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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES

Introduced By: Representative Joseph M. McNamara

Date Introduced: January 25, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 36-14-5 of the General Laws in Chapter 36-14 entitled "Code of
2 Ethics" is hereby amended to read as follows:

3 **36-14-5. Prohibited activities.** -- (a) No person subject to this code of ethics shall have
4 any interest, financial or otherwise, direct or indirect, or engage in any business, employment,
5 transaction, or professional activity, or incur any obligation of any nature, which is in substantial
6 conflict with the proper discharge of his or her duties or employment in the public interest and of
7 his or her responsibilities as prescribed in the laws of this state, as defined in section 36-14-7.

8 (b) No person subject to this code of ethics shall accept other employment which will
9 either impair his or her independence of judgment as to his or her official duties or employment
10 or require him or her, or induce him or her, to disclose confidential information acquired by him
11 or her in the course of and by reason of his or her official duties.

12 (c) No person subject to this code of ethics shall willfully and knowingly disclose, for
13 pecuniary gain, to any other person, confidential information acquired by him or her in the course
14 of and by reason of his or her official duties or employment or use any information for the
15 purpose of pecuniary gain.

16 (d) No person subject to this code of ethics shall use in any way his or her public office
17 or confidential information received through his or her holding any public office to obtain
18 financial gain, other than that provided by law, for him or herself or any person within his or her
19 family, any business associate, or any business by which the person is employed or which the

1 person represents.

2 (e) No person subject to this code of ethics shall:

3 (1) Represent him or herself before any state or municipal agency of which he or she is a
4 member or by which he or she is employed. In cases of hardship, the ethics commission may
5 permit such representation upon application by the official provided that he or she shall first:

6 (i) Advise the state or municipal agency in writing of the existence and the nature of his
7 or her interest in the matter at issue;

8 (ii) Recuse him or herself from voting on or otherwise participating in the agency's
9 consideration and disposition of the matter at issue; and

10 (iii) Follow any other recommendations the ethics commission may make to avoid any
11 appearance of impropriety in the matter.

12 (2) Represent any other person before any state or municipal agency of which he or she
13 is a member or by which he or she is employed.

14 (3) Act as an expert witness before any state or municipal agency of which he or she is a
15 member or by which he or she is employed with respect to any matter the agency's disposition of
16 which will or can reasonably be expected to directly result in an economic benefit or detriment to
17 him or herself, or any person within his or her family, or any business associate of the person, or
18 any business by which that person is employed or which the person represents.

19 (4) Shall engage in any of the activities prohibited by subsection (e)(1), (e)(2), or (e)(3)
20 of this section for a period of one year after he or she has officially severed his or her position
21 with said state or municipal agency; provided, however, that this prohibition shall not pertain to a
22 matter of public record in a court of law.

23 (f) No business associate of any person subject to this code of ethics shall represent him
24 or herself or any other person, or act as an expert witness before the state or municipal agency of
25 which the person is a member or by which the person is employed unless:

26 (1) He or she shall first advise the state or municipal agency of the nature of his or her
27 business relationship with the person subject to this code of ethics; and

28 (2) The person subject to this code of ethics shall recuse him or herself from voting on or
29 otherwise participating in the agency's consideration and disposition of the matter at issue.

30 (g) No person subject to this code of ethics, or spouse (if not estranged), dependent child,
31 or business associate of the person, or any business by which the person is employed or which the
32 person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise
33 of future employment based on any understanding that the vote, official action, or judgment of
34 the person would be influenced thereby.

1 (h) No person subject to this code of ethics, or any person within his or her family or
2 business associate of the person, or any business entity in which the person or any person within
3 his or her family or business associate of the person has a ten percent (10%) or greater equity
4 interest or five thousand dollars (\$5,000) or greater cash value interest, shall enter into any
5 contract with any state or municipal agency unless the contract has been awarded through an open
6 and public process, including prior public notice and subsequent public disclosure of all proposals
7 considered and contracts awarded; provided, however, that contracts for professional services
8 which have been customarily awarded without competitive bidding shall not be subject to
9 competitive bidding if awarded through a process of public notice and disclosure of financial
10 details.

11 (i) No person shall give or offer to any person covered by this code of ethics, or to any
12 candidate for public office, or to any person within his or her family or business associate of any
13 person, or to any business by which the person is employed or which the person represents, any
14 gift, loan, political contribution, reward, or promise of future employment based on any
15 understanding or expectation that the vote, official action, or judgment of the person would be
16 influenced thereby.

17 (j) No person shall use for any commercial purpose information copied from any
18 statements required by this chapter or from lists compiled from the statements.

19 (k) No person shall knowingly and willfully make a false or frivolous complaint under
20 this chapter.

21 (l) No candidate for public office, or any person within his or her family, business
22 associate of the candidate, or any business by which the candidate is employed or which the
23 candidate represents, shall solicit or accept any gift, loan, political contribution, reward, or
24 promise of future employment based on any understanding that the vote, official action, or
25 judgment of the candidate would be influenced thereby.

26 (m) No person subject to this code of ethics shall, either directly or indirectly, through
27 any government agency, or through a business associate, or through any other person, threaten or
28 intimidate any complainant or witness or any family member of any complainant or witness in
29 any proceeding before the state ethics commission.

30 (1) In addition to any rights a complainant or witness may have under the Rhode Island
31 Whistleblowers' Protection Act, chapter 50 of title 28 or under any other statute, a complainant or
32 witness may bring a civil action in superior court for appropriate injunctive relief, or actual
33 damages, or both and attorney's fees within three (3) years after the occurrence of the alleged
34 violation of subsection (m) above.

1 (2) The initiation of litigation by a complainant or witness pursuant to subsection (m)(1)
2 shall not constitute a violation of any confidentiality provisions of this chapter.

3 (n) (1) No state elected official, while holding state office and for a period of one year
4 after leaving state office, shall seek or accept employment with any other state agency, as defined
5 in section 36-14-2(8)(i), other than employment which was held at the time of the official's
6 election or at the time of enactment of this subsection, except as provided herein.

7 (2) Nothing contained herein shall prohibit any general officer or the general assembly
8 from appointing any state elected official to a senior policy-making, discretionary, or confidential
9 position on the general officer's or the general assembly's staff, and in the case of the governor, to
10 a position as a department director; nor shall the provisions herein prohibit any state elected
11 official from seeking or accepting a senior policy-making, discretionary, or confidential position
12 on any general officer's or the general assembly's staff, or from seeking or accepting appointment
13 as a department director by the governor.

14 (3) Nothing contained herein shall prohibit a state elected official from seeking or being
15 elected for any other constitutional office.

16 (4) Nothing contained herein shall prohibit the Rhode Island ethics commission from
17 authorizing exceptions to this subsection where such exemption would not create an appearance
18 of impropriety.

19 (o) (1) No person holding a senior policy-making, discretionary, or confidential position
20 on the staff of any state elected official or the general assembly shall seek or accept any other
21 employment by any state agency as defined in section 36-14-2(8)(i), while serving as such policy-
22 making, discretionary, or confidential staff member and for a period of one year after leaving that
23 state employment as a member of the state elected official's or the general assembly's senior
24 policy-making, discretionary, or confidential staff.

25 (2) No person or employee currently employed by the department of administration in a
26 decision-making position or capacity or influence over legislation with the executive branch may
27 lobby for, nor be employed by any state agency, quasi-public agency, or any other state
28 subsidized corporation or entity should they leave their current employment until such time as a
29 new governor shall be elected.

30 ~~(2)~~(3) Notwithstanding the foregoing, a person holding a senior policy-making,
31 discretionary, or confidential staff position who has a minimum of five (5) years of uninterrupted
32 state service shall be exempt from the provisions of this section. "State service" as used herein
33 means service in the classified, unclassified and nonclassified services of the state, but shall not
34 include service in any state elective office.

1 ~~(3)~~(4) Nothing contained herein shall prohibit any general officer or the general
2 assembly from appointing any such senior policy-making, discretionary, or confidential member
3 of the staff of any state elected official or the general assembly to any other senior policymaking,
4 discretionary, or confidential position on any general officer's or the general assembly's staff, and
5 in the case of the governor, to a position as a department director; nor shall the provisions hereof
6 prohibit any senior policy-making, discretionary, or confidential member of the staff of any state
7 elected official or the general assembly from seeking or accepting any other senior policy-
8 making, discretionary, or confidential position on any general officer's or the general assembly's
9 staff, or from seeking or accepting appointment as a department director by the governor.

10 ~~(4)~~(5) Nothing contained herein shall prohibit a person holding a senior policy-making,
11 discretionary, or confidential staff position from seeking or being elected for any constitutional
12 office.

13 ~~(5)~~(6) Nothing contained herein shall prohibit the Rhode Island ethics commission from
14 authorizing exceptions to this subsection where such exemption would not create an appearance
15 of impropriety.

16 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC OFFICERS AND EMPLOYEES

1 This act would preclude current employees of the department of administration or the
2 executive branch from leaving their employment and either lobbying on behalf of, or being
3 employed by, any state agency, quasi-public agency, or any other state subsidized corporation or
4 entity until such time as a new governor is elected.

5 This act would take effect upon passage.

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