

## CHAPTER 493

## (HB 712)

AN ACT relating to the legislative ethics code.

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

Section 1. KRS 6.656 is amended to read as follows:

- (1) The chair and the vice chair of the commission shall be elected by a majority vote of the members of the commission. The chair and the vice chair shall serve terms of one (1) year and may be reelected. The chair shall preside at meetings of the commission. The vice chair shall preside in the absence or disability of the chair.
- (2) The commission shall meet within ninety (90) days of February 18, 1993. The time and place of the meeting shall be determined by the chair. Thereafter, the commission shall meet at such times deemed necessary at the call of the chair or a majority of its members. A quorum shall consist of five (5) or more members. An affirmative vote of five (5) or more members shall be necessary for commission action.
- (3) A member of the commission shall receive one hundred dollars (\$100) per day ***and reimbursement***~~[for attending meetings and shall be reimbursed]~~ for actual and necessary expenses incurred in the performance of his official duties as a member of the commission ***for meeting days and for a maximum of two (2) nonmeeting days per month devoted to commission-related work.***

Section 2. KRS 6.686 is amended to read as follows:

- (1) (a) The commission shall have jurisdiction to investigate and proceed as to any violation of this code upon the filing of a complaint. The complaint shall be a written statement ***alleging a violation against one (1) or more named persons and stating***~~[of]~~ the essential facts constituting the violation charged. The complaint shall be made under oath and signed by the complaining party before a person who is legally empowered to administer oaths. The commission shall have no jurisdiction in absence of a complaint. A member of the commission may file a complaint.
  - (b) Within ten (10) days of the filing of a complaint, the commission shall cause a copy of the complaint to be served by certified mail upon the person alleged to have committed the violation.
  - (c) Within twenty (20) days of service of the complaint the person alleged to have committed the violation may file an answer with the commission. The filing of an answer is wholly permissive, and no inferences shall be drawn from the failure to file an answer.
  - (d) Not later than ten (10) days after the commission receives the answer, or the time expires for the filing of an answer, the commission shall initiate a preliminary inquiry into any alleged violation of this code. If the commission determines that the complaint fails to state a claim of an ethics violation, the complaint shall be dismissed.
  - (e) Within thirty (30) days of the commencement of the inquiry, the commission shall give notice of the status of the complaint and a general statement of the applicable law to the person alleged to have committed a violation.

- (2) All commission proceedings, including the complaint and answer and other records relating to a preliminary inquiry, 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, Commonwealth's attorney, or county attorney of the jurisdiction in which the offense allegedly occurred, evidence which may be used in criminal proceedings; and
  - (b) If the complainant or alleged violator publicly discloses the existence of a preliminary inquiry, the commission may publicly confirm the existence of the inquiry and, in its discretion, make public any documents which were issued to either party.
- (3) The commission shall afford a person who is the subject of a preliminary inquiry an opportunity to appear in response to the allegations in the complaint. The person shall have the right to be represented by counsel, to appear and be heard under oath, and to offer evidence in response to the allegations in the complaint.
- (4) If the commission determines by the answer or in the preliminary inquiry that the complaint does not allege facts sufficient to constitute a violation of this code, the commission shall immediately terminate the matter and notify in writing the complainant 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 action and, in its discretion, make public any documents that were issued to the alleged violator.
- (5) If the commission, during the course of the preliminary inquiry, finds probable cause to believe that a violation of this code has occurred, the commission shall notify the alleged violator of the finding, and 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, confidentially reprimand, in writing, the alleged violator for potential violations of the law and provide a copy of the reprimand to the presiding officer of the house in which the alleged violator serves, or the alleged violator's employer, if the alleged violator is a legislative agent. ***The proceedings leading to a confidential reprimand and the reprimand itself shall remain confidential except that,*** 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 adjudicatory proceeding to determine whether there has been a violation.
- (6) Any person who knowingly files with the commission a false complaint of misconduct on the part of any legislator or other person shall be guilty of a Class A misdemeanor.

Section 3. KRS 6.691 is amended to read as follows:

- (1) The Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence shall apply to all commission adjudicatory hearings. All testimony in a commission adjudicatory proceeding shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, to submit evidence, and to be represented by counsel

and any other due process rights, privileges, and responsibilities of a witness appearing before the courts of the Commonwealth of Kentucky. Before testifying,

all witnesses shall be given a copy of the regulations governing commission proceedings. All witnesses shall be entitled to be represented by counsel.

- (2) Any person whose name is mentioned during adjudicatory proceedings of the commission and who may be adversely affected thereby may appear personally before the commission on the person's own behalf, with or without attorney, to give a statement in opposition to such adverse mention or file a written statement of that opposition for incorporation into the record of proceeding.
- (3) All adjudicatory proceedings 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.
- (4) Within thirty (30) days after the end of an adjudicatory proceeding pursuant to the provisions of this section, the commission shall meet in executive session for the purpose of reviewing the evidence before it. Within thirty (30) days after completion of deliberations, the commission shall publish a written report of its findings and conclusions which shall be based on whether the person accused has complied with the statute as written.
- (5) ***No penalty provided for in this section shall be imposed except as the result of an adjudicatory proceeding held upon the filing of a complaint. Notwithstanding the administrative penalties provided for in Sections 6, 7, and 8 of this Act,*** the commission, upon a finding pursuant to an adjudicatory proceeding that there has been clear and convincing proof of a violation of this code, may:
  - (a) Issue an order requiring the violator to cease and desist the violation;
  - (b) Issue an order requiring the violator to file any report, statement, or other information as required by this code;
  - (c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the presiding officer of the house in which the alleged violator serves;
  - (d) In writing, recommend to the house in which the violator serves that the violator be sanctioned as recommended by the commission, which may include a recommendation for censure or expulsion;
  - (e) Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars (\$2,000); or
  - (f) Revoke the registration of any legislative agent or employer for a period not to exceed five (5) years. ***During the period of the revocation, the agent or employer or any other entity which constitutes nothing more than the legislative agent or employer operating under a different name or identity shall not be permitted to register as a legislative agent or employer.***
- (6) The commission may refer to the Attorney General, county attorney, or Commonwealth's attorney of the appropriate jurisdiction, for prosecution evidence of criminal violations of this code. The Attorney General shall have responsibility for all prosecutions under the law and may request from the commission all evidence collected in its investigation.

- (7) Findings of fact or final determinations by the commission that a violation of this code has been committed, or any testimony related to the commission's findings of fact or final determinations, shall not be admissible in criminal proceedings in the courts of the Commonwealth of Kentucky. Evidence collected by the commission may be used in a criminal proceeding if otherwise relevant.
- (8) Any person found by the commission to have committed a violation of this code may appeal the action to the Franklin Circuit Court. The appeal shall be initiated within thirty (30) days after the date of the final action of the commission by filing a petition with the court against the commission. The commission shall transmit to the clerk of the court all evidence considered by the commission at the public hearing. The court shall hear the appeal upon the record as certified by the commission.

Section 4. KRS 6.711 is amended to read as follows:

- (1) The commission shall design the general curriculum of orientation courses, which shall include, but not be limited to, explanations and discussions of the ethics laws, administrative regulations, relevant internal policies, specific technical and legal requirements, summaries of advisory opinions, underlying purposes and principles of ethics laws, examples of practical application of the laws and principles, and a question-and-answer participatory segment regarding common problems and situations. The commission shall prepare the methods and materials necessary to implement the curriculum.
- (2) The commission shall:
  - (a) Administer the orientation courses for legislators;
  - (b) Designate instructors to conduct their courses who shall be trained by the commission; and
  - (c) Notify legislators regarding attendance in these courses.
- (3) The orientation courses shall be conducted in January of each odd-numbered year. Each course shall be at least **three (3)**~~six (6)~~ hours in length and shall be designed for approval by the Kentucky Bar Association for continuing legal education ethics credits which the bar association may require.
- (4) To facilitate participant interaction, those portions of the courses dedicated to group participation shall be closed to the public.
- (5) Each legislator shall complete the initial orientation course offered under this section. Each legislator elected after the initial orientation course shall complete the next orientation course conducted. The commission may grant permission for a legislator to attend a later course for good cause shown.

Section 5. KRS 6.793 is amended to read as follows:

- (1) The statement of financial interests required by KRS 6.781 shall be filed with the commission for the preceding calendar year by no later than February 15 of each year, complete through December 31 of the preceding year, except that:
  - (a) A candidate for nomination or election to the General Assembly shall file his statement no later than twenty-one (21) days after the **filing deadline as set by the law or within ten (10) days of the filing deadline if it is a special election** date he became a candidate as defined in KRS 6.611; and

- (b) An individual appointed to a position listed in KRS 6.781(3) shall file his initial statement no later than twenty-one (21) days after the date of his appointment.
- (2) The commission may grant a reasonable extension of time for filing a statement of financial interests for good cause shown.

Section 6. KRS 6.797 is amended to read as follows:

- (1) The commission shall notify by certified mail each person required to file a statement of financial interests who fails to file the statement in a timely manner, completely, or in the form required by the commission. The notice shall specify the type of failure or delinquency and shall advise the person of the penalties for violation of this section.
- (2) (a) Any person who fails to file the statement or who fails to remedy a deficiency in his filing identified by the commission in the notice under subsection (1) of this section 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) ***without the necessity of a complaint being filed, notwithstanding Section 2(1)(a) of this Act, but only after notice has been given to the alleged violator of the intent of the commission to impose a fine, including the amount of the fine, and an opportunity has been afforded the alleged violator to appear before the commission or otherwise offer evidence as he may choose in mitigation of the imposition of the fine.***
- (b) Any person who intentionally files a statement of financial interests which he knows to contain false information or to omit required information shall be guilty of a Class A misdemeanor.

Section 7. KRS 6.807 is amended to read as follows:

- (1) Each legislative agent and employer, within seven (7) days following engagement of a legislative agent, shall file with the commission an initial registration statement listing the following:
- (a) The name, business address and telephone number, and occupation of the legislative agent;
- (b) The name, brief description of the nature of the business, nature and identity of the organized association, coalition, or public interest entity, business address and telephone number of the employer, and the real party in interest on whose behalf the legislative agent is lobbying, if it is different from the employer. For the purposes of this section, if a trade association or other charitable or fraternal organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code is the employer, the statement shall not list the names and addresses of each member of the association or organization, if the association or organization itself is listed;
- (c) The name, bill number, or a brief description of the legislative action for which the legislative agent is or will be engaged in lobbying on behalf of their employer or as a representative of the organized association, coalition, or public interest entity;
- (d) The date on which the legislative agent was engaged; and
- (e) Certification by the employer and legislative agent that the information contained in the registration statement is complete and accurate.

- (2) The registration shall be valid through the next thirty-first day of December of an odd-numbered year, unless previously terminated.
- (3)
  - (a) In addition to the initial registration statement required by subsection (1) of this section, each legislative agent and employer shall file an updated registration statement with the commission to be received by the commission, not later than 4 p.m. on the fifteenth day of January, February, March, April, and May, and the fifteenth day of September of each even-numbered year, and the fifteenth day of January, May, and September in each odd-numbered year, for the period since the end of the period covered by the previous report until the last day of the month preceding the filing date. The commission may grant a reasonable extension of time for filing the updated registration statement for good cause shown.
  - (b) The updated registration statement shall confirm the continuing existence of each engagement described in an initial registration statement, and list the specific bills or resolutions on which the agent lobbied under that engagement during the period covered by the updated statement. Any statement of expenditures required to be filed by KRS 6.821 and any details of financial transactions required to be filed by KRS 6.824 shall be filed with the updated registration statement.
- (4) If a legislative agent is engaged by more than one employer, the agent shall file a separate initial and updated registration statement for each engagement. If an employer engages more than one (1) legislative agent, the employer shall file only one (1) updated registration statement under subsection (3) of this section, which shall contain the information required by subsection (3) of this section regarding all legislative agents engaged by the employer.
- (5)
  - (a) A change in any information required by subsection (1)(a), (b), or (c) of this section shall be reflected in the next updated registration statement filed under subsection (3) of this section.
  - (b) Within thirty (30) days after the termination of an engagement, the legislative agent who was employed under the engagement shall file written notice of the termination with the commission.
  - (c) ***If the termination of a legislative agent leaves an employer without the engagement of any legislative agents, within thirty (30) days after the termination, the employer shall file written notice with the commission of its intent to terminate its current registration.***
- (6) Upon registration pursuant to subsection (1) of this section, the legislative agent shall be issued a card by the commission, showing that the legislative agent is registered. The registration card shall be valid from the date of its issuance through the next thirty-first day of December of an odd-numbered year.
- (7) Any legislative agent or employer who fails to file the initial registration statement or updated registration statement, 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) ***without the necessity of a complaint being filed, notwithstanding Section 2(1)(a) of this Act, but only after notice has been given to the alleged violator of the intent of the commission to impose a fine, including the amount of the fine, and an opportunity has been afforded the alleged violator to appear before the commission or otherwise offer evidence as he may choose in mitigation of the imposition of the fine.***

- (8) Any legislative agent or employer who intentionally fails to register shall be guilty of a Class D felony.

Section 8. KRS 6.821 is amended to read as follows:

- (1) With the updated registration statement required by KRS 6.807(3), each legislative agent, or representative of an organized association, coalition, or public interest entity, and each employer shall file a statement of expenditures as provided in subsections (2), (3), and (4) of this section. A representative of an organized association, coalition, or public interest entity shall identify the source of the entity or association's funds and financial resources. A legislative agent shall file a separate statement of expenditures for each employer engaging him.
- (2) If an employer or any legislative agent whom he engaged made expenditures, either separately or in combination with each other, either directly or indirectly, for food and beverages consumed on the premises on behalf of any particular member of the General Assembly or his immediate family, the employer or legislative agent shall also state the following:
- (a) The name of the legislator or member of his immediate family on whose behalf the expenditures were made;
  - (b) The total amount of the expenditures made; (c) A brief description of the expenditures made; and
  - (d) The approximate date the expenditures were made.
- (3) In addition to the information required by subsection (2) of this section, a statement filed by a legislative agent shall show:
- (a) The total amount of lobbying expenditures made by the legislative agent during the reporting period covered by the statement, whether or not reimbursed by the employer; and
  - (b) Cumulative amounts, except personal expenses, expended by the legislative agent for food, beverages, lodging, transportation, entertainment, and other expenses directly associated with the legislative agent's lobbying activities during the reporting period.
- (4) (a) In addition to the information required by subsection (2) of this section, a statement filed by an employer shall list:
- 1. The total amount of lobbying related expenditures made by the employer filing the statement during the period covered by the statement;
  - 2. A complete and itemized account of all amounts expended for receptions or other events held under subsection (5) of this section, including the date and location of the event and the name of the group of public servants invited to the event;
  - 3. A complete and itemized account of all other amounts expended for lobbying, including food and lodging expenses and reimbursements, and not including personal expenses incurred by an employer or a legislative agent; and
  - 4. The cumulative compensation paid to legislative agents, prorated to reflect the time the legislative agents were engaged in lobbying during the period covered by the statement.

- (b) No employer is required to show any expenditure on a statement filed under this subsection if the expenditure is reported on a statement filed under subsection (2) of this section by a legislative agent engaged by the employer.
- (5) (a) Any statement required to be filed under this section shall be filed at the times specified in KRS 6.807. Each statement shall cover expenditures made during the period that ended on the last day of the month immediately preceding the month in which the statement is required to be filed.
- (b) No portion of the amount of an expenditure for a dinner, party, or other function sponsored by an employer or legislative agent shall be attributed to, or counted toward the amount for a calendar year if the event qualifies under KRS 6.611(2)(b)8., 11., or 12.
- (c) The amount spent for a function described in paragraph (b) of this subsection shall be added with other expenditures to determine the total amount of expenditures reported in the statement under subsections (2) and (3) of this section.
- (d) If it is impractical or impossible for a legislative agent or employer to determine exact dollar amounts or values of expenditures, reporting of good faith estimates, based upon reasonable accounting procedures, constitutes compliance with this subsection.
- (6) All legislative agents and employers shall retain receipts or maintain records for all expenditures that are required to be reported pursuant to this section. These receipts or records shall be maintained for a period ending on the thirty-first day of December of the second calendar year after the year in which the expenditure was made.
- (7) Any legislative agent or employer who fails to file a required statement of expenditures, or who fails to remedy any deficiency in his 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) *without the necessity of a complaint being filed, notwithstanding Section 2(1)(a) of this Act, but only after notice has been given to the alleged violator of the intent of the commission to impose a fine, including the amount of the fine, and an opportunity has been afforded the alleged violator to appear before the commission or otherwise offer evidence as he may choose in mitigation of the imposition of the fine.*
- (8) Any legislative agent or employer who intentionally files a statement of expenditures which he knows to contain false information or to omit required information shall be guilty of a Class D felony.

**Approved April 21, 2000**