

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2019 REGULAR SESSION
Unofficial Document

Amend printed copy of **SB 6/HCS 1**

On page 19, after line 27, insert the following:

"➔SECTION 8. A NEW SECTION OF KRS 6.601 TO 6.849 IS CREATED TO READ AS FOLLOWS:

(1) A legislator, legislative agent, or the director of the Legislative Research Commission shall not engage in discrimination, harassment, or sexual harassment of any legislator, legislative agent, or employee of the legislative branch of state government.

(2) Violation of this section by a legislator, legislative agent, or the director of the Legislative Research Commission is ethical misconduct.

➔SECTION 9. A NEW SECTION OF KRS 6.601 TO 6.849 IS CREATED TO READ AS FOLLOWS:

As used in Sections 8 to 10 of this Act:

(1) "Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in treatment of a person or persons, or the aiding, abetting, inciting, coercing, or compelling that is unlawful under KRS Chapter 344;

(2) "Harassment" means any action taken with the intention of intimidating, harassing, threatening, or physically or verbally abusing another person at work, or in a work-related setting;

Amendment No. _____

Rep. _____

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: Deylin, Kevin

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

Not for Filing

(3) (a) "Sexual harassment" means any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct or communication of a sexual nature if:

1. Submission to the advances, requests, conduct, or communication is an explicit or implicit term or condition of obtaining or retaining employment;
2. Submission to or rejection of the advances, requests, conduct, or communication affects decisions concerning a person's employment;
3. The conduct or communication has the purpose or effect of unreasonably interfering with the person's ability to perform his or her job functions or of creating a hostile work environment; or
4. The conduct or communication is sexual harassment as defined in KRS Chapter 344, Title VII of the Civil Rights Act of 1964, state or federal case law, or enforced in policy or regulation by the federal Equal Employment Opportunity Commission or the Kentucky Commission on Human Rights.

(b) "Sexual harassment" includes such conduct or communication as:

1. Unwanted sexual contact or conduct of any kind, including sexual flirtations, touching, advances, actions, or propositions, intercourse, or assault;
2. Unwelcome verbal communication of a sexual nature, including lewd comments or innuendo, sexual jokes or references, or offensive personal references;
3. Demeaning, insulting, intimidating, or sexually suggestive comments or behavior directed at a person or in the presence of any person in a public or private setting;
4. The display in the workplace of demeaning, insulting, intimidating, or sexually suggestive objects, pictures, or photographs;
5. Demeaning, insulting, intimidating, or sexually suggestive written, recorded,

or electronically transmitted messages; or

6. Other conduct or communication not specifically described but which is substantially similar to the conduct or communication described in this subsection.

(c) A single incident described in this subsection may constitute sexual harassment and whether the incident is welcomed by the person to whom the incident is directed shall be a factor in determining whether sexual harassment has occurred; and

(4) "Workplace complaint" means a verbal or written allegation of discrimination, harassment, or sexual harassment submitted by a legislator, employee of the legislative branch of state government, or legislative agent, concerning an act or acts allegedly committed by a legislator, legislative agent, or director of the Legislative Research Commission.

➔SECTION 10. A NEW SECTION OF KRS 6.601 TO 6.849 IS CREATED TO READ AS FOLLOWS:

(1) The Legislative Ethics Commission shall have jurisdiction to investigate and proceed upon receipt of a written or oral workplace complaint from a legislator, legislative agent, or an employee of the legislative branch of state government regarding discrimination, harassment, or sexual harassment allegedly committed by:

(a) A legislator;

(b) A legislative agent; or

(c) The director of the Legislative Research Commission.

(2) An allegation of discrimination, harassment, or sexual harassment by an employee of the legislative branch of state government shall be communicated by the executive director of the commission or his or her designee to the chief human resources officer of

the Legislative Research Commission no later than one (1) business day after receipt of the allegation. Except as provided in subsection (1)(c) of this section, the Legislative Ethics Commission shall not have jurisdiction under this section in cases concerning an allegation of discrimination, harassment, or sexual harassment against an employee of the legislative branch of state government.

(3) The commission shall establish a legislative ethics telephone tip line to allow employees of the legislative branch of state government, legislators, or legislative agents to report workplace complaints of discrimination, harassment, or sexual harassment.

(4) The commission and the Legislative Research Commission shall ensure that the telephone number for the legislative ethics telephone tip line is available to employees of the legislative branch of state government, legislators, and legislative agents by multiple methods, including:

(a) The Legislative Research Commission shall print the legislative ethics telephone tip line number on posters to be placed on bulletin boards or other prominent locations in any building where staff of the legislative branch of state government are stationed, and where legislative agents and legislators are present, including the Capitol Building and Capitol Annex;

(b) The Legislative Research Commission shall include the legislative ethics telephone tip line number in any employment manual developed and printed by the Legislative Research Commission for use by legislators, legislative agents, or employees of the legislative branch of state government;

(c) The Legislative Research Commission shall include information about the legislative ethics telephone tip line in any form of training for legislators, legislative agents, or employees of the legislative branch of state government;

(d) The Legislative Research Commission shall inform legislators, legislative agents,

- and employees of the legislative branch of state government of the existence of the legislative ethics telephone tip line number through periodic electronic mail messages; and
- (e) The Legislative Research Commission shall place the legislative ethics telephone tip line number on its staff and public Web pages.
- (5) The legislative ethics telephone tip line shall be operational twenty-four (24) hours a day, seven (7) days a week. The commission shall provide staff for the legislative ethics telephone tip line during business hours and provide for a recorded line to receive messages at all other times. If a workplace complaint is received on the tip line or by other means, commission staff shall make telephone or electronic mail contact with the complainant no later than the first business day after receipt of the workplace complaint to confirm receipt and details of the workplace complaint. Workplace complaints may also be made in person to the commission staff at the commission's office during regular business hours, or may be sent to commission staff via electronic mail.
- (6) Within two (2) hours of receipt of a workplace complaint, or the confirmation required by subsection (5) of this section, a commission staff person shall forward the workplace complaint received to the executive director of the commission or his or her designee in writing on a form approved by the commission.
- (7) Within twenty-four (24) hours of receipt of a workplace complaint or confirmation required in subsection (5) of this section, the executive director of the commission or his or her designee shall either:
- (a) Make an initial determination as to whether the workplace complaint meets the criteria for consideration by the commission under this section, and if it does not, shall inform the complainant that the commission does not have jurisdiction and shall not notify the alleged violator; or

- (b) If the initial determination is that the workplace complaint meets the criteria for consideration by the commission under this section, notify the alleged violator of the receipt of the workplace complaint and provide the alleged violator with a written statement setting forth the allegations provided by the complainant. Within seven (7) business days of the executive director's or his or her designee's notification under this paragraph, the alleged violator may file a written response to the allegations with the executive director or his or her designee.
- (8) No later than seven (7) business days after the executive director or his or her designee receives the response or the time expires for the filing of the response, the commission chair, vice chair, executive director, or the designee of the chair, vice chair, or executive director shall interview the complainant, the alleged violator, and any other person with knowledge or information relevant to the workplace complaint.
- (9) No later than fourteen (14) business days after the completion of the interviews, the commission shall give notice of the status of the workplace complaint and a general statement of the applicable law to the complainant and the alleged violator.
- (10) Within thirty (30) business days of receipt of a workplace complaint or the confirmation required in subsection (5) of this section, after consultation with the complainant, the workplace complaint file shall be closed if the commission chair and vice chair agree the workplace complaint is resolved, or agree that there is no credible allegation of discrimination, harassment, or sexual harassment. The commission chair and vice chair may refer a workplace complaint to another federal or state agency if they determine it does not fall under the jurisdiction of the commission.
- (11) If the commission chair and vice chair do not agree that a workplace complaint of discrimination, harassment, or sexual harassment is resolved, and they agree that there is a credible allegation of discrimination, harassment, or sexual harassment, the

commission's enforcement counsel shall file a complaint as provided in subsection (1)(a) of Section 13 of this Act. A legislator, legislative agent, or an employee of the legislative branch of state government may file a complaint of discrimination, harassment, or sexual harassment against a person listed in subsection (1) of this section under Section 13 of this Act at any time.

(12) The provisions of KRS 61.805 to 61.850 or 61.870 to 61.884 notwithstanding, the testimony, records, and work products of the staff, investigators, complainants, alleged violators, witnesses, and meetings and other activities relating to the commission's or the Legislative Research Commission's duties and responsibilities under this section and relating to workplace complaints generally shall be privileged and confidential, and shall not be subject to discovery, disclosure, or production except upon the order or subpoena of a court of law or any other federal or state agency with subpoena power, and shall not be disclosed by the Legislative Research Commission or commission staff, commission members, or any other person. The name of any person making a workplace complaint and any witnesses providing information to the Legislative Research Commission or the commission shall remain confidential and shall not be disclosed without the express written permission of the complainant or the witness, except:

(a) To the extent disclosure is necessary to gather information from the alleged violator or any other person with knowledge of information relevant to the workplace complaint;

(b) If a workplace complaint is filed pursuant to Section 13 of this Act, the confidentiality provisions of Section 13 of this Act and KRS 6.691 shall apply. The commission may refer any evidence to the proper prosecutorial authorities pursuant to KRS 6.691(6); or

(c) As provided in the summary statistical report required under subsection (14) of this

section.

(13) A legislator, legislative agent, or employee of the legislative branch of state government shall not subject to reprisal any person who files a workplace complaint of discrimination, harassment, or sexual harassment under this section or use or threaten to use authority or influence that would discourage or interfere with any workplace complaint made to the commission under this section. Violation of this subsection shall be ethical misconduct.

(14) No later than August 1 of each year, the commission shall compile and publish an annual summary statistical report of workplace complaints of discrimination, harassment, or sexual harassment received during the previous fiscal year. The summary statistical report shall be distributed to each member of the commission, each member of the Legislative Research Commission, and the director of the Legislative Research Commission. The summary statistical report shall include:

(a) A synopsis of each incident reported, including:

1. The date the initial workplace complaint was made;

2. The date each case was resolved; or

3. The date on which a workplace complaint was filed under subsection (11) of this section, or under which a matter was referred under subsection (12)(b) of this section;

(b) The status of each incident reported, if not resolved as of the date of publication of the annual summary; and

(c) The total number of workplace complaints of discrimination, harassment, or sexual harassment received, categorized by status of the case, and method of resolution. No individually identifiable information shall be included in the summary statistical report unless the commission previously released the

information subject to Section 13 of this Act or KRS 6.691.

(15) Nothing in this section shall preclude a legislator, legislative agent, or an employee of the legislative branch of state government from pursuing other methods of addressing alleged incidents of discrimination, harassment, or sexual harassment, including reporting incidents to management staff of the legislative branch of state government or of filing a complaint with the commission under Section 13 of this Act.

(16) Employees of the legislative branch of state government who report discrimination, harassment, or sexual harassment in the workplace may seek assistance from the Kentucky Employee Assistance Program established under KRS Chapter 18A or from private health professionals of their choice for matters related to workplace complaints.

➔SECTION 11. A NEW SECTION OF KRS 6.601 TO 6.849 IS CREATED TO READ AS FOLLOWS:

If a provision of KRS 6.601 to 6.849 is designated as a misdemeanor or a felony, an alleged violation of the provision may be adjudicated by the commission as ethical misconduct.

➔Section 12. KRS 6.661 is amended to read as follows:

- (1) The commission may employ an executive director who shall serve at the pleasure of the commission.
- (2) The executive director shall:
 - (a) Administer the daily business of the commission and perform the duties assigned by the commission; ~~{and}~~
 - (b) Employ and remove other personnel as necessary to carry out the provisions of this code; and
 - (c) Ensure that any person investigating or prosecuting discrimination, harassment, or sexual harassment workplace complaints, as provided in Section 10 of this Act, shall have sufficient training and experience in the conduct of workplace

complaint investigations.

- (3) The commission shall fix the compensation of its staff, and the compensation shall be commensurate with that paid to executive branch officials with a similar level of responsibilities.
- (4) The staff of the commission shall be exempt from the provisions of KRS 18A.005 to 18A.202.
- (5) A member of the staff of the commission during his **or her** term of employment shall be subject to the provisions of KRS 6.651~~(7)~~~~(8)~~.

➔Section 13. 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 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. **Except as provided in Sections 8 to 10 of this Act,** the commission shall have no jurisdiction in **the** 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. **The commission may hold a teleconference meeting and, based upon the affirmative vote of at least five (5) members that the preliminary inquiry demonstrates**~~[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.

(f) A complaint may be filed against a former legislator, a former legislative agent, or former employer of a legislative agent within one (1) year of the date he or she left office or terminated lobbying registration, if the alleged violation occurred within one (1) year prior to the date he or she left office or terminated lobbying registration. These limitations of one (1) year do not apply if a complaint alleges a violation of KRS 6.757 or of Sections 8 to 10 of this Act. The commission may consider the dates of alleged violations of Sections 8 to 10 of this Act for purposes of determining whether conduct constitutes discrimination, harassment, or sexual harassment as defined in Section 9 of this Act. The applicable statutes of limitation shall not apply to ethical misconduct under KRS 6.601 to 6.849.

(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 14. KRS 6.701 is amended to read as follows:

- (1) The commission shall establish and supervise a program of ethics education and training, including~~{,}~~ but not limited to:~~{,}~~
 - (a) Preparing and publishing an ethics education manual;~~{,}~~
 - (b) Designing and supervising orientation courses for new legislators;~~{,}~~ and
 - (c) Designing and supervising current issues seminars for legislators, and employees of the legislative branch of state government.
- (2) The commission shall establish, supervise, and conduct a program of ethics education and training designed specifically for and made available to legislative agents.

➔Section 15. KRS 6.716 is amended to read as follows:

- (1) The commission shall design the general curriculum of a current issues seminar, which shall include, but not be limited to, discussion of changes in the ethics laws and administrative regulations, new advisory opinions, current ethical issues confronting public servants, practical application of ethics laws and principles to specific issues and situations, and development of problem-solving skills. The commission shall prepare the methods and materials necessary to implement the curriculum.
- (2) The commission shall:
 - (a) Administer the current issues seminars for legislators and employees of the legislative branch of state government;
 - (b) Designate instructors to conduct their current issues courses who shall be trained by

the commission; and

- (c) Notify legislators regarding attendance in these seminars.
- (3) The current issues seminars for legislators shall be conducted in January of each year. Each course shall be at least two (2)~~three (3)~~ 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 seminars dedicated to group participation may be closed to the public.
- (5) Each legislator, after completion of an orientation training course, shall complete one (1) current issues seminar annually.

➔Section 16. KRS 7.101 is amended to read as follows:

The Legislative Research Commission shall require all members of the General Assembly to attend a sexual and workplace harassment training course to be held at the beginning of each session of the General Assembly. *The Legislative Research Commission shall coordinate the development and presentation of the training course, with the assistance of the Legislative Ethics Commission.*