

Assembly Bill No. 499—Committee on Elections, Procedures,
Ethics, and Constitutional Amendments

CHAPTER.....

AN ACT relating to government; repealing the provision prohibiting a person from making a false statement of fact concerning a candidate or a question on a ballot under certain circumstances; repealing the provision prohibiting certain persons from willfully impeding the success of the campaign of a candidate or the campaign for the passage or defeat of a question on a ballot; and other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Secs. 1-13. (Deleted by amendment.)

Sec. 14. NRS 294A.410 is hereby amended to read as follows:

294A.410 1. ~~[Except as otherwise provided in NRS 294A.345 and 294A.346, if]~~ **If** it appears that the provisions of this chapter have been violated, the Secretary of State may:

(a) Conduct an investigation concerning the alleged violation and cause the appropriate proceedings to be instituted and prosecuted in the First Judicial District Court; or

(b) Refer the alleged violation to the Attorney General. The Attorney General shall investigate the alleged violation and institute and prosecute the appropriate proceedings in the First Judicial District Court without delay.

2. A person who believes that any provision of this chapter has been violated may notify the Secretary of State, in writing, of the alleged violation. The notice must be signed by the person alleging the violation and include any information in support of the alleged violation.

Sec. 15. NRS 281.461 is hereby amended to read as follows:

281.461 1. The Commission shall:

(a) At its first meeting and annually thereafter elect a Chairman and Vice Chairman from among its members.

(b) Meet regularly at least once in each calendar quarter, unless there are no requests made for an opinion pursuant to NRS 281.511, ~~[294A.345 or 294A.346,]~~ and at other times upon the call of the Chairman.

2. Members of the Commission are entitled to receive a salary of not more than \$80 per day, as fixed by the Commission, while engaged in the business of the Commission.

3. While engaged in the business of the Commission, each member and employee of the Commission is entitled to receive the

per diem allowance and travel expenses provided for state officers and employees generally.

4. The Commission may, within the limits of legislative appropriation, maintain such facilities as are required to carry out its functions.

Sec. 16. NRS 281.4635 is hereby amended to read as follows:

281.4635 1. In addition to any other duties imposed upon him, the Executive Director shall:

(a) Maintain complete and accurate records of all transactions and proceedings of the Commission.

(b) Receive requests for opinions pursuant to NRS 281.511 . ~~§ 294A.345 or 294A.346.~~

(c) Gather information and conduct investigations regarding requests for opinions received by the Commission and submit recommendations to the panel appointed pursuant to NRS 281.462 regarding whether there is just and sufficient cause to render an opinion in response to a particular request.

(d) Recommend to the Commission any regulations or legislation that he considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government.

(e) Upon the request of any public officer or the employer of a public employee, conduct training on the requirements of this chapter, the rules and regulations adopted by the Commission and previous opinions of the Commission. In any such training, the Executive Director shall emphasize that he is not a member of the Commission and that only the Commission may issue opinions concerning the application of the statutory ethical standards to any given set of facts and circumstances. The Commission may charge a reasonable fee to cover the costs of training provided by the Executive Director pursuant to this subsection.

(f) Perform such other duties, not inconsistent with law, as may be required by the Commission.

2. The Executive Director shall, within the limits of legislative appropriation, employ such persons as are necessary to carry out any of his duties relating to:

(a) The administration of the affairs of the Commission;

(b) The review of statements of financial disclosure; and

(c) The investigation of matters under the jurisdiction of the Commission.

Sec. 17. NRS 281.465 is hereby amended to read as follows:

281.465 1. The Commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of ~~§~~

~~—(a) This~~ *this* chapter by a public officer or employee or former public officer or employee in any proceeding commenced by:

~~[(1)]~~ (a) The filing of a request for an opinion with the Commission; or

~~[(2)]~~ (b) The Commission on its own motion.

~~[(b) NRS 294A.345 or 294A.346 in any proceeding commenced by the filing of a request for an opinion pursuant thereto.]~~

2. The provisions of ~~[(paragraph (a) of)]~~ subsection 1 apply to a public officer or employee who:

(a) Currently holds public office or is publicly employed at the commencement of proceedings against him.

(b) Resigns or otherwise leaves his public office or employment:

(1) After the commencement of proceedings against him; or

(2) Within 1 year after the alleged violation or reasonable discovery of the alleged violation.

Sec. 18. NRS 281.475 is hereby amended to read as follows:

281.475 1. The Chairman and Vice Chairman of the Commission may administer oaths.

2. The Commission, upon majority vote, may issue a subpoena to compel the attendance of a witness and the production of books and papers. Upon the request of the Executive Director or the public officer or public employee who is the subject of a request for an opinion, the Chairman or, in his absence, the Vice Chairman, may issue a subpoena to compel the attendance of a witness and the production of books and papers.

3. Before issuing a subpoena to a public officer or public employee who is the subject of a request for an opinion, the Executive Director shall submit a written request to the public officer or public employee requesting:

(a) His appearance as a witness; or

(b) His production of any books and papers relating to the request for an opinion.

4. Each written request submitted by the Executive Director pursuant to subsection 3 must specify the time and place for the attendance of the public officer or public employee or the production of any books and papers, and designate with certainty the books and papers requested, if any. If the public officer or public employee fails or refuses to attend at the time and place specified or produce the books and papers requested by the Executive Director within 5 business days after receipt of the request, the Chairman may issue the subpoena. Failure of the public officer or public employee to comply with the written request of the Executive Director shall be deemed a waiver by the public officer or public employee of the time set forth in subsections 3 and 4 of NRS 281.511.

5. If any witness refuses to attend, testify or produce any books and papers as required by the subpoena, the Chairman of the

Commission may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the Commission pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the Commission, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the Commission.

6. ~~Except as otherwise provided in this subsection, upon~~ Upon such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced the books or papers before the Commission. ~~If the witness has been subpoenaed by the Commission in response to a request for an opinion filed pursuant to NRS 294A.345 or 294A.346, the court shall direct the witness to appear before the court as expeditiously as possible to allow the Commission to render its opinion within the time required by NRS 281.477.]~~ A certified copy of the order must be served upon the witness.

7. If it appears to the court that the subpoena was regularly issued by the Commission, the court shall enter an order that the witness appear before the Commission, at the time and place fixed in the order, and testify or produce the required books and papers. Upon failure to obey the order, the witness must be dealt with as for contempt of court.

Sec. 19. NRS 281.521 is hereby amended to read as follows:

281.521 ~~[(1)]~~ The Commission's opinions may include guidance to a public officer or employee on questions whether:

~~[(a)]~~ 1. A conflict exists between his personal interest and his official duty.

~~[(b)]~~ 2. His official duties involve the use of discretionary judgment whose exercise in the particular matter would have a significant effect upon the disposition of the matter.

~~[(c)]~~ 3. The conflict would materially affect the independence of the judgment of a reasonable person in his situation.

~~[(d)]~~ 4. He possesses special knowledge which is an indispensable asset of his public agency and is needed by it to reach a sound decision.

~~[(e)]~~ 5. It would be appropriate for him to withdraw or abstain from participation, disclose the nature of his conflicting personal

interest or pursue some other designated course of action in the matter.

~~[2. Except as otherwise provided in NRS 281.477, 294A.345 and 294A.346, the Commission's opinions may not include guidance to a public officer or employee on questions regarding the provisions of chapter 294A of NRS.]~~

Sec. 20. NRS 281.551 is hereby amended to read as follows:

281.551 1. In addition to any other penalty provided by law, the Commission may impose on a public officer or employee or former public officer or employee civil penalties:

(a) Not to exceed \$5,000 for a first willful violation of this chapter;

(b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and

(c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

2. In addition to other penalties provided by law, the Commission may impose a civil penalty not to exceed \$5,000 and assess an amount equal to the amount of attorney's fees and costs actually and reasonably incurred by the person about whom an opinion was requested pursuant to NRS 281.511 ~~[]~~ against a person who prevents, interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.

3. If the Commission finds that a violation of a provision of this chapter by a public officer or employee or former public officer or employee has resulted in the realization by another person of a financial benefit, the Commission may, in addition to other penalties provided by law, require the current or former public officer or employee to pay a civil penalty of not more than twice the amount so realized.

4. ~~[In addition to any other penalty provided by law, by an affirmative vote of two thirds of the Commission, the Commission may impose on any person who violates any provision of NRS 294A.345 or 294A.346 a civil penalty not to exceed \$5,000. The Commission shall not impose a civil penalty for a violation of NRS 294A.345 unless the Commission has made the specific findings required pursuant to subsection 7 of NRS 281.477.]~~

~~—5.]~~ If the Commission finds that:

(a) A willful violation of this chapter has been committed by a public officer removable from office by impeachment only, ~~[it]~~ **the Commission** shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its finding. The report must contain a statement of the facts alleged to constitute the violation.

(b) A willful violation of this chapter has been committed by a public officer removable from office pursuant to NRS 283.440, the

Commission may file a proceeding in the appropriate court for removal of the officer.

(c) Three or more willful violations have been committed by a public officer removable from office pursuant to NRS 283.440, the Commission shall file a proceeding in the appropriate court for removal of the officer.

~~{6-}~~ 5. An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee:

(a) Relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281.471;

(b) Was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and

(c) Took action that was not contrary to a prior published opinion issued by the Commission.

~~{7-}~~ 6. In addition to other penalties provided by law, a public employee who willfully violates a provision of NRS 281.481, 281.491, 281.501 or 281.505 is subject to disciplinary proceedings by his employer and must be referred for action in accordance to the applicable provisions governing his employment.

~~{8-}~~ 7. NRS 281.481 to 281.541, inclusive, do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the Commission finds that a public officer or employee has committed a willful violation of this chapter which it believes may also constitute a criminal offense, the Commission shall refer the matter to the Attorney General or the district attorney, as appropriate, for a determination of whether a crime has been committed that warrants prosecution.

~~{9-}~~ 8. The imposition of a civil penalty pursuant to ~~{subsections 1 to 4, inclusive,}~~ **subsection 1, 2 or 3** is a final decision for the purposes of judicial review.

~~{10-}~~ 9. A finding by the Commission that a public officer or employee has violated any provision of this chapter must be supported by a preponderance of the evidence unless a greater burden is otherwise prescribed by law.

Sec. 21. NRS 281.477, 294A.345 and 294A.346 are hereby repealed.

Sec. 22. The amendatory provisions of sections 14 to 21, inclusive, of this act do not apply to conduct that occurred before October 1, 2005, or to the jurisdiction, duties, powers, or proceedings of the Commission on Ethics relating to such conduct.

Sec. 23. (Deleted by amendment.)

Sec. 24. 1. This section and sections 1, 3 to 8, inclusive, 10, 11, 12 and 14 to 23, inclusive, of this act become effective on October 1, 2005.

2. Sections 8 and 12 of this act expire by limitation on December 31, 2007.

3. Sections 2, 9 and 13 of this act become effective on January 1, 2008.

