

BILL NO. 36-0078

Thirty-Fifth Legislature of the Virgin Islands

May 8, 2025

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 \$1,000,000 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: Senator Kenneth L. Gittens

Be it enacted by the Legislature of the Virgin Islands:

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

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

(a) Section 1102 is amended by adding designating the exiting paragraph as subsection (b) and adding subsection (a) that reads:

“(a) For a period of one year after a territorial officer or employee employment has ended with the Government of the Virgin Islands, the former territorial officer or employee may not have any involvement, either directly or indirectly, with any negotiations, discussions, contracts, claims or any other matter with which the territorial officer or employee was previously involved in the person’s capacity, as a territorial

officer or employee. This subsection does not apply to a former employee who is subsequently reemployed in a governmental capacity where no substantial conflict of interest has occurred as prescribed in §1103.”

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

(c) Section 1106 is amended by striking “Attorney General” and inserting “Virgin Islands Commission on Ethics and Conflicts of Interest”; and before “file actions” inserting “submit criminal matters to the Attorney General or the United States Attorney”; add a new sentence that reads, “The Commission, in conjunction with the Attorney General, may certify to the Superior Court the facts evidencing the disobedience or resistance by a person to comply with a lawful order, or the refusal to be examined, or the misconduct of a person during a hearing, and the Commission may seek the assistance of the Court in enforcing the commission’s orders and processes.”

(d) Section 1108 is amended by striking “a provision” and inserting “sections 1102, 1103, 1104, 1105 and 1107”

(e) Sections 1109 to 1115 are repealed and reenacted as follows:

§1109. Requirements, Powers and Duties of Commission

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

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

(1) A “public official” is any person elected by the public or elected or appointed by a governmental body, or an appointed official in the executive, legislative, or judicial branch of the Virgin Islands or any political subdivision thereof, provided that a public official does not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal

1 expense, or to otherwise exercise the power of the Territory or any political
2 subdivision thereof.

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

5 (c) A public official as defined in paragraph (a)(1) shall complete a training
6 course provided by the Commission on Ethics and Conflicts of Interest no later than 30
7 days after being elected or appointed as a public official. The training requirement does
8 not apply to an individual who is a public official only as a member of a commission,
9 task force, or similar entity; or has completed a training course provided by the
10 Commission on Ethics and Conflicts of Interest while serving in another public official
11 position once not more than three years has elapsed since the training;

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

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

16 (f) Promulgate model regulations that address conflicts of interest and financial
17 disclosure;

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

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

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

24 (j) Inspect financial interest statements that have been filed to ascertain whether
25 any public official has failed to file the statement or has filed a deficient statement. If it
26 is determined that a reporting person has failed to file a financial interest statement or

1 that any statement that has been filed fails to conform with the requirements of section
2 1105, the Commission shall notify the person in writing. The notice must state in detail
3 the deficiency and the penalties for failure to file or for filing a deficient statement of
4 financial interests;

5 (k) Make statements and reports available for inspection and copying during
6 regular office hours and make copying facilities available at a charge not to exceed actual
7 cost for law enforcement agencies with legitimate reasons for the reports;

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

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

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

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

1 (p) Provide written advice to any person or the appointing authority or employer
2 of a person upon a request with respect to the employee's duties under this chapter. The
3 Commission shall provide the advice not later than 21 working days after the request, but
4 the time may be extended for good cause. It is a rebuttable presumption in any
5 enforcement proceeding initiated by the Commission and evidence of good faith conduct
6 in any other civil or criminal proceeding, if the requester at least 21 working days before
7 the alleged violation requested written advice from the Commission in good faith,
8 disclosed truthfully all material facts and committed the acts complained of either in
9 reliance on the advice or because of the failure of the Commission to provide advice
10 within 21 days after the request or such later extended time. The person requesting the
11 advice may, however, require that the advice contain deletions and changes as are
12 necessary to protect the identity of the person involved;

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

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

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

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

(u) Make recommendations to the Attorney General or the United States Attorney either for criminal prosecution or filing of charges arising out of violations of this chapter;

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

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

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

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

§1110. Investigation by Commission

(a) Upon a complaint signed by any person or upon its own motion, the Commission, through its executive director, shall conduct a preliminary inquiry into any alleged violation of this chapter. The Commission shall keep information, records, and proceedings relating to a preliminary inquiry confidential. The Commission may, however, refer the case to law enforcement officials, the Attorney General or United States Attorney during a preliminary inquiry or anytime thereafter without providing notice to the subject of the inquiry. The Commission shall complete its preliminary inquiry no later than 60 days after its initiation. On request of the Commission, an official of a department, agency, division, semi-autonomous agency, or instrumentality of the Government of the Virgin Islands shall provide the

Commission, in a timely manner, with any information necessary for the Commission to perform its duties under this subsection.

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

(c) If a preliminary inquiry establishes reason to believe this chapter has been violated, the Commission shall initiate an investigation through its executive director to determine if there has been a violation. The Commission shall keep information, records, and proceedings relating to an investigation confidential until a final determination is made, except as otherwise provided in subsection (g). Service of notice is complete upon mailing and must be by certified or registered mail. The Commission shall notify the complainant not later than 60 days after the commencement of an investigation, and thereafter, the Commission shall advise the complainant and the person who is the subject of the investigation of the status of the investigation at least every 90 days until the investigation is terminated. Not later than 180 days after the initiation of an investigation, the Commission shall either terminate the investigation pursuant to subsection (d) or issue a findings report under subsection (e). Upon a showing by the executive director of the need for an extension of this period, the Commission may extend an investigation for up to two 90-day periods. A majority vote of members, a quorum being present, must approve each 90-day extension. A findings report may not be issued later than 360 days after initiation of an investigation. The Commission shall refer the complaint to the Commission on Judicial Conduct promptly if the complaint concerns a judge of a court established under title 4 of the Virgin Islands Code. On request of the Commission of Judicial Conduct, the Commission shall provide any information or assistance that is not prohibited by law. The Commission shall promptly refer the complaint to the Legislature's

1 Standing Committee on Ethical Conduct or any successor committee having jurisdiction if the
2 complaint concerns a senator or employee of the legislative branch.

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

6 (e) The Commission, upon completing an investigation, shall issue a findings report to
7 the subject of an investigation setting forth the pertinent findings of fact by enumerating each
8 finding of fact by either number or letter. The subject may respond to the findings and request
9 an evidentiary hearing on the matter. The Commission shall grant any request for a hearing.
10 The hearing must be held in either the district of St. Croix or the district of St. Thomas and St.
11 John depending on the subject's place of residence. Any response to a findings report must
12 either admit or deny the pertinent facts by the corresponding number and letter. The subject of
13 the investigation is entitled to have access to any evidence intended to be used by the
14 Commission at the hearing and any exculpatory evidence developed by the Commission during
15 its investigation.

16 (f) Matters not specifically denied in the response are deemed admitted. The response
17 must be filed no later than 30 business days from the date of issuance of the findings report
18 unless the Commission extends the time for good cause shown. Hearings conducted upon
19 request must be instituted not later than 45 days after the response.

20 (g) Not later than 90 days after the Commission receives the hearing record, or, if no
21 hearing is to be held, not later than 30 days after the Commission receives the response to the
22 findings report, the Commission shall issue a final order. Upon receipt of a final order, the
23 subject of the investigation may file a petition for reconsideration in accordance with the
24 regulations of the Commission.

25 (h) Hearings conducted under this section are closed to the public unless the subject
26 requests an open hearing.

(i) Any person accused of violating any provision of this chapter is entitled to be represented by counsel before the Commission and has all rights normally accorded a person called to answer an accusation in the Superior Court of the Virgin Islands. All witnesses summoned for hearings are entitled to receive reimbursement for reasonable expenses in accordance with title 5 Virgin Islands Code. At the conclusion of a hearing and in a timely manner, the Commission shall deliberate on the evidence and determine whether there has been a violation of this chapter. At least three Commission members present at a hearing must find a violation by clear and convincing proof. The names of the members finding a violation and those dissenting and abstaining must be listed in the order. The determination of the Commission, in the form of a final order and findings of fact, are a matter of public record.

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

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

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

(m) No person may disclose or acknowledge, to any other person, any information relating to a complaint, preliminary inquiry, investigation, hearing, or petition for reconsideration that is before the Commission. The identity of the person that is the subject of the advisory opinion must not be revealed. Before an advisory opinion may be made public,

the advisory body shall delete the name of the person that is the subject of the opinion and, to the fullest extent possible, any other information that may identify the person. However, a person may disclose or acknowledge to another person matters held confidential in accordance with this subsection when the matters pertain to any of the following:

- (1) Final orders of the Commission as provided in subsection (h);
- (2) Hearing conducted in public under subsection (g);
- (3) For the purpose of seeking advice of legal counsel;
- (4) Filing an appeal from a Commission order;
- (5) Communicating with the Commission or its staff in the course of a preliminary inquiry, investigation, hearing, or petition for reconsideration by the Commission;
- (6) Consulting with a law enforcement official or agency for the purpose of initiating, participating in, or responding to an investigation or prosecution by the law enforcement official or agency;
- (7) Testifying under oath before a governmental body or a similar body of the United States of America;
- (8) Any information, records, or proceedings relating to a complaint, preliminary inquiry, investigation, hearing, or petition for reconsideration which the person is the subject of; or
- (9) such other exceptions as the Commission by regulation may direct.

(n) If a public official or public employee has reason to believe the complaint is frivolous as defined by this chapter, or without probable cause, and made primarily for a purpose other than that of reporting a violation of this chapter, or a person publicly disclosed or caused to be disclosed that a complaint against the public official or public employee has been filed with the Commission, the public official or the public employee shall notify the

Commission, and the Commission, through its executive director, shall conduct an investigation.

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

§1111. Penalties

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

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

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

(d) In addition to any other civil remedy or criminal penalty provided for in this chapter, the Commission may, after notice has been served in accordance with this chapter and upon a majority vote of its members, levy a civil penalty upon any person subject to this chapter

1 who fails to file a statement of financial interests in a timely manner or who files a deficient
2 statement of financial interests, at a rate of not more than \$25 for each day the statement remains
3 delinquent or deficient.

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

10 **§1112. Wrongful use of this chapter**

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

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

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

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

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

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

(c) When the Commission determines that a complainant has violated subsection (a), the Commission, upon receiving a written request from the subject of the complaint, shall provide the name and address of the complainant to the subject. If the Commission determines that a complainant has not violated the provisions of subsection (a), the Commission shall notify the subject accordingly. The subject may appeal the Commission's determination, and the Commission shall schedule an appeal hearing. The subject shall provide credible evidence the complainant violated the provisions of this section. If the Commission grants the appeal, the Commission shall immediately release the complainant's name and address to the subject. If the Commission denies the appeal, it shall present evidence of why the complainant's name and address may not be released.

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

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

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

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

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

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

§1113. Ethics and Conflicts of Interest Commission Fund

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

(b) The Commissioner of the Department of Finance shall administer the Fund, and no amounts therein may be made available for expenditure except as provided in this section and when authorized by the executive director of the Virgin Islands Commission on Ethics and

Conflicts of Interest. The Virgin Islands Commission on Ethics and Conflicts of Interest shall establish policies for the expenditures of money contained in the Fund.

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

(d) Any balance more than \$1,000,000 of government funds in any fiscal year must be deposited into the General Fund in the Treasury of the Virgin Islands.

§1114. Supplemental provisions

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

§1115. Conflict with other law

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

SECTION 3. There is appropriated in the fiscal year ending September 30, 2025, the sum of \$1,000,000 from the General Fund of the Treasury of the Virgin Islands to the Commission on Ethics and Conflicts of Interest to implement and execute the provisions of this act.

BILL SUMMARY

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

Section 2 of establishes procedures for investigating, enforcing, and appealing from ethical and conflict of interest violations of public officers and employees. Section 2 also

- 1 establishes the Ethics Commission Fund. Section 3 makes an appropriation to the Ethics and
- 2 Conflicts of Interest Commission for its operating expenses.
- 3 **BR25-0276B/April 24, 2025/NS**