

1 AN ACT relating to sexual harassment.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 6.601 TO 6.849 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) As used in Sections 1 to 3 of this Act:

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

9 1. Submission to the advances, requests, conduct, or communication is
10 an explicit or implicit term or condition of obtaining or retaining
11 employment;

12 2. Submission to or rejection of the advances, requests, conduct, or
13 communication affects decisions concerning a person's employment;

14 3. The conduct or communication has the purpose or effect of
15 unreasonably interfering with the person's ability to perform his or
16 her job functions or of creating a hostile work environment; or

17 4. The conduct or communication is sexual harassment or
18 discrimination as defined in KRS Chapter 344, Title VII of the Civil
19 Rights Act of 1964, state or federal case law, or enforced in policy or
20 regulation by the federal Equal Employment Opportunity Commission
21 or the Kentucky Commission on Human Rights;

22 (b) "Sexual harassment" includes such conduct as:

23 1. Unwanted sexual contact or conduct of any kind, including sexual
24 flirtations, touching, advances, actions, propositions, intercourse, or
25 assault;

26 2. Unwelcome verbal communication of a sexual nature, including lewd
27 comments or innuendo, sexual jokes or references, or offensive

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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 described in this subsection; and

(c) A single incident as 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.

(2) As used in Sections 1 to 3 of this Act, "complaint" means a verbal or written allegation of sexual harassment.

➔SECTION 2. A NEW SECTION OF KRS 6.601 TO 6.849 IS CREATED TO READ AS FOLLOWS:

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

(2) Violation of this section is ethical misconduct.

➔SECTION 3. 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 complaint from a legislator, legislative agent, or employee of the legislative branch of state government regarding sexual

1 harassment allegedly committed by:

2 (a) A legislator;

3 (b) An employee of the legislative branch of state government; or

4 (c) A legislative agent.

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

8 (3) The commission, the Legislative Research Commission, and businesses or
9 organizations that employ legislative agents shall ensure that the telephone
10 number for the legislative ethics telephone tip line is available to legislators,
11 legislative agents, and employees of the legislative branch of state government by
12 multiple methods, including:

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

18 (b) Businesses or organizations that employ legislative agents shall print the
19 legislative ethics telephone tip line number on posters to be placed on
20 bulletin boards or other prominent locations in any building where
21 legislative agents are stationed;

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

27 (d) The Legislative Research Commission shall include information about the

1 legislative ethics telephone tip line in any form of training for legislators,
2 legislative agents, or employees of the legislative branch of state
3 government;

4 (e) The Legislative Research Commission shall inform legislators, legislative
5 agents, and employees of the legislative branch of state government of the
6 existence of the legislative ethics telephone tip line number through periodic
7 electronic mail messages; and

8 (f) The Legislative Research Commission shall place the legislative ethics
9 telephone tip line number on its staff and public Web pages.

10 (4) The legislative ethics telephone tip line shall be operational twenty-four (24)
11 hours a day, seven (7) days a week. The commission shall provide staff for the
12 legislative ethics telephone tip line during regular business hours and provide for
13 a recorded line to receive messages at all other times. If a complaint is received
14 on the tip line or by other means, commission staff shall make telephone or
15 electronic mail contact with the complainant on the first business day after
16 receipt of the complaint to confirm receipt and details of the complaint.
17 Complaints may also be made in person to the commission staff at the
18 commission's office during regular business hours, or may be sent to the
19 commission staff via electronic mail.

20 (5) Within two (2) hours of receipt of a complaint, or the confirmation required in
21 subsection (4) of this section, a commission staff person shall forward the
22 complaint received to the executive director of the commission or his or her
23 designee in writing on a form approved by the commission.

24 (6) Within twenty-four (24) hours of receipt of a complaint or the confirmation
25 required in subsection (4) of this section, the executive director of the commission
26 or his or her designee shall either:

27 (a) Make an initial determination as to whether the complaint meets the criteria

- 1 for consideration by the commission under this section, and if it does not,
2 shall inform the complainant that the commission does not have
3 jurisdiction, and shall not notify the alleged violator; or
- 4 **(b) If the initial determination is that the complaint meets the criteria for**
5 **consideration by the commission under this section, notify the alleged**
6 **violator of the receipt of the complaint, and provide the alleged violator with**
7 **a written statement setting forth the allegations provided by the**
8 **complainant. Within seven (7) business days of the executive director's**
9 **notification under this paragraph, the alleged violator may file a written**
10 **response to the allegations with the executive director.**
- 11 **(7) No later than seven (7) days after the executive director receives the response**
12 **described in subsection (6) of this section, or the time expires for the filing of the**
13 **response, the commission chair, vice chair, executive director, or the designee of**
14 **the chair, vice chair, or executive director shall interview the complainant, the**
15 **alleged violator, and any other person with knowledge of any information**
16 **relevant to the complaint.**
- 17 **(8) No later than fourteen (14) days after the completion of the interviews described**
18 **in subsection (7) of this section, the commission shall give notice of the status of**
19 **the complaint and a general statement of the applicable law to the complainant**
20 **and the alleged violator.**
- 21 **(9) Within thirty (30) days of receipt of a complaint or the confirmation required in**
22 **subsection (4) of this section:**
- 23 **(a) After consultation with the complainant, the complaint file shall be closed if**
24 **the commission chair and vice chair agree the complaint is resolved, or**
25 **agree that there is no credible allegation of sexual harassment;**
- 26 **(b) The commission chair and vice chair may refer a complaint to another**
27 **federal or state agency if they determine that the complaint does not fall**

- 1 under the jurisdiction of the Legislative Ethics Commission; or
- 2 (c) If the commission chair and vice chair do not agree that a complaint of
3 sexual harassment is resolved, and they agree that there is a credible
4 allegation of sexual harassment, after attempting to resolve the issue by
5 conference pursuant to subsection (11) of this section, the commission's
6 enforcement counsel shall file a complaint as provided in Section 6 of this
7 Act.
- 8 (10) A legislator, legislative agent, or employee of the legislative branch of state
9 government may file a formal complaint of sexual harassment against a person
10 listed in subsection (1) of Section 2 of this Act as provided in Section 6 of this Act
11 and KRS 6.691 at any time.
- 12 (11) (a) After completing an investigation as described in subsections (4) to (9) of
13 this section, if the commission chair and vice chair find that the respondent
14 has engaged in sexual harassment, the commission chair and vice chair
15 shall hold a conference between the parties involved to reach an agreement,
16 or if the commission chair and vice chair determine that an agreement
17 cannot be reached, file a complaint, through its enforcement counsel,
18 pursuant to Section 6 of this Act.
- 19 (b) If the commission chair and vice chair determine that the respondent has
20 not engaged in sexual harassment, they shall issue a determination
21 dismissing the complaint and furnish a copy of the determination to the
22 complainant and the respondent.
- 23 (c) Within ten (10) days of receiving a copy of the determination dismissing the
24 complaint, a complainant may file with the commission an application for
25 reconsideration of the determination, if he or she has new or additional
26 evidence relevant to the complaint. Upon receiving a reconsideration
27 application, the commission chair and vice chair shall make a new

1 determination within ten (10) days.

2 (12) The provisions of KRS 61.805 to 61.850, KRS 61.870 to 61.884, or any other
3 statute to the contrary notwithstanding, the testimony, records, work products,
4 and records of the commission, staff, investigators, complainants, alleged
5 violators, witnesses, meetings, and other activities relating to the commission's or
6 Legislative Research Commission's duties and responsibilities under this section
7 shall be privileged and confidential, and shall not be subject to discovery,
8 disclosure, or production upon the order or subpoena of a court of law or any
9 other federal or state agency with subpoena power, and shall not be disclosed by
10 the staff or commission members or any other person except:

11 (a) To the extent disclosure is necessary to gather information from the alleged
12 violation or any other person with knowledge or information relevant to the
13 complaint;

14 (b) If a formal complaint is filed pursuant to Section 6 of this Act, the
15 confidentiality provisions of Section 6 and KRS 6.691 shall apply. The
16 commission may refer any evidence pursuant to KRS 6.691(6) to the proper
17 prosecutorial authority under that subsection; or

18 (c) As provided in the annual statistical report under subsection (14) of this
19 section.

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

26 (b) Upon request of the complainant or the complainant's supervisor, the
27 complainant, or the complainant's supervisor on behalf of the complainant,

1 may request a transfer to another department or committee while a
2 complaint or investigation is ongoing.

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

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

9 1. The date the initial complaint was made;

10 2. The date each case was resolved or referred to an outside agency,
11 explicitly listing each agency;

12 3. The length of time in days it took to resolve or refer the complaint;

13 4. Whether corrective action was taken for each complaint.

14 a. If corrective action was taken, include the penalty that was
15 assessed;

16 b. If no corrective action was taken, include the reasons why no
17 corrective action was taken; and

18 5. The date a complaint was filed with the full commission as described
19 in subsections (9) and (11) of this section, or under which a matter
20 was referred under subsection (12)(b) of this section;

21 (b) The status of each incident reported if not resolved as of the date of
22 publication of the annual report; and

23 (c) The total number of sexual harassment complaints received categorized by
24 status of the case, method of resolution, and whether the complaint was
25 reported by tip line or other methods, specifically providing the other
26 method. No individually identifiable information shall be used, unless the
27 commission has previously released information subject to the provisions of

1 Section 6 of this Act or KRS 6.691.

2 (15) Nothing in this section shall preclude a legislator, legislative agent, or employee
 3 of the legislative branch of state government from pursuing other methods of
 4 addressing alleged incidents of sexual harassment, including reporting incidents
 5 to legislative branch management staff or filing a formal complaint with the
 6 commission as provided in Section 6 of this Act.

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

11 ➔SECTION 4. A NEW SECTION OF KRS 6.601 TO 6.849 IS CREATED TO
 12 READ AS FOLLOWS:

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

16 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 6 IS CREATED TO
 17 READ AS FOLLOWS:

18 No legislator or legislative employee shall use public funds to satisfy a court judgment
 19 or otherwise settle a claim of sexual harassment against a legislator or legislative
 20 employee.

21 ➔Section 6. KRS 6.686 is amended to read as follows:

22 (1) (a) The commission shall have jurisdiction to investigate and proceed as to any
 23 violation of this code upon the filing of a complaint. The complaint shall be a
 24 written statement alleging a violation against one (1) or more named persons
 25 and stating the essential facts constituting the violation charged. The
 26 complaint shall be made under oath and signed by the complaining party
 27 before a person who is legally empowered to administer oaths. Except as

- 1 *provided in Sections 1 to 3 of this Act,* the commission shall have no
2 jurisdiction in *the* absence of a complaint. A member of the commission may
3 file a complaint.
- 4 (b) Within ten (10) days of the filing of a complaint, the commission shall cause a
5 copy of the complaint to be served by certified mail upon the person alleged to
6 have committed the violation.
- 7 (c) Within twenty (20) days of service of the complaint the person alleged to have
8 committed the violation may file an answer with the commission. The filing
9 of an answer is wholly permissive, and no inferences shall be drawn from the
10 failure to file an answer.
- 11 (d) Not later than ten (10) days after the commission receives the answer, or the
12 time expires for the filing of an answer, the commission shall initiate a
13 preliminary inquiry into any alleged violation of this code. If the commission
14 determines that the complaint fails to state a claim of an ethics violation, the
15 complaint shall be dismissed.
- 16 (e) Within thirty (30) days of the commencement of the inquiry, the commission
17 shall give notice of the status of the complaint and a general statement of the
18 applicable law to the person alleged to have committed a violation.
- 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.