

07/18/2024-HELD IN COMMITTEE

BILL NO. 35-0228

Thirty-Fifth Legislature of the Virgin Islands

February 2, 2024

An Act amending title 3 Virgin Islands Code, chapters 8 and 37 to enumerate the duties and functions of the Virgin Islands Commission on Ethics and Conflicts of Interest; appropriating \$500,000 from the General Fund of the Treasury of the Government of the Virgin Islands to the Virgin Islands Commission on Ethics and Conflicts of Interest and for other related purposes

PROPOSED BY: Senators Kenneth L. Gittens, Franklin D. Johnson,
Marvin A. Blyden and Diane T. Capehart

1 *Be it enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 3 Virgin Islands Code, chapter 8 section 114, subsection (a),
3 paragraph (17) is amended by striking “administer and” and after “enforces” by inserting “in
4 conjunction with the Virgin Islands Commission on Ethics and Conflicts of Interest,”.

5 **SECTION 2.** Title 3 Virgin Islands Code, chapter 37 is amended in the following
6 instances:

7 (a) Section 1105(a)(4) is amended by striking both occurrences of the word
8 “Committee” and inserting “Attorney General”;

9 (b) Section 1106 is amended by striking “Attorney General” and inserting “Virgin
10 Islands Commission on Ethics and Conflicts of Interest”; and before “file actions” inserting
11 “submit criminal matters to the Attorney General or the United States Attorney”.

12 (c) Sections 1109 to 1115 are added to read as follows:

1 **§1109. Requirements, Powers and Duties of Commission**

2 In addition to other powers and duties prescribed by law, the Commission shall:

3 (a) Determine whether an individual is a public official for purposes of this
4 chapter;

5 (1) A “public official” is any person elected by the public or elected or
6 appointed by a governmental body, or an appointed official in the executive,
7 legislative, or judicial branch of the Virgin Islands or any political subdivision
8 thereof, provided that a public official does not include members of advisory boards
9 that have no authority to expend public funds other than reimbursement for personal
10 expense, or to otherwise exercise the power of the Territory or any political
11 subdivision thereof.

12 (b) Provide a training course of not less than two hours for public officials on the
13 requirements of this chapter for an individual who has been identified as a public official;

14 (c) A public official as defined in paragraph (a)(1) shall complete a training
15 course provided by the Commission on Ethics and Conflicts of Interest no later than 30
16 days after being elected or appointed as a public official. The training requirement does
17 not apply to an individual who is a public official only as a member of a commission,
18 task force, or similar entity; or has completed a training course provided by the
19 Commission on Ethics and Conflicts of Interest while serving in another public official
20 position;

21 (d) Promulgate regulations to carry out the provisions of this chapter;

22 (e) Draft a “Code of Official Conduct” not later than six months after the
23 establishment of a quorum of the Commission, which Code must be ratified by the
24 Legislature;

1 (f) Promulgate model regulations that address conflicts of interest and financial
2 disclosure;

3 (g) Prescribe forms for statements and reports that must be filed and furnish the
4 forms to public officials required to file the statements and reports;

5 (h) Prepare and publish guidelines setting forth uniform methods of accounting
6 and reporting for use by persons required to file statements and reports;

7 (i) Accept and file any information voluntarily supplied that exceeds the
8 requirements of this chapter;

9 (j) Inspect financial interest statements that have been filed to ascertain whether
10 any public official has failed to file the statement or has filed a deficient statement. If it
11 is determined that a reporting person has failed to file a financial interest statement or
12 that any statement that has been filed fails to conform with the requirements of section
13 1105, the Commission shall notify the person in writing. The notice must state in detail
14 the deficiency and the penalties for failure to file or for filing a deficient statement of
15 financial interests;

16 (k) Make statements and reports available for public inspection and copying
17 during regular office hours and make copying facilities available at a charge not to exceed
18 actual cost and advise other government departments and agencies of the provisions of
19 this paragraph;

20 (l) Compile and maintain an index of all reports and statements filed with the
21 Commission to facilitate public access to the reports and statements and instruct other
22 local agencies that receive and file financial interest statements in the maintenance of
23 systems that facilitate public access to the statements;

24 (m) Prepare and publish annual summaries of statements and reports filed with
25 the Commission;

1 (n) Preserve statements and reports for five years from the date of their receipt
2 and advise other local agencies that receive and store financial interest statements to
3 preserve the statements for five years from date of receipt;

4 (o) Issue to any person upon the person's request, or to the appointing authority
5 or employer of that person, upon the request of the appointing authority or an employer,
6 an opinion with respect to the person's duties under this chapter. Not later than 14 days
7 after the request is made, the Commission shall either issue the opinion or advise the
8 person who requested whether an opinion will be issued. A person who acts in good faith
9 on an opinion issued by the Commission is not subject to criminal or civil penalties for
10 so acting, if the material facts are as stated in the opinion request. The Commission's
11 opinions are public records and may, from time to time, be published. The person
12 requesting the opinion may, however, require that the opinion contain such deletions and
13 changes as necessary to protect the identity of the persons involved;

14 (p) Provide written advice to any person or the appointing authority or employer
15 of a person upon a request with respect to the employee's duties under this chapter. The
16 Commission shall provide the advice not later than 21 working days after the request, but
17 the time may be extended for good cause. It is a complete defense in any enforcement
18 proceeding initiated by the Commission and evidence of good faith conduct in any other
19 civil or criminal proceeding, if the requester at least 21 working days before the alleged
20 violation requested written advice from the Commission in good faith, disclosed
21 truthfully all material facts and committed the acts complained of either in reliance on
22 the advice or because of the failure of the Commission to provide advice within 21 days
23 after the request or such later extended time. The person requesting the advice may,
24 however, require that the advice contain deletions and changes as are necessary to protect
25 the identity of the person involved;

1 (q) Initiate an inquiry under section 1110, where a complaint has not been filed
2 where there is a reasonable belief that a conflict may exist;

3 (r) Issue findings, reports, and orders relating to investigations initiated pursuant
4 to section 1110, which set forth the alleged violation, findings of fact, and conclusions of
5 law. An order may include recommendations to law enforcement officials. Any order
6 resulting from a finding that a public employee has obtained a financial gain in violation
7 of this chapter may require the restitution plus interest of that gain to the appropriate
8 governmental body. The Attorney General or the Commission may apply to the Superior
9 Court of the Virgin Islands to seek enforcement of an order requiring such restitution.
10 This restitution requirement is in addition to any other penalties provided for in this
11 chapter;

12 (s) Hold hearings, take testimony, issue subpoenas, and compel the attendance
13 of witnesses;

14 (t) Make recommendations to law enforcement officials for criminal
15 investigation of violations of this chapter;

16 (u) Make recommendations to the Attorney General or the U.S. Attorney either
17 for criminal prosecution or filing of charges arising out of violations of this chapter;

18 (v) Prepare and publish special reports, educational materials, and technical
19 studies to further the purposes of this chapter;

20 (w) Prepare and publish, before June 1 of each year, an annual report
21 summarizing the activities of the Commission;

22 (x) Transmit quarterly, free of charge, copies of each order, advisement and
23 opinion that has become a matter of public record to all law libraries in the Virgin Islands
24 and each authority appointing Commission members;

1 (y) Hold at least two public hearings each year, of which at least one must be
2 held in the district of St. Croix and at least one must be held in the district of St. Thomas
3 and St. John, to seek input from persons and organizations who represent any individual
4 subject to the provisions of this chapter and from other interested parties.

5 **§1110. Investigation by Commission**

6 (a) Upon a complaint signed by any person or upon its own motion, the Commission,
7 through its executive director, shall conduct a preliminary inquiry into any alleged violation of
8 this chapter. The Commission shall keep information, records, and proceedings relating to a
9 preliminary inquiry confidential. The Commission may, however, refer the case to law
10 enforcement officials, the Attorney General or U.S. Attorney during a preliminary inquiry or
11 anytime thereafter without providing notice to the subject of the inquiry. The Commission
12 shall complete its preliminary inquiry no later than 60 days after its initiation. On request of
13 the Commission, an official of a department, agency, division, semi-autonomous agency, or
14 instrumentality of the Government of the Virgin Islands shall provide the Commission, in a
15 timely manner, with any information necessary for the Commission to perform its duties under
16 this subsection.

17 (b) If a preliminary inquiry fails to establish reason to believe that this chapter has been
18 violated, the Commission may terminate the inquiry and notify the complainant and the person
19 who had been the subject of the inquiry. If the Commission determines that a complaint is
20 frivolous, it shall so state.

21 (c) If a preliminary inquiry establishes reason to believe this chapter has been violated,
22 the Commission shall initiate an investigation through its executive director to determine if
23 there has been a violation. The Commission shall keep information, records, and proceedings
24 relating to an investigation confidential until a final determination is made, except as otherwise
25 provided in subsection (g). Service of notice is complete upon mailing and must be by certified

1 or registered mail. The Commission shall notify the complainant not later than 60 days after
2 the commencement of an investigation, and thereafter, the Commission shall advise the
3 complainant and the person who is the subject of the investigation of the status of the
4 investigation at least every 90 days until the investigation is terminated. Not later than 180
5 days after the initiation of an investigation, the Commission shall either terminate the
6 investigation pursuant to subsection (d) or issue a findings report under subsection (e). Upon
7 a showing by the executive director of the need for an extension of this period, the Commission
8 may extend an investigation for up to two 90-day periods. A majority vote of members, a
9 quorum being present, must approve each 90-day extension. A findings report may not be
10 issued later than 360 days after initiation of an investigation. The Commission shall refer the
11 complaint to the Commission on Judicial Conduct promptly if the complaint concerns a judge
12 of a court established under title 4 of the Virgin Islands Code. On request of the Commission
13 of Judicial Conduct, the Commission shall provide any information or assistance that is not
14 prohibited by law. The Commission shall promptly refer the complaint to the Legislature's
15 Standing Committee on Ethical Conduct or any successor committee having jurisdiction if the
16 complaint concerns a senator or employee of the legislative branch.

17 (d) If an investigation indicates that no violation has been committed, the Commission
18 shall immediately terminate the investigation and send written notice of the determination to
19 the complainant and the person who was the subject of the investigation.

20 (e) The Commission, upon completing an investigation, shall issue a findings report to
21 the subject of an investigation setting forth the pertinent findings of fact by enumerating each
22 finding of fact by either number or letter. The subject may respond to the findings and request
23 an evidentiary hearing on the matter. The Commission shall grant any request for a hearing.
24 The hearing must be held in either the district of St. Croix or the district of St. Thomas and St.
25 John depending on the subject's place of residence. Any response to a findings report must

1 either admit or deny the pertinent facts by the corresponding number and letter. The subject of
2 the investigation is entitled to have access to any evidence intended to be used by the
3 Commission at the hearing and any exculpatory evidence developed by the Commission during
4 its investigation. Matters not specifically denied in the response are deemed admitted. The
5 response must be filed no later than 30 business days from the date of issuance of the findings
6 report unless the Commission extends the time for good cause shown. Hearings conducted
7 upon request must be instituted not later than 45 days after the response.

8 (f) Not later than 90 days after the Commission receives the hearing record, or, if no
9 hearing is to be held, not later than 30 days after the Commission receives the response to the
10 findings report, the Commission shall issue a final order. Upon receipt of a final order, the
11 subject of the investigation may file a petition for reconsideration in accordance with the
12 regulations of the Commission.

13 (g) Hearings conducted under this section are closed to the public unless the subject
14 requests an open hearing. Any person who appears before the Commission has all the due
15 process rights, privileges, and responsibilities of a party or witness. All witnesses summoned
16 for hearings are entitled to receive reimbursement for reasonable expenses in accordance with
17 title 5 of the Virgin Islands Code. At the conclusion of a hearing and in a timely manner, the
18 Commission shall deliberate on the evidence and determine whether there has been a violation
19 of this chapter. At least three Commission members present at a hearing must find a violation
20 by clear and convincing proof. The names of the members finding a violation and those
21 dissenting and abstaining must be listed in the order. The determination of the Commission, in
22 the form of a final order and findings of fact, are a matter of public record.

23 (h) Final orders must be available as public documents, but the files and records of the
24 Commission relating to the case must remain confidential.

1 (i) Any person aggrieved by an opinion or final order who has a direct interest in the
2 opinion or the final order may appeal to the Superior Court of the Virgin Islands.

3 (j) No public official, public employer, or public employee may discharge any
4 employee, change his official rank, grade, or compensation, deny him a promotion, or threaten
5 to do so for filing a complaint with or providing information to the Commission or testifying
6 in any Commission proceeding. No member of the Commission and no employee of the
7 Commission may discharge any employee of the Commission or change his official rank, grade,
8 or compensation or threaten to do so for providing any information about the internal operations
9 of the Commission not required by law to be kept secret, to any senator or legislative staff
10 member or testifying in any legislative proceeding.

11 (k) No person may disclose or acknowledge, to any other person, any information
12 relating to a complaint, preliminary inquiry, investigation, hearing, or petition for
13 reconsideration that is before the Commission. The identity of the person that is the subject of
14 the advisory opinion must not be revealed. Before an advisory opinion may be made public,
15 the advisory body shall delete the name of the person that is the subject of the opinion and, to
16 the fullest extent possible, any other information that may identify the person. However, a
17 person may disclose or acknowledge to another person matters held confidential in accordance
18 with this subsection when the matters pertain to any of the following:

19 (1) Final orders of the Commission as provided in subsection (h);

20 (2) Hearing conducted in public under subsection (g);

21 (3) For the purpose of seeking advice of legal counsel;

22 (4) Filing an appeal from a Commission order;

23 (5) Communicating with the Commission or its staff in the course of a
24 preliminary inquiry, investigation, hearing, or petition for reconsideration by the
25 Commission;

1 (6) Consulting with a law enforcement official or agency for the purpose of
2 initiating, participating in, or responding to an investigation or prosecution by the law
3 enforcement official or agency;

4 (7) Testifying under oath before a governmental body or a similar body of the
5 United States of America;

6 (8) Any information, records, or proceedings relating to a complaint, preliminary
7 inquiry, investigation, hearing, or petition for reconsideration which the person is the
8 subject of; or

9 (9) such other exceptions as the Commission by regulation may direct.

10 (l) If a public official or public employee has reason to believe the complaint is
11 frivolous as defined by this chapter, or without probable cause, and made primarily for a
12 purpose other than that of reporting a violation of this chapter, or a person publicly disclosed
13 or caused to be disclosed that a complaint against the public official or public employee has
14 been filed with the Commission, the public official or the public employee shall notify the
15 Commission, and the Commission, through its executive director, shall conduct an
16 investigation.

17 (m) The Commission may conduct an investigation not more than five years after the
18 alleged occurrence of any violation of this chapter.

19 **§1111. Penalties**

20 (a) Any person who obtains financial gain from violating any provision of this chapter,
21 in addition to any other penalty provided by law, shall pay into the Treasury of the Government
22 of the Virgin Islands a sum of money equal to three times the amount of the financial gain
23 resulting from the violation. Treble damages may not be assessed against a person who acted
24 in good faith, reliance on the advice of legal counsel.

1 (b) The penalties prescribed in this chapter do not limit the power of the Legislature of
2 the Virgin Islands to discipline its members or to initiate a recall election of an elected public
3 official, and do not limit the power of agencies or commissions to discipline officials or
4 employees.

5 (c) Any person who violates the confidentiality of a Commission proceeding commits
6 a misdemeanor and shall, upon conviction be sentenced to pay a fine of not more than \$1,000
7 or to imprisonment for not more than one year, or both. Any person who engages in retaliatory
8 activity prescribed by section 1110(j) commits a misdemeanor and, in addition to any other
9 penalty provided by law, shall upon conviction be sentenced to pay a fine of not more than
10 \$1,000 or to imprisonment for not more than one year, or both. Any person who willfully
11 affirms or swears falsely regarding any material matter before a Commission proceeding under
12 section 1110 commits a felony and shall, upon conviction, be sentenced to pay a fine of not
13 more than \$5,000 or to imprisonment for not more than five years, or both.

14 (d) In addition to any other civil remedy or criminal penalty provided for in this
15 chapter, the Commission may, after notice has been served in accordance with this chapter and
16 upon a majority vote of its members, levy a civil penalty upon any person subject to this chapter
17 who fails to file a statement of financial interests in a timely manner or who files a deficient
18 statement of financial interests, at a rate of not more than \$25 for each day the statement remains
19 delinquent or deficient. The maximum penalty payable under this subsection is \$250.

20 (e) A public official who acts in good faith reliance on a written, non-confidential
21 opinion of the solicitor general or upon an opinion of the solicitor general publicly stated at an
22 open meeting and recorded in the official minutes of the meeting is not subject to the penalties
23 provided for herein. However, this subsection does not apply in situations where the solicitor's
24 opinion has been rendered under duress or where the parties seeking and rendering the
25 solicitor's opinion have conspired to commit a violation of this chapter purposefully.

1 **§1112. Wrongful use of this chapter**

2 (a) A person who signs a complaint alleging a violation of this chapter is subject to
3 liability for wrongful use of this chapter if:

4 (1) The complaint was frivolous, as defined by this chapter, or without probable
5 cause and made primarily for a purpose other than that of reporting a violation of this
6 chapter; or

7 (2) The complainant publicly disclosed or caused to be disclosed that a complaint
8 against a person had been filed with the Commission.

9 (b) A person who signs a complaint alleging a violation of this chapter has probable
10 cause for doing so if the person reasonably believes in the existence of the facts upon which
11 the claim is based and either:

12 (1) reasonably believes that under those facts the complaint may be valid under
13 this chapter; or

14 (2) believes to this effect in reliance upon the advice of counsel, sought in good
15 faith and given after full disclosure of all relevant facts within his knowledge and
16 information.

17 (c) When the Commission determines that a complainant has violated subsection (a),
18 the Commission, upon receiving a written request from the subject of the complaint, shall
19 provide the name and address of the complainant to the subject. If the Commission determines
20 that a complainant has not violated the provisions of subsection (a), the Commission shall notify
21 the subject accordingly. The subject may appeal the Commission's determination, and the
22 Commission shall schedule an appeal hearing. The subject shall provide credible evidence the
23 complainant violated the provisions of this section. If the Commission grants the appeal, the
24 Commission shall immediately release the complainant's name and address to the subject. If

1 the Commission denies the appeal, it shall present evidence of why the complainant's name
2 and address may not be released.

3 (d) Upon a successful appeal, the subject is entitled to recover for the following:

4 (1) Monetary damages for harm to the plaintiff's reputation by a defamatory
5 matter alleged as the basis of the proceeding.

6 (2) The expenses, including any reasonable attorney fees and costs that the
7 plaintiff has reasonably incurred in proceedings before the Commission.

8 (3) Any specific pecuniary loss that has resulted from the proceedings.

9 (4) Any emotional distress that has been caused by the proceedings.

10 (5) Any punitive damages according to law in appropriate cases.

11 **§1113. Ethics and Conflicts of Interest Commission Fund**

12 (a) There is established within the Treasury of the Government of the Virgin Islands a
13 separate and distinct, non-lapsing fund known as the Ethics and Conflicts of Interest
14 Commission Revolving Fund, created for the purpose of funding the activities of the Virgin
15 Islands Commission on Ethics and Conflicts of Interest.

16 (b) The Commissioner of the Department of Finance shall administer the Fund, and no
17 amounts therein may be made available for expenditure except as provided in this section and
18 when authorized by the executive director of the Virgin Islands Commission on Ethics and
19 Conflicts of Interest. The Virgin Islands Commission on Ethics and Conflicts of Interest shall
20 establish policies for the expenditures of money contained in the Fund.

21 (c) The Fund consists of all monies appropriated from time to time by the Legislature,
22 all public or private grants, gifts, donations, bequests, and devises to the Commission on Ethics
23 and Conflicts of Interest, and any appropriation transfers to the Fund.

24 (d) Any balance more than \$500,000 in any fiscal year must be deposited into the
25 General Fund in the Treasury of the Virgin Islands.

1 **§1114. Supplemental provisions**

2 Any governmental body may adopt regulations covered in this chapter, but no such
3 regulation may in any way be less restrictive than those provided for in this chapter.

4 **§1115. Conflict with other law**

5 Except as otherwise provided in this chapter, if any provision of this chapter conflicts
6 with any other statute, the provisions of this chapter controls.

7 **SECTION 3.** There is appropriated in the fiscal year ending September 30, 2024, the
8 sum of \$500,000 from the General Fund of the Treasury of the Virgin Islands to the
9 Commission on Ethics and Conflicts of Interest to implement and execute the provisions of this
10 act.

11 **BILL SUMMARY**

12 Section 1 amends title 3, section 114 of the Virgin Islands Code relating to the duties of
13 the Attorney General. Section 1 divests the Attorney General of the jurisdiction to administer
14 ethics and conflict of interest laws and allows the Attorney General to enforce them in
15 conjunction with the Commission on Ethics and Conflicts of Interest when there is a criminal
16 nexus.

17 Section 2 of establishes procedures for investigating, enforcing, and appealing from
18 ethical and conflict of interest violations of public officers and employees. Section 2 also
19 establishes the Ethics Commission Fund. Section 3 makes an appropriation to the Ethics and
20 Conflicts of Interest Commission for its operating expenses.

21 **BR23-0594B/January 24, 2024/NS**