

CHAPTER 475**(HB 510)**

AN ACT relating to the executive branch code of ethics.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 11A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Business" means any corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, firm, enterprise, franchise, association, organization, selfemployed individual, holding company, joint stock company, receivership, trust, or any legal entity through which business is conducted for profit;
- (2) "Commission" means the Executive Branch Ethics Commission;
- (3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;
- (4) "Family" means spouse and children, as well as a person who is related to a public servant as any of the following, whether by blood or adoption: parent, brother, sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister;
- (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; ***"gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;***
- (6) "Income" means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of compensation or any combination thereof;
- (7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State Board for Adult and Technical Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection;
- (8) "Official duty" means any responsibility imposed on a public servant by virtue of his position in the state service;
- (9) "Public servant" means:
 - (a) The Governor;

- (b) The Lieutenant Governor;
 - (c) The Secretary of State;
 - (d) The Attorney General;
 - (e) The Treasurer;
 - (f) The Commissioner of Agriculture;
 - (g) The Auditor of Public Accounts;
 - (h) Each Railroad Commissioner; and
 - (i) All employees in the executive branch including officers as defined in subsection (7) of this section and merit employees;
- (10) "Agency" means every state office, cabinet, department, board, commission, public corporation, or authority in the executive branch of state government. A public servant is employed by the agency by which his appointing authority is employed, unless his agency is attached to the appointing authority's agency for administrative purposes only, or unless the agency's characteristics are of a separate independent nature distinct from the appointing authority and it is considered an agency on its own, such as an independent department;
- (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS 6.611(22) or any person employed as an executive agency lobbyist as defined in KRS 11A.201(8);
- (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes, opposes, or acts;
- (13) "Candidate" means those persons who have officially filed candidacy papers or who have been nominated by their political party pursuant to KRS 118.105, 118.115, 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (h) of this section;
- (14) "Does business with" or "doing business with" means contracting, entering into an agreement, leasing, or otherwise exchanging services or goods with a state agency in return for payment by the state, including accepting a grant, but not including accepting a state entitlement fund disbursement;
- (15) "Public agency" means any governmental entity;
- (16) "Appointing authority" means the agency head or any person whom he has authorized by law to act on behalf of the agency with respect to employee appointments;~~and~~
- (17) "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else; **and**
- (18) ***"Directly involved" means to work on personally or to supervise someone who works on personally.***

Section 2. KRS 11A.040 is amended to read as follows:

- (1) No public servant, in order to further his own economic interests, or those of any other person, shall knowingly disclose or use confidential information acquired in the course of his official duties.
- (2) No public servant shall knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in his hands or to be raised through any state agency.

- (3) No public servant shall knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with himself, or with any business in which he or a member of his family has any interest greater than five percent (5%) of the total value thereof.
- (4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340. This provision shall not apply to:
 - (a) A contract, purchase, or good faith negotiation made pursuant to KRS Chapter 416 relating to eminent domain; or
 - (b) Agreements which may directly or indirectly involve public funds disbursed through entitlement programs; or
 - (c) A public servant's spouse or child doing business with any state agency other than the agency by which the public servant is employed or which he supervises; or
 - (d) Purchases from a state agency that are available on the same terms to the general public or that are made at public auction.
- (5) No public servant shall knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.
- (6) No former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months of termination of his employment, knowingly by himself or through any business in which he owns or controls an interest of at least five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he was employed. This provision shall not apply to a contract, purchase, or good faith negotiation made under KRS Chapter 416 relating to eminent domain or to agreements that may directly or indirectly involve public funds disbursed through entitlement programs. This provision shall not apply to purchases from a state agency that are available on the same terms to the general public or that are made at public auction. ***This provision shall not apply to former officers of the Department of Public Advocacy whose continued representation of clients is necessary in order to prevent an adverse effect on the client.***
- (7) No present or former officer or public servant listed in KRS 11A.010(9)(a) to (h) shall, within six (6) months following termination of his office or employment, accept employment, compensation, or other economic benefit from any person or business that contracts or does business with, or is regulated by, the state in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall

not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

- (8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:
 - (a) The date of leaving office or termination of employment; or
 - (b) The date the term of office expires to which the public servant was elected.
- (9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:
 - (a) The date of leaving office or termination of employment; or
 - (b) The date the term of office expires to which the public servant was elected.
- (10) Without the approval of his appointing authority, no public servant shall accept outside employment from any person or business that does business with or is regulated by the state agency for which the public servant works or which he supervises, unless the outside employer's relationship with the state agency is limited to the receipt of entitlement funds.
 - (a) The appointing authority shall review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.
 - (b) The appointing authority shall not approve outside employment for a public servant if the public servant is involved in decision-making or recommendations concerning the person or business from which the public servant seeks outside employment or compensation.
 - (c) The appointing authority, if applicable, shall file quarterly with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment along with the name of the outside employer of each.
- (11) The prohibitions imposed by subsection (5) or (10) of this section shall not apply to Professional Golfers' Association class A members who teach golf lessons and receive a fee or lesson charge at golf courses owned and operated by the Kentucky Department of Parks. Instruction provided by an employee of the Commonwealth shall only be given while the employee is on his or her own personal time. The commissioner of the Department of Parks shall promulgate administrative regulations to establish guidelines for the process by which Professional Golfers' Association class A members are approved to teach golf lessons at Kentucky Department of Parks-owned golf courses. The exception granted by this subsection is in recognition of the benefits that will accrue to the Kentucky Department of Parks due to increased participation at state-owned golf courses.

Section 3. KRS 11A.045 is amended to read as follows:

- (1) No public servant, his spouse, or dependent child knowingly shall accept ~~any tangible~~ gifts or gratuities, **including travel expenses, meals, alcoholic beverages, and honoraria**, totaling

a value greater than twenty-five dollars (\$25) in a single calendar year~~[, or travel expenses, meals, alcoholic beverages, lodging or honoraria of any value,]~~ from any person

or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. ***Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.***~~[The following items are exempt:~~

- ~~(a) Coffee, soft drinks, pastries, hors d'oeuvres, or similar refreshments;~~
 - ~~(b) Food consumed at a public event to which twenty-five (25) or more individuals are in attendance if that event is also open to participants other than public servants and members of the donor's industry;~~
 - ~~(c) Meals, beverages, and free admission to an event if the public servant, as a part of his official duty, is a speaker or has a significant role in the program;~~
 - ~~(d) A campaign contribution to an employee's own campaign if in compliance with KRS Chapters 121 and 121A and all other campaign finance laws;~~
 - ~~(e) A gift from a family member who is not acting as an intermediary for a person from whom the gift would be otherwise prohibited;~~
 - ~~(f) Food, clothing, and shelter in times of natural disaster or other emergency;~~
 - ~~(g) Door prizes, if also open to persons other than public servants and members of the donor's industry and if all participants have an equal chance of receiving the prize;~~
 - ~~(h) Gifts which are modest, reasonable, and customary, received on special occasions such as marriage or retirement;~~
 - ~~(i) Awards of modest and reasonable value which are publicly received in recognition of public or charitable service, such as plaques;~~
 - ~~(j) Prizes awarded based solely on skill, such as those received in golf or tennis tournaments, if those tournaments are open to participants other than public servants and members of the donor's industry;~~
 - ~~(k) Meals at conferences or seminars which are included as part of the dues paid or registration fee and which are available to all attendees; and~~
 - ~~(l) A single copy of a textbook received by an educator for review.]~~
- (2) Nothing in KRS 11A.001 to 11A.110 shall prohibit or restrict the acceptance by a public servant of the Cabinet for Economic Development or by any other public servant working directly with the cabinet on an economic incentive package of anything of economic value as a gift or gratuity, if the gift or gratuity:
- (a) Was not solicited by the public servant;
 - (b) Was accepted by the public servant in the performance of his or her official duties and in compliance with guidelines to be established by the Kentucky Economic Development Partnership which shall include requirements that all gifts or gratuities of a reportable value under KRS 11A.050(3)(k) be registered with the Kentucky

Economic Development Partnership and with the Executive Branch Ethics Commission and that all tangible property with a value in excess of twenty-five dollars (\$25), other than food and beverages consumed on the premises, shall be turned over to the Cabinet for Economic Development within thirty (30) days of receipt. In filing reports of gifts or gratuities with the Executive Branch Ethics Commission, the Cabinet for Economic Development may delete information identifying the donors if the cabinet believes identification of the donors would damage economic development; and

- (e) Was not accepted under circumstances which would create a violation of KRS Chapter 521.

Section 4. KRS 11A.050 is amended to read as follows:

- (1) Each officer, each public servant listed in KRS 11A.010(9)(a) to (h), and each candidate shall file a statement of financial disclosure with the commission, as follows:
 - (a) Each officer and each public servant listed in KRS 11A.010(9)(a) to (h) who occupies his position during any portion of a calendar year shall file the statement for that **portion of the calendar year he occupied the position**~~[entire calendar year]~~ on or before April 15 of the following year, whether or not he remains an officer or public servant as listed in KRS 11A.010(9)(a) to (h).
 - (b) ***Each officer and public servant listed in KRS 11A.010(9)(a) to (h) who does not remain an officer or public servant listed in KRS 11A.010(9)(a) to (h) for the entire calendar year shall file the statement for the portion of the calendar year that the person served as an officer or public servant listed in KRS 11A.010(9)(a) to (h). The statement shall be filed with the commission within thirty (30) days after the date the person no longer serves as an officer or public servant listed in KRS 11A.010(9)(a) to (h).***
 - (c) A candidate shall file the statement reflecting the previous calendar year with the commission no later than February 15.
- (2) The statement of financial disclosure shall be filed on a form prescribed by the commission. The commission shall provide copies of the form upon request without charge.
- (3) The statement shall include the following information for the preceding calendar year:
 - (a) Name and entire residential and business address of filer;
 - (b) Title of position or office whereby filing is required;
 - (c) Any other occupations of filer and spouse;
 - (d) Positions held by the filer or his spouse in any business, ***and the name and address of the business***~~[partnership, or corporation for profit]~~;
 - (e) Names and addresses of all businesses in which the filer, his spouse, or dependent children has or had an interest of ten thousand dollars (\$10,000) at fair market value or five percent (5%) ownership interest or more;
 - (f) ***The name and address of any source of gross income exceeding one thousand dollars (\$1,000) from any one (1) source to***~~[Sources of gross income of]~~ the filer,~~[or]~~ his spouse, ***or dependent child***, as well as information concerning the nature of the business, and the form of the income;

- (g) Sources of retainers received by the filer or his spouse *relating to matters of the state agency for which the filer works or supervises or of any other entity of state government for which the filer would serve in a decision-making capacity, including each source's name and address*;
- (h) Any representation or intervention for compensation by the filer or his spouse for any person *or business* before *a state agency for which the filer works or supervises or before any entity of state government for which the filer would serve in a decisionmaking capacity, including the name and address of the person or business*~~[policymaking entities in state government]~~;
- (i) All positions of a fiduciary nature *held by the filer or his spouse* in a business, *including the name and address of the business*;
- (j) Information, *including a street address or location*, regarding any real property in which there is an interest of ten thousand dollars (\$10,000) or more held by the filer, his spouse, or dependent children;
- (k) Sources, *including each source's name and address*, of gifts of money or property with a retail value of more than two hundred dollars (\$200) *from any one (1) source* to the filer, his spouse, or dependent children, except those from *a member of the filer's family*~~[spouse, parents, or grandparents]~~; and
- (l) Identity, *including an address*, of creditors owed more than ten thousand dollars (\$10,000), except debts arising from the purchase of consumer goods.

Paragraphs (a) to (l) of this subsection shall not require disclosure of specific dollar amounts or of privileged information.

SECTION 5. A NEW SECTION OF KRS CHAPTER 11A IS CREATED TO READ AS FOLLOWS:

An agency that is directed by statute to adopt a code of ethics shall be exempt from KRS Chapter 11A upon the effective date of an Act of the General Assembly creating the agency's code of ethics or upon the effective date of an administrative regulation that creates the agency's code of ethics.

Section 6. KRS 11A.080 is amended to read as follows:

- (1) (a) Upon a complaint signed under penalty of perjury by any person, or upon its own motion, the commission shall conduct a preliminary investigation of any alleged violation of this chapter.
- (b) The preliminary investigation shall begin not later than ten (10) days after the next commission meeting following the receipt of the sworn complaint, or, if the investigation is initiated by the commission's own motion, not later than ten (10) days after the date of the adoption of the motion.
- (c) Within ten (10) days of the commencement of the preliminary investigation, the commission shall forward a copy of the complaint, if one has been filed, or a statement of possible violations being investigated, and a general statement of the applicable law to the person alleged to have committed a violation.
- (2) All commission proceedings and records relating to a preliminary investigation shall be confidential until a final determination is made by the commission, except:

- (a) The commission may turn over to the Attorney General, the United States Attorney, or the Commonwealth's Attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings;
 - (b) If the alleged violator publicly discloses the existence of a preliminary investigation, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party;
 - (c) *If the matter being investigated was referred to the commission from another state agency, the commission may inform the referring state agency of the status of any preliminary investigation and of any action taken on the matter.*
- (3) If the commission determines in the preliminary investigation that the facts are not sufficient to constitute a violation of this chapter, the commission shall immediately terminate the investigation and notify in writing the complainant, if any, and the person alleged to have committed a violation. The commission may confidentially inform the alleged violator of potential violations and provide information to ensure future compliance with the law. If the alleged violator publicly discloses the existence of such action by the commission, the commission may confirm the existence of the resolution and, in its discretion, make public any documents which were issued to the alleged violator.
- (4) If the commission, during the course of the preliminary investigation, finds probable cause to believe that a violation of this chapter has occurred, the commission may, upon majority vote:
- (a) Due to mitigating circumstances such as lack of significant economic advantage or gain by the alleged violator, lack of significant economic loss to the state, or lack of significant impact on public confidence in government, in writing, confidentially reprimand the alleged violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any. If the alleged violator publicly discloses the existence of such an action, the commission may confirm the existence of the action and, in its discretion, make public any documents which were issued to the alleged violator; or
 - (b) Initiate an administrative proceeding to determine whether there has been a violation.

Section 7. KRS 11A.100 is amended to read as follows:

- (1) The provisions of KRS Chapter 13B shall apply to all commission administrative hearings.
- (2) All administrative hearings of the commission carried out pursuant to the provisions of this section shall be public, unless the members vote to go into executive session in accordance with KRS 61.810.
- (3) The commission, upon a finding pursuant to an administrative hearing that there has been clear and convincing proof of a violation of this chapter, may:
 - (a) Issue an order requiring the violator to cease and desist the violation; *and*
 - (b) Issue an order requiring the violator to file any report, statement, or other information as required by this chapter; *and*
 - (c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the alleged violator's appointing authority, if any; *and*

- (d) In writing, recommend to the violator's appointing authority that the violator be removed or suspended from office or employment, and include a recommendation for length of suspension, to be approved by the appointing authority, if any; ~~and for~~
 - (e) Issue an order requiring the violator to pay a civil penalty of not more than ~~five~~ **two** thousand dollars ~~(\$5,000)~~ **(\$2,000)** for each violation of this chapter.
- (4) In addition to any other remedies provided by law, any violation of this chapter which has substantially influenced the action taken by any state agency in any particular matter shall be grounds for voiding, rescinding, or canceling the action on such terms as the interests of the state and innocent third persons require.
- (5) The commission shall refer to the Attorney General evidence of violations of KRS 11A.040 for prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation. The commission may represent itself through the general counsel in all subsequent proceedings.

Section 8. KRS 11A.990 is amended to read as follows:

- (1) Any person who violates KRS 11A.040 shall be guilty of a Class D felony. In addition:
 - (a) The judgment of conviction for a violation of KRS 11A.040(2) shall recite that the offender is disqualified to hold office thereafter; and
 - (b) Any person who violates KRS 11A.040(1) to (5) shall be judged to have forfeited any employment, or constitutional or statutory office he holds, provisions of KRS Chapter 18A to the contrary notwithstanding.
- (2) Any officer, public servant, or candidate required to file a statement of financial disclosure ~~under~~ ~~pursuant to~~ KRS 11A.050 who does not file the statement by a date specified in that section shall have his salary withheld from the first day of noncompliance until he shall have completed the action required by law. The amount withheld shall be deducted from his overall pay and allowances and shall ~~not~~ be recoverable **upon the filing of the statement of financial disclosure** ~~pursuant to Section 235 of the Constitution of Kentucky~~. The commission may grant a reasonable extension of time for filing a statement of financial disclosure for good cause shown.
- (3) Any person who maliciously files with the commission a false charge of misconduct on the part of any public servant or other person shall be fined not to exceed five thousand dollars (\$5,000), or imprisoned in a county jail for a term not to exceed one (1) year, or both.
- (4) Prosecution for violation of any provision of KRS 11A.040 shall not be commenced after four (4) years have elapsed from the date of the violation.

Any executive agency lobbyist, employer, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars (\$5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.

- (5) Any executive agency lobbyist, employer, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a deficiency in any filing in a timely manner, may be fined by the commission an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000).

- (6) Any executive agency lobbyist, employer, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.
- (7) An executive agency lobbyist, employer, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.226 is liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.
- (8) Violation of KRS 11A.236 is a Class D felony. **Approved April 21, 2000**