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8

9 **A BILL**

10
11 **Title to be inserted at a later date.**
12

13 Be it enacted by the General Assembly of the State of South
14 Carolina:
15

16 SECTION 1. Section 8-13-310 of the 1976 Code, as last amended
17 by Act 279 of 2012, is further amended to read:
18

19 ~~“Section 8-13-310. (A) The State Ethics Commission as~~
20 ~~constituted under law in effect before July 1, 1992, is reconstituted~~
21 ~~to continue in existence with the appointment and qualification of~~
22 ~~the at large members as prescribed in this section and with the~~
23 ~~changes in duties and powers as prescribed in this chapter. On July~~
24 ~~1, 1993, when the duties and powers given to the Secretary of State~~
25 ~~in Chapter 17 of Title 2 are transferred to the State Ethics~~
26 ~~Commission, the Code Commissioner is directed to change all~~
27 ~~references to “this chapter” in Article 3 of Chapter 13 of Title 8 to~~
28 ~~“this chapter and Chapter 17 of Title 2”.~~

29 ~~(B) There is created the State Ethics Commission composed of~~
30 ~~nine members appointed by the Governor, upon the advice and~~
31 ~~consent of the General Assembly. One member shall represent each~~
32 ~~of the seven congressional districts, and two members must be~~
33 ~~appointed from the State at large. No member of the General~~
34 ~~Assembly or other public official must be eligible to serve on the~~
35 ~~State Ethics Commission. The Governor shall make the~~
36 ~~appointments based on merit regardless of race, color, creed, or~~
37 ~~gender and shall strive to assure that the membership of the~~
38 ~~commission is representative of all citizens of the State of South~~
39 ~~Carolina.~~

40 ~~(C) The terms of the members are for five years and until their~~
41 ~~successors are appointed and qualify. The members of the State~~
42 ~~Ethics Commission serving on this chapter’s effective date may~~

1 continue to serve until the expiration of their terms. These members
2 may then be appointed to serve one full five year term under the
3 provisions of this chapter.

4 Members representing the first, third, and sixth congressional
5 districts on this chapter's effective date are eligible to be appointed
6 for a full five year term in or after 1991. Members currently
7 representing the second, fourth, and fifth congressional districts on
8 this chapter's effective date are eligible to be appointed for a full
9 five year term in or after 1993. The initial appointments for the
10 at large members of the commission created by this chapter must be
11 for a one , two , or three year term, but these at large members are
12 eligible subsequently for a full five year term. Under this section,
13 the at large members of the commission are to be appointed to begin
14 service on or after July 1, 1992. Vacancies must be filled in the
15 manner of the original appointment for the unexpired portion of the
16 term only. Members of the commission who have completed a full
17 five year term are not eligible for reappointment.

18 (D) The commission shall elect a chairman, a vice chairman, and
19 such other officers as it considers necessary. Five members of the
20 commission shall constitute a quorum. The commission must adopt
21 a policy concerning the attendance of its members at commission
22 meetings. The commission meets at the call of the chairman or a
23 majority of its members. Members of the commission, while serving
24 on business of the commission, receive per diem, mileage, and
25 subsistence as is provided by law for members of state boards,
26 committees, and commissions.

27 (A) There is created the State Ethics Commission composed of
28 the members provided for in this subsection:

29 (1) four members must be appointed by the Governor, no
30 more than two of whom are members of the appointing Governor's
31 political party. Prior to serving on the commission, each appointee
32 shall sign an affidavit stating the length of time he has been a
33 registered voter in this State, with which political party he is
34 associated if any, that he is not nor has been an officer or member
35 of the state or county executive committee of the party of the
36 Governor, that he is not nor has ever served as a poll watcher or
37 precinct officer of the Governor's party, and identify which primary
38 elections he cast a ballot within ten years immediately preceding the
39 appointment;

40 (2) four members must be elected by the Supreme Court, each
41 of whom must not be actively serving judges of any court of this
42 State, including summary court judges or retired judges sitting or
43 permitted to sit as judges in the courts of this State.

1 (3) two members must be elected by the Senate with one
2 member being a member of the majority political party in the
3 General assembly and the other being a member of the largest
4 minority party in the General Assembly ; and

5 (4) two members must be elected by the House of
6 Representatives with one member being a member of the majority
7 political party in the General assembly and the other being a member
8 of the largest minority party in the General Assembly.

9 (B)(1) The qualifications the appointing or electing authorities
10 shall consider for the appointees include, but are not limited to:

- 11 (a) ethical fitness;
- 12 (b) character;
- 13 (c) mental stability;
- 14 (d) experience;
- 15 (e) temperament; and
- 16 (f) if the appointee has contributed to the election
17 campaign of the individual appointing him to the State Ethics
18 Commission within the previous four years.

19 (2) Members shall be chosen based on merit. However, in
20 making appointments to the commission, the appointing authorities
21 shall ensure that race, color, gender, national origin, and other
22 demographic factors are considered to ensure the geographic and
23 political balance of the appointments, and shall strive to assure that
24 the membership of the commission represents, to the greatest extent
25 possible, all segments of the population of this State.

26 (3) The following are not eligible to serve on the State Ethics
27 Commission:

- 28 (a) a member of the General Assembly;
- 29 (b) a family member, as defined by Section 8-13-100(15),
30 of a member of the General Assembly, the Governor, or any member
31 of the Supreme Court;
- 32 (c) a person who made a campaign contribution, as defined
33 by Section 8-13-1300(7), within the previous four years to the
34 individual who appointed the person to serve on the State Ethics
35 Commission;
- 36 (d) a person who registered as a lobbyist within four years
37 of being appointed to serve on the State Ethics Commission;
- 38 (e) a person who is under the jurisdiction of the State Ethics
39 Commission, House of Representatives Ethics Committee or Senate
40 Ethics Committee; and
- 41 (f) an actively serving judge of any court of this State,
42 including summary court judges, and any retired judge sitting or
43 permitted to sit in any court of this State.

1 (C) The terms of the members are for five years. The terms of
2 the members currently serving expire on June 30, 2015; however, a
3 member who is serving at that time may be appointed for a new
4 five-year term. For the initial appointments made by the Governor,
5 two must be for a term of two years, the third must be for a term of
6 four years, and the fourth must be for a full five-year term. For the
7 initial appointments made by the House of Representatives and the
8 Senate, one must be for a three-year term and the other must be for
9 a full five-year term. The initial members who have served terms
10 that are less than five years are eligible to be reappointed for one full
11 five-year term. Vacancies must be filled in the manner of the
12 original appointment for the unexpired portion of the term only.
13 Members of the commission who have completed a full five-year
14 term are not eligible for reappointment and shall not serve on the
15 commission after their term expires.

16 (D) The commission shall elect a chairman, a vice chairman, and
17 such other officers as it considers necessary. Five members of the
18 commission constitutes a quorum. The commission shall adopt a
19 policy concerning the attendance of its members at commission
20 meetings. The commission meets at the call of the chairman or a
21 majority of its members. Members of the commission, while serving
22 on business of the commission, receive per diem, mileage, and
23 subsistence as is provided by law for members of state boards,
24 committees, and commissions.

25 (E)(1) A commission member appointed by the Governor may
26 be removed from office by the Governor for malfeasance,
27 misfeasance, incompetency, absenteeism, conflicts of interest,
28 misconduct, persistent neglect of duty in office, or incapacity,
29 pursuant to Section 1-3-240.

30 (2) A commission member elected by the Senate or the House
31 of Representatives may be removed for malfeasance, misfeasance,
32 incompetency, absenteeism, conflicts of interest, misconduct,
33 persistent neglect of duty in office, or incapacity upon a finding by
34 two-thirds of the membership of the appropriate body.”
35

36 SECTION 2. A. The first paragraph of Section 8-13-320(9) of the
37 1976 Code of Laws, as last amended by Act 245 of 2008, is further
38 amended to read:
39

40 “(9) to initiate or receive complaints and make investigations, as
41 provided in item (10), of statements filed or allegedly failed to be
42 filed under the provisions of this chapter and Chapter 17, ~~of~~ Title 2
43 and, upon complaint by an individual, of an alleged violation of this

1 chapter or Chapter 17, ~~of~~ Title 2 by a public official, public member,
2 or public employee ~~except members or staff, including staff elected~~
3 ~~to serve as officers of or candidates for the General Assembly unless~~
4 ~~otherwise provided for under House or Senate rules.~~ Any person
5 charged with a violation of this chapter or Chapter 17, ~~of~~ Title 2 is
6 entitled to the administrative hearing process contained in this
7 section.”

8
9 B. Section 8-13-320(10)(g) of the 1976 Code, as last amended by
10 Act 1 of 2011, is further amended to read:

11
12 “(g) All investigations, inquiries, hearings, and accompanying
13 documents ~~must remain~~ are confidential ~~until a finding of probable~~
14 ~~cause or dismissal unless the respondent waives the right to~~
15 ~~confidentiality and only may be released pursuant to this subsection.~~
16 After a finding of probable cause by a majority of the commission,
17 the following documents become public record: the complaint, the
18 response by the respondent, the notice of hearing, exhibits
19 introduced at a hearing, the commission’s findings, and the final
20 order. Exhibits introduced must be redacted prior to release to
21 exclude personal information where the public disclosure would
22 constitute an unreasonable invasion of personal privacy. The
23 respondent may waive the right to confidentiality. The ~~willful~~ ~~willful~~
24 release of confidential information is a misdemeanor, and any
25 person releasing confidential information, upon conviction, must be
26 fined not more than one thousand dollars or imprisoned not more
27 than one year.”

28
29 C. Section 8-13-320(10)(j) of the 1976 Code is amended to read:

30
31 “(j) If a hearing is to be held, the respondent must be allowed to
32 examine and make copies of all evidence in the commission’s
33 possession relating to the charges. The same discovery techniques
34 which are available to the commission must be equally available to
35 the respondent, including the right to request the commission to
36 subpoena witnesses or materials and the right to conduct depositions
37 as prescribed by subitem (f). A panel of three commissioners must
38 conduct a hearing in accordance with Chapter 23, ~~of~~ Title 1
39 (Administrative Procedures Act), except as otherwise expressly
40 provided. Panel action requires the participation of the three panel
41 members. During a commission panel hearing conducted to
42 determine whether a violation of the chapter has occurred, the
43 respondent must be afforded appropriate due process protections,

1 including the right to be represented by counsel, the right to call and
2 examine witnesses, the right to introduce exhibits, and the right to
3 cross-examine opposing witnesses. All evidence, including records
4 the commission considers, must be offered fully and made a part of
5 the record in the proceedings. The hearings must be ~~held in~~
6 ~~executive session unless the respondent requests an open hearing~~
7 open to the public.”
8

9 D. Section 8-13-320(11) of the 1976 Code amended to read:

10
11 “(11)(a) to issue, upon request from persons covered by this
12 chapter, and publish formal advisory opinions on the requirements
13 of this chapter, based on real or hypothetical sets of circumstances;
14 provided, that an opinion rendered by the commission or an opinion
15 issued by the commission prior to the effective date of this act, until
16 amended or revoked, is binding on the commission in any
17 subsequent charges concerning the person who requested the
18 opinion and who acted in reliance on it in good faith unless material
19 facts were omitted or misstated by the person in the request for the
20 opinion. Formal advisory opinions must be in writing and are
21 considered rendered when approved by ~~five or more~~ a majority of
22 the commission members subscribing to the advisory opinion.
23 Advisory opinions must be made available to the public unless the
24 commission, by majority vote of the total membership of the
25 commission, requires an opinion to remain confidential. However,
26 the identities of the parties involved must be withheld upon request;

27 (b) The State Ethics Commission may issue through its staff a
28 written informal advisory opinion, based on real or hypothetical sets
29 of circumstances, to a person or governmental entity within the
30 commission’s jurisdiction upon that person’s or governmental
31 entity’s request. If raised in response to a complaint, the commission
32 shall consider whether the person who requested the opinion or who
33 is a member of the governmental entity who requested the informal
34 opinion and who is affected by the circumstances described within
35 the request for the informal opinion, relied in good faith upon on a
36 written informal advisory opinion prior to making a probable cause
37 determination.”
38

39 E. Section 8-13-320 of the 1976 Code, as last amended by Act 1
40 of 2011, is further amended by adding appropriately numbered
41 items to read:
42

1 “() to initiate upon the vote of a majority of the membership, and
2 to receive complaints against a member or staff of the appropriate
3 house or legislative caucus committee, or a candidate for the
4 appropriate house, alleging a violation of this chapter or Chapter 17,
5 Title 2 and to conduct an investigation into the complaint pursuant
6 to Section 8-13-540;

7 ()to initiate upon the vote of a majority of the membership, and
8 to receive complaints against judges and other judicial officials of
9 the unified judicial system and their staffs whose conduct is now
10 regulated and supervised by the Commission on Judicial Conduct as
11 governed by the Supreme Court and to conduct an investigation into
12 the complaint pursuant to Article 6, Chapter 13 of this title;

13 () to provide a copy of the complaint and accompanying materials
14 to the Attorney General if the commission finds that there is
15 probable cause to support the existence of criminal intent on the part
16 of the respondent when the violation occurred.”

17

18 SECTION 3. Section 8-13-530 of the 1976 Code, as last amended
19 by Act 245 of 2008, is further amended to read

20

21 “Section 8-13-530. Each ethics committee shall:

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

26 (2) receive complaints filed by individuals and, upon a
27 majority vote of the total membership of the committee, file
28 complaints when alleged violations are identified;

29 (3) upon the filing of a complaint, investigate possible
30 violations of a rule or breach of a privilege governing a member or
31 staff of the appropriate house, the alleged breach of a rule governing
32 a member of, legislative caucus committees for, or a candidate, or
33 staff for the appropriate house, ~~misconduct of a member or staff of,~~
34 ~~legislative caucus committees for, or a candidate for the appropriate~~
35 ~~house, or a violation of this chapter or Chapter 17 of Title 2. Upon~~
36 the filing of a complaint alleging a violation by a member or staff of
37 the appropriate house or legislative caucus committee, or a
38 candidate for the appropriate house, for a violation of this chapter or
39 Chapter 17, Title 2, except a technical violation pursuant to Section
40 8-13-1170 or 8-13-1372, the ethics committee shall refer the
41 complaint to the State Ethics Commission for an investigation
42 pursuant to Section 8-13-540. The appropriate ethics committee

1 shall investigate and make determinations for technical violations of
2 Section 8-13-1170 or 8-13-1372;

3 (4) receive and hear a complaint which alleges a breach of a
4 privilege governing a member or staff of the appropriate house, the
5 alleged breach of a rule governing a member or staff of or candidate
6 for the appropriate house, ~~misconduct of a member or staff of or~~
7 ~~candidate for the appropriate house, or a violation of this chapter or~~
8 ~~Chapter 17 of Title 2;~~

9 (5) no complaint may be accepted by the ethics committee or the
10 State Ethics Commission concerning a member of or candidate for
11 the appropriate house during the fifty-day period before an election
12 in which the member or candidate is a candidate. ~~During this~~
13 ~~fifty day period, any person may petition the court of common pleas~~
14 ~~alleging the violations complained of and praying for appropriate~~
15 ~~relief by way of mandamus or injunction, or both. Within ten days,~~
16 ~~a rule to show cause hearing must be held, and the court must either~~
17 ~~dismiss the petition or direct that a mandamus order or an injunction,~~
18 ~~or both, be issued. A violation of this chapter by a candidate during~~
19 ~~this fifty day period must be considered to be an irreparable injury~~
20 ~~for which no adequate remedy at law exists. The institution of an~~
21 ~~action for injunctive relief does not relieve any party to the~~
22 ~~proceeding from any penalty prescribed for violations of this~~
23 ~~chapter. The court must award reasonable attorney's fees and costs~~
24 ~~to the nonpetitioning party if a petition for mandamus or injunctive~~
25 ~~relief is dismissed based upon a finding that the:~~

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

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

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

36 Action on a complaint filed against a member or candidate which
37 was received more than fifty days before the election but which
38 cannot be disposed of or dismissed by the ethics committee at least
39 thirty days before the election must be postponed until after the
40 election;

41 ~~(5)(6)~~ obtain information and investigate hear complaints as
42 provided in Section 8-13-540 with respect to any complaint filed
43 pursuant to this chapter or Chapter 17, of Title 2 and to that end may

1 compel by subpoena issued by a majority vote of the committee the
2 attendance and testimony of witnesses and the production of
3 pertinent books and papers;

4 ~~(6)~~(7) administer or recommend sanctions appropriate to a
5 particular member, or staff of, or candidate for, the appropriate
6 house pursuant to Section 8-13-540, including the recovery of the
7 value of anything transferred or received in breach of the ethical
8 standards, or dismiss the charges; and

9 ~~(7)~~(8) act as an advisory body to the General Assembly and to
10 individual members of or candidates for the appropriate house on
11 questions pertaining to the disclosure and filing requirements of
12 members of or candidates for the appropriate house and to issue,
13 upon request from persons covered by this chapter and Chapter 17,
14 Title 2, and publish advisory opinions on the requirements of these
15 chapters.”

16
17 SECTION 4. A. Section 8-13-540 of the 1976 Code, as last amended
18 by Act 184 of 1993, is further amended to read:

19
20 ~~“Section 8-13-540. Unless otherwise provided for by House or~~
21 ~~Senate rule, as appropriate, each ethics committee must conduct its~~
22 ~~investigation of a complaint filed pursuant to this chapter or Chapter~~
23 ~~17 of Title 2 in accordance with this section.~~

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

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

4 (a) render an advisory opinion to the respondent and require
5 the respondent's compliance within a reasonable time; or

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

12 (2) If a hearing is to be held, the respondent must be allowed to
13 examine and make copies of all evidence in the ethics committee's
14 possession relating to the charges. At the hearing the charged party
15 must be afforded appropriate due process protections, including the
16 right to be represented by counsel, the right to call and examine
17 witnesses, the right to introduce exhibits, and the right to
18 cross-examine opposing witnesses. All hearings must be conducted
19 in executive session.

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

24 (a) administer a public or private reprimand;

25 (b) determine that a technical violation as provided for in
26 Section 8-13-1170 has occurred;

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

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

36 (4) An individual has ten days from the date of the notification of
37 the ethics committee's action to appeal the action to the full
38 legislative body.

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

41 (6) The ethics committee shall establish procedures which afford
42 respondents appropriate due process protections, including the right
43 to be represented by counsel, the right to call and examine witnesses,

1 ~~the right to introduce exhibits, and the right to cross examine~~
2 ~~opposing witnesses.~~

3 (A)(1) When a complaint is filed with or by the ethics committee,
4 a copy must be sent to the person alleged to have committed the
5 violation and to the State Ethics Commission, within thirty days
6 from the date the complaint was filed, for an investigation as
7 provided in this subsection. The State Ethics Commission may
8 commence an investigation of an alleged violation of this chapter or
9 Chapter 17, Title 2 of a member of the General Assembly, its staff,
10 or candidates for the General Assembly upon the filing of a
11 complaint by the commission or an individual, or by the referral of
12 a complaint by the appropriate ethics committee. A copy of the
13 complaint must be sent to the appropriate ethics committee.
14 However, the appropriate ethics committee shall investigate and
15 make a determination for a complaint that alleges only a technical
16 violation of Section 8-13-1170 or 8-13-1372.

17 (2) If an alleged violation is found to be groundless by the
18 State Ethics Commission, a report must be provided to the
19 appropriate ethics committee. The appropriate ethics committee
20 may concur or nonconcur with the commission's report or, within
21 fifteen days from the receipt of the State Ethics Commission's
22 report, request the commission to continue the investigation and
23 consider additional matters not considered by the commission. If the
24 commission finds that the complaining party wilfully filed a
25 groundless complaint, the finding must be reported to the Attorney
26 General. The wilful filing of a groundless complaint is a
27 misdemeanor and, upon conviction, the person must be fined not
28 more than one thousand dollars or imprisoned not more than one
29 year. In lieu of the criminal penalty provided by this item, a civil
30 penalty of not more than one thousand dollars may be assessed
31 against the complainant upon proof by a preponderance of the
32 evidence that the filing of the complaint was wilful and without just
33 cause or with malice.

34 (3) Action may not be taken on a complaint filed more than
35 four years after the violation is alleged to have occurred unless a
36 person, by fraud or other device, prevents discovery of the violation.

37 (4)(a) To conduct its investigation:

38 (i) the State Ethics commission, upon receipt of
39 information, may initiate a complaint upon an affirmative vote of
40 the commission or shall accept notarized complaints referred from
41 the ethics committees or from an individual, whether personally or
42 on behalf of an organization or governmental body, that states the
43 name of a person alleged to have committed a violation of this

1 chapter or Chapter 17, Title 2 and the particulars of the violation.
2 The commission shall forward a copy of the complaint, a general
3 statement of the applicable law with respect to the complaint, and a
4 statement explaining the due process rights of the respondent
5 including, but not limited to, the right to counsel to the respondent
6 within ten days of the filing of the complaint;

7 (ii) if the commission or its executive director
8 determines that the complaint does not allege facts sufficient to
9 constitute a violation, a report must be provided to the appropriate
10 ethics committee. The appropriate ethics committee may concur or
11 nonconcur with the commission's report, or within fifteen days from
12 the committee's receipt of the finding, the committee may request
13 the commission to continue the investigation and consider
14 additional matters not considered by the commission. If the
15 appropriate ethics committee concurs with the recommendation to
16 dismiss the complaint, the committee must notify the complainant
17 and respondent. All documents related to a complaint that result in
18 a dismissal or a finding of no probable cause remains confidential,
19 unless the respondent waives the right to confidentiality;

20 (iii) if the commission or its executive director determines that the
21 complaint alleges facts sufficient to constitute a violation, an
22 investigation may be conducted into the alleged violation. However,
23 if the commission receives or initiates a complaint regarding a
24 member of the General Assembly, legislative staff, or a candidate
25 for the General Assembly, that only alleges a technical violation
26 pursuant to Section 8-13-1170 or 8-13-1372, the complaint must be
27 forwarded to the appropriate ethics committee for an investigation
28 and disposition of the matter;

29 (iv) if the commission finds that there is probable cause
30 to support the existence of criminal intent on the part of the
31 respondent when the violation occurred, then the complaint and
32 accompanying materials must also be provided to the Attorney
33 General;

34 (v) if the commission determines that assistance is
35 needed in conducting an investigation, the commission shall request
36 the assistance of appropriate agencies;

37 (vi) the commission may order testimony to be taken in
38 any investigation or hearing by deposition before a person who is
39 designated by the commission and has the power to administer oaths
40 and, in these instances, to compel testimony. The commission may
41 administer oaths and affirmation for the testimony of witnesses and
42 issue subpoenas by approval of the chairman, subject to judicial
43 enforcement, and issue subpoenas for the procurement of witnesses

1 and materials including books, papers, records, documents, or other
2 tangible objects relevant to the agency's investigation by approval
3 of the chairman, subject to judicial enforcement. A person to whom
4 a subpoena has been issued may move before a commission panel
5 or the commission for an order quashing a subpoena issued pursuant
6 to this section.

7 (b) All investigations and accompanying documents are
8 confidential and only may be released pursuant to this item. Thirty
9 days after a recommendation of probable cause by the commission
10 after it completes its investigation, the following documents become
11 public record: the complaint, the response by the respondent, the
12 notice of hearing before the appropriate ethics committee, the
13 investigative findings, exhibits introduced at any hearing, and the
14 final order. However, if the appropriate committee requests a further
15 investigation, the documents must not be released until thirty days
16 after the conclusion of the investigation or upon a finding of
17 probable cause by the committee, whichever occurs earlier.

18 (c) Exhibits introduced must be redacted prior to release to
19 exclude personal information where the public disclosure would
20 constitute an unreasonable invasion of personal privacy. The
21 respondent may waive the right to confidentiality. The wilful release
22 of confidential information is a misdemeanor, and a person releasing
23 confidential information, upon conviction, must be fined not more
24 than one thousand dollars or imprisoned for not more than one year.

25 (5) Upon completion of the commission's investigation, the
26 commission shall make a recommendation as to whether there is
27 probable cause to believe a violation of this chapter or of Chapter
28 17, Title 2 has occurred. The commission shall forward a copy of its
29 recommendation, along with a copy of all relevant reports, evidence,
30 and testimony, to the appropriate ethics committee.

31 (6) If after reviewing the commission's recommendation and
32 relevant evidence, the ethics committee determines that probable
33 cause does not exist, it shall send a written decision to the
34 respondent and the complainant. If the ethics committee determines
35 that probable cause exists to support an alleged violation, it shall, as
36 appropriate:

37 (a) render an advisory opinion to the respondent and
38 require the respondent's compliance within a reasonable time; or

39 (b) convene a formal public hearing on the matter within
40 thirty days of the respondent's failure to comply with the advisory
41 opinion. A complaint must not be accepted which is filed later than
42 four years after the alleged violation occurred.

43 (B) If a formal public hearing is to be held,;

1 (1) the investigator or attorney handling the investigation
2 from the ethics commission shall present the evidence related to the
3 complaint to the appropriate ethics committee;

4 (2) it is the duty of the investigator or attorney to further
5 investigate the subject of the complaint and any related matters
6 under the jurisdiction and at the direction of the ethics committee,
7 to request assistance from appropriate state agencies as needed, to
8 request authorization from the committee for funds for the hiring of
9 auditors, investigators, or other assistance as necessary, to prepare
10 subpoenas, and to present evidence to the committee at any public
11 hearing. The appropriate committee shall maintain the authority to
12 approve subpoenas, authorize expenditures, dismiss complaints,
13 schedule hearings, grant continuances, and any other authority as
14 provided for by their rules;

15 (3) the respondent must be allowed to examine and make
16 copies of all evidence in the ethics committee's possession relating
17 to the charges. At the hearing the charged party must be afforded
18 appropriate due process protections, including the right to be
19 represented by counsel, the right to call and examine witnesses, the
20 right to introduce exhibits, and the right to cross-examine opposing
21 witnesses. All hearings must be open to the public.

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

26 (1) administer a public reprimand;

27 (2) determine that a technical violation as provided for in
28 Section 8-13-1170 or 8-13-1372 has occurred;

29 (3) require the respondent to pay a civil penalty not to
30 exceed two thousand dollars for each nontechnical violation that is
31 unrelated to the late filing of a required statement or report or failure
32 to file a required statement or report;

33 (4) require the forfeiture of gifts, receipts, or profits, or the
34 value of each, obtained in violation of Chapter 13, Title 8 or Chapter
35 17, Title 2;

36 (5) recommend expulsion of the member;

37 (6) provide a copy of the complaint and accompanying
38 materials to the Attorney General if the committee finds that there
39 is probable cause to support the existence of criminal intent on the
40 part of the respondent when the violation occurred;

41 (7) require a combination of items (1) through (6) as
42 necessary and appropriate.

1 **(b) The ethics committee shall report its findings in writing to**
2 **the Speaker of the House of Representatives or President Pro**
3 **Tempore of the Senate, as appropriate. The report must be**
4 **accompanied by an order of punishment and supported and signed**
5 **by a majority of the ethics committee members. If the ethics**
6 **committee finds the respondent has not violated a code or statutory**
7 **provision, it shall dismiss the charges.**

8 **(D) An individual has ten days from the date of the notification**
9 **of the ethics committee's action to appeal the action to the full**
10 **legislative body.**

11 **(E) No ethics committee member may participate in any matter**
12 **in which he is involved.**

13 **(F) The ethics committee shall establish procedures which**
14 **afford respondents appropriate due process protections, including**
15 **the right to be represented by counsel, the right to call and examine**
16 **witnesses, the right to introduce exhibits, and the right to**
17 **cross-examine opposing witnesses.**

18
19 B. Article 5, Chapter 13, Title 8 of the 1976 Code is amended by
20 adding:

21
22 “Section 8-13-545. (A) The ethics committee may issue a formal
23 advisory opinion, based on real or hypothetical sets of
24 circumstances. A formal advisory opinion issued by the committee
25 is binding on the State Ethics Commission and the committee, until
26 amended or revoked, in any subsequent charges concerning the
27 person who requested the formal opinion and any other person who
28 acted in reliance upon it in good faith unless material facts were
29 omitted or misstated by the person in the request for the opinion. A
30 formal advisory opinion must be in writing and is considered
31 rendered when approved by a majority of the committee members
32 subscribing to the advisory opinion. Advisory opinions must be
33 made available to the public unless the committee, by majority vote
34 of the total membership of the committee, requires an opinion to
35 remain confidential. However, the identities of the parties involved
36 must be withheld upon request.

37 (B) The State Ethics Commission and the appropriate ethics
38 committee shall consider whether a person relied in good faith upon
39 a formal advisory opinion or written informal opinion issued by the
40 committee prior to the effective date of this act, unless amended or
41 revoked prior to the action considered as a possible violation, prior
42 to making a probable cause decision.”

43

1 SECTION 5. Chapter 13, Title 8 of the 1976 Code is amended by
2 adding:

3
4 “Article 6

5
6 Judicial Complaints and Procedures

7
8 Section 8-13-610. When a complaint is filed with or by the
9 Commission on Judicial Conduct, a copy must be sent to the person
10 alleged to have committed the violation and to the State Ethics
11 Commission, within thirty days from the date the complaint was
12 filed, for an investigation as provided in this subsection. The State
13 Ethics Commission may commence an investigation of an alleged
14 violation of the Canons of Judicial Conduct, Chapter 17, Title 2 and
15 Chapter 13, Title 8, as applicable, of a judge and other judicial
16 officials of the unified judicial system upon the filing of a complaint
17 by the commission or an individual, or by the referral of a complaint
18 by the Commission on Judicial Conduct. A copy of the complaint
19 must be sent to the Commission on Judicial Conduct.

20
21 Section 8-13-620. If an alleged violation is found to be
22 groundless by the State Ethics Commission, a report must be
23 provided to the Commission on Judicial Conduct. The Commission
24 on Judicial Conduct may concur or nonconcur with the
25 commission’s report or, within fifteen days from the receipt of the
26 State Ethics Commission’s report, request the commission to
27 continue the investigation and consider additional matters not
28 considered by the commission. If the commission finds that the
29 complaining party wilfully filed a groundless complaint, the finding
30 must be reported to the Attorney General. The wilful filing of a
31 groundless complaint is a misdemeanor and, upon conviction, the
32 person must be fined not more than one thousand dollars or
33 imprisoned not more than one year. In lieu of the criminal penalty
34 provided by this section, a civil penalty of not more than one
35 thousand dollars may be assessed against the complainant upon
36 proof by a preponderance of the evidence that the filing of the
37 complaint was wilful and without just cause or with malice.

38
39 Section 8-13-630. Action may not be taken on a complaint filed
40 more than four years after the violation is alleged to have occurred
41 unless a person, by fraud or other device, prevents discovery of the
42 violation.

43

1 Section 8-13-640. (A) To conduct its investigation:

2 (1) The State Ethics Commission, upon receipt of
3 information, may initiate a complaint upon an affirmative vote of
4 the commission or shall accept notarized complaints referred from
5 the Commission on Judicial Conduct or from an individual, whether
6 personally or on behalf of an organization or governmental body,
7 that states the name of a person alleged to have committed a
8 violation of the Canons of Judicial Conduct, Chapter 17, Title 2 and
9 Chapter 13, Title 8, as applicable, and the particulars of the
10 violation. The commission shall forward a copy of the complaint, a
11 general statement of the applicable law with respect to the
12 complaint, and a statement explaining the due process rights of the
13 respondent including, but not limited to, the right to counsel the
14 respondent within ten days of the filing of the complaint.

15 (2) If the commission or its executive director determines that
16 the complaint does not allege facts sufficient to constitute a
17 violation, a report must be provided to the Commission on Judicial
18 Conduct. The Commission on Judicial Conduct may concur or
19 nonconcur with the commission's report, or within fifteen days from
20 the Commission on Judicial Conduct's receipt of the finding, it may
21 request the State Ethics Commission to continue the investigation
22 and consider additional matters not considered by the commission.
23 If the Commission on Judicial Conduct concurs with the
24 recommendation to dismiss the complaint, it must notify the
25 complainant and respondent. All documents related to a complaint
26 that result in a dismissal or a finding of no probable cause must
27 remain confidential, unless the respondent waives the right to
28 confidentiality.

29 (3) If the commission or its executive director determines that
30 the complaint alleges facts sufficient to constitute a violation, an
31 investigation may be conducted into the alleged violation.

32 (4) If the commission finds that there is probable cause to
33 support the existence of criminal intent on the part of the respondent
34 when the violation occurred, then the complaint and accompanying
35 materials also must be provided to the Attorney General.

36 (5) If the commission determines that assistance is needed in
37 conducting an investigation, the commission shall request the
38 assistance of appropriate agencies.

39 (6) The commission may order testimony to be taken in any
40 investigation or hearing by deposition before a person who is
41 designated by the commission and has the power to administer oaths
42 and, in these instances, to compel testimony. The commission may
43 administer oaths and affirmation for the testimony of witnesses and

1 issue subpoenas by approval of the chairman, subject to judicial
2 enforcement, and issue subpoenas for the procurement of witnesses
3 and materials including books, papers, records, documents, or other
4 tangible objects relevant to the agency's investigation by approval
5 of the chairman, subject to judicial enforcement. A person to whom
6 a subpoena has been issued may move before a commission panel
7 or the commission for an order quashing a subpoena issued under
8 this section.

9 (7) All investigations and accompanying documents are
10 confidential and only may be released pursuant to this item. Thirty
11 days after a recommendation of probable cause by the commission
12 after it completes its investigation, the following documents become
13 public record: the complaint, the response by the respondent, the
14 notice of hearing before the Commission on Judicial Conduct, the
15 investigative findings, exhibits introduced at any hearing, and the
16 final order. However, if the Commission on Judicial Conduct
17 requests a further investigation, the documents must not be released
18 until thirty days after the conclusion of the investigation or upon a
19 finding of probable cause by the committee, whichever occurs
20 earlier.

21 (B) Exhibits introduced must be redacted prior to release to
22 exclude personal information where the public disclosure would
23 constitute an unreasonable invasion of personal privacy. The
24 respondent may waive the right to confidentiality. The wilful release
25 of confidential information is a misdemeanor, and a person releasing
26 confidential information, upon conviction, must be fined not more
27 than one thousand dollars or imprisoned for not more than one year.
28

29 Section 8-13-650. Upon completion of the commission's
30 investigation, the commission shall make a recommendation as to
31 whether there is probable cause to believe a violation of the Canons
32 of Judicial Conduct, Chapter 17, Title 2 and Chapter 13, Title 8, as
33 applicable, has occurred. The commission shall forward a copy of
34 its recommendation, along with a copy of all relevant reports,
35 evidence, and testimony, to the Commission on Judicial Conduct
36 and the Supreme Court for disposition pursuant to its rules."'
37

38 SECTION 6. This act takes effect upon approval by the Governor.
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