town officials getting municipal contracts. The law requires that municipal officials disclose their interests to the city council or town board in advance and abstain from voting on any contract they could receive.

Colorado reports that 2 bills were defeated. One bill would have tightened financial disclosure reporting requirements and would have created an ethics commission. The other bill would have made all state government employees subject to financial disclosure requirements.

CONNECTICUT

State Ethics Commission
97 Elm Street (Rear)
Hartford, Connecticut 06106
(203) 566-4472

Executive Director & General Counsel: Alan Plofsky

Legislation: Ethics Code applied to quasi-public entities. - The Connecticut General Assembly has passed, by unanimous vote of both houses, and the governor has signed a bill extending the Code of Ethics to the State's nine quasi-public agencies. The effort was commenced after two incidents involving former quasi-public agency officials dealing with their former agencies crystallized the need for the legislation. In connection with this legislation, the Commission staff will be increased from six to eight (an additional attorney and paralegal).

Legislation proposed for 1989. Connecticut expects to see these proposals before the Legislature in 1989: (1) A ban on lobbying by legislators, governor, and governor's staff in the year following their leaving office. (2) A ban on all gifts from lobbyists to any member of state government, with certain exceptions for meals and commemorative articles. Currently Connecticut has a reporting threshold of \$15 for gifts and an absolute maximum (total received by one individual for a year) of \$50. (3) Extension of a restraint on a state official's ownership interest in an enterprise to an employee's interest. This would mean that a legislator who works for an enterprise in any capacity (middle management or custodial staff, for example) would have restrictions on his or her voting on legislation affecting the enterprise.

DELAWARE

Division of Research
Legislative Council/Legislative Hall
Dover, Delaware 19904
(302) 736-5803
Director of Research: Earl McGinnes

Delaware reports no significant legislation or litigation.

DISTRICT OF COLUMBIA

Office of Campaign Finance
2000 14th Street, N.W. Suite 400
Washington, D.C. 20009
(202) 939-8710

Director of Campaign Finance: Marianne Coleman Niles

The District of Columbia reports no significant legislation or litigation.

FLORIDA

Commission on Ethics
2105 The Capitol
PO Box 6
Tallahassee, Florida 32302-0006
(904) 488-7864
Executive Director: Bonnie Williams

Legislation: Independence of ethics commission's employees. - In October of 1987, the Commission on Ethics filed suit against the President of the Florida Senate, the Speaker of the House of Representatives, and the Legislature's Joint Legislative Management Committee seeking a writ of mandamus or a declaratory judgement which would stop the defendants from imposing the personnel system for employees of the Legislature upon commission employees. On July 1, 1987, the defendants began processing the pay and benefits of commission employees in accordance with the legislative system, even though no bill had passed which would have amended the statutes governing the personnel systems of which commission employees had been members.

The commission's lawsuit asserted that the defendants' actions contravened the independence of the commission, as provided for in the Florida Constitution, because of the authority which the President and the Speaker would have over the commission. The commission alleged that the defendants' actions were in violation of existing statutory law governing the rights, pay, and benefits of Commission employees.

Via negotiations the commission and the Legislature agreed to include the commission's employees under the uniform personnel plan that is administered by a joint committee of the Legislature. The Commission's employees' salaries, benefits, leave policies, etc., will be governed by the plan. Personnel decisions related to hiring, firing, promotion, and demotion are explicitly reserved to the Commission. This has been adopted by Florida's Legislature.

Legislation: Postemployment restrictions for local officials. - Florida's Legislature has enacted legislation that will permit local governments to forbid a former local official to represent a client for pay before local governments for two years after leaving office. Florida's Ethics Code forbids former legislators from representing clients for pay before the Legislature.

Litigation: Complainant gag rule unconstitutional. - Confidentiality of complaint proceedings. Under Florida's law complaints are initially accorded a substantial degree of confidentiality. Only at a later stage of the proceedings does a complaint become public. Florida's law requires not only the Ethics Commission but individuals with knowledge that a complaint has been filed to keep that information confidential. That is unlawful under the constitution of the United States, the U.S. District Court for the Southern District of Florida has told the Commission. The Court granted summary judgement in favor of a plaintiff who contested the gag the Florida law purported to place on individuals. In 1978 the United States Supreme Court had found in *Landmark Communication vs. Commonwealth of Virginia*, 435 U.S. 829, that a state statute requiring confidentiality of a legal proceeding could not, constitutionally, prevent a newspaper from reporting information with respect to those proceedings. The United States Supreme Court had said that the state could not restrict free speech of third parties. The recent Florida case seems to be the first time that a court has reviewed a statute purporting to forbid a complainant to reveal that a complaint has been filed. *Doe vs. Larry Gonzalez* (Case No. 85-8452, U.S. District Court for the Southern District of Florida). The Florida commission has appealed this decision to the 11th Circuit Court of Appeals where the matter now rests.

GEORGIA

State Ethics Commission
2082 East Exchange Place-Suite 235
Tucker, Georgia 30084
(404) 493-5795

Executive Secretary: Robert P. Lane

Legislation: Disclosure laws weakened. - When filing a campaign finance report in Georgia, those running for office need only file where their campaign money came from and how they spent it. Georgia's Ethics in Gov-

eriment Act then requires nothing else, not even that state officials read it. And currently they don't.

In an *Atlanta Journal-Constitution* review of the Ethics Commission's actions for the past 2 years, they found that as long as it was signed and on time, a blank campaign finance report could pass unnoticed. The commissioners on the Ethics Committee say they don't have the staff or the time to look at the reports.

This places Georgia among the states with the weakest ethics law in the nation. And in the last moments of the 1988 session, the ethics law has been further weakened by provisions eliminating some business and personal financial interests from the required finance report. The new law also eliminates the felony provision on second and subsequent violations of the act.

Georgia is also one of the few states that allows a candidate or incumbent to convert campaign funds to personal use, as long as the contributor is notified before the money is pocketed.

Executive secretary of the commission, Robert Lane, said the in-house rule is that an investigation will be initiated only if someone files a sworn complaint or a newspaper article appears.

Although 18 sworn complaints have been filed in the last 2 fiscal years, all were dismissed because the commission could find no violation of the act or intent to violate the act.

Local Legislation: Local ethics code. - A code of ethics, the first of its kind to be adopted by a government board or agency in Gwinnett County, Georgia, will probably be signed at the next meeting of the Lilburn planning commission. The two-page document covers ethical conduct on the part of commission officials in the areas of competence, confidentiality, integrity, and objectivity.

HAWAII

State Ethics Commission
PO Box 616
Honolulu, Hawaii 96809
(808) 548-6401

Executive Director: Daniel J. Mollway

Hawaii reports no significant state legislation or litigation.

Administrative action: Use of title or prestige of office to endorse candidate.

- Prior to the November 1988 election the commission held that legislators could not use the title of their positions to endorse candidates for election. The commission reasoned that the decision of for whom to cast a ballot was an individual decision and that legislators were not selected to offer their positions on these matters. The commission is now re-evaluating that position.

Local Legislation: No freebies for liquor licensors. - As much as bar or restaurant owners may want to offer friendly freebies to the people who gave--and could take away--their liquor licenses, that is now prohibited under a new code of conduct for the Honolulu Liquor Commission.

Commissioners may not accept drinks, food or other gifts and "shall not use their official positions to influence any person, firm or organization to obtain for himself or someone else any favor or other personal advantage." un-

der the rules signed by Mayor Frank Fasi and Honolulu Finance Director Linda Smith.

According to both Smith and Commission Chairman John Edwards, Jr., the document is "codified common sense" and did not come as a surprise to the five-member appointed board that oversees the highly regulated liquor industry. A version of the code was generated by the commission and liquor law administrator Eugene Carson more than two years ago.

IDAHO

Secretary of State's Office
Room 205, State Capitol
Boise, Idaho 83720
(208) 334-2300.
Secretary of State: Pete T. Cenarrusa

Idaho reports no significant legislation or litigation.

For a number of years, the governor has, by executive order, issued a code of conduct for state employees. Idaho reports no substantial change in the code.

ILLINOIS

Illinois Board of Ethics
State Illinois Center
100 W. Randolph Street
Suite 3-300
Chicago, Illinois 60601
(312) 917-4100
Executive Director: John L. Larsen

City of Chicago Board of Ethics
205 West Randolph, Suite 530
Chicago, IL 60606
(312) 744-9660
Executive Director: Harriet McCollough

Legislation: Award of contracts. - Almost unnoticed in the closing days of the recent legislative session was passage of a bill, Public Act 85-1295, that specifically prohibits a number of bad practices in the letting of state contracts, and clarifies the steps that are mandatory in opening up competition for contracts. The reforms, coming in the aftermath of the Pentagon contract scandals, involve technical procedures familiar to purchasing agents and contractors. So strict are the new safeguards that many veterans of the political process were amazed they attracted so little organized opposition. The new requirements take effect in November 1989.

INDIANA

State Ethics Commission
One North Capitol, Suite 444
Indianapolis, IN 46204
(317) 232-3850

Executive Secretary: Mary A. Donovan

Legislative Ethics Committee
Statehouse
Indianapolis, IN 46204

Ray Richardson: Chairman, past session
(317) 232-9608

Administrative action: New code for state employees. - The Indiana Ethics Commission gave its final approval in March 1988 to a new ethics code for state employees. The unanimous vote in favor of the new code followed a public hearing on December 28, 1987. The new code establishes controls on employee conflicts of interest, moonlighting and honoraria which employees may accept. A portion of the code was stiffened to prohibit political work by state workers on taxpayers' time.

New restrictions require state employees to disclose the receipt of gifts, property, favors, services, entertainment, food or drink if they total more than \$100 in a calendar year and are given by a person or business with or desiring contracts with the employees' state agency. The section also limits such gifts to a total of \$250 per year. The new code instructs workers not to accept fees for speeches or articles whose content is derived from their state jobs.

Local Legislation: Gifts: local officials. - A council member would no longer have to report gifts with a total annual value in excess of \$100 from a business doing business with the city if the gifts involved Marion County events to which all council members were invited. A new provision would prohibit employees and appointed officials of the city and county and their immediate families from accepting gifts exceeding a total value of \$250 from a business doing business with the agency of the employee or official. Elected officials would not be covered by this prohibition.

IOWA

Iowa Campaign Finance Disclosure Commission
507 Tenth Street
Des Moines, Iowa 50309
(515) 281-4411

Executive Director: Kay Williams

Iowa reports no significant legislation or litigation.

KANSAS

Kansas Public Disclosure Commission
Suite 504
109 West Ninth Street
Topeka, Kansas 66612
(913) 296-4219
Administrator: Carol E. Williams

Legislation: Ethics Code applied to interstate compacts. - House Bill 2882, as passed by the House requires executive directors or administrators of 11 interstate compacts and commissions to file statements of substantial interests. The bill was amended on the floor of the House to require all city and county officers and candidates for such offices to file statements of substantial interests. Currently, city and county officers and candidates for these offices file statements of substantial interests provided by county election offices. The bill as amended puts the statement of substantial interests filings for these officers and candidates under the jurisdiction of the Public Disclosure Commission.

Legislation: New penalties for violations; subpoena power. - Senate Bill 252, gave the Kansas Public Disclosure Commission authority to issue subpoenas during the course of its investigation, once a sufficiency determination has been made on a complaint. Formerly the law provided for subpoena power only after a probable cause determination. The law also provides for fines (\$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for third and subsequent violations) for violations of the Act.

KENTUCKY

Financial Disclosure Review Commission
PO Box K
Corbin, Kentucky 40701
(606) 523-0443
Executive Director: Ralph D. Roaden

Kentucky reports no significant legislation or litigation.

LOUISIANA

Commission on Ethics for Public Employees
7434 Perkins Road, Suite B
Baton Rouge, Louisiana 70808
(504) 925-7290
Maris McCrory

Legislation: Ethics code extended to boards that direct agencies. - Act 144 of the 1988 regular session of the Legislature subjects appointed board and commission members who exercise supervision over an agency to the same ethical standards as "agency heads". "Agency head" was defined to establish that nepotism and postemployment restriction apply to members of these boards and commissions.

Legislation: Recision of permits. - Act 581 expands the authority of the Commission on Ethics for Public Employees and the Board of Ethics for Elected Officials to rescind contracts that have been influenced by ethics violations to include also recision of permits and licenses.

Legislation: Sole decision maker may not enter into contract. - Act 880 provides that elected officials can no longer use recusal to cure certain conflicts of interest where the elected official is the "sole decision maker".

Legislation: Private use of public equipment authorized. - Act 623 provides that public law enforcement officers may use their official vehicles to provide private traffic control or security services provided "such use is approved by and in accordance with the policy of the law enforcement officer's public employer". The law requires that "appropriate charges" for such use be provided for, but sets no minimum fees.

MAINE

Commission on Governmental Ethics & Election Practices
Office of the Secretary of State
State House Station #101
Augusta, Maine 04333
(207) 289-4178
Deputy Secretary of State: Peter W. Danton
Administrative Assistant: Marilyn Canavan

Legislation: Ethics Code under study. - A blue ribbon commission to examine legislative ethics in state government was established by the president of the Senate and the Speaker of the House in the fall of 1988. The report is due at the end of 1988.

MARYLAND

State Ethics Commission
Room 1515
301 West Preston Street
Baltimore, Maryland 21201
(301) 225-1030
Executive Director: John E. O'Donnell

Legislation: Regulation of speakers' fees fails. - Julian L. Lapidés (D-Baltimore) sponsored a bill to bar executive branch officials from accepting fees for speaking to special interest groups. The Senate, which approved the proposal on a 33 to 11 vote, amended the measure to allow fees for written communications. Lapidés had been concerned over the large fees given by special-interest groups to members of Congress for speeches. These large fees "are very often tantamount to bribes," state Lapidés. This bill was approved by the Senate but failed in the House.

Legislation: Ethics law clearly applied to law enforcement officers. - In the 1988 session of the Maryland General Assembly, the Ethics Law was amended to

make it clear that the provisions of the Law Enforcement Officers' Bill of Rights did not apply to the activities of the State Ethics Commission.

Litigation: Eleven years of litigation. - In the latest skirmish in a political corruption case that just won't die, federal prosecutors and lawyers for former Maryland governor Marvin Mandel clashed once more over the 11-year-old mail fraud and racketeering conviction of the once powerful politician.

Last November, a federal judge in Baltimore overturned the conviction of Mandel and five associates in a reversal based on the 1987 Supreme Court *McNalley* ruling that swept away the underpinning of the mail fraud convictions of scores of public officials and private citizens. Prosecutors asked a three-judge panel of the 4th U.S. Circuit Court of Appeals to reinstate the conviction calling it the most important criminal case in the history of Maryland.

If the lower court ruling is upheld, it could lead eventually to Mandel's criminal record being expunged, restoration of his right to practice law and the return of more than \$600,000 in fines and forfeitures to four of his co-defendants. Mandel served about 19 months in federal prison.

MASSACHUSETTS

State Ethics Commission
One Ashburton Place, Room 619
Boston Massachusetts 02108
(617) 727-0060
Executive Director: Andrew B. Crane

Litigation: Separation of powers. - The Massachusetts Commission had initiated an action against Judge William Highgas, Jr. The judge asked that the complaint be dismissed on the theory of separation of powers. The Commission has deferred its proceeding until resolution of an action brought by the state's Judicial Conduct Commission against the judge for the same conduct that formed the basis of the Ethics Commission's complaint.

Litigation: Participation in matter in which interested. - The Town of Grafton took an interest in locating a sanitary landfill across the street from the home of town selectman George Prunier. Many Not-In-My-Back-Yard types might have worked to thwart the Town's decision, but not this public spirited local official. He voted in support of the town's acquisition of the landfill site. The Commission reprimanded the Selectman for participating in a decision in which he had a personal, financial stake.

Litigation: Golfing treasurers. - In August the Commission issued public enforcement letters to 5 municipal treasurers and to a Boston based bank in connection with the bank's furnishing the local treasurers with meals and golf outings. This action stemmed from the state inspector general's identification of 104 treasurers who had accepted benefits from the bank. The Commission's action was against the 5 who had accepted out of state golf outings valued at more than \$100. A further result is that Massachusetts has now prepared a fact sheet on business entertainment expenses for public officials.

Litigation: Political support is thing of value. - In the town of Chelsea the now former mayor cancelled a Fire Captain's promotional exam in exchange

for the political support of ten of twelve fire fighters competing for the position, or so it was alleged by the Massachusetts' Ethics Commission. It seems that when the mayor posted the notice of the exam for the selection of a fire captain two of twelve fire fighters lacked sufficient tenure to apply, but the two fire fighters would be eligible if a second notice of an examination were posted two months later. It was set in motion to hold that second exam, but the first ten protested to the mayor. It is alleged that the mayor told the ten fire fighters that he would not schedule the second exam in exchange for their political support. The Commission has filed a complaint.

Litigation: Use of office for free travel. - Massachusetts' Secretary of Economic Affairs, it alleged, used his state office to solicit people's interest in a tour of the Soviet Union. This was a tour to have been arranged under the auspices of People-to-People. Had the official successfully solicited a sufficient number of people he would have traveled free. Had he successfully solicited even more travelers, his spouse could have accompanied him without cost. Using the state's resources to solicit interest in this trip was a violation of Massachusetts ethics of law, said the Ethics Commission. The official withdrew from the tour, reimbursed the state for misdirection of resources to his private end, and was reprimanded.

Legislation: No significant legislation reported. - No legislation of significance this year. Legislation took a back seat to Presidential Politics.

MICHIGAN

State Board of Ethics
Dept. of Civil Service
Lewis Cass Bldg.
320 South Walnut
PO Box 30002
Lansing, Michigan 48909
(517) 373-2754

Executive Secretary: Donald H. Myers

Michigan reports no significant legislation or litigation.

MINNESOTA

Ethical Practices Board
625 North Robert Street, Suite 102
St. Paul, Minnesota 55101-2520
(612) 296-1720

Executive Director: Mary Ann McCoy

Legislation: Ethics Code to be proposed. - A bill to establish standards of conduct for state officials and to create an ethics board or commission to oversee those standards is expected to be offered in the Senate in 1989.

MISSISSIPPI

Mississippi Ethics Commission
PO Box 22746
Jackson, Mississippi 39225-2746
(601) 359-1285
Executive Director: Ronald E. Crowe

Legislation: Public official felons. - Operation Pretense has generated a call for a state law which would forbid convicted federal felons to hold public office. An incumbent member of the state House of Representatives has prefiled a bill on this issue for consideration in 1989. Currently, conviction of only certain state crimes preclude one from holding public office. These bills have been prefiled for the 1989 legislative session.

At the present time, "Operation Pretense" has resulted in 54 supervisors being charged. Both the U.S. Attorneys in the southern district and northern district of the state continue to report that even though more than fifty supervisors have either been convicted or pleaded guilty, many additional supervisors will be brought before federal grand juries.

Litigation: Board members not to hire spouses. - The Mississippi Supreme Court has ruled that employment of spouses of members of school boards is prohibited pursuant to Section 109 of the Mississippi Constitution of 1890. The case was originally brought by several taxpayers. The attorney general and the Mississippi Ethics Commission intervened in the case. *Smith, et al. v. Dorsey, et al.*, Supreme Court of Mississippi, No. 58,288 (Decided March 16, 1988). This decision was subsequently modified and reissued in August 1988.

Litigation: Hospital board's members not to grant privileges to selves. - The Mississippi Ethics Commission is also presently involved at the trial court level in two cases, each concerning service of a physician holding staff privileges at a public hospital while serving as a member of the hospital's board of trustees. The hospital's board of trustees must annually pass on the renewal of staff privileges. The question before the trial courts is whether the action of the board of trustees granting staff privileges authorizes a contract with a physician. One case also concerns a claim by the Ethics Commission asserting that the board member-staff physician used his official position as a trustee to obtain additional benefits for his medical practice through the use of the hospital's equipment and staff. One case is still before the trial court; the other was decided adversely toward the commission, which has appealed to Mississippi's Supreme Court.

Legislation: Private interest in public contract; advisory opinions. - 1987 was a general election year in Mississippi. The new governor, Ray Mabus, and the new attorney general, Mike Moore, ran their successful campaigns urging white collar crime packages, public integrity laws, and additional disclosure requirements. Governor Mabus presented his government reform package to the new legislature.

The Mississippi Legislature adjourned the 1988 Session in early May and several matters were taken up by the Legislature which affect the ethics laws of the state. Senate Bill 2853 was adopted. It conforms the ethics in government statutes with the constitutional mandate of Section 109 prohibiting a public official's interest in a contract he is authorized to approve. The statutes

had ingrafted a number of exceptions to the constitutional language. In 1987 the Ethics Commission had struck several of the exceptions that had been placed in the law in 1983 by the Legislature. *Frazier, et al. v. State ex rel. Pittman*, 504 So. 2d 675 (March 1987) Senate Bill 2853 replaced the statutory language with the language of the constitution.

Senate Bill 2853 also gave the Ethics Commission's advisory opinions legal standing and allowed public servants to rely upon the opinions with no liability if such reliance is in good faith. The bill places a 90-day deadline on local district attorneys and the state attorney general for response to matters which have been referred to their offices for action by the Ethics Commission.

The act will take effect upon approval by the United States Department of Justice due to the requirement of the Voting Rights Act review process.

Local reform: - Governor Ray Mabus called a special session for August 1988 after the Legislature failed to agree on reforms during the regular spring session. The real goal of the special session of the legislature was to overhaul what Mabus called "an archaic system of county government" that "has made stealing too easy and too tempting." Officials blamed graft on a county government system that carves a county into five electoral districts, each run by an elected supervisory who makes decisions on purchasing, inventory, personnel and road work. An opportunity for the revamping of county governmental structure appeared on ballots in the November election. The more urban counties reorganized; the more rural did not.

Legislation: Administrative remedies . - The Senate Judiciary Committee has shown an interest in giving the commission administrative remedies, after administrative hearings, instead of requiring the commission to have cases brought through local district attorneys. Watch for developments in 1989.

MISSOURI

Secretary of State's Office
Campaign Reporting Division
PO Box 1370
Jefferson City, Missouri 65102
(314) 751-3919

Co-Directors: Gayla Thomas and Steve Byers

Missouri reports no significant legislation or litigation.

MONTANA

Commissioner of Political Practices
Capitol Station
Helena, Montana 59620
(406) 444-2942
Commissioner: Dolores Colburg

Montana reports no significant legislation or litigation.

NEBRASKA

Accountability and Disclosure Commission
11 Floor, State Capitol Bldg.
PO Box 95086
Lincoln, Nebraska 68509
(402) 471-2522
Executive Director: Dannie Trautwein

Legislation: Financial disclosure. - A new rule requiring the filing of Statements of Financial Interests by certain state level public employees and officials has been approved by the Governor.

NEVADA

Commission on Ethics
State Capitol Complex
Carson City, Nevada 89710
(702) 885-5469
Chairman: Carl F. Dodge

Nevada reports no significant legislation or litigation.

NEW HAMPSHIRE

Secretary of State's Office
State House, Room 204
Concord, New Hampshire 03301
(603) 271-3242
Secretary of State: William M. Gardner

New Hampshire reports no significant legislation or litigation.

NEW JERSEY

Executive Commission on Ethical Standards
28 West State Street
Room 1407, CN 082
Trenton, New Jersey 08625
(609) 292-1892
Executive Director: John G. Donnelly

Legislation: Recodification of ethics code. - The New Jersey Conflicts of Interest Law was amended by P.L. 1987, c. 432, effective February 14, 1988. This law extends to the executive branch of state government. Major changes include: state agencies to include interstate agencies to which New Jersey is a party; reduction from 10% to 1% the stock ownership or control of a corporation by a legislator or certain officer or employee which precludes the corporation from contracting with the state for anything having a value of \$25 or more where the contract is not publicly bid or subject to certain other statutory exceptions; a broadening of the post-employment restrictions to prohibit officers and employees from providing or agreeing to provide information not

generally available to members of the public or services to anyone other than the state in connection with any matter in which he was substantially and directly involved during the course of his public office or employment.

Legislation: Advisory bodies subject to new law. - Almost as soon as the law tightening ethical restrictions was enacted there were calls for an amendment to distinguish between advisory and enforcement commissions. The law, long a standard for full-time, salaried commission members, states that commission members should not "undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgement in the exercise of his official duties." Revisions of the ethics law, sponsored by Assemblyman Paul Contillo (D-Bergen), extended the range of the old law to include citizens who serve part-time on state commissions on a voluntary basis.

Commissions with enforcement of contracting powers are very different from advisory commissions. According to both Michael Cole, chief counsel to Gov. Thomas Kean, and Albert Porroni, counsel to the Legislature, a distinction should be made between the two types of commissions.

According to Contillo, commissions with enforcement powers or the ability to award state contracts are those, who "act . . . buy . . . order". A member of such a commission needs to be objective and to have an independence of judgement as stated in the law.

Contillo states, "The whole purpose of (an advisory) commission is to supply a whole spectrum of hopefully conflicting opinions. We deliberately appoint people of various and conflicting views."

Legislation: Disclosure by legislators. - In a unanimous vote, the Joint Legislative Committee on Ethical Standards approved a new ethics code that would result in lawmakers having to make fewer disclosures. Current code requires a legislator to report any gift worth more than \$250 and any honorarium, fee or reimbursement above \$100. The new code would raise the gift level to \$400 and the fee limit to \$200.

Legislation: Purchasing standards. - In July 1988 New Jersey's governor issued an executive order (#189) proclaiming certain standards of conduct for vendors wishing to do business with the state. A vendor's violation of those purchasing standards can bar a vendor from state business for as much as 5 years.

NEW MEXICO

Secretary of State's Office
State Capitol Bldg., Room 400
Santa Fe, New Mexico 87503
(505) 827-3600

Secretary of State: Rebecca Vigil-Giron

New Mexico reports no significant legislation or litigation.

NEW YORK

State of New York Commission on Government Integrity
21st Floor, Two World Trade Center
New York, New York 10047
Executive Director: Peter Bienstock
(212) 321-1350

New York reports no significant legislation in 1988.

Legislation: Ethics code strengthened. - The ethics measures enacted in April 1987 which bar legislators from appearing before state agencies on behalf of private clients, call for broader financial disclosure by legislators, and provide biennial audits of the Legislature, state agencies and public authorities are already being viewed as insufficient. Critics within the Legislature are deliberating what steps to take to guarantee greater accountability for legislative expenditures and a means to open the legislative process to public scrutiny.

Legislation: Campaign activities of legislative employees. - State legislative employees would be prohibited from engaging in political campaign work on state time or from using state resources for campaign purposes if rules proposed by a state commission are approved.

The New York State Blue Ribbon Commission reviewed legislative practices in relation to political campaign activities of legislative employees. The commission was headed by former Governor Malcolm Wilson. Following are some of the recommendations made by the commission in April 1988: Legislative employees would be prohibited, while on state time, from doing strictly campaign work; Legislative employees would be allowed to do campaign work voluntarily outside their regular state time; No mass mailings could be made on behalf of a legislator during a 30-day period prior to a primary or general election in which the legislator is a candidate; Within 10 days after beginning their jobs, all legislative employees must file a public document that lists the person's name, salary and other compensation, work address and telephone number, a general description of the duties and listing of time and attendance obligations.

Legislation: Local ethics codes. - New York's Commission proposes that the Legislature establish minimum standards of conduct for local governmental officials. A public hearing on that proposal was set for November 22, 1988.

Legislation: Ethics Act to take effect. - New York's Commission on Government Integrity was designed to be a temporary agency. Initially it was funded for one year and was later granted funds to carry it through March 1989. New York adopted its Ethics in Government Act in July 1987 to take effect in January 1989. This Act creates an ethics commission which includes some public members for the executive branch of state government, a commission comprising only legislators for the legislative branch, a commission for the judicial branch which will take effect in 1991, and a commission for local government ethics.

Legislation: New York City Conflict of Interest Board. - On November 8, 1988 New York City's voters revised the City's charter to rename its Board of Ethics

the Conflict of Interests Board and to give it new powers. The Board's members are reduced from 5 to 3. The revised board has new powers to impose penalties. The Mayor is to appoint members by January 1, 1989. The new body is to adopt its procedural rules by December 1989, and the new effort is to take effect at the start of 1990. For information consult New York City Charter Revision Committee, 11 Park Place, Room 1616, New York, New York 10007. Also Priscilla Lundin Counsel/Executive Director and Peter Zimroth, Corporation Counsel, New York City Board of Ethics, 280 Broadway, New York, NY 10007, (212) 566-4900.

NORTH CAROLINA

Board of Ethics
116 West Jones Street
Raleigh, North Carolina 27603-8003
(919) 733-5103

Administrative Assistant: Mildred M. Donavant

North Carolina reports no significant legislation or litigation.

NORTH DAKOTA

Secretary of State's Office
Capitol Bldg.
Bismark, North Dakota 58505
(702) 224-2900
Secretary of State: Ben Meier

North Dakota reports no significant legislation or litigation.

OHIO

Ohio Ethics Commission
8 East Long Street, Suite 1200
Columbus, Ohio 43215
(614) 466-7090
Executive Director: Melissa Warheit

Litigation: Financial disclosure. - On February 21, 1988, the U.S. Supreme Court rejected an appeal by Ray Morgan, who ran unsuccessfully for Clark County Commission in 1984. Morgan had claimed that Ohio's financial disclosure law is unconstitutional.

Litigation: "Knowingly". - The Ohio Supreme Court voted 7-0 to uphold the Cuyahoga County Common Pleas Court conviction of Arnold Pinkney for violating SECTION 2921.42 (A)(1) of the Ohio Revised Code, which prohibits a public official from knowingly authorizing a public contract in which he has an interest.

While a member of the Cleveland-Cuyahoga County Port Authority, Pinkney co-signed a check payable to his insurance company for liability insurance for members of the Port Authority.

In interpreting Section 2921.42(A)(1), the Court held that, "knowledge by a public official that certain conduct is unlawful is not an element of the crime of his 'knowingly' authorizing a public contract in which he has an interest, as set forth in R.C. 2921.42(A)." In upholding the conviction, the Court acknowledged that any personal reward to the defendant was minimal, and there was no apparent attempt at deception.

Legislation: Ethics Codes for school boards. - House Bill 786, sponsored by Rep. Ray Miller would require members of, and candidates for, school boards of education to file a financial disclosure statement with the Ohio Ethics Commission. The bill was introduced February 12, 1988, and referred to the House Ethics and Standards committee; it did not pass.

Legislation: Postemployment. - A lengthy, complex hazardous waste siting bill included, to the surprise of the Ohio Ethics Commission, a provision prohibiting a former official who had been charged with making hazardous waste siting decisions representing a client for pay in connection with hazardous waste siting for a period of 2 years after leaving government service.

Legislation: Public officials to account for their contributions. - In mid November Ohio revamped its system for issuing motor vehicle license plates. Each county has 1 or more so-called Deputy Registrars appointed to issue license plates. To register your automobile in Ohio you must make an annual trek to the Deputy Registrar. The Legislature has not provided for automatic or mail registration. These registrars are, by all reports, political plums. As part of the revamping of the system, registrars are required to report annually a list of their campaign contributions made by them or their spouses. The new law provides no penalty for failure to comply but imposes a whopping \$10,000 penalty for incorrect filing.

OKLAHOMA

Ethics Commission

5-2A State Capitol

Oklahoma City, OK 73105-4802

Marilyn Hughes, Acting Executive Director

(405) 521-3451

Legislation: Charitable solicitations. - In a letter to state Chief Justice James Doolin, Governor Henry Bellmon requested a review of the Code of Judicial Conduct and in particular, a modification of the restrictions applied to members of the Oklahoma Ethics Commission. One canon of the code would prohibit ethics panel members from engaging in charitable activities, such as fund raising for religious, educational or civic organizations. Bellmon asked for a distinction to be made in the code as it applies to ethics commissioners in order to recognize the differences between full-time, paid judges and part-time, volunteer commissioners. Bellmon warned that if not modified, the number of civic-minded candidates for commissioner positions would be reduced, affecting the public policy behind the Ethics Act.

OREGON

Oregon Government Ethics Commission
700 Pringle Parkway, SE, 1st Floor
Salem, Oregon 97310-1360
(503) 378-5105
Executive Director: Betty J. Reynolds

Litigation: Gifts of Travel. - Oregon law prohibits public officials from accepting for themselves or their families a gift valued at more than \$100. Excluded from "gift" is "food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity." Two city officials, traveling on business that fell within the exception, had their spouses accompany them at the expense of another entity. The Commission found both officials guilty of obtaining travel for their spouses. The officials have taken their case to the Court of Appeals which heard arguments on September 12th. As of December 1, 1988 a decision had not been rendered.

PENNSYLVANIA

State Ethics Commission
308 Finance Bldg.
PO Box 11470
Harrisburg, Pennsylvania 11708-1470
(717) 783-1610
Executive Director: John J. Contino

Legislation: Recodification; sunset review. - As previously reported, the Pennsylvania State Ethics Commission is currently undergoing a sunset review process. Pursuant to this process, the General Assembly of Pennsylvania must enact legislation to recreate the Pennsylvania State Ethics Commission or the agency must terminate its existence. The original termination schedule for the Pennsylvania Ethics Commission was set for December 31, 1987. The Pennsylvania House of Representatives passed HB 1733, Printer's No. 2623, recreating the State Ethics Commission and providing for various additional powers and duties of the agency. That legislation has now been referred to the Pennsylvania State Senate for review and consideration. The Leadership Committee of the Pennsylvania General Assembly authorized a six month extension of the sunset date of the commission during which time the Pennsylvania State Senate will review the legislation already passed by the Pennsylvania House of Representatives. A second six month extension was provided to keep the Commission in business through the end of 1988. Pennsylvania law permits only 2 of these extensions. The Senate is expected to pass legislation reauthorizing the Commission during the last week of November. Resolution of House and Senate versions will likely come in December.

Litigation: Separation of powers. - *Maunus v. State Ethics Commission*. Pa. Commw. Ct. 515 A 2d 83. (1986). Argument before the Supreme Court of Pennsylvania in the case of *Maunus v. State Ethics Commission* were set for April

1988. This case involved the issue of whether full-time, publicly employed attorneys are required to file Statements of Financial Interests pursuant to the provisions of the Pennsylvania State Ethics Act. The lower court had ruled that such attorneys were exempt from the filing requirement based upon the decision that the requirement was unconstitutional as applied to full-time, publicly employed attorneys. The court reasoned that such legislatively enacted provisions were a violation of the constitutional separation of powers doctrine. On June 23, 1987, the Supreme Court of Pennsylvania granted a Petition for Permission to Appeal in the matter and said Appeal/Argument were scheduled for April, 1988.

On August 10, the Pennsylvania Supreme Court unanimously decided that the financial disclosure provisions of the Pennsylvania State Ethics Act are applicable to full-time, publicly employed attorneys. The decision reversed a Commonwealth Court ruling that had declared the disclosure provisions unconstitutional as applied to attorneys, based upon the theory that such legislative enactment encroached upon the inherent and exclusive regulating authority of the judiciary thus violating the separation of powers doctrine. See: *Maunus vs. State Ethics Commission* No. 38 M.D. Appeal Dkt. 1987, August 10, 1988.

Litigation: Enforcement of ethics code. - In *Fee vs. State Ethics Commission*, Pa. Commw. Ct., 540 A. 2d 1385 (1988) the Commonwealth Court upheld the authority to enforce State Ethics Commission orders requiring the payment of restitution of financial gains received in violation of the State Ethics Act.

Litigation: Nepotism; home rule. - In Philadelphia three Philadelphia City Council Members hired their spouses to work in their legislative offices. Pennsylvania Ethics Commission has brought an action against them, not under a specific nepotism statute, but under a more general provision forbidding use of office to obtain gain for self and family. Among arguments cited by the Council Members and defense is that Philadelphia, having been granted "home rule", is exempt from the provisions of the state's ethics act.

Litigation: Interstate compacts. - The Delaware River port authority is a 16 member authority created by agreement of Pennsylvania and New Jersey. Each state sends 8 members to this body. The Pennsylvania Ethics Commission claims that Pennsylvania's ethics law applies to Pennsylvania's representatives to this commission. In an action for declaratory judgement, someone takes a different view. The claim is made that because this is a bi-state commission one state cannot impose qualifications or restraints upon some of the members without the concurrence of the other state. The Pennsylvania Ethics Commission's staff expects this matter to be heard in 1989. The resolution may be in 2 or 3 years.

RHODE ISLAND

Ethics Commission
Room 220, 10 Dorrance Street
Providence, Rhode Island 02903
(401) 277-3790
Executive Director: Mark Eckstein

Administrative action. - Rhode Island's code applies to state, county, and municipal employees. Out of 5,000 persons required to file, there were approximately 1500 non-filers. The Ethics Commission hasn't had the resources to file complaints against all non-filers. There was to be a public hearing at the end of November at which the Commission was to have proposed changes in its administrative rules so the Commission will be able to take enforcement action against all the non-filers.

SOUTH CAROLINA

State Ethics Commission
P.O. Box 11926
Columbia, South Carolina 29211
(803) 734-1227
Executive Director: Gary R. Baker

Legislation: Penalties for late filings. - Legislation providing for levying of fines by the State Ethics Commission for late filing or nonfiling of required statements passed the House and was later amended by the Senate in a way that the Ethics Commission found made the legislation unworkable. The Ethics Commission asked that the bill be withdrawn, and it was. New ethics legislation is foreseen for 1989.

SOUTH DAKOTA

Secretary of State's Office
500 E. Capitol, Suite 204
Pierre, South Dakota 57501-5077
(605) 773-3537
Secretary of State: Joyce Hazeltine

South Dakota reports no significant legislation or litigation.

TENNESSEE

Senate Ethics Committee
Suite G-7
War Memorial Building
Nashville, TN 37219
(617) 741-4856
Legal counsel: Nathan Ridley

Tennessee reports no significant legislation or litigation.

TEXAS

State Ethics Advisory Commission
PO Box 13485, Capitol Station
Austin, Texas 78711-3485
(512) 463-5655
Chairman: Harold Hammett

Texas reports no significant legislation or litigation.

UTAH

Office of the Attorney General of Utah
236 State Capitol
Salt Lake City, UT 84114
Ralph Finlayson, Asst. Attorney General
(801) 538-1021

Utah reports no significant legislation or litigation.

VERMONT

Secretary of State's Office
Pavillion Office Bldg.
Montpelier, Vermont 05602
(802) 828-2363
Secretary of State: James H. Douglas

In March 1988, the governor issued an executive order establishing a code of ethics for all gubernatorial appointees. Appointees are required to file a statement of financial interests. Appointees must agree not to lobby for one year after they leave state employment. But Secretary of State Jim Douglas call the order unenforceable and plans to ask the next legislative session to establish an ethics code for state and local executive branch officials.

VIRGINIA

Office of the Secretary of the Commonwealth
101 North 8th Street
Richmond, VA 23219
(804) 786-8109
Assistant Attorney General: Gregory J. Haley

Virginia reports no significant legislation or litigation.

WASHINGTON

State Public Disclosure Commission
403 Evergreen Plaza Bldg., FJ-42
Olympia, Washington 98504-3342
(206) 753-1111
Executive Director: Graham E. Johnson

Washington reports no significant legislation or litigation.

WEST VIRGINIA

Legislative Services
132 East State Capitol
Charleston, WV 25305
(304) 348-2040
Angela White

Legislation: No ethics code this year. - A comprehensive ethics bill passed one house but not the other. Look for possible legislation from the next session of the legislature.

WISCONSIN

Wisconsin State Ethics Board
125 South Webster Street
Madison, Wisconsin 53702
(608) 266-8123
Executive Director: R. Roth Judd

Legislation: Burden of proof altered. - It is now easier to prove a violation of Wisconsin's ethics code. A violation must now be established by clear and convincing evidence in an administrative proceeding. Formerly the Board had to prove its case "beyond a reasonable doubt," even in a civil case.

Legislation: Penalties increased. - The penalty for a violation of Wisconsin's ethics code has been increased from \$500 to \$5,000 plus any economic benefit derived improperly.

WYOMING

Secretary of State's Office
State Capitol
Cheyenne, Wyoming 82002-0020
(307) 777-7186
Deputy Secretary of State: Margy White

Wyoming reports no significant legislation or litigation.

UNITED STATES (FEDERAL)

Office of Government Ethics
1625 K Street, N.W. Suite 400
PO Box 14108

Washington, D.C. 20044

(202) 632-7642

Director: Frank Q. Nebeker

Legislation: Ethics office reauthorized. - Public Law 100-598 was signed November 3, 1988. This law reauthorizes the Office of Government Ethics grants of new enforcement authority. This act extends the office's lease on life for another 6 years. The office of Governmental Ethics will become an independent agency as of September 1989. Currently it is a part of the Office of Personnel Management. This law also establishes procedures whereby the Capitol Office may order corrective action by employees.

Legislation: Postemployment provision vetoed - The President has vetoed H. R. 40-53 which would have established post employment restraints upon employees of the Executive Branch. There continues to be considerable controversy about the measure's merits. One government official familiar with this bill indicated that this bill established good policy and procedure until its final days. Then, its effectiveness was compromised in its last 2 days before the Congress when it became "an arcane and disastrous piece of legislation." The bill was passed on a voice vote, arguably because no one wanted to be recorded on a roll call on this issue on the days prior to November's election.

In mid November 1988 there was enacted a bill establishing post employment provisions for procurement personnel in the Office of Federal Procurement Policy. (Was this legislation or rule)

Litigation: Nepotism. - *United States vs Lund*, 853 Fed. 2d 242 (4th Circuit, 1988 reversing 670 F.Supp. 654 (east district of Virginia)) involved a proceeding against a U.S. Government employee who had recommended promotion and pay increase for his spouse who was also an employee of the U. S. Government. The defendant argued that his action could not contravene laws regulating conflicting interests because his actions involved the internal affairs of the United States Government rather than a conflict of the U. S. Government and a separate organization. He lost.

Administrative action? We'll see. - Saying he's "personally disturbed" and "tired of being embarrassed" by the ethical lapses in government, George Bush proposed establishing a "strict code of ethics" and a new ethics panel in the White House to "avoid the excesses of the past".

Bush said he was critical of corruption at the White House but said this did not include President Reagan.

Bush said people should "come to serve, not to profit" when taking a government job. As to whether his code of ethics would apply to subordinates who lie to Congress, Bush said "I haven't drawn up the code of ethics. Certainly, telling the truth should be part of it."

CANADA

Assistant Deputy Registrar General of Canada
207 Queen Street
Ottawa, Ontario, Canada K1A 0C9
(613) 995-0721

Assistant Deputy Registrar General of Canada: Jean-Pierre Kingsley

Legislation: Ethics Commission. - Canadian Prime Minister Brian Mulroney's Conservative government introduced conflict-of-interest legislation which would have applied to all members of Parliament, as well as to cabinet ministers, opposition-party leaders and parliamentary secretaries. The legislation called for disclosure of all private interests to a new three-member commission, which to be appointed by the government after consultations with opposition parties. The new commission was to assist members of Parliament to avoid conflicts when arranging their affairs. Penalties were to be levied at the discretion of Parliament.

The legislation was tabled in the House of Commons and did not pass. There are expectations that the legislation will be reintroduced in the new Parliament and pass.

NEWFOUNDLAND

Lieutenant-Governor James McGrath announced during the throne speech that the second phase of a two-tiered program to oversee conflict of interest is being established. The first stage was the establishment of a panel to review administrative decisions relating to the Newfoundland public service and conflicting interests. The second stage is establishment of a tribunal to oversee standards of conduct for cabinet ministers.

ONTARIO

Policy Development Division
Ministry of the Attorney General
18 King Street East, 15th floor
Toronto, Ontario M5C 1C5
(416) 965-0577
Karen Cohl

On February 9, 1988, the Ontario Legislature passed a bill requiring all members to disclose their assets to a conflicts commissioner. The 100 MPP's who are not in the cabinet have until mid-June to disclose to the commissioner their assets and those of their immediate family. All 30 cabinet ministers have already made such declarations. The ministers are to place their assets in a management trust, which, unlike a blind trust, allows them to keep track of what they own. They are to withdraw from cabinet discussions on matters in which they have an interest. The opposition parties opposed the legislation, contending that the provisions of the act permitting ministers to retain their assets could put them in a conflict. The opposition argued that the public has no way of knowing whether ministers withdraw from cabinet discussions, and while the Cabinet is keeping a list of which ministers declare a conflict of in-

terest, the list will be available only to the conflict commissioner, who will be a servant of the Legislature, and not the public unless he decides to make the complaint public after receiving a complaint. MPP's will be permitted to own businesses, but will be forbidden from participating in any decisions which could further their private interests.

END



LEGISLATIVE RESEARCH

S-420 State Capitol, Salem, OR 97310-1316

(503) 378-6871

87:272

TO: Representative Peg Jolin

FROM: Shelby J. Crawford, Research Analyst

SUBJECT: "Revolving Door" Laws

DATE: March 12, 1987

You asked Legislative Research to provide information regarding the advantages and disadvantages of the "revolving door" employment policy. This memorandum provides background information on the policy and summarizes state laws that provide for some form of post-employment restriction.

BACKGROUND

Many believe that public confidence in the integrity of elected and appointed officials is essential for effective government. And according to one author, the independence of the regulatory process is a crucial factor of that confidence.¹ An examination of this independence presents a major concern regarding the appearance of impropriety and also conflict of interest, particularly in the "revolving door" practice of some states.

The term "revolving door" has been used to describe the interchange of personnel between public and private sector. But recently, there has been additional concern about the revolving door between state agency heads and the industries they regulate. Some believe that such an interchange hinders an agency's effectiveness and independence. For example, the impartiality with which the agency exercises its independence may be compromised when significant numbers of policymakers come from the regulated industry. According to one source, an industry that employs a former government official might anticipate preferential treatment.² But others believe that an industry cannot adequately

¹Edna Earle Vass Johnson, "Agency 'Capture': The 'Revolving Door' Between Regulated Industries and Their Regulating Agencies," 18 U. Rich. L. Rev. 95 (1983).

²*Ibid.*, p. 96.

serve its clientele without knowing how the government process works, "having a feel for likely new directions and preparing [their clientele] to live in tomorrow's regulatory environment."³

As indicated, the revolving door situation may be both useful as well as dangerous. Some of the potential dangers include:

- (1) Can the regulatory agency be unduly influenced by former government officials or employees in the performance of its regulatory functions?
- (2) Do former agency employees seek and receive special favors from their former friends and colleagues in the agency that are not available to others?
- (3) Is confidential information made available to regulatory or government agencies?
- (4) What is the potential for disloyalty if the "revolving door" is perceived as an opportunity for future gratification?
- (5) Has government service become a training ground for insincere and self-serving government employees?
- (6) Will former industry employees who have entered agency employment through political appointment, or otherwise, unduly influence the activities of the regulatory agency for the benefit of their former private employer?

On the other hand, there are certain benefits to be gained by regulatory agencies and the public resulting from the revolving door practice. For example, it is significant to our political system that each new administration appoint top level officials in accordance with its philosophy. In order to recruit high quality individuals for government service, there must not be undue restrictions on their movement back into the private sector. 'New blood' is infused into the agencies when former industry personnel enter government service. Former industry employees bring new perspectives, ideas, and knowledge to the agency allowing the regulatory process to be more responsive to the real world of industry.

³Robert H. Mundheim, "Conflict of Interest and the Former Government Employee: Rethinking the Revolving Door," 14 Creighton L. Rev. 707 (Spring 1980/81).

The efficiency and quality of the relationship between industry and its regulatory agency can be enhanced when former agency employees are employed by or represent private organizations. Former agency employees can serve to educate and inform their private employers and the public of the workings of the agency. That is, understanding agency procedures, policies, and regulations provides a climate for more effective communication between an industry and its regulatory agency. Further, if the revolving door between the regulated industry and its regulating agency is hindered, an elite core of unresponsive government servants could result.

OTHER STATES

According to one source, at least 25 states have adopted some type of post-employment restrictions with regard to government employees.⁴ In addition, some states prohibit legislators or state employees from using their office to seek advantages. For example, Hawaii law provides that such individuals may not use their current employment to seek other employment or contract services.⁵ And under Arizona law, officers and employees are prohibited from representing another person before a public agency of past employment within the preceding 12 months.⁶

Florida and Iowa post-employment restrictions are specifically targeted toward unethical practices of former regulatory commissions. In Iowa, the law prohibits individuals who have served on such commissions from accepting compensation or rendering special favors with respect to licenses, contracts, certificates, or in promoting the passage of certain bills or resolutions before the legislature.⁷ Florida prohibits former commissioners of the Public Service Commission from appearing before the commission representing a client or any industry regulated by the commission for a period of two years following termination of commission service.⁸

⁴Neal R. Price, "The Ethics of Revolving-Doorism," Boston Globe, June 23, 1986.

⁵Hawaii Rev. Stat. § 84-13(1).

⁶Ariz. Rev. State Ann. § 38-504.

⁷Iowa Code Ann. § 68B.7.

⁸Fla. Stat. Ann. § 350.0605(1)

CODE OF ETHICS FOR PUBLIC OFFICIALS AND EMPLOYEES
(Text as of July 1, 1985 and reflecting
1985 Wisconsin Acts 1 - 29)

19.41 Declaration of policy. (1) It is declared that high moral and ethical standards among state public officials and state employes are essential to the conduct of free government; that the legislature believes that a Code of Ethics for the guidance of state public officials and state employes will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employes.

(2) It is the intent of the legislature that in its operations the board shall protect to the fullest extent possible the rights of individuals affected.

19.42 Definitions. In this subchapter:

(1) "Anything of value" means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees, honorariums and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity.

(3) "Board" means the ethics board.

(4) "Candidate for state public office" means any individual who files nomination papers and a declaration of candidacy under s. 8.21 for the purpose of appearing on the ballot for election as a state public official or any individual nominated for the purpose of appearing on the ballot for election as a state public official through the write-in process or by appointment to fill a vacancy in nomination and who files a declaration of candidacy under s. 8.21.

(5) "Department" means the legislature, the university of Wisconsin system, any authority or public corporation created and regulated by an act of the legislature and any office, department, independent agency or legislative service agency created under ch. 13, 14, or 15, any vocational, technical and adult education district or any constitutional office other than a judicial office.

(6) "Gift" means the payment or receipt of anything of value without valuable consideration.

(7) "Immediate family" means:

(a) An individual's spouse; and

(b) An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.