

1 AN ACT relating to executive branch ethics.

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

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

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

- 5 (1) "Business" means any corporation, limited liability company, partnership, limited
6 partnership, sole proprietorship, firm, enterprise, franchise, association,
7 organization, self-employed individual, holding company, joint stock company,
8 receivership, trust, or any legal entity through which business is conducted, whether
9 or not for profit;
- 10 (2) "Commission" means the Executive Branch Ethics Commission;
- 11 (3) "Compensation" means any money, thing of value, or economic benefit conferred
12 on, or received by, any person in return for services rendered, or to be rendered, by
13 himself or another;
- 14 (4) "Family" means spouse and children, as well as a person who is related to a public
15 servant as any of the following, whether by blood or adoption: parent, brother,
16 sister, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-
17 in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter,
18 stepbrother, stepsister, half brother, half sister;
- 19 (5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or
20 anything of value, unless consideration of equal or greater value is received; "gift"
21 does not include gifts from family members, campaign contributions, the waiver of
22 a registration fee for a presenter at a conference or training described in KRS
23 45A.097(5), or door prizes available to the public;
- 24 (6) "Income" means any money or thing of value received or to be received as a claim
25 on future services, whether in the form of a fee, salary, expense allowance,
26 forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other
27 form of compensation or any combination thereof;

- 1 (7) "Officer" means:
- 2 (a) All major management personnel in the executive branch of state government,
- 3 including the secretary of the cabinet, the Governor's chief executive officers,
- 4 cabinet secretaries, deputy cabinet secretaries, general counsels,
- 5 commissioners, deputy commissioners, executive directors, executive
- 6 assistants, policy advisors, special assistants, administrative coordinators,
- 7 executive advisors, staff assistants, and division directors;
- 8 (b) Members and full-time chief administrative officers of:
- 9 1. The Parole Board;
- 10 2. Kentucky Claims Commission;
- 11 3. Kentucky Retirement Systems board of trustees;
- 12 4. Kentucky Teachers' Retirement System board of trustees;
- 13 5. The Kentucky Public Employees Deferred Compensation Authority
- 14 board of trustees;
- 15 6. Public Service Commission;
- 16 7. Worker's Compensation Board and its administrative law judges;
- 17 8. The Kentucky Occupational Safety and Health Review Commission;
- 18 9. The Kentucky Board of Education; and
- 19 10. The Council on Postsecondary Education;
- 20 (c) Salaried members of executive branch boards and commissions; and
- 21 (d) Any person who, through a personal service contract or any other contractual
- 22 employment arrangement with an agency, performs on a full-time,
- 23 nonseasonal basis a function of any major management position listed in this
- 24 subsection;
- 25 (8) "Official duty" means any responsibility imposed on a public servant by virtue of
- 26 his or her position in the state service;
- 27 (9) "Public servant" means:

- 1 (a) The Governor;
- 2 (b) The Lieutenant Governor;
- 3 (c) The Secretary of State;
- 4 (d) The Attorney General;
- 5 (e) The Treasurer;
- 6 (f) The Commissioner of Agriculture;
- 7 (g) The Auditor of Public Accounts;
- 8 (h) All employees in the executive branch including officers as defined in
9 subsection (7) of this section and merit employees; and
- 10 (i) Any person who, through any contractual arrangement with an agency, is
11 employed to perform a function of a position within an executive branch
12 agency on a full-time, nonseasonal basis;
- 13 (10) "Agency" means every state office, cabinet, department, board, commission, public
14 corporation, or authority in the executive branch of state government. A public
15 servant is employed by the agency by which his or her appointing authority is
16 employed, unless his or her agency is attached to the appointing authority's agency
17 for administrative purposes only, or unless the agency's characteristics are of a
18 separate independent nature distinct from the appointing authority and it is
19 considered an agency on its own, such as an independent department;
- 20 (11) "Lobbyist" means any person employed as a legislative agent as defined in KRS
21 6.611(23) or any person employed as an executive agency lobbyist as defined in
22 KRS 11A.201(9)~~(8)~~;
- 23 (12) "Lobbyist's principal" means the entity in whose behalf the lobbyist promotes,
24 opposes, or acts;
- 25 (13) "Candidate" means those persons who have officially filed candidacy papers or who
26 have been nominated by their political party pursuant to KRS 118.105, 118.115,
27 118.325, or 118.760 for any of the offices enumerated in subsections (9)(a) to (g) of

1 this section;

2 (14) "Does business with" or "doing business with" means contracting, entering into an
3 agreement, leasing, or otherwise exchanging services or goods with a state agency
4 in return for payment by the state, including accepting a grant, but not including
5 accepting a state entitlement fund disbursement;

6 (15) "Public agency" means any governmental entity;

7 (16) "Appointing authority" means the agency head or any person whom he or she has
8 authorized by law to act on behalf of the agency with respect to employee
9 appointments;

10 (17) "Represent" means to attend an agency proceeding, write a letter, or communicate
11 with an employee of an agency on behalf of someone else;

12 (18) "Directly involved" means to work on personally or to supervise someone who
13 works on personally;

14 (19) "Sporting event" means any professional or amateur sport, athletic game, contest,
15 event, or race involving machines, persons, or animals, for which admission tickets
16 are offered for sale and that is viewed by the public;

17 (20) "Person" means an individual, proprietorship, firm, partnership, limited partnership,
18 joint venture, joint stock company, syndicate, business or statutory trust, donative
19 trust, estate, company, corporation, limited liability company, association, club,
20 committee, organization, or group of persons acting in concert; and

21 (21) "Salaried" means receiving a fixed compensation or benefit reserved for full-time
22 employees, which is paid on a regular basis without regard to the actual number of
23 hours worked.

24 ➔Section 2. KRS 11A.201 is amended to read as follows:

25 As used in KRS 11A.201 to 11A.246 and KRS 11A.990:

26 (1) "Compensation" means any money, thing of value, or economic benefit conferred
27 on, or received by, any person in return for services rendered, or to be rendered, by

1 himself or another;

2 (2) (a) "Expenditure" means any of the following that is made to, or for the benefit of
3 an elected executive official, the secretary of a cabinet listed in KRS 12.250,
4 an executive agency official, or a member of the staff of any of the officials
5 listed in this paragraph:

- 6 1. A payment, distribution, loan, advance, deposit, reimbursement, or gift
7 of money, real estate, or anything of value, including, but not limited to,
8 food and beverages, entertainment, lodging, transportation, or honoraria;
- 9 2. A contract, promise, or agreement to make an expenditure; or
- 10 3. The purchase, sale, or gift of services or any other thing of value.

11 (b) "Expenditure" does not include a contribution, gift, or grant to a foundation or
12 other charitable organization that is exempt from federal income taxation
13 under Section 501(c)(3) of the Internal Revenue Code. "Expenditure" does not
14 include the purchase, sale, or gift of services or any other thing of value that is
15 available to the general public on the same terms as it is available to the
16 persons listed in this subsection. "Expenditure" does not include a payment,
17 contribution, gift, purchase, or any other thing of value that is made to or on
18 behalf of any elected executive official, the secretary of a cabinet listed in
19 KRS 12.250, an executive agency official, or any member of the staff of any
20 of the officials listed in this paragraph who works for a state agency for which
21 the executive agency lobbyist is not registered to influence;

22 (3) "Employer" means any person who engages an executive agency lobbyist;

23 (4) "Engage" means to make any arrangement, and "engagement" means arrangement,
24 whereby an individual is employed or retained for compensation to act for or on
25 behalf of an employer to influence executive agency decisions or to conduct any
26 executive agency lobbying activity;

27 (5) **"Financial impact" means to have an effect on the financial position of the**

1 *employer of the executive agency lobbyist or the real party in interest whether or*
2 *not the impact is positive or negative;*

3 **(6)** (a) "Financial transaction" means a transaction or activity that is conducted or
4 undertaken for profit and arises from the joint ownership, or the ownership, or
5 part ownership in common of any real or personal property or any commercial
6 or business enterprise of whatever form or nature between the following:

- 7 1. An executive agency lobbyist, his or her employer, a real party in
8 interest, or a member of the immediate family of the executive agency
9 lobbyist, his or her employer, or a real party in interest; and
- 10 2. Any elected executive official, the secretary of a cabinet listed in KRS
11 12.250, an executive agency official, or any member of the staff of any
12 of the officials listed in this subparagraph.

13 (b) "Financial transaction" does not include any transaction or activity described
14 in paragraph (a) of this subsection if it is available to the general public on the
15 same terms;

16 ~~(7)~~ **(6)** "Executive agency" means the office of an elected executive official, a cabinet
17 listed in KRS 12.250, or any other state agency, department, board, or commission
18 controlled or directed by an elected executive official or otherwise subject to his or
19 her authority. "Executive agency" does not include any court or the General
20 Assembly;

21 ~~(8)~~ **(7)** "Executive agency decision" means a decision of an executive agency
22 regarding the expenditure of funds of the state or of an executive agency with
23 respect to the award of a contract, grant, lease, or other financial arrangement under
24 which those funds are distributed or allocated. This shall also include decisions
25 made concerning:

26 (a) The parameters of requests for information, ~~and~~ requests for proposals, *and*
27 *other forms of solicitation in KRS Chapter 45A or KRS Chapter 176;*

- 1 (b) Drafting, adopting, or implementing a budget provision;
- 2 (c) Administrative regulations or rules;
- 3 (d) An executive order; or
- 4 (e) Legislation or amendments thereto; ~~or~~
- 5 ~~(f) Other public policy decisions};~~

6 ~~(9)~~~~(8)~~ (a) "Executive agency lobbyist" means any person engaged to influence
 7 executive agency decisions or to conduct executive agency lobbying activity
 8 as one (1) of his or her main purposes regarding a substantial issue, including
 9 associations, coalitions, or public interest entities formed for the purpose of
 10 promoting or otherwise influencing executive agency decisions. The term
 11 "executive agency lobbyist" shall also include placement agents and
 12 unregulated placement agents.

13 (b) "Executive agency lobbyist" does not include an elected or appointed officer
 14 or employee of a federal or state agency, state college, state university, or
 15 political subdivision who attempts to influence or affect executive agency
 16 decisions in his or her fiduciary capacity as a representative of his or her
 17 agency, college, university, or political subdivision;

18 ~~(10)~~~~(9)~~ (a) "Executive agency lobbying activity" means contacts made to promote,
 19 advocate, or oppose the passage, modification, defeat, or executive approval
 20 or veto of any legislation or otherwise influence the outcome of an executive
 21 agency decision by direct communication with an elected executive official,
 22 the secretary of any cabinet listed in KRS 12.250, any executive agency
 23 official whether in the classified service or not, or a member of the staff of any
 24 one of the officials listed in this paragraph.

25 (b) "Executive agency lobbying activity" does not include any of the following:

- 26 1. The action of any person having a direct interest in executive agency
 27 decisions, if the person acting under Section 1 of the Kentucky

- 1 Constitution, assembles together with other persons for their common
2 good, petitions any person listed in paragraph (a) of this subsection for
3 the redress of grievances or other proper purposes;
- 4 2. Contacts made for the sole purpose of gathering information contained
5 in a public record;
- 6 3. Appearances before public meetings of executive agencies;
- 7 4. News, editorial, and advertising statements published in newspapers,
8 journals, or magazines, or broadcast over radio or television;
- 9 5. The gathering and furnishing of information and news by bona fide
10 reporters, correspondents, or news bureaus to news media described in
11 subparagraph 4. of this paragraph;
- 12 6. Publications primarily designed for, and distributed to, members of bona
13 fide associations or charitable or fraternal nonprofit corporations;
- 14 7. Professional services in preparing executive agency decisions, preparing
15 arguments regarding executive agency decisions, or in advising clients
16 and rendering opinions regarding proposed or pending executive agency
17 decisions, if the services are not otherwise connected to lobbying; or
- 18 8. Public comments submitted to an executive agency during the public
19 comment period on administrative regulations or rules;
- 20 (11)~~(10)~~ "Executive agency official" means an officer or employee of an executive
21 agency whose principal duties are to formulate policy or to participate directly or
22 indirectly in the preparation, review, or award of contracts, grants, leases, or other
23 financial arrangements with an executive agency;
- 24 (12)~~(11)~~ "Aggrieved party" means a party entitled to resort to a remedy;
- 25 (13)~~(12)~~ "Elected executive official" means the Governor, Lieutenant Governor,
26 Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General,
27 and Commissioner of Agriculture;

1 ~~(14)~~~~(13)~~ "Person" means an individual, proprietorship, firm, partnership, limited
2 partnership, joint venture, joint stock company, syndicate, business or statutory
3 trust, donative trust, estate, company, corporation, limited liability company,
4 association, club, committee, organization, or group of persons acting in concert;

5 ~~(15)~~~~(14)~~ "Staff" means any employee of the office of the Governor, or a cabinet listed
6 in KRS 12.250, whose official duties are to formulate policy and who exercises
7 administrative or supervisory authority, or who authorizes the expenditure of state
8 funds;

9 ~~(16)~~~~(15)~~ "Real party in interest" means the person or entity on whose behalf an
10 executive agency lobbyist is acting, if that person or entity is not the employer of the
11 executive agency lobbyist;

12 ~~(17)~~~~(16)~~ "Substantial issue" means contacts which are intended to influence a decision
13 that involves one or more disbursements of state funds in an amount of at least five
14 thousand dollars (\$5,000) per year, or any budget provision, administrative
15 regulation or rule, or legislative matter~~, or other public policy matter~~ that
16 financially impacts the executive agency lobbyist or his or her employer;

17 ~~(18)~~~~(17)~~ "Placement agent" means an individual or firm who is compensated or hired
18 by an employer or other real party in interest for the purpose of influencing an
19 executive agency decision regarding the investment of the Kentucky Retirement
20 Systems or the Kentucky Teachers' Retirement System assets; and

21 ~~(19)~~~~(18)~~ "Unregulated placement agent" means a placement agent who is prohibited by
22 federal securities laws and regulations promulgated thereunder from receiving
23 compensation for soliciting a government agency.

24 ➔Section 3. KRS 11A.211 is amended to read as follows:

25 (1) Each executive agency lobbyist, employer, and real party in interest shall file with
26 the commission within ten (10) days following the engagement of an executive
27 agency lobbyist, an initial registration statement showing all of the following:

- 1 (a) The name, business address, and occupation of the executive agency lobbyist;
- 2 (b) The name and business address of the employer and of any real party in
- 3 interest on whose behalf the executive agency lobbyist is acting, if it is
- 4 different from the employer. However, if a trade association or other
- 5 charitable or fraternal organization that is exempt from federal income
- 6 taxation under Section 501(c) of the Internal Revenue Code is the employer,
- 7 the statement need not list the names and addresses of every member of the
- 8 association or organization, so long as the association or organization itself is
- 9 listed;
- 10 (c) A brief description of the executive agency decision to which the engagement
- 11 relates;
- 12 (d) The name of the executive agency or agencies to which the engagement
- 13 relates;
- 14 (e) Certification by the employer and executive agency lobbyist that the
- 15 information contained in the registration statement is complete and accurate;
- 16 (f) Compensation paid to, **or received by,** each executive agency lobbyist, ~~by~~
- 17 ~~each~~ employer, **and real party in interest as part of the engagement;** and
- 18 (g) Certification that the employer and agent have complied with KRS 11A.236.
- 19 (2) In addition to the initial registration statement required by subsection (1) of this
- 20 section, each executive agency lobbyist, employer, and real party in interest shall
- 21 file with the commission, not later than the last day of July of each year, an updated
- 22 registration statement that confirms the continuing existence of each engagement
- 23 described in an initial registration statement, that lists the specific executive agency
- 24 decisions the executive agency lobbyist sought to influence under the engagement
- 25 during the period covered by the updated statement, and the compensation paid to,
- 26 **or received by,** each executive agency lobbyist, ~~by each~~ employer, and **real party**
- 27 **in interest as part of the engagement, and** with it any statement of expenditures

1 required to be filed by KRS 11A.216 and any details of financial transaction
2 required to be filed by KRS 11A.221.

3 **(3) Compensation paid under subsection (1)(f) shall be reported after it is received**
4 **by, or paid to, each executive agency lobbyist, employer, and real party in interest**
5 **as determined by the terms of the engagement, and shall be listed by the amount**
6 **paid or received, the intervals on which the payment is paid or received, and shall**
7 **include any other compensation received or paid as part of the engagement.**

8 ~~(4)~~~~(3)~~ If an executive agency lobbyist is engaged by more than one (1) employer, the
9 executive agency lobbyist shall file a separate initial and updated registration
10 statement for each engagement and list compensation paid to, **or received by each**~~f~~
11 ~~the~~ executive agency lobbyist, ~~by each~~ employer, **and real party in interest as**
12 **part of the engagement.** If an employer engages more than one (1) executive
13 agency lobbyist, the employer shall file only one (1) updated registration statement
14 under subsection (2) of this section, which shall contain the information required by
15 subsection (2) of this section regarding all executive agency lobbyists engaged by
16 the employer.

17 ~~(5)~~~~(4)~~ (a) A change in any information required by subsection (1)(a), (b), (c), (d),
18 or (2) of this section shall be reflected in the next updated registration
19 statement filed under subsection (2) of this section.

20 (b) Within thirty (30) days following the termination of an engagement, the
21 executive agency lobbyist who was employed under the engagement shall file
22 written notice of the termination with the commission.

23 ~~(6)~~~~(5)~~ Each employer of one (1) or more executive agency lobbyists, and each real
24 party in interest, shall pay a registration fee of five hundred dollars (\$500) upon the
25 filing of an updated registration statement. All fees collected by the commission
26 under the provisions of this subsection shall be deposited in the State Treasury in a
27 trust and agency fund account to the credit of the commission. These agency funds

1 shall be used to supplement general fund appropriations for the operations of the
2 commission and shall not lapse. No part of the trust and agency fund account shall
3 revert to the general funds of this state.

4 ~~(7)~~~~(6)~~ Upon registration pursuant to this section, an executive agency lobbyist shall
5 be issued a card annually by the commission showing the executive agency lobbyist
6 is registered. The registration card shall be valid from the date of its issuance
7 through the thirty-first day of July of the following year.

8 ~~(8)~~~~(7)~~ The commission shall review each registration statement filed with the
9 commission under this section to determine if the statement contains all of the
10 required information. If the commission determines the registration statement does
11 not contain all of the required information or that an executive agency lobbyist,
12 employer, or real party in interest has failed to file a registration statement, the
13 commission shall send written notification of the deficiency by certified mail to the
14 person who filed the registration statement or to the person who failed to file the
15 registration statement regarding the failure. Any person so notified by the
16 commission shall, not later than fifteen (15) days after receiving the notice, file a
17 registration statement or an amended registration statement that includes all of the
18 required information. If any person who receives a notice under this subsection fails
19 to file a registration statement or an amended registration statement within the
20 fifteen (15) day period, the commission may initiate an investigation of the person's
21 failure to file. If the commission initiates an investigation pursuant to this section,
22 the commission shall also notify each elected executive official and the secretary of
23 each cabinet listed in KRS 12.250 of the pending investigation.

24 ~~(9)~~~~(8)~~ In the biennial report published under KRS 11A.110(13), the commission
25 shall, in the manner and form the commission determines, include a report
26 containing statistical information on the registration statements filed under this
27 section during the preceding biennium.

1 ~~(10)~~⁽⁹⁾ If an employer who engages an executive agency lobbyist, or a real party in
2 interest on whose behalf the executive agency lobbyist was engaged is the recipient
3 of a contract, grant, lease, or other financial arrangement pursuant to which funds of
4 the state or of an executive agency are distributed or allocated, the executive agency
5 or any aggrieved party may consider the failure of the real party in interest, the
6 employer, or the executive agency lobbyist to comply with this section as a breach
7 of a material condition of the contract, grant, lease, or other financial arrangement.

8 ~~(11)~~⁽¹⁰⁾ Executive agency officials may require certification from any person seeking
9 the award of a contract, grant, lease, or financial arrangement that the person, his or
10 her employer, and any real party in interest are in compliance with this section.

11 ➔Section 4. KRS 11A.233 is amended to read as follows:

12 (1) For purposes of KRS 11A.201 to 11A.246, the term "executive agency lobbyist"
13 does not include a person acting to promote, oppose, or otherwise influence the
14 outcome of a decision of the Cabinet for Economic Development or any board or
15 authority within or attached to that cabinet relating to the issuance or award of a
16 bond, grant, lease, loan, assessment, incentive, inducement, or tax credit pursuant to
17 KRS 42.4588, 103.210, Chapter 154, or Chapter 224A, or otherwise relating to any
18 other component of an economic incentive package.

19 (2) Notwithstanding subsection (1), before any board or authority within or attached to
20 the Cabinet for Economic Development takes final action on any contract or
21 agreement by which any bond, grant, lease, loan, assessment, incentive, inducement,
22 or tax credit is awarded, the beneficiary of an economic incentive package shall file
23 with the approving board or authority a disclosure statement which shall contain:

24 (a) The identity of the beneficiary of an economic incentive package and any
25 person employed to act on its behalf in its dealings with the Cabinet for
26 Economic Development or any board or authority within or attached to that
27 cabinet regarding the matters to which the contract or agreement refers; and

- 1 (b) The details of any financial transaction as defined in KRS 11A.201~~(6)~~~~(5)~~(a)
2 between the beneficiary or any other person listed as an employee or agent of
3 the beneficiary as required by paragraph (a) of this subsection and any agent or
4 public servant of the Cabinet for Economic Development, any member of any
5 board or authority within or attached to that cabinet, or any other public
6 servant involved in the negotiation of the economic incentive package.
- 7 (3) After final action by the board or authority, the Cabinet for Economic Development
8 shall file the disclosure statement described in subsection (2) of this section with the
9 Executive Branch Ethics Commission, but the cabinet may delete information
10 identifying the beneficiary of the economic-incentive package if the cabinet believes
11 that identification would damage economic development.
- 12 (4) No beneficiary of an economic incentive package as referred to in this section shall
13 engage any person to influence decisions of the Cabinet for Economic Development
14 or the approving board or authority for compensation that is contingent in any way
15 on the outcome of the decisions of the cabinet or the approving board or authority
16 regarding contracts or agreements specified in subsection (2) of this section, and no
17 person shall accept any engagement to influence these decisions or conduct
18 lobbying activities related to these decisions for compensation that is contingent in
19 any way on the outcome of the decisions of the cabinet or the approving board or
20 authority regarding these contracts or agreements.
- 21 (5) Subsection (4) of this section does not prohibit, and shall not be construed to
22 prohibit, any person from compensating that person's sales employees pursuant to
23 any incentive compensation plan, such as commission sales, if the incentive
24 compensation plan is the same plan used to compensate similarly-situated sales
25 employees who are not engaged by the beneficiary of an economic incentive
26 package in activities and functions referred to in this section.