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HOUSE BILL NO. 216

Offered January 12, 2022

Prefiled January 10, 2022

A *BILL to amend and reenact § 2.2-3101 of the Code of Virginia, relating to State and Local Government Conflict of Interests Act; definition of gift; certain tickets and registration or admission fees.*

Patron—Simonds

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3101 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. The candidate shall become subject to the provisions of this chapter upon the filing of a statement of qualification pursuant to § 24.2-501. The State Board of Elections or general registrar shall notify each such candidate of the provisions of this chapter. Notification made by the general registrar shall consist of information developed by the State Board of Elections.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred.

"Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received

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59 and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private
60 profession or occupation or volunteer service of an officer or employee or of a member of his
61 immediate family; (vi) food or beverages consumed while attending an event at which the filer is
62 performing official duties related to his public service; (vii) food and beverages received at or
63 registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or
64 lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall
65 memento, or similar item that is given in recognition of public, civic, charitable, or professional service;
66 (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act
67 (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its
68 territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate
69 attendance by a legislator at a regular or special session of the General Assembly, a meeting of a
70 legislative committee or commission, or a national conference where attendance is approved by the
71 House Committee on Rules or its Chairman or the Senate Committee on Rules or its Chairman; (xiii)
72 travel related to an official meeting of, or any meal provided for attendance at such meeting by, the
73 Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any
74 charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with
75 such entity, to which such person has been appointed or elected or is a member by virtue of his office
76 or employment; (xiv) gifts with a value of less than \$20; (xv) attendance at a reception or similar
77 function where food, such as hors d'oeuvres, and beverages that can be conveniently consumed by a
78 person while standing or walking are offered; ~~or~~ (xvi) *tickets or the registration or admission fees to an*
79 *event that are provided by an agency to its own officers or employees for the purposes of performing*
80 *official duties related to their public service; or (xvii) gifts from relatives or personal friends.*

81 For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece,
82 nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his
83 spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild,
84 step-brother, or step-sister; or the donee's brother's or sister's spouse or the donee's son-in-law or
85 daughter-in-law.

86 For the purpose of this definition, "personal friend" does not include any person that the filer knows
87 or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4
88 of Title 2.2; (b) a lobbyist's principal as defined in § 2.2-419; (c) for an officer or employee of a local
89 governmental or advisory agency, a person, organization, or business who is a party to or is seeking to
90 become a party to a contract with the local agency of which he is an officer or an employee; or (d) for
91 an officer or employee of a state governmental or advisory agency, a person, organization, or business
92 who is a party to or is seeking to become a party to a contract with the Commonwealth.

93 For purposes of this definition, "person, organization, or business" includes individuals who are
94 officers, directors, or owners of or who have a controlling ownership interest in such organization or
95 business.

96 "Governmental agency" means each component part of the legislative, executive or judicial branches
97 of state and local government, including each office, department, authority, post, commission,
98 committee, and each institution or board created by law to exercise some regulatory or sovereign power
99 or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by
100 the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

101 "Immediate family" means (i) a spouse and (ii) any other person who resides in the same household
102 as the officer or employee and who is a dependent of the officer or employee.

103 "Officer" means any person appointed or elected to any governmental or advisory agency including
104 local school boards, whether or not he receives compensation or other emolument of office. Unless the
105 context requires otherwise, "officer" includes members of the judiciary.

106 "Parent-subsidiary relationship" means a relationship that exists when one corporation directly or
107 indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

108 "Personal interest" means a financial benefit or liability accruing to an officer or employee or to a
109 member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the
110 ownership interest exceeds three percent of the total equity of the business; (ii) annual income that
111 exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property
112 or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or
113 any combination thereof, paid or provided by a business or governmental agency that exceeds, or may
114 reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the
115 interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other
116 compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or
117 assumed on behalf of a business if the liability exceeds three percent of the asset value of the business;
118 or (vi) an option for ownership of a business or real or personal property if the ownership interest will
119 consist of clause (i) or (iv).

120 "Personal interest in a contract" means a personal interest that an officer or employee has in a

contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency, or an officer, employee, or elected member of a separate local governmental agency formed by a local governing body is appointed to serve on a governmental agency, and the personal interest in the transaction of the governmental agency is the result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body or the separate governmental agency to the officer, employee, elected member, or member of his immediate family.

"State and local government officers and employees" shall not include members of the General Assembly.

"State filer" means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § 2.2-3114.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.