

# MAINE STATE LEGISLATURE

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New Draft of: S. P. 769, L. D. 2200  
FIRST SPECIAL SESSION

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 2605

S. P. 954

In Senate, March 22, 1974

Reported by Majority from the Committee on State Government and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FOUR

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**AN ACT** Relating to Legislative Ethics and the Disclosure of Certain  
Information by Legislators.

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. R. S., T. 3, § 380, additional.** Title 3 of the Revised Statutes is amended by adding a new section 380 to read as follows:

**§ 380. Definitions**

As used in this chapter, the following words shall have the following meanings unless the context otherwise indicates.

1. Close economic association. "Close economic association" includes the employers, employees, partners or clients of the Legislator or a member of his immediate family; corporations in which the Legislator or a member of his immediate family is an officer, director or agent or owns 10% or more of the outstanding capital stock; a business which is a significant unsecured creditor of the Legislator or a member of his immediate family, or a business of which the Legislator or a member of his immediate family is a significant unsecured creditor.

2. Immediate family. "Immediate family" shall mean a Legislator's spouse and dependent children.

3. Income. "Income" shall mean economic gain to a person from whatever source derived, including, but not limited to, the following items: Compensation for services including fees, commissions and payments in kind; income derived from business; gains derived from dealings in property; rents;

royalties; income from investments including interest, capital gains and dividends; alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; and prizes, awards, grants and gifts.

Sec. 2. R. S., T. 3, § 381, sub-§§ 4 and 5, repealed. Subsection 4, as repealed and replaced by section 1 of chapter 602 of the public laws of 1971 and subsection 5, as enacted by section 1 of chapter 602 of the public laws of 1971, both of section 381 of Title 3 of the Revised Statutes, are repealed.

Sec. 3. R. S., T. 3, § 381-A, additional. Title 3 of the Revised Statutes is amended by adding a new section 381-A to read as follows:

§ 381-A. Authority; procedures

1. Authority. The committee shall have the authority:

A. To issue, on request of any Legislator on an issue involving himself, or on its own motion, advisory opinions and guidelines on problems or questions involving possible conflicts of interest in matters under consideration by, or pertaining to, the Legislature;

B. To investigate complaints filed by Legislators alleging conflict of interest against any Legislator, to hold hearings thereon and to issue findings of fact together with its opinion; and

C. To administer the disclosure of sources of income by Legislators as required by subchapter III.

2. Procedure. The following procedures shall apply to all matters within the jurisdiction of the committee:

A. Requests for advisory opinions by members of the Legislature shall be filed with the committee on writing, signed by the Legislator requesting the opinion and shall contain such supporting data as the committee shall require. When preparing an advisory opinion on its own motion, the committee shall notify the Legislator concerned and allow him to provide additional information to the committee. In preparing an advisory opinion, either upon request or on its own motion, the committee may make such an investigation as it deems necessary. A copy of the committee's advisory opinion shall be sent to the Legislator concerned and to the presiding officer of the House of which the Legislator is a member;

B. A Legislator making a complaint shall file the complaint under oath with the chairman. The complaint shall specify the facts of the alleged conflict of interest. The Legislator against whom a complaint is filed shall immediately be given a copy of the complaint and the name of the complainant. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the committee. Upon a majority vote of the committee, the committee shall conduct such investigation and hold such hearings as it deems necessary. The committee shall issue its findings of fact together with its opinion regarding the

alleged conflict of interest to the House of which the Legislator concerned is a member. That House may take whatever action it deems appropriate, in accordance with the Constitution of the State of Maine.

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator shall be given written notification of the time and place at which the hearing is to be held. Such notification shall be given not less than 10 days prior to the date set for the hearing.

D. The committee shall have the authority, through its chairman or any member designated by him, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records which the committee deems relevant. The committee shall subpoena such witnesses as the complainant Legislator or the Legislator against whom the complaint has been filed may request to be subpoenaed. The State, its agencies and instrumentalities shall furnish to the committee any information, records or documents which the committee designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the committee, the Superior Court, upon application of the committee, shall have jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

E. Any person whose conduct is under inquiry shall be accorded due process, and, if requested, the right to a hearing. All witnesses shall be subject to cross-examination.

Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or at the discretion of the committee and under such circumstances as the committee shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the committee, shall be entitled to a copy of such testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearings.

All witnesses shall be sworn. The committee may sequester witnesses as it deems necessary. The committee shall not be bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence.

Time periods and notices may be waived by agreement of the committee and the person whose conduct is under inquiry.

F. If the committee concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate shall be referred to the Attorney General. Any determination by the committee or by the House of the Legislature that a conflict of interest has occurred does not preclude any

criminal action relating to the conflict which may be brought against the Legislator.

G. If the committee determines that a complaint filed under oath is groundless and without foundation, or if the Legislator filing the complaint fails to appear at the hearing without being excused by the committee, the committee may order the complainant to pay to the Legislator against whom the complaint has been filed his costs of investigation and defense, including any reasonable attorney's fees. The complainant may appeal such an order to the House of which he is a member.

Such an order shall not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to his reputation.

H. A copy of the committee's advisory opinions and guidelines, with such deletions and changes as the committee deems necessary to protect the identity of the person seeking the opinions, or others, shall be filed with the Clerk of the House. The clerk shall keep them in a special binder and shall finally publish them in the Legislative Record. The committee may exempt an opinion or a part thereof from release, publication or inspection, if it deems such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect.

I. A copy of the committee's findings of fact and opinions regarding complaints against Legislators shall also be filed with the Clerk of the House. The clerk shall keep them in a special binder and shall finally publish them in the Legislative Record.

J. The records of the committee and all information received by the committee in the course of its investigation and conduct of its affairs shall be confidential, except that evidence or information disclosed at public hearings, the committee's findings of fact and its opinions and guidelines are public records.

K. In addition, the committee shall have the authority to adopt, amend and repeal any rules and regulations it deems necessary to carry out this chapter, and it shall exercise all other powers and duties necessary to effect the purpose of this chapter.

Sec. 4. R. S., T. 3, § 382, repealed and replaced. Section 382 of Title 3 of the Revised Statutes, as enacted by section 2 of chapter 602 of the public laws of 1971, is repealed and the following enacted in place thereof:

#### § 382. Conflict of interest

1. A conflict of interest shall include the following:

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefitted by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legis-

lator to have a direct financial interest in an enterprise affected by proposed legislation.

B. When a Legislator or a member of his immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in a business affected by proposed legislation, where it is known or reasonably should be known that the purpose of the donor in making the gift is to influence the Legislator in the performance of his official duties or vote or is intended as a reward for action on his part.

C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator.

D. Appearing for, representing or assisting another in respect to a claim before the Legislature, unless without compensation and for the benefit of a citizen.

E. Where a Legislator or a member of his immediate family accepts or engages in employment which could impair the Legislator's judgment, or where the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded him or a member of his immediate family with intent to influence his conduct in the performance of his official duties, or where the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community.

F. When a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

2. Undue influence. It is presumed that a conflict of interest exists where there are circumstances which involve a substantial risk of undue influence by a Legislator, including but not limited to the following cases.

A. Appearing for, representing or assisting another in a matter before a state agency or authority, unless without compensation and for the benefit of a constituent, except for attorneys or other professional persons engaged in the conduct of their professions.

(1) Even in the excepted cases, an attorney or other professional person must refrain from references to his legislative capacity, from communications on legislative stationery and from threats or implications relating to legislative action.

B. Representing or assisting another in the sale of goods or services to the State, a state agency or authority, unless the transaction occurs after public notice and competitive bidding.

3. Abuse of office or position. It is presumed that a conflict of interest exists where a Legislator abuses his office or position, including but not limited to the following cases.

A. Where a Legislator or a member of his immediate family has a direct financial interest or an interest through a close economic association in a contract for goods or services with the State, a state agency or authority in a transaction not covered by public notice and competitive bidding or by uniform rates established by the State, a state agency, authority or other governmental entity or by a professional association or organization.

B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs.

C. Use or disclosure of confidential information obtained because of office or position for the benefit of self or another.

Sec. 5. R. S., T. 3, § 383, repealed and replaced. Section 383 of Title 3 of the Revised Statutes, as enacted by section 2 of chapter 602 of the public laws of 1971, is repealed and the following enacted in place thereof:

#### § 383. Actions precluded

If the committee has determined that a member of the Legislature has a conflict of interest, he shall be precluded from voting on any question in connection with the conflict in committee or in either branch of the Legislature, or from attempting to influence the outcome of the legislation.

Sec. 6. R. S., T. 3, c. 19, sub-c. III, additional. Chapter 19 of Title 3 of the Revised Statutes is amended by adding a new subchapter III to read as follows:

### SUBCHAPTER III

#### DISCLOSURE OF SOURCES OF INCOME BY LEGISLATORS

##### § 391. Statement of sources of income

Each member of the Senate and House of Representatives shall file a statement of sources of income for the preceding calendar year with the Legislative Ethics Committee prior to the close of the 2nd week in February of each year. Sources of income need not be indicated by name, but shall be indicated by category or type of business entity or economic activity in such manner as shall be determined by the committee.

##### § 392. Form; contents

The statement of sources of income filed under this subchapter shall be on a form prescribed by the committee and shall be a matter of public record. The Legislator filing the statement shall reveal each source of income to him or any member of his immediate family exceeding a value of \$300 in the aggregate during the preceding year. Campaign contributions duly recorded

as required by law, shall not be considered income for the purposes of this statement. Income received in kind, including but not limited to the transfer of property, options to buy or lease, and stock certificates, shall be reported by identifying both the source and the particular nature of the income.

The Legislator filing shall indicate those state agencies before which he has represented or assisted others for compensation during the preceding year. The Legislator filing shall also indicate those state agencies to which he or any member of his immediate family has sold goods or services during the preceding year.

Attorneys-at-law shall indicate their major areas of practice and, if associated with a law firm, the major areas of practice of the firm, in such manner as the committee shall require.

#### § 393. Updating statement

A Legislator shall file an updating statement with the committee on a form prescribed by the committee within one month of any addition, deletion or change to the information relating to the preceding year supplied under this subchapter.

#### § 394. False statement ; failure to file

The willful filing of a false statement shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than 11 months. If the committee concludes that it appears that a Legislator has willfully filed a false statement, it shall refer its findings of fact to the Attorney General.

If the committee determines that a Legislator has willfully failed to file a statement required by this subchapter, the Legislator shall be presumed to have a conflict of interest on every question and shall be precluded as provided in section 383.

### STATEMENT OF FACT

This Bill gives the Committee on Legislative Ethics broader authority to regulate the ethical conduct of Legislators. It allows the committee to issue advisory opinions regarding possible conflicts of interest on its own motion, provides a more detailed description of conflicts of interest, and provides for the disclosure of sources of income by category. Advisory opinions and a more detailed description of conflicts of interest assist a Legislator in avoiding a situation where he would have a conflict of interest. The disclosure of sources of income by category aids the committee in making advisory opinions and provides information to the general public.

In changing present law regarding the procedures to be followed, the Bill removes a constitutionally suspect reference to an appeal to the Superior Court. The Bill accords due process to any Legislator involved in an advisory opinion or against whom a complaint may have been filed. The Bill clarifies the ability of the committee to act on an alleged conflict of interest relating to the present Legislature.