**South Carolina General Assembly**

121st Session, 2015-2016

**H. 3185**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pope, Cole, Anderson, Bales, G.A. Brown, R.L. Brown, Finlay, Felder, Funderburk, Hart, Knight, Lucas, Murphy, Newton, Norman, Norrell, Putnam, Rivers, Southard, Spires, Tallon, Taylor, Wells, Williams, Willis, Bernstein, Long, Douglas, Henderson, G.M. Smith, G.R. Smith, McCoy, Clary, M.S. McLeod and Corley

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Companion/Similar bill(s): 1, 14, 74, 3184, 3722

Introduced in the House on January 13, 2015

Currently residing in the House Committee on **Judiciary**

Summary: Ethics, Criminal Penalties

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/18/2014 House Prefiled

12/18/2014 House Referred to Committee on **Judiciary**

1/13/2015 House Introduced and read first time ([House Journal‑page 138](file:///h:\HJ%20Archive\2015\01-13-15.docx))

1/13/2015 House Referred to Committee on **Judiciary** ([House Journal‑page 138](file:///h:\HJ%20Archive\2015\01-13-15.docx))

3/3/2015 House Member(s) request name added as sponsor: Corley

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**VERSIONS OF THIS BILL**

[12/18/2014](file:///p:\pprever\2015-16\3185_20141218.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 28 TO TITLE 16 ENTITLED “ETHICS, CRIMINAL PENALTIES” SO AS TO INCORPORATE BY REFERENCE THE DEFINITIONS CONTAINED IN SECTIONS 8‑13‑100 AND 8‑13‑1300, TO MOVE CERTAIN LANGUAGE RELATING TO ETHICS VIOLATIONS AND CRIMINAL PENALTIES FOR A VIOLATION, AND TO CREATE SIMILAR OFFENSES CONTAINED IN CHAPTER 28 OF TITLE 16 WITH REVISIONS; TO AMEND SECTION 8‑13‑780, AS AMENDED, RELATING TO REMEDIES FOR BREACHES OF ETHICAL STANDARDS BY PUBLIC OFFICIALS, MEMBERS, OR EMPLOYEES, SO AS TO REVISE AND EXPAND THE REMEDIES FOR A BREACH OF CERTAIN ETHICAL STANDARDS; TO AMEND SECTION 8‑13‑790, AS AMENDED, RELATING TO RECOVERY OF AMOUNTS RECEIVED BY OFFICIALS OR EMPLOYEES IN BREACH OF ETHIC STANDARDS, SO AS TO DELETE THE REFERENCE TO REGULATIONS; TO AMEND SECTION 8‑13‑1510, AS AMENDED, RELATING TO CIVIL AND CRIMINAL PENALTIES FOR THE LATE FILING OF OR FAILURE TO FILE A REQUIRED ETHICS REPORT OR STATEMENT, SO AS TO DELETE THE CRIMINAL PENALTIES AFTER THE MAXIMUM CIVIL PENALTY HAS BEEN LEVIED; BY ADDING SECTION 8‑13‑1515 SO AS TO CREATE THE NEW OFFENSE OF WILFUL FAILURE TO FILE A REQUIRED STATEMENT OR REPORT IN AN EFFORT TO CONCEAL A VIOLATION OF THE ETHICS CHAPTER AND TO PROVIDE A PENALTY; BY ADDING SECTION 8‑13‑1525 SO AS TO REVISE AND EXPAND THE REMEDIES FOR A VIOLATION OF CERTAIN ETHICAL STANDARDS; AND TO REPEAL SECTIONS 8‑13‑705, 8‑13‑720, 8‑13‑725, 8‑13‑750, 8‑13‑755, AND 8‑13‑760 ALL RELATING TO ETHICS VIOLATIONS AND CRIMINAL PENALTIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 16 of the 1976 Code is amended by adding:

“CHAPTER 28

Ethics

Criminal Penalties

Section 16‑28‑100. As used in this chapter, all terms shall have the same definition as contained in Sections 8‑13‑100 and 8‑13‑1300 as applicable.

Section 16‑28‑110. (A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

(1) influence the discharge of a public official’s, public member’s, or public employee’s official responsibilities

(2) influence a public official, public member, or public employee to commit, aid in comm,tting, collude in, or allow fraud on a governmental entity; or

(3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official’s, public member’s, or public employee’s official responsibilities:

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

(1) influenced in the discharge of his official responsibilities;

(2) influenced to commit, aid in committing, collude in, or allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or

(3) induced to perform or fail to perform an act in violation of his official responsibilities.

(C) A person may not, directly or indirectly, give, offer, or promise to give anything of value to another person with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

(1) a court;

(2) a committee of either house or both houses of the General Assembly; or

(3) an agency, commission, or officer authorized to hear evidence or take testimony or with intent to influence a witness to fail to appear.

(D) A person may not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a trial or other proceeding before:

(1) a court;

(2) a committee of either house or both houses of the General Assembly; or

(3) an agency, commission, or officer authorized to hear evidence or take testimony or with intent to influence a witness to fail to appear.

(E) Subsections (C) and (D) do not prohibit the payment or receipt of witness fees provided by law or the payment by the party on whose behalf a witness is called and receipt by a witness of the reasonable costs of travel and subsistence at trial, hearing, or proceeding, or, in the case of an expert witness, of the reasonable fee for time spent in the preparation of the opinion and in appearing or testifying.

(F) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten years and a fine of not more than ten thousand dollars and is permanently disqualified from being a public official or a public member. A public official, public member, or public employee who violates the provisions of this section forfeits his public office, membership, or employment.

(G) This section does not apply to political contributions unless the contributions are conditioned upon the performance of specific actions of the person accepting the contributions nor does it prohibit a parent, grandparent, or other close relative from making a gift to a child, grandchild, or other close relative for love and affection except as otherwise provided.

Section 16‑28‑115. (A) No person may knowingly use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual’s duties as a holder of elective office.

(B) The payment of reasonable and necessary travel expenses or for food or beverages consumed by the candidate or members of his immediate family while at, and in connection with, a political event are permitted.

(C) A person who wilfully or recklessly violates the provisions of this section:

(1) if the amount is two thousand dollars or less in the aggregate during any reporting period for the certified campaign reports as set forth in Section 8‑13‑1308, or in final disbursement as set forth in Section 8‑13‑1370, is guilty of misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days and must refund the amount of personal use back to his campaign account;

(2) if the amount is more than two thousand dollars but less than ten thousand dollars in the aggregate during any reporting period for the certified campaign reports as set forth in Section 8‑13‑1308, or in final disbursement as set forth in Section 8‑13‑1370, the person is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years and must refund the amount of personal use back to his campaign account;

(3) if the amount is ten thousand dollars or more in the aggregate during any reporting period for the certified campaign reports as set forth in Section 8‑13‑1308, or in final disbursement as set forth in Section 8‑13‑1370, the person is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, and must refund the amount of personal use back to his campaign account.

Section 16‑28‑120. (A) No person may wilfully offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may wilfully solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

(B) A person who wilfully or recklessly violates the provisions of this section:

(1) if the amount is two thousand dollars or less, is guilty of a misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days and must refund the amount of money to the state’s general fund;

(2) if the amount is more than two thousand dollars but less than ten thousand dollars, is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years and must refund the amount of money to the state’s general fund;

(3) if the amount is ten thousand dollars or more, is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, and must refund the amount of money to the state’s general fund.

Section 16‑28‑125. (A) A public official, public member, or public employee may not wilfully use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a family member, an individual with whom he is associated, or a business with which he is associated.

(B)(1) A public official, public member, or public employee may not wilfully examine, or aid and abet in the wilful examination of, a tax return of a taxpayer, a worker’s compensation record, a record in connection with health or medical treatment, social services records, or other records of an individual in the possession of or within the access of a public department or agency if the purpose of the examination is improper or unlawful.

(2) A person convicted of violating this subsection must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and shall reimburse the costs of prosecution. Upon conviction, the person also must be discharged immediately from his public capacity as an official, member, or employee.

Section 16‑28‑130. (A) No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages.

(B) A public official, public member, or public employee may not participate in an action relating to the discipline of the public official’s, public member’s, or public employee’s family member.

Section 16‑28‑135. A former public official, former public member, or former public employee may not for a period of one year after terminating his public service or employment:

(1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment; or

(2) accept employment if the employment:

(a) is from a person who is regulated by the agency or department on which the former public official, former public member, or former public employee served or was employed; and

(b) involves a matter in which the former public official, former public member, or former public employee directly and substantially participated during his public service or public employment.

Section 16‑28‑140. It is a breach of ethical standards for a public official, public member, or public employee who is participating directly in procurement, as defined in Section 11‑35‑310(22), to resign and accept employment for a period of one year from the date of termination of service or employment with a person contracting with the governmental body if the contract falls or would fall under the public official’s, public member’s, or public employee’s official responsibilities.

Section 16‑28‑145. (A) Unless otherwise provided for in this chapter, a person who wilfully violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be punished by imprisonment of not more than three years or a fine of not more than ten thousand dollars, or both. A court also may order an appropriate amount of restitution taking under consideration any unjust enrichment, use of campaign funds to defray costs associated with a criminal action, or other factors deemed relevant to the particular case.

(B) As used in this chapter, the term ‘wilfully’ means that the act is intentional or knowing, as opposed to inadvertent. Proof of evil motive or intent to violate the law or knowledge that the law is being violated is not required.”

SECTION 2. Section 8‑13‑780 of the 1976 Code, as last amended by Act 248 of 1991, is further amended to read:

“Section 8‑13‑780. (A) The provisions of this section are in addition to all other civil and administrative remedies against public officials, public members, or public employees which are provided by law.

(B) ~~In addition to existing remedies for breach of the ethical standards of this chapter or regulations promulgated hereunder, the State Ethics Commission may impose an oral or written warning or reprimand.~~ For violation of the ethical standards of this article, the appropriate supervisory agency may:

(1) administer a public reprimand;

(2) require the respondent to pay a civil penalty not to exceed two thousand dollars for each nontechnical violation that is unrelated to the late filing of a required statement or report or failure to file a required statement or report;

(3) require the forfeiture of gifts, receipts, or profits, or the value of each obtained in violation of Chapter 13, Title 8 or Chapter 17, Title 2;

(4) require a combination of items (1) through (3) as necessary and appropriate.

(C) The value of anything received by a public official, public member, or public employee in breach of the ethical standards of this chapter ~~or regulations promulgated hereunder~~ is recoverable by the State or other governmental entity in an action by the Attorney General against a person benefitting from the violations.

(D) Before a public employee’s employment or a public official’s or public member’s association with the governmental entity is terminated for a violation of the provisions of this chapter, notice and an opportunity for a hearing must be provided to the public official, public member, or public employee.”

SECTION 3. Section 8‑13‑790(A) of the 1976 Code, as last amended by Act 248 of 1991, is further amended to read:

“(A) The value of anything transferred or received in breach of the ethical standards of Articles 1 through 11 of this chapter ~~or regulations promulgated under it~~ by a public employee, public official, or a nonpublic employee or official may be recovered from the public employee, public official, or nonpublic employee or official.”

SECTION 4. Section 8‑13‑1510 of the 1976 Code, as last amended by Act 40 of 2011, is further amended to read:

“Section 8‑13‑1510. ~~(A)~~ Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows:

(1) a fine of one hundred dollars if the statement or report is not filed within five days after the established deadline provided by law in this chapter; and

(2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per calendar day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement or report is not filed, not exceeding five thousand dollars.

~~(B)~~ ~~After the maximum civil penalty has been levied and the required statement or report has not been filed, the person is:~~

~~(1)~~ ~~for a first offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days;~~

~~(2)~~ ~~for a second offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned not less than a mandatory minimum of thirty days;~~

~~(3)~~ ~~for a third or subsequent offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.~~”

SECTION 5. Article 15, Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1515. A person who wilfully fails to file a required statement or report which has the effect of concealing a violation of this chapter is guilty of a misdemeanor and, upon conviction, must be fined five thousand dollars or be imprisoned for not more than one year, or both, for each statement or report not filed.”

SECTION 6. Section 8‑13‑1520 of the 1976 Code, as last amended by Act 76 of 2003, is further amended to read:

“Section 8‑13‑1520. (A) Except as otherwise specifically provided in this chapter and for failure to file a required statement or report, a person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

(B) A person who wilfully violates any provision of this Article 13 is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred percent of the amount of contributions or anything of value that should have been reported pursuant to the provisions of this Article 13 but not less than five thousand dollars or imprisoned for not more than one year, or both.

(C) A violation of the provisions of this chapter does not necessarily subject a public official to the provisions of Section 8‑13‑560.

(D) For purposes of this section, ‘wilfully’ means that the act is intentional or knowing, as opposed to inadvertent. Proof of evil motive or intent to violate the law or knowledge that the law is being violated is not required.”

SECTION 7. Article 15, Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1525. For a violation of the ethical standards of this article, the appropriate supervisory agency may:

(1) administer a public reprimand;

(2) require the respondent to pay a civil penalty not to exceed two thousand dollars for each nontechnical violation that is unrelated to the late filing of a required statement or report or failure to file a required statement or report;

(3) require the forfeiture of gifts, receipts, or profits, or the value of each, obtained in violation of Chapter 13, Title 8, or Chapter 17, Title 2;

(4) order the repayment of any campaign funds it determines were inappropriately used to defray costs associated with the defense of the matter;

(5) require a combination of items (1) through (4) as necessary and appropriate.”

SECTION 8. Sections 8‑13‑705, 8‑13‑720, 8-13-725, 8‑13‑750, 8‑13‑755, and 8‑13‑760 of the 1976 Code are repealed.

SECTION 9. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 10. This act takes effect upon approval by the Governor.

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