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Summary: Legislative Ethics Committees

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1/29/2013 Scrivener's error corrected

**VERSIONS OF THIS BILL**

[12/18/2012](file:///p:\pprever\2013-14\133_20121218.docx)

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**A** **BILL**

TO AMEND THE FIRST PARAGRAPH OF SECTION 8‑13‑320(9) OF THE 1976 CODE, RELATING TO THE DUTIES AND POWERS OF THE STATE ETHICS COMMISSION, TO PROVIDE THAT COMPLAINTS AGAINST MEMBERS OR STAFF, INCLUDING STAFF ELECTED TO SERVE AS OFFICERS OF OR CANDIDATES FOR THE GENERAL ASSEMBLY, MUST BE FILED WITH THE STATE ETHICS COMMISSION; TO AMEND SECTION 8‑13‑320(10)(D), TO PROVIDE THAT A FINDING OF PROBABLE CAUSE REGARDING A VERIFIED COMPLAINT FILED BY THE COMMISSION MUST BE PROVIDED TO THE HOUSE OF REPRESENTATIVES OR SENATE LEGISLATIVE ETHICS COMMITTEE, AS APPROPRIATE, FOR DISPOSITION; TO AMEND SECTION 8‑13‑320(10)(I), TO PROVIDE THAT A FINDING OF PROBABLE CAUSE REGARDING A VERIFIED COMPLAINT FILED BY AN INDIVIDUAL MUST BE PROVIDED TO THE HOUSE OF REPRESENTATIVES OR SENATE LEGISLATIVE ETHICS COMMITTEE, AS APPROPRIATE, FOR DISPOSITION; TO AMEND SECTION 8‑13‑510, TO PROVIDE THAT THE HOUSE OF REPRESENTATIVES AND SENATE LEGISLATIVE ETHICS COMMITTEES MUST EACH BE COMPRISED OF TEN MEMBERS WITH FIVE MEMBERS FROM THE MAJORITY PARTY AND FIVE MEMBERS FROM THE MINORITY PARTY; TO AMEND SECTION 8‑13‑520, TO PROVIDE THAT EACH LEGISLATIVE ETHICS COMMITTEE MUST MAKE AVAILABLE TO THE PUBLIC A COMPILATION OF THE PRINCIPLES SET FORTH IN ITS ADVISORY OPINIONS; TO AMEND SECTION 8‑13‑530, TO PROVIDE FOR THE POWERS AND DUTIES OF EACH LEGISLATIVE ETHICS COMMITTEE; TO AMEND SECTION 8‑13‑540, TO PROVIDE FOR THE PROCESS AND PROCEDURE FOR DISPOSITION OF ETHICS COMPLAINTS REFERRED TO THE LEGISLATIVE ETHICS COMMITTEES; TO AMEND CHAPTER 13, TITLE 8, BY ADDING SECTION 8‑13‑545, TO PROVIDE FOR THE IMPOSITION OF PENALTIES AND THE DISPOSITION OF TECHNICAL VIOLATIONS BY THE LEGISLATIVE ETHICS COMMITTEES; TO AMEND CHAPTER 13, TITLE 8, BY ADDING SECTION 8‑13‑1317, TO PROHIBIT MEMBERS OF THE GENERAL ASSEMBLY FROM RECEIVING CAMPAIGN CONTRIBUTIONS DURING THE ANNUAL REGULAR SESSION OF THE GENERAL ASSEMBLY; TO AMEND CHAPTER 13, TITLE 8, BY ADDING SECTION 8‑13‑1341, TO PROHIBIT LEGISLATIVE LEADERSHIP POLITICAL ACTIONS COMMITTEES; TO AMEND SECTION 8‑13‑755, TO PROVIDE THAT FORMER MEMBERS OF THE GENERAL ASSEMBLY MAY NOT LOBBY FOR A PERIOD OF TWO YEARS AFTER LEAVING OFFICE; AND TO AMEND CHAPTER 13, TITLE 8, BY ADDING ARTICLE 12, TO REQUIRE ANNUAL PERSONAL FINANCE DISCLOSURES FROM ELECTED OFFICIALS AND DEPARTMENT HEADS, TO PROVIDE FOR THE FILING DEADLINE, THE INFORMATION THAT MUST BE DISCLOSED, PENALTIES, AND FOR THE DISPOSITION OF INADVERTENT AND UNINTENTIONAL VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. The first paragraph of Section 8‑13‑320(9) is amended to read:

“(9) to initiate or receive complaints and make investigations, as provided in item (10), of statements filed or allegedly failed to be filed under the provisions of this chapter and Chapter 17 of Title 2 and, upon complaint by an individual, of an alleged violation of this chapter or Chapter 17 of Title 2 by a public official, public member, or public employee ~~except~~ including members or staff, including staff elected to serve as officers of or candidates for the General Assembly ~~unless otherwise provided for under House or Senate rules~~. Any person charged with a violation of this chapter or Chapter 17 of Title 2 is entitled to the administrative hearing process contained in this section.”

B. Section 8‑13‑320(10)(d) of the 1976 Code is amended to read:

“(d) If the commission, upon the receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of the majority of the total membership of the commission, file a verified complaint, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint. If the respondent is a member or staff, including staff elected to serve as officers of or candidates for the General Assembly, then notice of a finding of probable cause, the complaint, the statement of the applicable law with respect to the complaint, and any additional relevant information must be forwarded to the House of Representatives or Senate Legislative Ethics Committee, as appropriate, for further disposition pursuant to Article 5 of this chapter.”

C. Section 8‑13‑320(10)(i) of the 1976 Code is amended to read:

“(i) At the conclusion of its investigation, the commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred.

(A) If the commission determines that probable cause does not exist, it shall send a written decision with findings of fact and conclusions of law to the respondent and the complainant.

(B) ~~If~~ Except as provided in item (C), if the commission determines that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred. If the commission finds probable cause to believe that a violation of this chapter has occurred, the commission may waive further proceedings if the respondent takes action to remedy or correct the alleged violation.

(C) If the commission determines that there is probable cause to believe that a violation of this chapter has been committed by a member or staff, including staff elected to serve as officers of or candidates for the General Assembly, then notice of a finding of probable cause, the complaint, the statement of the applicable law with respect to the complaint, and any additional relevant information must be forwarded to the House of Representatives or Senate Legislative Ethics Committee, as appropriate, for further disposition pursuant to Article 5 of this chapter.”

SECTION 2. Sections 8‑13‑510 through 8‑13‑540 of the 1976 Code are amended to read:

“Section 8‑13‑510. There is created a House of Representatives Legislative Ethics Committee and a Senate Legislative Ethics Committee. Each ethics committee is composed of ~~six~~ ten members, of which five shall be members of the majority party and five shall be members of the minority party. Terms are coterminous with the term for which members are elected to the House or Senate. Vacancies must be filled for the unexpired term in the manner of the original selection. ~~The members of each ethics committee must be elected by the House or the Senate, as appropriate.~~ One member of each ethics committee must be elected as chairman by a majority of the members of the ethics committee.

Section 8‑13‑520. (A) Each ethics committee shall meet and recommend any changes in the law or rules relating to ethics considered proper to their respective houses. Changes recommended must be consistent with the Constitution of the State of South Carolina, the provisions of this chapter, and any other applicable law.

(B) Each legislative ethics committee shall annually make available to the public a compilation of the principles set forth in advisory opinions rendered during the previous year.

Section 8‑13‑530. Each ethics committee shall:

(1) ascertain whether a person has failed to comply fully and accurately with the disclosure requirements of this chapter and promptly notify the person to file the necessary notices and reports to satisfy the requirements of this chapter;

(2) ~~receive complaints filed by individuals and, upon a majority vote of the total membership of the committee, file complaints when alleged violations are identified~~ receive from the State Ethics Commission notice that the commission found probable cause that a member or staff, including staff elected to serve as officer of or a candidate for the General Assembly, has violated a provision contained in Chapter 13, Title 8 or Chapter 17, Title 2;

(3) ~~upon the filing of a complaint, investigate possible violations of breach of a privilege governing a member or staff of the appropriate house, the alleged breach of a rule governing a member of, legislative caucus committees for, or a candidate, or staff for the appropriate house, misconduct of a member or staff of, legislative caucus committees for, or a candidate for the appropriate house, or a violation of this chapter or Chapter 17 of Title 2~~ conduct disciplinary hearings as appropriate;

(4) ~~receive and hear a complaint which alleges a breach of a privilege governing a member or staff of the appropriate house, the alleged breach of a rule governing a member or staff of or candidate for the appropriate house, misconduct of a member or staff of or candidate for the appropriate house, or a violation of this chapter or Chapter 17 of Title 2. No complaint may be accepted by the ethics committee concerning a member of or candidate for the appropriate house during the fifty‑day period before an election in which the member or candidate is a candidate. During this fifty‑day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty‑day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve any party to the proceeding from any penalty prescribed for violations of this chapter. The court must award reasonable attorney’s fees and costs to the nonpetitioning party if a petition for mandamus or injunctive relief is dismissed based upon a finding that the:~~

~~(i)~~  ~~petition is being presented for an improper purpose such as harassment or to cause delay;~~

~~(ii)~~ ~~claims, defenses, and other legal contentions are not warranted by existing law or are based upon a frivolous argument~~ ~~for the extension, modification, or reversal of existing law or the establishment of new law; and~~

~~(iii)~~ ~~allegations and other factual contentions do not have evidentiary support or, if specifically so identified, are not likely to have evidentiary support after reasonable opportunity for further investigation or discovery.~~

~~Action on a complaint filed against a member or candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the ethics committee at least thirty days before the election must be postponed until after the election;~~ administer or recommend sanctions as appropriate to a particular member or staff of or candidate for the appropriate house or dismiss the charges;

(5) ~~obtain information and investigate complaints as provided in Section 8‑13‑540 with respect to any complaint filed pursuant to this chapter or Chapter 17 of Title 2 and to that end may compel by subpoena the attendance and testimony of witnesses and the production of pertinent books and papers;~~ act as an advisory body to the General Assembly and to individual members of or candidates for the appropriate house on questions pertaining to the disclosure and filing requirements of members of or candidates for the appropriate house; and

~~(6)~~ ~~administer or recommend sanctions appropriate to a particular member or staff of or candidate for the appropriate house pursuant to Section 8‑13‑540 or dismiss the charges; and~~ exercise other powers and duties prescribed by law.

~~(7)~~ ~~act as an advisory body to the General Assembly and to individual members of or candidates for the appropriate house on questions pertaining to the disclosure and filing requirements of members of or candidates for the appropriate house.~~

Section 8‑13‑540. (A) ~~Unless otherwise provided for by House or Senate rule, as appropriate, each ethics committee must conduct its investigation of a complaint filed pursuant to this chapter or Chapter 17 of Title 2 in accordance with this section.~~ If the State Ethics Commission finds that probable cause exists to support an alleged violation the ethics committee receiving the notice that probable cause exists must:

~~(1)~~ ~~When a complaint is filed with or by the ethics committee, a copy must promptly be sent to the person alleged to have committed the violation. If the ethics committee determines the complaint does not allege facts sufficient to constitute a violation, the complaint must be dismissed and the complainant and respondent notified. If the ethics committee finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to appropriate law enforcement authorities. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, a person must be fined not more than one thousand dollars or imprisoned not more than one year. In lieu of the criminal penalty provided by this subsection, a civil penalty of not more than one thousand dollars may be assessed against the complainant upon proof, by a preponderance of the evidence, that the filing of the complaint was wilful and without just cause or with malice. If the ethics committee determines the complaint alleges facts sufficient to constitute a violation, it shall promptly investigate the alleged violation and may compel by subpoena the attendance and testimony of witnesses and the production of pertinent books and papers.~~

~~If after such preliminary investigation, the ethics committee finds that probable cause exists to support an alleged violation, it shall, as appropriate:~~

~~(a)~~(1) render an advisory opinion to the respondent and require the respondent’s compliance within a reasonable time; or

~~(b)~~(2) convene a formal hearing on the matter within thirty days of the respondent’s failure to comply with the advisory opinion. All ethics committee investigations and records relating to the preliminary investigation are confidential. No complaint shall be accepted which is filed later than four years after the alleged violation occurred.

~~(2)~~(B) If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the ethics committee’s possession relating to the charges. At the hearing the charged party must be afforded appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses. All hearings must be conducted in executive session.

~~(3)~~(C) After the hearing, the ethics committee shall determine its findings of fact. If the ethics committee, based on competent and substantial evidence, finds the respondent has violated this chapter or Chapter 17 of Title 2, it shall:

~~(a)~~(1) administer a public or private reprimand;

~~(b)~~(2) determine that a technical violation as provided for in Section 8‑13‑1170 has occurred;

~~(c)~~(3) recommend expulsion of the member; and/or~~,~~

~~(d)~~(4) in the case of an alleged criminal violation, refer the matter to the Attorney General for investigation. The ethics committee shall report its findings in writing to the Speaker of the House or President Pro Tempore of the Senate, as appropriate. The report must be accompanied by an order of punishment and supported and signed by a majority of the ethics committee members. If the ethics committee finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

~~(4)~~(D) An individual has ten days from the date of the notification of the ethics committee’s action to appeal the action to the full legislative body.

~~(5)~~(E) No ethics committee member may participate in any matter in which he is involved.

~~(6)~~(F) The ethics committee shall establish procedures which afford respondents appropriate due process protections, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross‑examine opposing witnesses.

Section 8‑13‑545. (A) Except as provided in subsection (B), if the ethics committee finds the respondent has failed to file or was late in filing a required statement of economic interests, personal financial disclosure, or campaign disclosure report, the ethics committee must order the respondent to pay a fine according to the provisions in Section 8‑13‑1510.

(B) The ethics committee may, in its discretion, determine that errors or omissions on statements of economic interests, personal financial disclosure, and campaign disclosure reports are inadvertent and unintentional and not an effort to violate a requirement of Chapter 13, Title 8 and may be handled as technical violations not subject to the provisions of Chapter 13, Title 8 pertaining to ethical violations. The ethics committee may assess a penalty for technical violations not exceeding fifty dollars.”

SECTION 3. Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1317. (A) During the time period beginning on the second Tuesday in January and ending on the first Thursday in June, members of the House of Representatives and Senators may not accept or receive contributions from any source.

(B) The recipient of a contribution given in violation of subsection (A) may not keep the contribution but within seven days must remit the contribution to the Children’s Trust Fund.”

SECTION 4. Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1341. Notwithstanding Section 8‑13‑1340, a member of the General Assembly shall not, directly or indirectly, establish, finance, maintain, or control a noncandidate committee as defined in Section 8‑13‑1300. A noncandidate committee does not include a candidate committee or a legislative caucus committee.”

SECTION 5. Section 8‑13‑755 of the 1976 Code is amended to read:

“Section 8‑13‑755. (A) ~~A~~ Except as provided in subsection (B), a former public official, former public member, or former public employee ~~holding public office, membership, or employment on or after January 1, 1992,~~ may not for a period of one year after terminating his public service or employment:

(1) serve as a lobbyist or represent clients before the agency or department on which he formerly served in a matter which he directly and substantially participated during his public service or employment; or

(2) accept employment if the employment:

(a) is from a person who is regulated by the agency or department on which the former public official, former public member, or former public employee served or was employed; and

(b) involves a matter in which the former public official, former public member, or former public employee directly and substantially participated during his public service or public employment.

(B) Former members of the General Assembly may not for a period of two years after leaving office serve as a lobbyist.”

SECTION 6. Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Article 12

Personal Financial Disclosure

Section 8‑13‑1200. The Governor, Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Superintendent of Education, Comptroller General, Commissioner of Agriculture, Adjutant General, members of the General Assembly, or candidates for any of these offices, and the head of each department of state government must file with the appropriate supervisory office a personal financial disclosure on forms prescribed by the commission.

Section 8‑13‑1210. Personal finance disclosures must be filed with the appropriate supervisory office annually no later than April fifteenth of each calendar year.

Section 8‑13‑1220. Each disclosure filed pursuant to this article shall include a full and complete statement with respect to the following:

(1) the source, type, and amount or value of income, except as provided in item (2), from any source aggregating two hundred dollars or more; and

(2) the source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceed two hundred dollars in amount or value, and an indication of which of the following categories the amount or value of the item of income is within:

(a) not more than one thousand dollars;

(b) greater than one thousand dollars but not more than two thousand five hundred dollars;

(c) greater than two thousand five hundred dollars but not more than five thousand dollars;

(d) greater than five thousand dollars but not more than fifteen thousand dollars;

(e) greater than fifteen thousand dollars but not more than fifty thousand dollars;

(f) greater than fifty thousand dollars but not more than one hundred thousand dollars;

(g) greater than one hundred thousand dollars but not more than one million dollars;

(h) more than one million dollars.

Section 8‑13‑1230. (A) The Senate Ethics Committee and the House of Representatives Ethics Committee must forward a copy of each disclosure filed with it to the State Ethics Commission within five business days of receipt.

(B) Within five business days of receipt, a copy of all financial disclosures received by the State Ethics Commission must be forwarded to the clerk of court in the county of residence of the filing official or employee.

Section 8‑13‑1240. (A) The appropriate supervisory office may, in its discretion, determine that errors or omissions on personal financial disclosures are inadvertent and unintentional and not an effort to violate a requirement of this chapter and may be handled as technical violations not subject to the provisions of this chapter pertaining to ethical violations. Technical violations must remain confidential unless requested to be made public by the public official, public member, or public employee filing the statement. In lieu of all other penalties, the appropriate supervisory office may assess a technical violations penalty not exceeding fifty dollars.

(B) The appropriate supervisory office may grant a reasonable extension of time for filing a statement of economic interests. The extension may not exceed thirty days except in cases of illness or incapacitation.”

SECTION 7. This act takes effect July 1, 2013.

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