

1 AN ACT relating to ethics and declaring an emergency.

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

3 ➔Section 1. KRS 6.686 is amended to read as follows:

4 (1) (a) The commission shall have jurisdiction to investigate and proceed as to any  
5 violation of this code upon the filing of a complaint. The complaint shall be a  
6 written statement alleging a violation against one (1) or more named persons  
7 and stating the essential facts constituting the violation charged. The  
8 complaint shall be made under oath and signed by the complaining party  
9 before a person who is legally empowered to administer oaths. The  
10 commission shall have no jurisdiction in the absence of a complaint. A  
11 member of the commission may file a complaint.

12 (b) ***For each complaint filed by a person other than the commission or a***  
13 ***member of the commission, the commission shall make a finding as to***  
14 ***whether the complaint is:***

15 ***1. Well-grounded in fact;***

16 ***2. Warranted by existing law; and***

17 ***3. Filed for a good faith argument or reason and not for any improper***  
18 ***purpose, such as for political advantage, to harass or embarrass a***  
19 ***person or persons, to cause delays, or to increase the costs of***  
20 ***adjudicating a case before the commission.***

21 **(c)** Within ten (10) days of the filing of a complaint, the commission shall cause a  
22 copy of the complaint to be served by certified mail upon the person alleged to  
23 have committed the violation.

24 **(d)**~~(e)~~ Within twenty (20) days of service of the complaint the person alleged  
25 to have committed the violation may file an answer with the commission. The  
26 filing of an answer is wholly permissive, and no inferences shall be drawn  
27 from the failure to file an answer.

1        ~~(e)~~~~(d)~~     Not later than ten (10) days after the commission receives the answer, or  
2                    the time expires for the filing of an answer, the commission shall initiate a  
3                    preliminary inquiry into any alleged violation of this code. If the commission  
4                    determines upon the affirmative vote of at least five (5) members, at either a  
5                    regularly scheduled meeting, or a teleconference meeting called upon the  
6                    chair's oral or written notice to all members of the commission, that the  
7                    complaint fails to state a claim of an ethics violation, the complaint shall be  
8                    dismissed.

9        ~~(f)~~~~(e)~~     Within thirty (30) days of the commencement of the inquiry, the  
10                    commission shall give notice of the status of the complaint and a general  
11                    statement of the applicable law to the person alleged to have committed a  
12                    violation.

13        ~~(g)~~~~(f)~~     A complaint may be filed against a former legislator, a former legislative  
14                    agent, or a former employer of a legislative agent within one (1) year of the  
15                    date he or she left office or terminated lobbying registration. The one (1) year  
16                    limitation shall not apply if a complaint alleges a violation of KRS 6.757.

17        ~~(h)~~~~(g)~~     The applicable criminal statutes of limitation shall not apply to ethical  
18                    misconduct under KRS 6.601 to 6.849.

19        (2) All commission proceedings, including the complaint and answer and other records  
20                    relating to a preliminary inquiry, shall be confidential until a final determination is  
21                    made by the commission, except:

22        (a) The commission may turn over to the Attorney General, the United States  
23                    Attorney, Commonwealth's attorney, or county attorney of the jurisdiction in  
24                    which the offense allegedly occurred, evidence which may be used in criminal  
25                    proceedings; and

26        (b) If the complainant or alleged violator publicly discloses the existence of a  
27                    preliminary inquiry, the commission may publicly confirm the existence of the

1 inquiry and, in its discretion, make public any documents which were issued  
2 to either party.

3 (3) The commission shall afford a person who is the subject of a preliminary inquiry an  
4 opportunity to appear in response to the allegations in the complaint. The person  
5 shall have the right to be represented by counsel, to appear and be heard under oath,  
6 and to offer evidence in response to the allegations in the complaint.

7 (4) If the commission determines by the answer or in the preliminary inquiry that the  
8 complaint does not allege facts sufficient to constitute a violation of this code, the  
9 commission shall immediately terminate the matter and notify in writing the  
10 complainant and the person alleged to have committed a violation. The commission  
11 may confidentially inform the alleged violator of potential violations and provide  
12 information to ensure future compliance with the law. If the alleged violator  
13 publicly discloses the existence of such action by the commission, the commission  
14 may confirm the existence of the action and, in its discretion, make public any  
15 documents that were issued to the alleged violator.

16 (5) If the commission, during the course of the preliminary inquiry, finds probable  
17 cause to believe that a violation of this code has occurred, the commission shall  
18 notify the alleged violator of the finding, and the commission may, upon majority  
19 vote:

20 (a) Due to mitigating circumstances such as lack of significant economic  
21 advantage or gain by the alleged violator, lack of significant economic loss to  
22 the state, or lack of significant impact on public confidence in government,  
23 confidentially reprimand, in writing, the alleged violator for potential  
24 violations of the law and provide a copy of the reprimand to the presiding  
25 officer of the house in which the alleged violator serves, or the alleged  
26 violator's employer, if the alleged violator is a legislative agent. The  
27 proceedings leading to a confidential reprimand and the reprimand itself shall

1 remain confidential except that, if the alleged violator publicly discloses the  
 2 existence of such an action, the commission may confirm the existence of the  
 3 action and, in its discretion, make public any documents which were issued to  
 4 the alleged violator; or

5 (b) Initiate an adjudicatory proceeding to determine whether there has been a  
 6 violation.

7 (6) Any person who knowingly files with the commission a false complaint of  
 8 misconduct on the part of any legislator or other person shall be guilty of a Class A  
 9 misdemeanor.

10 ➔Section 2. KRS 11A.060 is amended to read as follows:

11 (1) The Executive Branch Ethics Commission is hereby established.

12 (2) The commission shall be composed of seven (7)~~five (5)~~ members, two (2) of  
 13 whom shall be appointed by the Governor. Each of the following shall appoint  
 14 one (1) member of the commission:

15 (a) Treasurer;

16 (b) Auditor of Public Accounts;

17 (c) Commissioner of Agriculture;

18 (d) Secretary of State; and

19 (e) Attorney General.

20 (3) On the effective date of this Act, the terms of the existing members of the  
 21 commission shall terminate and seven (7) new initial members shall be appointed  
 22 by the officials listed under subsection (2) of this section. Members of the  
 23 commission shall serve staggered terms of four (4) years. Of the initial members  
 24 appointed as provided in this section, one (1) member shall serve a term of one (1)  
 25 year and shall be appointed by the Treasurer, one (1) member shall serve a term of  
 26 two (2) years and shall be appointed by the Auditor of Public Accounts, two (2)  
 27 members~~one (1) member~~ shall serve a term of three (3) years, one (1) of whom

1 shall be appointed by the Governor and one (1) of whom shall be appointed by the  
 2 Commissioner of Agriculture, and three (3)[two (2)] members shall be appointed  
 3 for terms of four (4) years, one (1) of whom shall be appointed by the Governor,  
 4 one (1) of whom shall be appointed by the Secretary of State, and one (1) of  
 5 whom shall be appointed by the Attorney General. Thereafter, all appointments  
 6 shall be for staggered terms of four (4) years.

- 7 (4) The commission shall elect from its membership a chairman and vice chairman. In  
 8 the absence of the chairman or in the event of a vacancy in that position, the vice  
 9 chairman shall serve as chairman.
- 10 (5) A member of the commission shall receive one hundred dollars (\$100) per day for  
 11 attending meetings and shall be reimbursed for actual and necessary expenses  
 12 incurred in the performance of duties.
- 13 (6) All members shall be registered voters of the state.
- 14 (7) Members of the commission shall be removed by the appointing authority who  
 15 appointed him or her[Governor] for cause only, including substantial neglect of  
 16 duty and inability to discharge the powers and duties of office.
- 17 (8) A quorum shall consist of three (3) or more members. An affirmative vote of three  
 18 (3) or more members shall be necessary for commission action.
- 19 (9) The commission shall meet at the call of the chairman or a majority of its members.
- 20 (10) The commission shall be attached to the Finance and Administration Cabinet for  
 21 administrative purposes only.

22 (11) The commission shall not be reorganized except by statute.

23 ➔Section 3. KRS 11A.080 is amended to read as follows:

- 24 (1) (a) Upon a complaint signed under penalty of perjury by any person, or upon its  
 25 own motion, the commission shall conduct a preliminary investigation of any  
 26 alleged violation of this chapter.
- 27 (b) The preliminary investigation shall begin not later than ten (10) days after the

1 next commission meeting following the receipt of the sworn complaint, or, if  
2 the investigation is initiated by the commission's own motion, not later than  
3 ten (10) days after the date of the adoption of the motion.

4 (c) Within ten (10) days of the commencement of the preliminary investigation,  
5 the commission shall forward a copy of the complaint, if one has been filed, or  
6 a statement of possible violations being investigated, and a general statement  
7 of the applicable law to the person alleged to have committed a violation.

8 **(d) For each complaint filed by a person other than the commission or a**  
9 **member of the commission, the commission shall make a finding as to**  
10 **whether the complaint is:**

11 **1. Well-grounded in fact;**

12 **2. Warranted by existing law; and**

13 **3. Filed for a good faith argument or reason and not for any improper**  
14 **purpose, such as for political advantage, to harass or embarrass a**  
15 **person or persons, to cause delays, or to increase the costs of**  
16 **adjudicating a case before the commission.**

17 (2) All commission proceedings and records relating to a preliminary investigation  
18 shall be confidential until a final determination is made by the commission, except:

19 (a) The commission may turn over to the Attorney General, the United States  
20 Attorney, or the Commonwealth's attorney of the jurisdiction in which the  
21 offense allegedly occurred, evidence which may be used in criminal  
22 proceedings or, at its discretion, may at any time turn over to the Personnel  
23 Board, the Auditor of Public Accounts, or any other agency with jurisdiction  
24 to review, audit, or investigate the alleged offense, evidence which may be  
25 used by those agencies for investigative purposes;

26 (b) If the alleged violator publicly discloses the existence of a preliminary  
27 investigation, the commission may publicly confirm the existence of the

1 inquiry and, in its discretion, make public any documents which were issued  
2 to either party;

3 (c) If the matter being investigated was referred to the commission from another  
4 state agency, the commission may inform the referring state agency of the  
5 status of any preliminary investigation and of any action taken on the matter.

6 (3) If the commission determines in the preliminary investigation that the facts are not  
7 sufficient to constitute a violation of this chapter, the commission shall immediately  
8 terminate the investigation and notify in writing the complainant, if any, and the  
9 person alleged to have committed a violation. The commission may confidentially  
10 inform the alleged violator of potential violations and provide information to ensure  
11 future compliance with the law. If the alleged violator publicly discloses the  
12 existence of such action by the commission, the commission may confirm the  
13 existence of the resolution and, in its discretion, make public any documents which  
14 were issued to the alleged violator.

15 (4) If the commission, during the course of the preliminary investigation, finds probable  
16 cause to believe that a violation of this chapter has occurred, the commission may,  
17 upon majority vote:

18 (a) Due to mitigating circumstances such as lack of significant economic  
19 advantage or gain by the alleged violator, lack of significant economic loss to  
20 the state, or lack of significant impact on public confidence in government, in  
21 writing, confidentially reprimand the alleged violator for potential violations  
22 of the law and provide a copy of the reprimand to the alleged violator's  
23 appointing authority, if any. If the alleged violator publicly discloses the  
24 existence of such an action, the commission may confirm the existence of the  
25 action and, in its discretion, make public any documents which were issued to  
26 the alleged violator; or

27 (b) Initiate an administrative proceeding to determine whether there has been a

1 violation.

2 (5) If the commission determines that a violation of this chapter has occurred in a case  
3 involving a contract with state government, the secretary of the Finance and  
4 Administration Cabinet may void any contract related to that case.

5 (6) If the commission determines that a violation of the provisions of KRS 11A.001 to  
6 11A.130 has occurred, an employer of a former officer or public servant may be  
7 subject to a fine of up to one thousand dollars (\$1,000) for each offense.