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## RESEARCH MEMO

**TO:** Interested Persons

**FROM:** Office of Legislative Legal Services

**DATE:** November 27, 2007

**SUBJECT:** Ethics laws applicable to members of the General Assembly other than article XXIX of the state constitution ("Amendment 41").

The following contains a brief summary of the major constitutional provisions, statutes, and legislative rules that relate to the ethical duties of members of the General Assembly, other than article XXIX of the state constitution ("Amendment 41") and an appendix with excerpts from those provisions.

Certain of the attached provisions relating to gift acceptance and reporting were impacted by the gift bans in Amendment 41. Legislation conforming these provisions to Amendment 41 was vetoed by the Governor following the issuance of the preliminary injunction in the *Developmental Pathways* lawsuit.<sup>1</sup> Accordingly, these provisions remain in effect as a result of the preliminary injunction and veto.

### Constitutional provisions - conflict of interest

Article V, section 43 of the Colorado Constitution requires that a member of the General Assembly who has a "personal or private interest" in pending legislation must disclose the fact of such interest and may not vote on the legislation.

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<sup>1</sup> House Bill 07-1356, "[c]oncerning technical modifications to statutory provisions governing the ethical conduct of persons involved in government as required by section 3 (5) of article XXIX of the state constitution", made amendments to several of the gift reporting and code of ethics provisions consistent with Amendment 41. The Governor vetoed this bill following the entry of the preliminary injunction in *Developmental Pathways*, on grounds that "[b]ecause the limitations set forth in sections 2 and 3 of article XXIX are not in effect, it is essential that the disclosure requirements and code of conduct that were in effect prior to Amendment 41's passage remain in place." See: "GOV. RITTER'S VETO MESSAGE ON HOUSE BILL 1356", dated June 1, 2007.

## **Statutory disclosure law - gifts and honoraria reporting - gift ban**

Part 2 of article 6 of title 24, C.R.S., outlines requirements for the disclosure by public officials of interests, such as sources of income, business interests, and interests in real property, as well as for the reporting of gifts, honoraria, and other benefits. Under these provisions, in addition to the disclosure requirements, a member of the General Assembly is prohibited from accepting or receiving:

- A gift of money for the purpose of defraying any expenses related to his or her official duties or an in-kind gift; or
- A gift of money from a lobbyist or from a corporation or labor organization.<sup>2</sup>

## **Statutory Code of Ethics**

Article 18 of title 24, C.R.S., prescribes standards of conduct for government officials and employees. Part 1 establishes a "Code of Ethics", and part 2 describes prohibited acts relating to contracts and claims.

**Rules of conduct versus ethical principles.** The code of ethics provides that the holding of public office is a public trust, and a member of the General Assembly or other public official "whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust".<sup>3</sup> The code further enumerates specified "*rules of conduct*" applicable to members of the General Assembly and provides that "proof beyond a reasonable doubt of commission of any act enumerated" is proof that the actor "has breached his fiduciary duty and the public trust".<sup>4</sup> Under these rules, a member of the General Assembly shall not:

- Disclose or use confidential information acquired in the course of his or her official duties in order to further substantially his or her financial interests.

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<sup>2</sup> Section 24-6-203 (3.5) (a) and (3.7), C.R.S.

<sup>3</sup> Section 24-18-103, C.R.S.

<sup>4</sup> Sections 24-18-104 and 24-18-106, C.R.S.

- Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value which: 1) Would tend to improperly influence a reasonable person in his or her position to depart from the faithful and impartial discharge of their duties; or 2) he or she knows or which a reasonable person in his or her position should know under the circumstances is primarily for the purpose of rewarding him or her for official action he or she has taken.
- Accept a fee, a contingent fee, or any other compensation, except his or her official compensation, for promoting or opposing the passage of legislation.<sup>5</sup>

The code also establishes "*ethical principles*" applicable to members of the General Assembly and provides that ethical principles serve only as "guides" to conduct and do not constitute violations as such of the public trust.<sup>6</sup> Under the ethical principles, a member of the General Assembly who has a personal or private interest in any measure or bill proposed or pending before the General Assembly shall disclose that fact and shall not vote thereon.<sup>7</sup>

**Voluntary disclosure.** The code provides that a member of the General Assembly "may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his private interest" in the manner provided by the rules of the House of Representatives and the Senate. Disclosure then serves as "an affirmative defense to any civil or criminal action or any other sanction".<sup>8</sup> We are not aware of a case where this affirmative defense has been tested. While disclosure may provide a measure of protection where the issue is close, it is not certain that mere disclosure would insulate a member from liability where the conduct is clearly a breach of the member's fiduciary duty and the public trust. Furthermore, where civil or criminal liability is predicated on a *constitutionally* imposed duty, it is questionable whether a statute could grant an affirmative defense.

**Board of ethics for the general assembly.** The code establishes a "board of ethics for the general assembly" and provides that the board "shall,

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<sup>5</sup> Sections 24-18-104 (1) and 24-18-106 (1), C.R.S.

<sup>6</sup> Sections 24-18-105 and 24-18-107, C.R.S.

<sup>7</sup> Section 24-18-107 (2), C.R.S.

<sup>8</sup> Section 24-18-110, C.R.S.

upon written request of a member of the general assembly, issue advisory opinions concerning issues relating to the requesting member's conduct and the provisions of this article".<sup>9</sup> According to the code, the board consists of four members, and the majority and minority leaders of the Senate and the House of Representatives each appoint one member.

**Advisory opinions of secretary of state.** The secretary of state is authorized to issue advisory opinions relating to ethical issues involving public officials. Such advisory opinions take priority over any conflicting opinions of the board of ethics for the General Assembly.<sup>10</sup>

**Proscribed acts related to contracts and claims.** Part 2 of the statutory provisions concerning standards of conduct for public officials prohibits members of the General Assembly and other public officials from being "interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees".<sup>11</sup>

### **Criminal code provisions**

The criminal code contains various provisions that could be applicable to the conduct of members of the House of Representatives, including provisions prohibiting bribery,<sup>12</sup> compensation for past official behavior<sup>13</sup>, and misuse of official information.<sup>14</sup>

### **Rules of the House of Representatives**

**Conflict of interest.** Rule 21 (c) of the Rules of the House of Representatives requires that, "A member who has an immediate personal or financial interest in any bill or measure proposed or pending before the General Assembly shall disclose the fact to the House, and shall not vote upon such bill or measure".

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<sup>9</sup> Section 24-18-113, C.R.S.

<sup>10</sup> Section 24-18-111, C.R.S.

<sup>11</sup> Section 24-18-201 (1), C.R.S.

<sup>12</sup> Section 18-8-302, C.R.S.

<sup>13</sup> Section 18-8-303, C.R.S.

<sup>14</sup> Section 18-8-402, C.R.S.

**Ethics complaints.** Rule 49 of the Rules of the House of Representatives establishes a procedure for a "committee on ethics" to consider complaints concerning "misconduct involving legislative duties by a member of the House, including but not limited to the alleged violation of the Rules of the House of Representatives or of section 40 of article V of the state constitution".

### **Rules of the Senate**

**Conflict of interest.** Rule 17 (c) of the Rules of the Senate requires that, "Any Senator having a personal or private interest in any question or bill pending, shall disclose such fact to the Senate and shall not vote thereon, and if the vote be by ayes and noes, such fact shall be entered in the journal".<sup>15</sup>

Rule 41 of the Rules of the Senate establishes guidelines for determining when a Senator has a conflict of interest and prohibits Senators from certain acts that constitute undue influence.

**Ethics complaints.** Rule 43 of the Rules of the Senate establishes a process under which persons with knowledge of misconduct involving legislative duties by a Senator may file a written complaint with the President of the Senate and for the appointment of a committee on ethics to investigate the complaint if the complaint is not dismissed. The committee may dismiss the complaint either after preliminary investigation or a hearing, or may make recommendations to the Senate, including reprimand, censure, or expulsion.

### **Joint Rules of the Senate and House of Representatives**

Joint Rule 42 specifies that, for purposes of section 43 of article V, House Rule 21 (c) and Senate Rule 17 (c), a member shall be considered to have a personal, private, or financial interest in a pending bill, measure, or question if the passage or failure of the legislation will result in the member deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other persons in the member's profession, occupation, industry, or region. The Rule further provides that a member shall not be deemed to have such an interest in legislation where that interest arises from legislation affecting the entire membership of a class to which the member belongs.

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<sup>15</sup> Article V, section 43 of the Colorado constitution serves as the basis for both Senate Rule 17 (c) and House Rule 21 (c).

## **General discussion**

Before entering into a contract for professional or other services or entering into an employment relationship with an entity that may be affected by legislation being considered by the General Assembly, a member should consider the provisions of law and legislative rules described in this memorandum. In addition, it is suggested that the member consider (1) consulting with the member's leadership or other members about their perception of the meaning of conflict of interest; (2) informing the potential employer about the applicable laws and rules which govern the conduct of a legislator; and (3) defining in writing the terms and conditions of employment or the contractual relationship in a manner that is consistent with the laws and legislative rules described in this memorandum.

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**APPENDIX**

*Note: Emphasis has been added by italics or underscoring where appropriate.*

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# COLORADO CONSTITUTION

## Article V

**Section 29. Contracts for facilities and supplies.** All stationery, printing, paper, and fuel used in the legislative and other departments of government shall be furnished; and the printing and binding and distributing of the laws, journals, department reports, and other printing and binding; and the repairing and furnishing the halls and rooms used for the meeting of the general assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as may be prescribed by law. *No member or officer of any department of the government shall be in any way interested in any such contract;* and all such contracts shall be subject to the approval of the governor or his designee.

**Section 40. Bribery and influence in general assembly.** If any person elected to either house of the general assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition pending or proposed to be introduced in the general assembly in consideration or upon condition that any other person elected to the same general assembly will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such general assembly, the person making such offer or promise, shall be deemed guilty of solicitation of bribery. If any member of the general assembly shall give his vote or influence for or against any measure or proposition pending in such general assembly, or offer, promise or assent so to do, upon condition that any other member will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such general assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such general assembly, he shall be deemed guilty of bribery; and any member of the general assembly, or person elected thereto, who shall be guilty of either of such offenses shall be expelled, and shall not be thereafter eligible to the same general assembly; and, on conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

**Section 43. Member interested shall not vote.** *A member who has a personal or private interest in any measure or bill proposed or pending before the general assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.*

## Article XII

**Section 2. Personal attention required.** No person shall hold any office or employment of trust or profit, under the laws of the state or any ordinance of any municipality therein, without devoting his personal attention to the duties of the same.

**Section 6. Bribery of officers defined.** Any civil officer or member of the general assembly who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment or of personal advantage or promise thereof, for his vote, official influence or action, or for withholding the same, or with an understanding that his official influence or action shall be in any way influenced thereby, or who shall solicit or demand any such money or advantage, matter or



thing aforesaid for another, as the consideration of his vote, official influence or action, or for withholding the same, or shall give or withhold his vote, official influence or action, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, or solicitation of bribery, as the case may be, within the meaning of this constitution, and shall incur the disabilities provided thereby for such offense, and such additional punishment as is or shall be prescribed by law.

**COLORADO REVISED STATUTES**

**CRIMINAL CODE - TITLE 18**

**18-1-901. Definitions.** (3) (o) "Public servant" means any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses.

**ARTICLE 8  
OFFENSES - GOVERNMENTAL OPERATIONS**

**PART 1  
OBSTRUCTION OF PUBLIC JUSTICE**

**18-8-101. Definitions.** As used in this article, unless the context otherwise requires: (3) "Public servant" has the same meaning as described in section 18-1-901 (3) (o).

**PART 3  
BRIBERY AND CORRUPT INFLUENCES**

**18-8-301. Definitions.** The definitions contained in section 18-8-101 are applicable to this part 3, unless the context otherwise requires, and, in addition to those definitions:

(1) "Benefit" means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(2) "Party officer" means a person who holds any position or office in a political party, whether by election, appointment, or otherwise.

(3) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(4) "Public servant", as used in sections 18-8-302 to 18-8-308, includes persons who presently occupy the position of a public servant as defined in section 18-8-101 (3) or have been elected, appointed, or designated to become a public servant although not yet occupying that position.

**18-8-302. Bribery.** (1) A person commits the crime of bribery, if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity; or

(b) While a public servant, he solicits, accepts, or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

(2) It is no defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class 3 felony.

**18-8-303. Compensation for past official behavior.** (1) A person commits a class 6 felony, if he:

(a) Solicits, accepts, or agrees to accept any pecuniary benefit as compensation for

having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another or for having otherwise exercised a discretion in his favor, whether or not he has in so doing violated his duty; or

(b) Offers, confers, or agrees to confer compensation, acceptance of which is prohibited by this section.

**18-8-304. Soliciting unlawful compensation.** A public servant commits a class 2 misdemeanor if he requests a pecuniary benefit for the performance of an official action knowing that he was required to perform that action without compensation or at a level of compensation lower than that requested.

**18-8-305. Trading in public office.** (1) A person commits trading in public office if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant or party officer upon an agreement or understanding that he or a particular person will or may be appointed to a public office or designated or nominated as a candidate for public office; or

(b) While a public servant or party officer, he solicits, accepts, or agrees to accept any pecuniary benefit from another upon an agreement or understanding that a particular person will or may be appointed to a public office or designated or nominated as a candidate for public office.

(2) It shall be an affirmative defense that the pecuniary benefit was a customary contribution to political campaign funds solicited and received by lawfully constituted political parties.

(3) Trading in public office is a class 1 misdemeanor.

**18-8-306. Attempt to influence a public servant.** Any person who attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or the agency or body of which he is a member, commits a class 4 felony.

**18-8-307. Designation of supplier prohibited.** (1) No public servant shall require or direct a bidder or contractor to deal with a particular person in procuring any goods or service required in submitting a bid to or fulfilling a contract with any government.

(2) Any provision in invitations to bid or any contract documents prohibited by this section are against public policy and void.

(3) It shall be an affirmative defense that the defendant was a public servant acting within the scope of his authority exercising the right to reject any material, subcontractor, service, bond, or contract tendered by a bidder or contractor because it does not meet bona fide specifications or requirements relating to quality, availability, form, experience, or financial responsibility.

(4) Any public servant who violates the provisions of subsection (1) of this section commits a class 6 felony.

**18-8-308. Failing to disclose a conflict of interest.** (1) A public servant commits failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without having given seventy-two hours' actual advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the

existence of a known potential conflicting interest of the public servant in the transaction with reference to which he is about to act in his official capacity.

(2) A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

(3) Failing to disclose a conflict of interest is a class 2 misdemeanor.

#### PART 4 ABUSE OF PUBLIC OFFICE

**18-8-401. Definitions.** The definitions contained in sections 18-8-101 and 18-8-301 are applicable to this part 4, unless a different meaning is plainly required.

**18-8-402. Misuse of official information.** (1) Any public servant, in contemplation of official action by himself or by a governmental unit with which he is associated or in reliance on information to which he has access in his official capacity and which has not been made public, commits misuse of official information if he:

(a) Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or

(b) Speculates or wagers on the basis of such information or official action; or

(c) Aids, advises, or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.

(2) Misuse of official information is a class 6 felony.

**18-8-403. Official oppression.** (1) A public servant, while acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, commits official oppression if, with actual knowledge that his conduct is illegal, he:

(a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, or lien; or

(b) Has legal authority and jurisdiction of any person legally restrained of his liberty and denies the person restrained the reasonable opportunity to consult in private with a licensed attorney-at-law, if there is no danger of imminent escape and the person in custody expresses a desire to consult with such attorney.

(2) Official oppression is a class 2 misdemeanor.

**18-8-404. First degree official misconduct.** (1) A public servant commits first degree official misconduct if, with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he knowingly:

(a) Commits an act relating to his office but constituting an unauthorized exercise of his official function; or

(b) Refrains from performing a duty imposed upon him by law; or

(c) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) First degree official misconduct is a class 2 misdemeanor.

**18-8-405. Second degree official misconduct.** (1) A public servant commits second degree official misconduct if he knowingly, arbitrarily, and capriciously:

(a) Refrains from performing a duty imposed upon him by law; or

(b) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) Second degree official misconduct is a class 1 petty offense.

**18-8-406. Issuing a false certificate.** A person commits a class 6 felony, if, being a public servant authorized by law to make and issue official certificates or other official written instruments, he makes and issues such an instrument containing a statement which he knows to be false.

**18-8-407. Embezzlement of public property.** (1) Every public servant who lawfully or unlawfully comes into possession of any public moneys or public property of whatever description, being the property of the state or of any political subdivision of the state, and who knowingly converts any of such public moneys or property to his own use or to any use other than the public use authorized by law is guilty of embezzlement of public property. Every person convicted under the provisions of this section shall be forever thereafter ineligible and disqualified from being a member of the general assembly of this state or from holding any office of trust or profit in this state.

(2) Embezzlement of public property is a class 5 felony.

**18-8-408. Designation of insurer prohibited.** (1) No public servant shall, directly or indirectly, require or direct a bidder on any public building or construction contract which is about to be or has been competitively bid to obtain from a particular insurer, agent, or broker any surety bond or contract of insurance required in such bid or contract or required by any law, ordinance, or regulation.

(2) Any such public servant who violates any of the provisions of subsection (1) of this section commits a class 1 petty offense.

(3) Any provisions in invitations to bid or in any contract documents prohibited by this section are declared void as against the public policy of this state.

(4) Nothing in this section shall be construed to prevent any such public servant acting on behalf of the government from exercising the right to approve or reject a surety bond or contract of insurance as to its form or sufficiency or the lack of financial capability of an insurer selected by a bidder.

(5) This section shall apply only to contracts entered into on or after July 1, 1977.

**18-8-409. Violation of rules and regulations of judicial nominating commissions not subject to criminal prosecution.** A person who violates a rule or regulation promulgated by any judicial nominating commission shall not be subject to criminal prosecution.

**GOVERNMENT -- STATE - TITLE 24**

**ARTICLE 6**  
Colorado Sunshine Law

**PART 2**  
**PUBLIC OFFICIAL DISCLOSURE LAW**

**24-6-201. Declaration of policy.** In order to continue the public confidence in the integrity of government officials and to promote trust of the people in the objectivity of their public servants, this open disclosure law is adopted.

**24-6-202. Disclosure - contents - filing - false or incomplete filing - penalty.** (1) Not more than thirty days after their election, reelection, appointment, or retention in office, written disclosure, in such form as the secretary of state shall prescribe, stating the interests named in subsection (2) of this section shall be made to and filed with the secretary of state of Colorado by:

- (a) Each member of the general assembly;
- (b) The governor, lieutenant governor, secretary of state, attorney general, and state treasurer;
- (c) Each justice or judge of a court of record;
- (d) Each district attorney;
- (e) Each member of the state board of education;
- (f) Each member of the board of regents of the university of Colorado;
- (g) Each member of the public utilities commission.
- (h) Repealed.

(1.5) The provisions of subsection (1) of this section apply to any person who is serving in any position noted in said subsection (1) on July 1, 1979.

(2) Disclosure shall include:

- (a) The names of any source or sources of any income, including capital gains, whether or not taxable, of the person making disclosure, his spouse, and minor children residing with him;
- (b) The name of each business, insurance policy, or trust in which he, his spouse, or minor children residing with him has a financial interest in excess of five thousand dollars;
- (c) The legal description of any interest in real property, including an option to buy, in the state in which the person making disclosure, his spouse, or minor children residing with him have any interest, direct or indirect, the market value of which is in excess of five thousand dollars;
- (d) The identity, by name, of all offices, directorships, and fiduciary relationships held by the person making disclosure, his spouse, and minor children residing with him;
- (e) The identity, by name, of any person, firm, or organization for whom compensated lobbying is done by any person associated with the person making disclosure if the benefits of such compensation are or may be shared by the person making disclosure, directly or indirectly;
- (f) The name of each creditor to whom the person making disclosure, his spouse, or minor children owe money in excess of one thousand dollars and the interest rate;
- (g) A list of businesses with which the person making disclosure or his spouse are associated that do business with or are regulated by the state and the nature of such business or regulation;

(h) Such additional information as the person making disclosure might desire.

(3) Any disclosure statement shall be amended no more than thirty days after any termination or acquisition of interests as to which disclosure is required.

(4) Any person required by this section to file a disclosure statement shall, on or before January 10 of each calendar year, file an amended statement with the secretary of state or notify the secretary of state in writing that he has had no change of condition since the previous filing of a disclosure statement.

(5) Each disclosure statement, amended statement, or notification that no amendment is required shall be public information, available to any person upon request during normal working hours.

(6) Any person subject to the provisions of this section may elect to file with the secretary of state annually a copy of his federal income tax return and any separate federal income tax return filed by his spouse or minor children residing with him together with a certified statement of any investments held by him, his spouse, or minor children residing with him which are not reflected by the income tax returns in lieu of complying with the provisions of subsections (1) to (4) of this section, which tax return and any statement filed under the provisions of this subsection (6) shall be public information.

(7) Any person who willfully files a false or incomplete disclosure statement, amendment, or notice that no amendment is required, or who willfully files a false or incomplete copy of any federal income tax return or a false or incomplete certified statement of investments, or who willfully fails to make any filing required by this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars.

**24-6-203. Reporting by incumbents and elected candidates - gifts, honoraria, and other benefits - prohibition on monetary gifts - penalty - definitions.** (1) (a) As used in this section, the terms "appropriate officer" and "candidate" shall have the meanings ascribed to them in section 1-45-103, C.R.S., of the "Fair Campaign Practices Act".

(b) (I) As used in this section, the term "public office" means any office voted for in this state at any election.

(II) "Public office" does not include:

(A) The office of president or vice president of the United States;

(B) The office of senator or representative in the congress of the United States;

(C) Any office in a political party chosen pursuant to sections 1-3-103, 1-4-403, and 1-4-701, C.R.S.;

(D) Any political party office in an assembly or convention, including delegates thereto; or

(E) Any elective office within a special district for which the annual compensation is less than twelve hundred dollars.

(III) "Public office" includes the office of governor, lieutenant governor, secretary of state, attorney general, state treasurer, state board of education, regents of the university of Colorado, the Colorado court of appeals, or the supreme court of Colorado.

(c) As used in this section, "statewide elected office" means the office of governor, lieutenant governor, secretary of state, attorney general, state treasurer, members of the state board of education, regents of the university of Colorado, members of the general assembly, or district attorneys.

(2) Every incumbent in or candidate elected to public office who receives from any other person any item described in subsection (3) of this section in connection with the incumbent's or elected candidate's public service shall file with the appropriate officer, on or before January 15, April 15, July 15, and October 15 of each year, a report covering the

period since the last report. Such report shall be on forms prescribed by the secretary of state and shall contain, at a minimum, the name of the person from whom the item was received and the amount or value and the date of receipt. The secretary of state shall furnish such forms to municipal clerks, to county clerk and recorders, and to incumbents and elected candidates for state offices and district offices of districts greater than a county free of charge for use by incumbents and elected candidates required to file such forms. If any incumbent in or candidate elected to public office does not receive any such item, he or she shall not be required to file such report.

(3) The reports required by subsection (2) of this section shall include the following:

(a) Subject to the requirements of subsection (3.5) of this section, any money, including but not limited to a loan, pledge, or advance of money or a guarantee of a loan of money, with a value of twenty-five dollars or more;

(b) Subject to the requirements of subsection (3.5) of this section, any gift of any item of real or personal property, other than money, with a value of fifty dollars or more;

(c) Any loan of any item of real or personal property, other than money, if the value of the loan is fifty dollars or more. For such purpose, the "value of the loan" means the cost saved or avoided by the incumbent or elected candidate by not borrowing, leasing, or purchasing comparable property from a source available to the general public.

(d) Any payment for a speech, appearance, or publication;

(e) Tickets to sporting, recreational, educational, or cultural events with a value of fifty dollars or more for any single event, or a series of tickets to sporting events of a specific team scheduled during a season with a total value of one hundred dollars or more, or a series of tickets to cultural events of a specific performing company or organization with a total value of one hundred dollars or more;

(f) Payment of or reimbursement for actual and necessary expenditures for travel and lodging for attendance at a convention or other meeting at which the incumbent or elected candidate is scheduled to participate, unless the payment of or reimbursement for such expenditures is made from public funds, from the funds of an organization declared to be a joint governmental agency by section 2-3-311, C.R.S., or from the funds of any association of public officials or public entities whose membership includes the incumbent's or elected candidate's office or the governmental entity in which such office is held;

(g) Any gift of a meal to a fund-raising event of a political party.

(3.5) (a) Each incumbent in or candidate elected to statewide elected office is prohibited from knowingly receiving or accepting from any other person, in connection with the public service of the incumbent or elected candidate:

(I) A gift of any money, including but not limited to a loan, pledge, or advance of money, a guarantee of a loan of money, or any monetary payment given, directly or indirectly, for the purpose of defraying any expenses related to the official duties undertaken by the incumbent or elected candidate; or

(II) An in-kind gift.

(b) Nothing in paragraph (a) of this subsection (3.5) shall be construed to prohibit an incumbent or elected candidate from receiving a salary or other compensation paid to the incumbent or elected candidate in connection with the performance of his or her official duties, including, without limitation, payment for a speech, appearance, or publication or payment of or reimbursement for actual and necessary expenditures for travel and lodging as provided by law, including scholarships for conferences.

(c) For purposes of this subsection (3.5), an "in-kind gift" means any gift of equipment, goods, supplies, property, services, or anything else, the value of which exceeds fifty dollars in the aggregate in any one calendar year, given, directly or indirectly, to an



incumbent in or candidate elected to statewide elected office for the purpose of defraying any expenses related to the official duties undertaken by the incumbent or elected candidate.

(3.7) Notwithstanding any other provision of this section, no incumbent in or candidate elected to statewide elected office shall accept a gift of any money from any person who is a professional or volunteer lobbyist or from a corporation or labor organization.

(4) The reports required by subsection (2) of this section need not include the following:

(a) A contribution or contribution in kind that has already been reported pursuant to section 1-45-108, C.R.S.;

(b) Any item of perishable or nonpermanent value, including but not limited to meals, unless such item is required to be reported under paragraph (e) or (g) of subsection (3) of this section;

(c) A nonpecuniary award publicly presented by an organization in recognition of public service;

(d) Payment of or reimbursement for actual and necessary expenditures for travel and lodging for attendance at a convention or other meeting at which the incumbent or elected candidate is scheduled to participate, if the payment of or reimbursement for such expenditures is made from public funds, from the funds of an organization declared to be a joint governmental agency by section 2-3-311, C.R.S., or from the funds of any association of public officials or public entities whose membership includes the incumbent's or elected candidate's office or the governmental entity in which such office is held;

(e) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office.

(5) Any person who provides an incumbent or elected candidate with any item required to be reported by the incumbent or elected candidate pursuant to this section shall, at the time the item is provided, furnish the recipient with a written statement of the dollar value of the item.

(6) Nothing contained in this section shall relieve any person from the disclosure requirements of part 3 of article 6 of this title, relating to the regulation of lobbyists.

(7) Any person who willfully files a false or incomplete report pursuant to this section, who willfully fails to file a report required by this section, who willfully fails to provide the statement of value required by subsection (5) of this section, or who violates any provision of subsection (3.5) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars.

## **ARTICLE 18**

### Standards of Conduct

#### PART 1

#### CODE OF ETHICS

**24-18-101. Legislative declaration.** The general assembly recognizes the importance of the participation of the citizens of this state in all levels of government in the state. The general assembly further recognizes that, when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The general assembly hereby declares that the prescription of some standards of conduct common to those citizens involved with government is beneficial to all residents

of the state. The provisions of this part 1 recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

**24-18-102. Definitions.** As used in this part 1, unless the context otherwise requires:

(1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of a state agency or any local government, *except a member of the general assembly* and an employee under contract to the state.

(4) "Financial interest" means a substantial interest held by an individual which is:

(a) An ownership interest in a business;

(b) A creditor interest in an insolvent business;

(c) An employment or a prospective employment for which negotiations have begun;

(d) An ownership interest in real or personal property;

(e) A loan or any other debtor interest; or

(f) A directorship or officership in a business.

(5) "Local government" means the government of any county, city and county, city, town, special district, or school district.

(6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.

(7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. *"Public officer" does not include a member of the general assembly*, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

(9) "State agency" means the state; *the general assembly* and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

**24-18-103. Public trust - breach of fiduciary duty.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated

may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

**24-18-104. Rules of conduct for all public officers, members of the general assembly, local government officials, and employees.** (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:

(a) Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or

(b) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

(I) Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(II) Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift of substantial value includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services.

(3) The following shall not be considered gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this section:

(a) Campaign contributions and contributions in kind reported as required by section 1-45-108, C.R.S.;

(b) An occasional nonpecuniary gift, insignificant in value;

(c) A nonpecuniary award publicly presented by a nonprofit organization in recognition of public service;

(d) Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for attendance at a convention or other meeting at which such public officer, member of the general assembly, local government official, or employee is scheduled to participate;

(e) Reimbursement for or acceptance of an opportunity to participate in a social function or meeting which is offered to such public officer, member of the general assembly, local government official, or employee which is not extraordinary when viewed in light of the position held by such public officer, member of the general assembly, local government official, or employee;

(f) Items of perishable or nonpermanent value, including, but not limited to, meals, lodging, travel expenses, or tickets to sporting, recreational, educational, or cultural events;

(g) Payment for speeches, appearances, or publications reported pursuant to section 24-6-203;

(h) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office.

(4) The provisions of this section are distinct from and in addition to the reporting requirements of section 1-45-108, C.R.S., and section 24-6-203, and do not relieve an

incumbent in or elected candidate to public office from reporting an item described in subsection (3) of this section, if such reporting provisions apply.

**24-18-106. Rules of conduct for members of the general assembly.** (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the member of the general assembly committing the act has breached his fiduciary duty and the public trust. A member of the general assembly shall not accept a fee, a contingent fee, or any other compensation, except his official compensation provided by statute, for promoting or opposing the passage of legislation.

(2) It shall not be a breach of fiduciary duty and the public trust for a member of the general assembly to:

(a) Use state facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or

(b) Accept or receive a benefit as an indirect consequence of transacting state business.

(3) Notwithstanding any other provision of law, no member of the general assembly shall lobby, solicit lobbying business or contracts, or otherwise establish a lobbying business or practice respecting issues before the general assembly prior to the expiration of his or her term. Where the member tenders his or her resignation prior to the expiration of his or her term, the requirements of this subsection (3) shall apply up through the date of the member's resignation from office.

**24-18-107. Ethical principles for members of the general assembly.** (1) The principles in this section are intended only as guides to a member of the general assembly in determining whether or not his conduct is ethical.

(2) A member of the general assembly who has a personal or private interest in any measure or bill proposed or pending before the general assembly shall disclose the fact to the house of which he is a member and shall not vote thereon. In deciding whether or not he has such an interest, a member shall consider, among other things, the following:

(a) Whether the interest impedes his independence of judgment;

(b) The effect of his participation on public confidence in the integrity of the general assembly; and

(c) Whether his participation is likely to have any significant effect on the disposition of the matter.

(3) An interest situation does not arise from legislation affecting the entire membership of a class.

(4) If a member of the general assembly elects to disclose the interest, he shall do so as provided in the rules of the house of representatives or the senate, but in no case shall failure to disclose constitute a breach of the public trust of legislative office.

**24-18-110. Voluntary disclosure.** A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses, a member of the general assembly, a public officer, a local government official, or an employee may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his private interest. Members of the general assembly shall make disclosure as provided in the rules of the house of representatives and the senate, and all others shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the

official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

**24-18-111. Powers of the secretary of state.** (1) The secretary of state may:

(a) Issue advisory opinions to persons subject to the provisions of this article concerning issues relating to the requesting person's conduct and the provisions of this article with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;

(b) Keep and permit reasonable public access to voluntary disclosure statements;

(c) Make rules for the conduct of his affairs under this part 1.

(2) Any advisory opinion issued by the secretary of state shall take priority over any comment issued by the board of ethics for the executive branch pursuant to section 24-18-112 or any opinion issued by the board of ethics for the general assembly pursuant to section 24-18-113 if the comment or the opinion covers the same circumstances and the same issues as covered by the opinion of the secretary of state and if the comment or the opinion reached a separate conclusion from that reached by the opinion of the secretary of state.

**24-18-113. Board of ethics for the general assembly - created - duties.** (1) There is hereby created a board of ethics for the general assembly. The board shall consist of four legislative members. One member shall be appointed by and serve at the pleasure of the majority leader of the house of representatives; one member shall be appointed by and serve at the pleasure of the majority leader of the senate; one member shall be appointed by and serve at the pleasure of the minority leader of the house of representatives; and one member shall be appointed by and serve at the pleasure of the minority leader of the senate.

(2) The board of ethics for the general assembly shall, upon written request of a member of the general assembly, issue advisory opinions concerning issues relating to the requesting member's conduct and the provisions of this article.

## PART 2

### PROSCRIBED ACTS RELATED TO CONTRACTS AND CLAIMS

**24-18-201. Interests in contracts.** (1) Members of the general assembly, public officers, local government officials, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment. For purposes of this section, the term:

(a) "Be interested in" does not include holding a minority interest in a corporation.

(b) "Contract" does not include:

(I) Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(II) Merchandise sold to the highest bidder at public auctions;

(III) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;

(IV) A contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of

the subject of a contract if the additional cost to the local government is greater than ten percent of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(V) A contract with respect to which any member of the general assembly, public officer, local government official, or employee has disclosed a personal interest and has not voted thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with section 24-18-109 (3) (b) or 31-4-404 (3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees; in accordance with the rules of the house of representatives and the senate, for members of the general assembly; and to the secretary of state, for all others.

**24-18-202. Interest in sales or purchases.** Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

**24-18-203. Voidable contracts.** Every contract made in violation of any of the provisions of section 24-18-201 or 24-18-202 shall be voidable at the instance of any party to the contract except the officer interested therein.

**24-18-204. Dealings in warrants and other claims prohibited.** State officers, county officers, city and county officers, city officers, and town officers, as well as all other local government officials, and their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, city and county, city, or town warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city and county, city, or town thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, or clerk, and evidences of the funded indebtedness of such state, county, city and county, city, or town.

**24-18-205. Settlements to be withheld on affidavit.** (1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part 2 shall suspend such settlement or payment and cause such officer to be prosecuted for such violation by the district attorney of the appropriate jurisdiction.

(2) If there is judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

## **RULES OF THE HOUSE OF REPRESENTATIVES**

### **21. WHEN MEMBERS SHALL VOTE - PERSONAL INTEREST CHANGING VOTE**

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- c) A member who has an immediate personal or financial interest in any bill or measure proposed or pending before the General Assembly shall disclose the fact to the House, and shall not vote upon such bill or measure.

### **49. COMMITTEE ON ETHICS**

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- (a) Any person who has knowledge concerning misconduct involving legislative duties by a member of the House, including but not limited to the alleged violation of the Rules of the House of Representatives or of section 40 of article V of the state constitution, may file a written, signed complaint with the Speaker setting forth the facts that constitute the alleged misconduct and specifying the statutes, rules, constitutional provisions, or other ethical principles alleged to have been violated. The Speaker shall provide the member complained against with a copy of the complaint. The Speaker shall consult with the majority leader and the minority leader about the complaint. If at least two of the three leaders conclude that the complaint does not state an ethical violation, the complaint shall be dismissed, and the complainant and the member complained against shall be so notified.
- (b) If the complaint is not dismissed pursuant to subsection (a) of this rule, the Speaker shall appoint a committee on ethics, which shall consist of not less than five nor more than seven members. The party representation on the committee shall be in proportion generally to the relative number of members of the two major political parties in the House. The majority party members of the committee shall be selected from among the chairmen of committees of reference of the House. The minority party members of the committee shall be selected, after considering recommendations by the minority leader, from among the members of the House who are senior in service and experience. The Speaker shall designate the chairman and vice-chairman of the committee from among its members.
- (c) The person complained against may submit a written answer to the committee within ten days after appointment of the committee. The committee shall make a preliminary investigation of the complaint. The preliminary investigation shall consist of an examination of the complaint, the answer, if any, and any other evidence compiled pursuant to the request of the committee, but the committee shall not receive testimony or other evidence from other sources. The preliminary investigation shall be completed within thirty days after appointment of the committee. If, after the preliminary investigation, the committee determines no violation has occurred, the complaint shall be dismissed.
- (d) If, after the preliminary investigation, the committee determines probable cause exists to find that a violation may have occurred, it shall so notify the person complained against. Within seven days after such notification, such person may request a hearing before the committee, at which he or she shall be entitled to appear, present evidence, cross-examine witnesses, and be represented by counsel. The committee shall have the power to take testimony under oath and to issue subpoenas and subpoenas duces tecum in the manner provided by Joint Rule No. 33 (b), (c), and (d) of the Joint Rules of the Senate and House of Representatives. The hearing shall commence within fourteen days after receipt of the

request for a hearing.

- (e) All proceedings of the committee shall be governed by the provisions of part 4 of article 6 and part 2 of article 72 of title 24, Colorado Revised Statutes.
- (f) After a hearing held pursuant to subsection (d) of this rule, the committee may dismiss the complaint, or, if it finds that action should be taken against the member complained against, it shall make appropriate recommendations to the House of Representatives, including reprimand, censure, or expulsion. Expulsion of a House member shall require the affirmative vote of two-thirds of the members elected to the House. Reprimand or censure of a member shall require the affirmative vote of a majority of the members elected to the House.
- (g) Action of the leadership, the ethics committee, or the House pursuant to this rule is final and not subject to court review. Nothing in this rule shall prohibit the House of Representatives from taking any action based upon its authority to judge the qualifications of its members pursuant to Section 10 of Article V of the state Constitution.
- (h) The committee may retain such counsel and may hire such investigators as it deems necessary for the performance of its duties under this rule. All expenditures incurred pursuant to this subsection (h) shall be approved by the Speaker and paid by vouchers and warrants drawn as provided by law from appropriations made to the General Assembly.
- (i) The committee may adopt rules of procedure for the orderly conduct of its meetings, investigations, and hearings, which rules shall be consistent with this rule and other applicable rules and statutes.
- (j) If the complaint concerns misconduct of the Speaker, then the duties of the Speaker in this rule shall be the duties of the majority floor leader and the duties of the majority floor leader shall be the duties of the assistant majority leader. If the complaint concerns misconduct of the majority floor leader or the minority leader, then the duties of such leader in this rule shall be the duties of the assistant majority leader or the assistant minority leader, as the case may be.



## RULES OF THE SENATE

### 17. Voting

- (c) Any Senator having a personal or private interest in any question or bill pending, shall disclose such fact to the Senate and shall not vote thereon, and if the vote be by ayes and noes, such fact shall be entered in the journal.

### 41. Ethics

- (a) **Definitions.** As used in this rule, unless the context otherwise requires:

- (1) "Close economic associate" or "close economic association" means the Senator's employer, client, employee, or partner or associate in business or professional activities; enterprises of which a Senator is a director or officer; corporations in which a Senator owns more than ten percent of the outstanding capital stock; an enterprise which is the Senator's significant unsecured creditor or of which the Senator is a significant creditor; or a trust of which the Senator is a beneficiary. It does not mean a bank or savings and loan association in which the Senator's interest is in the form of an account; nor an officership, directorship, or employment in a political, religious, charitable, or educational entity which returns compensation to the Senator of less than one thousand dollars per year.
  - (2) "Close relative" means the spouse of the Senator and the following natural, adoptive, and adopted members of the Senator's or spouse's family: Mother, father, children, brothers, and sisters.
  - (3) "Enterprise" means corporation, partnership, proprietorship, association, or other legal entity (other than an estate or trust) engaged in business for profit.
  - (4) "Lobbyist" means any person defined as such in the Joint Rules of the Senate and House of Representatives.
  - (5) "Person" and "another" means an individual, partnership, association, corporation, or other legal entity.
  - (6) "State agency" means every department, commission, board, division, office, council, or other agency created as part of the state government pursuant to law and supported by state moneys.
- (a.5) **Legislative ethics and official conduct.** Legislative office is a trust to be performed with integrity in the public interest. A member is to be respectful of the confidence placed in that member by the other members of the Senate and by the people of the state of Colorado. A member shall respect and comply with the law and shall perform his or her legislative duties at all times in a manner that promotes public confidence in the integrity and independence of the Senate and of the General Assembly. By personal example and by admonition to colleagues whose behavior may threaten the honor and integrity of the lawmaking body, the member shall watchfully guard the responsibilities of the public office and the responsibilities and duties placed on the member by the Senate. To this end, each member shall be accountable to the Senate for violations of the Rules of the Senate, the Joint Rules of the Senate and the House of Representatives, the Constitution of the state of Colorado, or any provision of the code of ethics set forth in article 18 of title 24, Colorado Revised Statutes.

- (b) ***Conflicts of interest - personal or private interests versus public interest - definition.*** (1) Subject to article V, section 43, of the state constitution, a Senator has the right to vote upon all questions before the Senate and to participate in the business of the Senate and its committees, and, in so doing, is presumed to act in good faith and in the public interest. When a personal interest conflicts with the public interest and tends to affect the Senator's independence of judgment, legislative activities are subject to limitations. Where any such conflict exists, it disqualifies the Senator from voting upon any question and from attempting to influence any legislation to which it relates.
- (2) A question arises as to whether a personal or private interest tends to affect a Senator's independence of judgment if the Senator:
- (A) Has or acquires a substantial economic interest by reason of the Senator's personal situation, distinct from that held generally by members of the same occupation, profession, or business, in a measure proposed or pending before the General Assembly; or has a close relative or close economic associate with such an interest.
  - (B) Has or acquires a financial interest in an enterprise, direct or indirect, which enterprise or interest would be affected by proposed legislation differently from like enterprises.
  - (C) Has or acquires a close economic association with, or is a close relative of, a person who has a financial interest in an enterprise, direct or indirect, which enterprise or interest would be affected by proposed legislation differently from like enterprises.
  - (D) Has or acquires a close economic association with, or is a close relative of, a person who is a lobbyist or who employs or has employed a lobbyist to propose legislation or to influence proposed legislation on which the Senator has or may be expected to vote.
  - (E) Accepts a gift, loan, service, or economic opportunity of significant value from a person who would be affected by or who has an interest in an enterprise which would be affected by proposed legislation. This provision shall likewise apply where such gift, loan, service, or opportunity is accepted by a close relative of the Senator. It shall not normally apply in the following cases: A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of this state to engage in the business of making loans; an occasional nonpecuniary gift, insignificant in value; a nonpecuniary award publicly presented by a nonprofit organization in recognition of public service; or payment of or reimbursement for actual and necessary expenditures for travel and subsistence for personal attendance at a convention or other meeting at which the Senator is scheduled to participate and for which attendance no reimbursement is made by the state of Colorado.
- (c) ***Undue influence - definition.*** (1) A Senator, by reason of his or her office, is or may be in a position to bring undue influence on other legislators, public officials, or private persons. To use this potential for economic or private gain is an abuse of office and a matter of concern to the Senate, whether or not the act is also punishable under the criminal laws.
- (2) The following limitations shall apply to legislative conduct and violations are declared to constitute undue influence:

- (A) A Senator shall not use his or her public position, intentionally or otherwise, to obtain or attempt to obtain any confidential information or special advantage or a decision from a public body on a matter unrelated to his or her senatorial duties in which he or she has a financial interest for himself or herself, a close relative, or a close economic associate.
  - (B) A Senator shall not sell goods or services to a state agency in a transaction not governed by the laws relating to public purchasing by competitive bidding, or intercede for or represent another in so doing; nor shall the Senator in any way be interested in any contract to furnish supplies, printing, repairs, or furnishings to the General Assembly or any other state agency, contrary to section 29 of article V of the state constitution.
  - (C) A Senator shall not solicit, receive, offer, or give any bribe, contrary to the state constitution and the provisions of sections 18-8-302 to 18-8-308, 18-8-401, 18-8-402, 18-8-404, 18-8-405, and 18-8-407, C.R.S.; nor shall the member accept or give any compensation, gratuity, or reimbursement for voting upon any question or for attempting to influence legislation.
  - (D) A Senator shall not vote or offer to vote in consideration of the vote of another member, contrary to the provisions of section 40 of article V of the state constitution.
  - (E) A Senator shall not attempt to influence any public official by deceit or threat, contrary to section 7 of article XII of the state constitution and section 18-8-306, C.R.S. 1973.
- (d) ***When Senator permitted to vote.*** Nothing in this rule shall be construed as prohibiting a Senator from voting for a bill or other measure whose passage would adversely affect the Senator's personal or private interest or from voting against a bill or other measure whose defeat would adversely affect the Senator's personal or private interest; and nothing in this rule shall be construed to prevent a Senator from voting on the report of the committee of the whole, unless such vote is conducted solely on the bill or measure in which that personal or private interest exists.
  - (e) ***Applicability of rule.*** The provisions of this rule shall not apply as the basis for the recall of any measure by either house nor otherwise constitute the basis to contest the validity of any legislative action on any bill or other measure on which a vote was cast by any member of the Senate in violation of this rule.
  - (f) ***Legislators not to request donations to charitable organizations.*** A legislator shall not request a lobbyist or an employee of the General Assembly to make donations to any type of charitable organization.
  - (g) ***Advisory opinions.***
    - (1) A Senator contemplating a possible ethics dilemma that relates to the Senator's past, current, or anticipated conduct and the provisions of article 18 of title 24, Colorado Revised Statutes, is encouraged to seek, at his or her discretion, an advisory opinion from the board of ethics created pursuant to section 24-18-113, Colorado Revised Statutes, with respect to the standards of conduct of the Senate on the general propriety of past, current, or anticipated

conduct of that Senator.

- (2) With appropriate redactions to ensure the privacy of the members and other individuals concerned, the Senate shall annually publish and continuously maintain a cumulative compilation of the advisory opinions rendered by the board of ethics, making such publication available for the guidance of Senators, to the extent that such opinions are made known and made available.
- (h) ***Ethics training.*** Commencing January 1, 2007, each Senator is encouraged to, at least once every two years during the course of his or her term in the Senate:
- (1) Attend a legislative ethics training program offered by the Office of Legislative Legal Services as part of new member orientation or attend such other legislative ethics training program as may from time to time be offered by said Office;
  - (2) Participate in a legislative ethics training program or workshop sponsored by a nationally recognized legislative organization with knowledge, expertise, and experience in legislative ethics issues; or
  - (3) Successfully complete an on-line legislative ethics training course or tutorial.

#### **43. Committee on Ethics**

- (a) Any person who has knowledge concerning misconduct involving legislative duties by a member of the Senate, including but not limited to the alleged violation of the Rules of the Senate or of Section 40 of Article V of the state Constitution, may file a written, signed complaint with the President setting forth the facts that constitute the alleged misconduct and specifying the statutes, rules, constitutional provisions, or other ethical principles alleged to have been violated. The President shall provide the member complained against with a copy of the complaint. The President shall consult with the majority leader and the minority leader about the complaint. The fact that a complaint has been filed and any documents relating thereto shall be kept confidential by the President, the majority leader, and the minority leader. If at least two of the three leaders conclude that the complaint is not meritorious or does not substantiate an ethical violation, the complaint shall be dismissed, and the complainant and the member complained against shall be so notified. If the complaint is dismissed, it shall remain confidential.
- (b) If the complaint is not dismissed pursuant to subsection (a) of this rule, a committee on ethics shall be appointed, which shall consist of not less than five nor more than seven members. The party representation on the committee shall be in proportion generally to the relative number of members of the two major political parties in the Senate. The majority party members of the committee shall be appointed by the President from among the chairmen of committees of reference of the Senate. The minority party members of the committee shall be appointed by the minority leader from among the members of the Senate who are senior in service and experience. The President shall designate the chairman and vice-chairman of the committee from among its members.
- (c) The person complained against may submit a written answer to the committee within ten days after appointment of the committee. The committee shall make a preliminary investigation of the complaint. The preliminary investigation shall consist of an examination of the complaint, the answer, if any, and any other evidence compiled pursuant to the request of the committee, but the committee shall not receive testimony or other evidence from other sources. The preliminary

investigation shall be completed within thirty days after appointment of the committee. If, after the preliminary investigation, the committee determines no violation has occurred, the complaint shall be dismissed.

- (d) If, after the preliminary investigation, the committee determines probable cause exists to find that a violation may have occurred, it shall so notify the person complained against. Within seven days after such notification, such person may request a hearing before the committee, at which he or she shall be entitled to appear, present evidence, cross-examine witnesses, and be represented by counsel. The committee shall have the power to take testimony under oath and to issue subpoenas and subpoenas duces tecum in the manner provided by Joint Rule No. 33 (b), (c), and (d) of the Joint Rules of the Senate and House of Representatives. The hearing shall commence within fourteen days after receipt of the request for a hearing.
- (e) All proceedings of the committee shall be governed by the provisions of part 4 of article 6 and part 2 of article 72 of title 24, Colorado Revised Statutes.
- (f) After a hearing held pursuant to subsection (d) of this rule, the committee may dismiss the complaint, or, if it finds that action should be taken against the member complained against, it shall make appropriate recommendations to the Senate, including reprimand, censure, or expulsion. Pursuant to the authority vested in the Senate by Section 12 of Article V of the state Constitution, the Senate may expel the member in question by an affirmative vote of no fewer than two-thirds of the members elected to the Senate, or the Senate may reprimand, censure, or otherwise punish the member by an affirmative vote of a majority of the members elected to the Senate.
- (g) Action of the leadership, the ethics committee, or the Senate pursuant to this rule is final and not subject to court review. Nothing in this rule shall prohibit the Senate from taking any action based upon its authority to judge the qualifications of its members pursuant to Section 10 of Article V of the state Constitution.
- (h) The committee may retain such counsel and may hire such investigators as it deems necessary for the performance of its duties under this rule. All expenditures incurred pursuant to this subsection (h) shall be approved by the President and paid by vouchers and warrants drawn as provided by law from appropriations made to the General Assembly.
- (i) The committee may adopt rules of procedure for the orderly conduct of its meetings, investigations, and hearings, which rules shall be consistent with this rule and other applicable rules and statutes.
- (j) If the complaint concerns misconduct of the President, then the duties of the President in this rule shall be the duties of the majority floor leader and the duties of the majority floor leader shall be the duties of the assistant majority leader. If the complaint concerns misconduct of the majority floor leader or the minority leader, then the duties of such leader in this rule shall be the duties of the assistant majority leader or the assistant minority leader, as the case may be.

## **JOINT RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES**

### **42. Member Interest in Bills - Voting**

- (a) For purposes of section 43 of article V of the state constitution, House Rule No. 21 (c), and Senate Rule No. 17 (c):
  - (1) A member of the General Assembly shall be considered to have a personal, private, or financial interest in a pending bill, measure, or question if the passage or failure of such bill, measure, or question will result in the member deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other persons in the member's profession, occupation, industry, or region.
  - (2) A member shall not be deemed to have a personal, private, or financial interest in a pending bill, measure, or question where such interest arises from a bill, measure, or question that affects the entire membership of a class to which the member belongs; except that, where such an interest arises, nothing in this paragraph (2) shall be construed as prohibiting a member from disclosing such interest and not voting on the bill, measure, or question.

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