

## LEGISLATIVE BILL 548

Approved by the Governor February 21, 1986

Introduced by Landis, 46

AN ACT relating to the Nebraska Political Accountability and Disclosure Act; to amend sections 49-1401, 49-1408, 49-1474, and 49-14,101, Reissue Revised Statutes of Nebraska, 1943, section 17-209.02, Revised Statutes Supplement, 1984, and section 23-3113, Revised Statutes Supplement, 1985; to change provisions prohibiting certain contracts and employment involving certain officers of governing bodies as prescribed; to provide for the disclosure, recording, and storage of certain information; to provide exceptions; to provide penalties as prescribed; to redefine a term; to provide an exception to a penalty; to eliminate a penalty for false campaign statements; to eliminate provisions relating to certain contracts involving officers and officials of political subdivisions as prescribed; to harmonize provisions; and to repeal the original sections, and also sections 2-3216.05, 18-301.05, and 23-184, Reissue Revised Statutes of Nebraska, 1943, and sections 2-3216.01 to 2-3216.04, 2-2316.06, 18-301.01 to 18-301.04, 18-301.06, 23-180 to 23-183, 23-185, and 79-4,208 to 79-4,213, Revised Statutes Supplement, 1984.

Be it enacted by the people of the State of Nebraska,

Section 1. Notwithstanding section 49-1499 and subsection (3) of section 49-14,101, a public official or public employee may employ, recommend the employment of, or supervise the employment of an immediate family member if he or she does not abuse his or her official position and makes a full disclosure on the record to the governing body or a written disclosure to the person in charge of keeping records for the governing body. No public official or public employee shall employ an immediate family member without first having made a reasonable solicitation and consideration of applications for such employment.

Except for making a full disclosure provided by sections 1 to 7 of this act, this section shall not

apply to an immediate family member of a public official or public employee who (1) was previously employed in a position subject to this section prior to the election or appointment of the public official or public employee or (2) was employed in a position subject to this section prior to the effective date of this act. Any newly elected or appointed public official or employee shall make a full disclosure of any immediate family member employed in a position subject to this section, prior to or as soon as reasonably possible after the official date of taking office.

Any person who violates this section shall be guilty of a Class III misdemeanor.

Sec. 2. (1) For purposes of sections 2 to 7 of this act, unless the context otherwise requires, officer shall mean (a) a member of the board of directors of a natural resources district, (b) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, and (c) any elected county, school district, city, or village official. Officer shall not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(2) Except as provided in section 70-624.04 and section 1 of this act, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of such contract with actual knowledge of the prohibited conflict. An action to have a contract declared void under this section may be brought by the county attorney, governing body, or any resident within the jurisdiction of the governing body and shall be brought within one year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

The prohibition in this subsection shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section 49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

(3) The provisions in subsection (2) of this section shall not apply if the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matter of granting the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matter; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

(4) An officer who (a) has no business association as defined in section 49-1408 with the business involved in the contract or (b) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

(5) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than five per cent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(6) If an officer's parent, spouse, or child is an employee of his or her governing body, the officer may vote on all issues of the contract which are generally applicable to (a) all employees or (b) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

(7) Any contract entered into with an interested officer of the governing body shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the governing body.

(8) Nothing in this section shall prohibit a director of a natural resources district from acting as a participant in any of the conservation or other general district programs which are available for like participation to other residents and landowners of the district or from granting, selling, or otherwise transferring to such district any interest in real property necessary for the exercise of its powers and authorities if the cost of acquisition thereof is equal to or less than that established by a board of three

real estate appraisers qualified in accordance with sections 81-8.276 and 81-8.287 or by a court of competent jurisdiction in an eminent domain proceeding.

District payments to a director of a natural resources district of the fair market value for real property owned by him or her and needed for district projects, or for cost sharing for conservation work on such director's land or land in which a director may have an interest, shall not be deemed subject to this section.

Sec. 3. The person charged with keeping records for each governing body shall maintain separately from other records a ledger containing the information listed in subdivisions (1) to (5) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to section 1 or 2 of this act. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

(1) Names of the contracting parties;

(2) Nature of the interest of the officer in question;

(3) Date that the contract was approved by the governing body;

(4) Amount of the contract; and

(5) Basic terms of the contract.

The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger kept pursuant to this section shall be available for public inspection during the normal working hours of the office in which it is kept.

Sec. 4. An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to sections 2 to 7 of this act. The statement required to be filed by section 3 of this act shall be filed within ten days after such account is opened. Thereafter, the person charged with keeping records for such governing body shall maintain a running account of amounts purchased on the open account. Purchases made from petty cash or a petty cash fund shall not be subject to sections 2 to 7 of this act.

Sec. 5. Any officer who knowingly violates sections 2 to 4 of this act shall be guilty of a Class III misdemeanor. Any officer who negligently violates sections 2 to 4 of this act shall be guilty of a Class V misdemeanor.

Sec. 6. Notwithstanding sections 2 to 4 of this act, any governing body may prohibit contracts over a specific dollar amount in which an officer of such body may have an interest.

Sec. 7. Any governing body may exempt from sections 2 to 4 of this act contracts involving one hundred dollars or less in which an officer of such body may have an interest.

Sec. 8. Individuals required to make disclosures pursuant to sections 1 to 7 of this act shall not be required to file potential conflict of interest statements pursuant to section 49-1499.

Sec. 9. That section 17-209.02, Revised Statutes Supplement, 1984, be amended to read as follows:

17-209.02. The local governing body of a village may, at its discretion, by ordinance combine and merge any elective or appointive office or employment, except trustee, with any other elective or appointive office or employment so that one or more of such offices or employments may be held by the same officer or employee at the same time, except that trustees may perform and upon board approval receive compensation for seasonal or emergency work subject to the provisions of sections ~~18-301-01 to 18-301-04~~ 2 to 7 of this act. The offices or employments so merged and combined shall always be construed to be separate and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined. For purposes of this section volunteer firefighters and ambulance drivers shall not be considered officers.

Sec. 10. That section 23-3113, Revised Statutes Supplement, 1985, be amended to read as follows:

23-3113. (1) Neither the county purchasing agent nor any member of his or her office staff, if any, shall be financially interested in or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any personal property or services used by or furnished to any office, officer, department, or agency of the county government, nor shall such purchasing agent or a member of his or her staff, if any, receive directly or indirectly, from any

person, firm, or corporation to which any contract or purchase order may be awarded, by rebate, gift, or otherwise, any money, anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Any county purchasing agent or any member of his or her office staff, if any, who shall ~~violate~~ violates any of the provisions of the County Purchasing Act shall, upon conviction thereof, be guilty of a Class IV felony. All contracts or agreements in violation of this section are declared unlawful and shall be wholly void as an obligation against the county.

(2) If there is no purchasing agent, the county board acting pursuant to the County Purchasing Act shall be subject to section ~~23-180~~ 2 of this act.

Sec. 11. That section 49-1401, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1401. Sections 49-1401 to 49-14,138 and ~~49-1446-01 to 49-1446-03~~ sections 1 to 8 of this act shall be known and may be cited as the Nebraska Political Accountability and Disclosure Act. After the effective date of this act, any reference to sections 49-1401 to 49-14,138 shall be construed to include sections 1 to 8 of this act.

Sec. 12. That section 49-1408, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1408. Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, director, or officer, ~~or employee,~~ or (2) in which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth one thousand dollars or more at fair market value or which represents more than a five per cent equity interest, or is a stockholder of publicly traded stock worth ten thousand dollars or more at fair market value or which represents more than ten per cent equity interest. For purposes of this section, employee shall not include an individual retained or otherwise employed by a client when the employment creates a confidential professional relationship protected by law, unless that individual is a regularly salaried employee for whom the business withholds income tax or pays social security tax. A partnership or professional corporation whose officers, directors or employees occupy An individual who occupies a confidential professional relationship protected by law is also shall be exempt from this

section. This section shall not apply to publicly traded stock under a trading account if the filer reports the name and address of the stockbroker.

Sec. 13. That section 49-1474, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-1474. (1) No political newsletter or other campaign mass mailing shall be sent at public expense by or on behalf of any elected official after that person has announced his or her candidacy for any office. An elected official violating the provisions of this subsection shall be guilty of a Class III misdemeanor.

(2) No person shall write, print, publish, post or circulate, or cause to be written, printed, published, posted or circulated, any letter, circular, bill, placard, poster or other publication, or cause any advertisement to be placed in a newspaper or any other publication, or singly or with others pay for any such advertisement, knowing such letter, circular, bill, placard, poster, publication or advertisement to contain any false statement of material fact relating to any candidate or committee or, if he is a candidate, to himself, or any false statement of material fact relating to any ballot question. Any person violating the provisions of this subsection shall be guilty of a Class III misdemeanor.

Sec. 14. That section 49-14,101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

49-14,101. (1) No person shall offer or give to the following persons anything of value, including a gift, loan, contribution, reward, or promise of future employment, based on an agreement that the vote, official action, or judgment of any public official, public employee, or candidate would be influenced thereby:

- (a) A public official, public employee, or candidate;
- (b) A member of the immediate family of an individual listed in subdivision (a) of this subsection; or
- (c) A business with which an individual listed under subdivision (a) or (b) of this subsection is associated.

(2) No person listed in subsection (1) of this section shall solicit or accept anything of value, including a gift, loan, contribution, reward, or promise of future employment based on an agreement that the

vote, official action, or judgment of the public official, public employee, or candidate would be influenced thereby.

(3) No public official or public employee shall use that person's public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

(4) No public official or public employee shall use personnel, resources, property, or funds under that individual's official care and control, other than in accordance with prescribed constitutional, statutory, and regulatory procedures, or use such items, other than compensation provided by law, for personal financial gain.

(5) Except as provided in section 23-3113, any person violating the provisions of this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Sec. 15. That original sections 49-1401, 49-1408, 49-1474, and 49-14,101, Reissue Revised Statutes of Nebraska, 1943, section 17-209.02, Revised Statutes Supplement, 1984, and section 23-3113, Revised Statutes Supplement, 1985, and also sections 2-3216.05, 18-301.05, and 23-184, Reissue Revised Statutes of Nebraska, 1943, and sections 2-3216.01 to 2-3216.04, 2-3216.06, 18-301.01 to 18-301.04, 18-301.06, 23-180 to 23-183, 23-185, and 79-4,208 to 79-4,213, Revised Statutes Supplement, 1984, are repealed.