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Indicates New Matter

COMMITTEE REPORT

January 21, 2015

**H. 3184**

Introduced by Reps. Pope, Cole, Anderson, Bales, G.A. Brown, R.L. Brown, Finlay, Felder, Funderburk, Hart, Knight, Lucas, Murphy, Newton, Norman, Norrell, Putnam, Rivers, Southard, Spires, Tallon, Taylor, Wells, Williams, Willis, Bernstein, Long, Douglas, Henderson, G.M. Smith, G.R. Smith, McCoy, McKnight, Clary, M.S. McLeod, Thayer and W.J. McLeod

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Read the first time January 13, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3184) to amend Section 8‑13‑310, as amended, Code of Laws of South Carolina, 1976, relating to the State Ethics Commission and its membership, so as to reconstitute, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

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

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

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

~~(C)~~ ~~The terms of the members are for five years and until their successors are appointed and qualify. The members of the State Ethics Commission serving on this chapter’s effective date may continue to serve until the expiration of their terms. These members may then be appointed to serve one full five‑year term under the provisions of this chapter.~~

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

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

(A) There is created the State Ethics Commission which beginning July 1, 2015, shall be composed of the members provided for in this subsection:

(1) four members must be appointed by the Governor, no more than two of whom are associated with the appointing Governor’s political party;

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

(3) two members must be elected by the Senate with one member being nominated by the majority political party in the General Assembly and the other being nominated by the largest minority party in the General Assembly; and

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

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

(a) ethical fitness;

(b) character;

(c) mental stability;

(d) experience;

(e) temperament; and

(f) if the appointee has contributed to the election campaign of the individual appointing him to the State Ethics Commission within the previous four years.

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

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

(a) a member of the General Assembly;

(b) a family member, as defined by Section 8‑13‑100(15), of a member of the General Assembly, the Governor, or any member of the Supreme Court;

(c) a person who registered as a lobbyist within four years of being appointed to serve on the State Ethics Commission;

(d) a person who is under the jurisdiction of the State Ethics Commission, the House of Representatives Ethics Committee, or the Senate Ethics Committee; and

(e) an actively serving judge of any court of this State, including summary court judges, and any retired judge sitting or permitted to sit in any court of this State.

(C) Any member of the commission who has made a campaign contribution as defined in Section 8‑13‑1300(7) or has any direct financial relationship, including interest in a business, partnership or LLC, with the respondent before the commission must recuse themselves from all proceedings concerning that respondent.

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

(E) The commission shall elect a chairman, a vice chairman, and such other officers as it considers necessary. Seven members of the commission constitute a quorum. The commission shall adopt a policy concerning the attendance of its members at commission meetings. The commission meets at the call of the chairman or a majority of its members. Members of the commission, while serving on business of the commission, receive per diem, mileage, and subsistence as is provided by law for members of state boards, committees, and commissions.

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

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

SECTION 2. A. The first paragraph of Section 8‑13‑320(9) of the 1976 Code, as last amended by Act 245 of 2008, is further 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 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)(g) of the 1976 Code, as last amended by Act 1 of 2011, is further amended to read:

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

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

“(j) If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the commission’s possession relating to the charges. The same discovery techniques which are available to the commission must be equally available to the respondent, including the right to request the commission to subpoena witnesses or materials and the right to conduct depositions as prescribed by subitem (f). A panel of three commissioners must conduct a hearing in accordance with Chapter 23, ~~of~~ Title 1 (Administrative Procedures Act), except as otherwise expressly provided. Panel action requires the participation of the three panel members. During a commission panel hearing conducted to determine whether a violation of the chapter has occurred, the respondent 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 evidence, including records the commission considers, must be offered fully and made a part of the record in the proceedings. The hearings must be ~~held in executive session unless the respondent requests an open hearing~~ open to the public.”

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

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

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

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

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

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

SECTION 3. Section 8‑13‑350 of the 1976 Code, as added by Act 248 of 1991, is amended to read:

“Section 8‑13‑350. When hired, filing for office, or appointed and upon assuming the duties of employment, office, or position in state government, a public official, public member, and public employee shall receive a brochure prepared by the State Ethics Commission describing the general application of this chapter. The brochure must be created and updated by the State Ethics Commission and the brochure must provide an outline of the enforcement structure in the Ethics Act, the filing deadlines provided in the Ethics Act, and a general overview of the duties and responsibilities of individuals under the Ethics Act. Upon receipt of the brochure, the receiving individual should sign a document memorializing his receipt of the brochure. This signed document should be transmitted to the appropriate supervisory agency for its retention.”

SECTION 4. Section 8‑13‑530 of the 1976 Code, as last amended by Act 245 of 2008, is further amended to read:

“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;

(3) upon the filing of a complaint, investigate possible violations of a rule or 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~~. Upon the filing of a complaint alleging a violation by a member or staff of the appropriate house or legislative caucus committee, or a candidate for the appropriate house, for a violation of this chapter or Chapter 17, Title 2, except a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the ethics committee shall refer the complaint to the State Ethics Commission for an investigation pursuant to Section 8‑13‑540. The appropriate ethics committee shall investigate and make determinations for technical violations of Section 8‑13‑1170 or 8‑13‑1372;

(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.~~;

(5) no complaint may be accepted by the ethics committee or the State Ethics Commission 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;

~~(5)~~(6) obtain information and ~~investigate~~ hear 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 issued by a majority vote of the committee the attendance and testimony of witnesses and the production of pertinent books and papers;

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

~~(7)~~(8) 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 to issue, upon request from persons covered by this chapter and Chapter 17, Title 2, and publish advisory opinions on the requirements of these chapters.”

SECTION 5. A. Section 8‑13‑540 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

“Section 8‑13‑540. ~~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.~~

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

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

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

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

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

~~(6)~~ ~~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.~~

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

(2) If an alleged violation is found to be groundless by the State Ethics Commission, a report must be provided to the appropriate ethics committee. The appropriate ethics committee may concur or nonconcur with the commission’s report or, within fifteen days from the receipt of the State Ethics Commission’s report, request the commission to continue the investigation and consider additional matters not considered by the commission. If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, the 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 item, 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.

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

(4)(a) To conduct its investigation:

(i) the State Ethics Commission, upon receipt of information, may initiate a complaint upon an affirmative vote of the commission or shall accept notarized complaints referred from the ethics committees or from an individual, whether personally or on behalf of an organization or governmental body, that states the name of a person alleged to have committed a violation of this chapter or Chapter 17, Title 2 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;

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

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

(iv) if the commission finds that there is evidence of wilful conduct that would constitute a criminal violation of Chapter 28 of Title 16, Chapter 13 of Title 8, or Chapter 17 of Title 2, on the part of the respondent when the violation occurred, then the complaint and accompanying materials also must be provided to the Attorney General. This provision does not limit any authority of the Attorney General or circuit solicitor to initiate or conduct any criminal investigation within his jurisdiction;

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

(vi) the commission may order testimony to be taken in any investigation or hearing by deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas by approval of the chairman, subject to judicial enforcement, and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency’s investigation by approval of the chairman, subject to judicial enforcement. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued pursuant to this section.

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

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

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

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

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

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

(B) If a formal public hearing is to be held:

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

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

(3) 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 open to the public.

(C)(1) 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, Title 2, it shall:

(a) administer a public reprimand;

(b) determine that a technical violation as provided for in Section 8‑13‑1170 or 8‑13‑1372 has occurred;

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

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

(e) recommend expulsion of the member;

(f) provide a copy of the complaint and accompanying materials to the Attorney General if the committee finds evidence of willful conduct on the part of the respondent when the violation occurred; however, this provision does not limit any authority of the Attorney General or circuit solicitor to initiate or conduct any criminal investigation within his jurisdiction;

(g) require a combination of subitems (a) though (f) as necessary and appropriate.

(2) The ethics committee shall report its findings in writing to the Speaker of the House of Representatives 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.

(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.

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

(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.”

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

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

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

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

“Article 6

Judicial Complaints and Procedures

Section 8‑13‑610. (A) There is created a Commission on Judicial Conduct. The commission has jurisdiction over judges regarding allegations that misconduct occurred before or during service as a judge and regarding allegations of incapacity during service as a judge. The commission has continuing jurisdiction over former judges regarding allegations that misconduct occurred during service as a judge. The commission shall also have jurisdiction over allegations that a former judge has made false statements or presented false evidence, or has committed conduct which would be a ground for discipline under Rule 7(a)(2), Rules for Judicial Disciplinary Enforcement (RJDE), Rule 502, South Carolina Appellate Court Rules (SCACR), during a disciplinary proceeding against the former judge even if the conduct did not occur during the time of service as a judge, and the commission may recommend the imposition of a sanction under Rule 7(b) or may recommend that a finding of criminal contempt be made by the Supreme Court for this conduct.

(B) The commission shall be composed of twenty‑four members determined by the Supreme Court, the General Assembly, and the Governor as follows:

(1) The Supreme Court shall elect eight members, six of whom shall be judges from the circuit court, family court, or masters‑in‑equity, and two shall be judges from the magistrate, municipal, or probate courts.

(2) The Senate shall elect four members, two of whom must be regular members of the South Carolina Bar appointed from the state at large, and two of whom must be public members appointed from the state at large. To be eligible for election, two members must first be nominated by the majority party of the Senate and two members must be nominated by the minority party of the Senate.

(3) The House of Representatives shall elect four members, two of whom must be regular members of the South Carolina Bar appointed from the state at large, and two of whom must be public members appointed from the state at large. To be eligible for election, two members must first be nominated by the majority party of the House and two members must be nominated by the minority party of the House.

(4) The Governor shall appoint eight members, four of whom must be regular members of the South Carolina Bar appointed from the state at large, and four of whom must be public members appointed from the state at large. Additionally, no more than four of the appointees may be associated with the appointing Governor’s political party. Executive branch employees and current members of the Governor’s staff may not be appointed to serve as commission members.

(C) For purposes of this section, ‘public member’ means a commission member who has never served as a judge or admitted to practice law. The term ‘public member’ excludes current members of the General Assembly, executive branch employees, or current members of the Governor’s staff.

(D) Commission members shall serve for a term of four years and until their successors are appointed and qualify. Commission members are eligible for reappointment. A member assigned to a hearing panel may continue to participate in the hearing and decision of a matter despite the expiration of the member’s term if the hearing began before the expiration of the term. A vacancy shall occur when a commission member ceases to be eligible to represent the category from which the member was appointed, is removed by the member’s appointing authority, or becomes unable to serve. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. Members of the commission, while serving on business of the commission, shall receive per diem, mileage, and subsistence as is provided by law for members of state boards, committees, and commissions. Current members of the General Assembly may not be appointed to serve as commission members.

(E) Except as otherwise provided in this article, the commission’s organization, authority, powers, duties, and responsibilities are delineated in Rule 4, RJDE, Rule 502, SCACR.

Section 8‑13‑620. The Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR, shall govern the regulation of judicial conduct and provide the procedure for resolving allegations that a judge has committed ethical misconduct.

Section 8‑13‑630. (A) All judicial misconduct investigations, inquiries, hearings, and accompanying documents are confidential and only may be released pursuant to this subsection. Upon the filing of formal charges, the following documents become public record: the complaint, the response by the respondent, the notice of hearing, exhibits introduced at a hearing, the commission’s findings, and the final order. Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. The respondent may waive the right to confidentiality.

(B) The wilful release of confidential information is a misdemeanor, and any person releasing confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year. If allegations of incapacity, as defined in Rule 2(l), RJDE, Rule 502, SCACR, are raised during the misconduct proceedings, all records, information, and proceedings relating to these allegations must be held confidential.

Section 8‑13‑640. If the chair, vice‑chair or a panel of the Commission on Judicial Conduct is in possession of reliable information indicating that a judge has violated the criminal laws of this State, another state, the District of Columbia, or the United States, the existence of the misconduct proceedings and other materials related to a criminal violation must be provided as soon as practicable to the Attorney General, the United States Attorney, or another similarly suitable law enforcement official for appropriate action.”

SECTION 7. Title 16 of the 1976 Code is amended by adding:

“CHAPTER 28

Ethics

Criminal Penalties

Section 16‑28‑100. As used in this chapter, all terms shall have the same definition as contained in Sections 8‑13‑100 and 8‑13‑1300 as applicable.

Section 16‑28‑110. (A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

(1) influence the discharge of a public official’s, public member’s, or public employee’s official responsibilities

(2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or

(3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official’s, public member’s, or public employee’s official responsibilities:

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

(1) influenced in the discharge of his official responsibilities;

(2) influenced to commit, aid in committing, collude in, or allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or

(3) induced to perform or fail to perform an act in violation of his official responsibilities.

(C) A person may not, directly or indirectly, give, offer, or promise to give anything of value to another person with intent to influence testimony under oath or affirmation in a trial or other proceeding before:

(1) a court;

(2) a committee of either house or both houses of the General Assembly; or

(3) an agency, commission, or officer authorized to hear evidence or take testimony or with intent to influence a witness to fail to appear.

(D) A person may not, directly or indirectly, ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value in return for influencing testimony under oath or affirmation in a trial or other proceeding before:

(1) a court;

(2) a committee of either house or both houses of the General Assembly; or

(3) an agency, commission, or officer authorized to hear evidence or take testimony or with intent to influence a witness to fail to appear.

(E) Subsections (C) and (D) do not prohibit the payment or receipt of witness fees provided by law or the payment by the party on whose behalf a witness is called and receipt by a witness of the reasonable costs of travel and subsistence at trial, hearing, or proceeding, or, in the case of an expert witness, of the reasonable fee for time spent in the preparation of the opinion and in appearing or testifying.

(F) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten years and a fine of not more than ten thousand dollars and is permanently disqualified from being a public official or a public member. A public official, public member, or public employee who violates the provisions of this section forfeits his public office, membership, or employment.

(G) This section does not apply to political contributions unless the contributions are conditioned upon the performance of specific actions of the person accepting the contributions nor does it prohibit a parent, grandparent, or other close relative from making a gift to a child, grandchild, or other close relative for love and affection except as otherwise provided.

Section 16‑28‑115. (A) No person may knowingly use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual’s duties as a holder of elective office.

(B) The payment of reasonable and necessary travel expenses or for food or beverages consumed by the candidate or members of his immediate family while at, and in connection with, a political event are permitted.

(C) A person who wilfully or recklessly violates the provisions of this section:

(1) if the amount is two thousand dollars or less in the aggregate during any reporting period for the certified campaign reports as set forth in Section 8‑13‑1308, or in final disbursement as set forth in Section 8‑13‑1370, is guilty of misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days and must refund the amount of personal use back to his campaign account;

(2) if the amount is more than two thousand dollars but less than ten thousand dollars in the aggregate during any reporting period for the certified campaign reports as set forth in Section 8‑13‑1308, or in final disbursement as set forth in Section 8‑13‑1370, the person is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years and must refund the amount of personal use back to his campaign account;

(3) if the amount is ten thousand dollars or more in the aggregate during any reporting period for the certified campaign reports as set forth in Section 8‑13‑1308, or in final disbursement as set forth in Section 8‑13‑1370, the person is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, and must refund the amount of personal use back to his campaign account.

Section 16‑28‑120. (A) No person may wilfully offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may wilfully solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.

(B) A person who wilfully or recklessly violates the provisions of this section:

(1) if the amount is two thousand dollars or less, is guilty of a misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days and must refund the amount of money to the state’s general fund;

(2) if the amount is more than two thousand dollars but less than ten thousand dollars, is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years and must refund the amount of money to the state’s general fund;

(3) if the amount is ten thousand dollars or more, is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, and must refund the amount of money to the state’s general fund.

Section 16‑28‑125. (A) A public official, public member, or public employee may not wilfully use or disclose confidential information gained in the course of or by reason of his official responsibilities in a way that would affect an economic interest held by him, a family member, an individual with whom he is associated, or a business with which he is associated.

(B)(1) A public official, public member, or public employee may not wilfully examine, or aid and abet in the wilful examination of, a tax return of a taxpayer, a worker’s compensation record, a record in connection with health or medical treatment, social services records, or other records of an individual in the possession of or within the access of a public department or agency if the purpose of the examination is improper or unlawful.

(2) A person convicted of violating this subsection must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and shall reimburse the costs of prosecution. Upon conviction, the person also must be discharged immediately from his public capacity as an official, member, or employee.

Section 16‑28‑130. (A) No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages.

(B) A public official, public member, or public employee may not participate in an action relating to the discipline of the public official’s, public member’s, or public employee’s family member.

Section 16‑28‑135. A former public official, former public member, or former public employee 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.

Section 16‑28‑140. It is a breach of ethical standards for a public official, public member, or public employee who is participating directly in procurement, as defined in Section 11‑35‑310(22), to resign and accept employment for a period of one year from the date of termination of service or employment with a person contracting with the governmental body if the contract falls or would fall under the public official’s, public member’s, or public employee’s official responsibilities.

Section 16‑28‑145. (A) Unless otherwise provided for in this chapter, a person who wilfully violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be punished by imprisonment of not more than three years or a fine of not more than ten thousand dollars, or both. A court also may order an appropriate amount of restitution taking under consideration any unjust enrichment, use of campaign funds to defray costs associated with a criminal action, or other factors deemed relevant to the particular case.

(B) As used in this chapter, the term ‘wilfully’ means that the act is intentional or knowing, as opposed to inadvertent.”

SECTION 8. Section 8‑13‑780 of the 1976 Code, as last amended by Act 248 of 1991, is further amended to read:

“Section 8‑13‑780. (A) The provisions of this section are in addition to all other civil and administrative remedies against public officials, public members, or public employees which are provided by law.

(B) ~~In addition to existing remedies for breach of the ethical standards of this chapter or regulations promulgated hereunder, the State Ethics Commission may impose an oral or written warning or reprimand.~~ For violation of the ethical standards of this article, the appropriate supervisory agency may:

(1) administer a public reprimand;

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

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

(4) require a combination of items (1) through (3) as necessary and appropriate.

(C) The value of anything received by a public official, public member, or public employee in breach of the ethical standards of this chapter ~~or regulations promulgated hereunder~~ is recoverable by the State or other governmental entity in an action by the Attorney General against a person benefitting from the violations.

(D) Before a public employee’s employment or a public official’s or public member’s association with the governmental entity is terminated for a violation of the provisions of this chapter, notice and an opportunity for a hearing must be provided to the public official, public member, or public employee.”

SECTION 9. Section 8‑13‑790(A) of the 1976 Code, as last amended by Act 248 of 1991, is further amended to read:

“(A) The value of anything transferred or received in breach of the ethical standards of Articles 1 through 11 of this chapter ~~or regulations promulgated under it~~ by a public employee, public official, or a nonpublic employee or official may be recovered from the public employee, public official, or nonpublic employee or official.”

SECTION 10. Section 8‑13‑1510 of the 1976 Code, as last amended by Act 40 of 2011, is further amended to read:

“Section 8‑13‑1510. ~~(A)~~ Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows:

(1) a fine of one hundred dollars if the statement or report is not filed within five days after the established deadline provided by law in this chapter; and

(2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per calendar day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement or report is not filed, not exceeding five thousand dollars.

~~(B)~~ ~~After the maximum civil penalty has been levied and the required statement or report has not been filed, the person is:~~

~~(1)~~ ~~for a first offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days;~~

~~(2)~~ ~~for a second offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned not less than a mandatory minimum of thirty days;~~

~~(3)~~ ~~for a third or subsequent offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.~~”

SECTION 11. Article 15, Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1515. A person who wilfully fails to file a required statement or report which has the effect of concealing a violation of this chapter is guilty of a misdemeanor and, upon conviction, must be fined five thousand dollars or be imprisoned for not more than one year, or both, for each statement or report not filed.”

SECTION 12. Section 8‑13‑1520 of the 1976 Code, as last amended by Act 76 of 2003, is further amended to read:

“Section 8‑13‑1520. (A) Except as otherwise specifically provided in this chapter and for failure to file a required statement or report, a person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

(B) A person who wilfully violates any provision of this Article 13 is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred percent of the amount of contributions or anything of value that should have been reported pursuant to the provisions of this Article 13 but not less than five thousand dollars or imprisoned for not more than one year, or both.

(C) A violation of the provisions of this chapter does not necessarily subject a public official to the provisions of Section 8‑13‑560.

(D) For purposes of this section, ‘wilfully’ means that the act is intentional or knowing, as opposed to inadvertent.”

SECTION 13. Article 15, Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1525. For a violation of the ethical standards of this article, the appropriate supervisory agency may:

(1) administer a public reprimand;

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

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

(4) order the repayment of any campaign funds it determines were inappropriately used to defray costs associated with the defense of the matter;

(5) require a combination of items (1) through (4) as necessary and appropriate.”

SECTION 14. Sections 8‑13‑705, 8‑13‑720, 8‑13‑725, 8‑13‑750, 8‑13‑755, and 8‑13‑760 of the 1976 Code are repealed.

SECTION 15. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 16. Sections 1 through 6 of this act take effect on July 1, 2015, except that the election or appointment of members of the State Ethics Commission as provided for in Section 8‑13‑310 of the 1976 Code, as amended by this act, may take place upon the signature of this act by the Governor so that these members may take office and begin serving on July 1, 2015. Sections 7 through 14 of this act take effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 8‑13‑310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE ETHICS COMMISSION AND ITS MEMBERSHIP, SO AS TO RECONSTITUTE THE MEMBERSHIP OF THE COMMISSION EFFECTIVE JULY 1, 2015, TO CONSIST OF FOUR MEMBERS APPOINTED BY THE GOVERNOR, FOUR MEMBERS ELECTED BY THE SUPREME COURT, TWO MEMBERS ELECTED BY THE HOUSE OF REPRESENTATIVES, AND TWO MEMBERS ELECTED BY THE SENATE, RESPECTIVELY, TO PROVIDE FOR THE QUALIFICATIONS OF THESE MEMBERS, TO PROVIDE FOR OFFICERS OF THE COMMISSION, AND TO PROVIDE FOR THE MEMBERS’ TERMS OF OFFICE AND MANNER OF THEIR REMOVAL UNDER CERTAIN CONDITIONS; TO AMEND SECTION 8‑13‑320, AS AMENDED, RELATING TO THE DUTIES, POWERS, AND PROCEDURES OF THE STATE ETHICS COMMISSION, SO AS TO REVISE THESE DUTIES, POWERS, AND PROCEDURES INCLUDING PROVISIONS TO VEST WITH THE COMMISSION THE ADDITIONAL RESPONSIBILITY TO INITIATE OR RECEIVE COMPLAINTS AGAINST MEMBERS OF THE GENERAL ASSEMBLY, ITS STAFF, AND CANDIDATES FOR ELECTION TO THE GENERAL ASSEMBLY, TO INITIATE OR RECEIVE COMPLAINTS AGAINST JUDGES AND OTHER JUDICIAL OFFICIALS OF THE UNIFIED JUDICIAL SYSTEM AND THEIR STAFFS, TO PROVIDE FOR THE INVESTIGATION AND PROCESSING OF COMPLAINTS AGAINST GENERAL ASSEMBLY MEMBERS, STAFF, AND CANDIDATES PURSUANT TO SPECIFIED PROCEDURES AND FOR THE REFERRAL OF SUBSTANTIVE COMPLAINTS TO THE APPROPRIATE HOUSE OR SENATE ETHICS COMMITTEES FOR DISPOSITION TOGETHER WITH THE ETHICS COMMISSION’S RECOMMENDATION AS TO WHETHER OR NOT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION HAS OCCURRED, TO PROVIDE FOR THE INVESTIGATION AND PROCESSING OF COMPLAINTS AGAINST JUDGES AND OTHER JUDICIAL OFFICIALS OR THEIR STAFF PURSUANT TO SPECIFIED PROCEDURES AND, AFTER INVESTIGATION, FOR THE REFERRAL OF SUBSTANTIVE COMPLAINTS TO THE COMMISSION ON JUDICIAL CONDUCT AND THE SUPREME COURT FOR DISPOSITION TOGETHER WITH THE ETHICS COMMISSION’S RECOMMENDATION AS TO WHETHER OR NOT THERE IS PROBABLE CAUSE TO BELIEVE A VIOLATION HAS OCCURRED; TO AMEND SECTIONS 8‑13‑530 AND 8‑13‑540, BOTH AS AMENDED, RELATING TO THE DUTIES, FUNCTIONS, AND PROCEDURES OF THE HOUSE AND SENATE ETHICS COMMITTEES, SO AS TO REVISE THESE DUTIES, FUNCTIONS, AND PROCEDURES IN ORDER TO BE CONSISTENT WITH THE ABOVE PROVISIONS AND TO MAKE OTHER CHANGES; BY ADDING SECTION 8‑13‑545 SO AS TO AUTHORIZE THE HOUSE OR SENATE ETHICS COMMITTEES TO ISSUE FORMAL ADVISORY OPINIONS AND PROVIDE FOR THEIR EFFECT AND APPLICABILITY; AND BY ADDING ARTICLE 6 TO CHAPTER 13, TITLE 8 SO AS TO PROVIDE FOR JUDICIAL COMPLAINT PROCEDURES IN REGARD TO THE ABOVE PROVISIONS.

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

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

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

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

~~(C)~~ ~~The terms of the members are for five years and until their successors are appointed and qualify. The members of the State Ethics Commission serving on this chapter’s effective date may continue to serve until the expiration of their terms. These members may then be appointed to serve one full five‑year term under the provisions of this chapter.~~

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

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

(A) There is created the State Ethics Commission which beginning July 1, 2015, shall be composed of the members provided for in this subsection:

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

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

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

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

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

(a) ethical fitness;

(b) character;

(c) mental stability;

(d) experience;

(e) temperament; and

(f) if the appointee has contributed to the election campaign of the individual appointing him to the State Ethics Commission within the previous four years.

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

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

(a) a member of the General Assembly;

(b) a family member, as defined by Section 8‑13‑100(15), of a member of the General Assembly, the Governor, or any member of the Supreme Court;

(c) a person who made a campaign contribution, as defined by Section 8‑13‑1300(7), within the previous four years to the individual who appointed the person to serve on the State Ethics Commission;

(d) a person who registered as a lobbyist within four years of being appointed to serve on the State Ethics Commission;

(e) a person who is under the jurisdiction of the State Ethics Commission, the House of Representatives Ethics Committee, or the Senate Ethics Committee; and

(f) an actively serving judge of any court of this State, including summary court judges, and any retired judge sitting or permitted to sit in any court of this State.

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

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

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

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

SECTION 2. A. The first paragraph of Section 8‑13‑320(9) of the 1976 Code, as last amended by Act 245 of 2008, is further 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 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)(g) of the 1976 Code, as last amended by Act 1 of 2011, is further amended to read:

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

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

“(j) If a hearing is to be held, the respondent must be allowed to examine and make copies of all evidence in the commission’s possession relating to the charges. The same discovery techniques which are available to the commission must be equally available to the respondent, including the right to request the commission to subpoena witnesses or materials and the right to conduct depositions as prescribed by subitem (f). A panel of three commissioners must conduct a hearing in accordance with Chapter 23, ~~of~~ Title 1 (Administrative Procedures Act), except as otherwise expressly provided. Panel action requires the participation of the three panel members. During a commission panel hearing conducted to determine whether a violation of the chapter has occurred, the respondent 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 evidence, including records the commission considers, must be offered fully and made a part of the record in the proceedings. The hearings must be ~~held in executive session unless the respondent requests an open hearing~~ open to the public.”

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

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

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

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

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

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

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

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

“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;

(3) upon the filing of a complaint, investigate possible violations of a rule or 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~~. Upon the filing of a complaint alleging a violation by a member or staff of the appropriate house or legislative caucus committee, or a candidate for the appropriate house, for a violation of this chapter or Chapter 17, Title 2, except a technical violation pursuant to Section 8‑13‑1170 or 8‑13‑1372, the ethics committee shall refer the complaint to the State Ethics Commission for an investigation pursuant to Section 8‑13‑540. The appropriate ethics committee shall investigate and make determinations for technical violations of Section 8‑13‑1170 or 8‑13‑1372;

(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.~~;

(5) no complaint may be accepted by the ethics committee or the State Ethics Commission 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;

~~(5)~~(6) obtain information and ~~investigate~~ hear 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 issued by a majority vote of the committee the attendance and testimony of witnesses and the production of pertinent books and papers;

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

~~(7)~~(8) 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 to issue, upon request from persons covered by this chapter and Chapter 17, Title 2, and publish advisory opinions on the requirements of these chapters.”

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

“Section 8‑13‑540. ~~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.~~

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

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

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

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

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

~~(6)~~ ~~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.~~

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

(2) If an alleged violation is found to be groundless by the State Ethics Commission, a report must be provided to the appropriate ethics committee. The appropriate ethics committee may concur or nonconcur with the commission’s report or, within fifteen days from the receipt of the State Ethics Commission’s report, request the commission to continue the investigation and consider additional matters not considered by the commission. If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, the 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 item, 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.

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

(4)(a) To conduct its investigation:

(i) the State Ethics Commission, upon receipt of information, may initiate a complaint upon an affirmative vote of the commission or shall accept notarized complaints referred from the ethics committees or from an individual, whether personally or on behalf of an organization or governmental body, that states the name of a person alleged to have committed a violation of this chapter or Chapter 17, Title 2 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;

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

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

(iv) if the commission finds that there is evidence of wilful conduct that would constitute a criminal violation of Chapter 28 of Title 16, Chapter 13 of Title 8, or Chapter 17 of Title 2, on the part of the respondent when the violation occurred, then the complaint and accompanying materials also must be provided to the Attorney General or circuit solicitor. This provision does not limit any authority of the Attorney General or circuit solicitor to initiate or conduct any criminal investigation within his jurisdiction;

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

(vi) the commission may order testimony to be taken in any investigation or hearing by deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas by approval of the chairman, subject to judicial enforcement, and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency’s investigation by approval of the chairman, subject to judicial enforcement. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued pursuant to this section.

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

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

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

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

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

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

(B) If a formal public hearing is to be held:

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

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

(3) 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 open to the public.

(C)(1) 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, Title 2, it shall:

(a) administer a public reprimand;

(b) determine that a technical violation as provided for in Section 8‑13‑1170 or 8‑13‑1372 has occurred;

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

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

(e) recommend expulsion of the member;

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

(g) require a combination of subitems (a) through (f) as necessary and appropriate.

(2) The ethics committee shall report its findings in writing to the Speaker of the House of Representatives 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.

(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.

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

(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.”

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

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

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

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

“Article 6

Judicial Complaints and Procedures

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

Section 8‑13‑620. If an alleged violation is found to be groundless by the State Ethics Commission, a report must be provided to the Commission on Judicial Conduct. The Commission on Judicial Conduct may concur or nonconcur with the commission’s report or, within fifteen days from the receipt of the State Ethics Commission’s report, request the commission to continue the investigation and consider additional matters not considered by the commission. If the commission finds that the complaining party wilfully filed a groundless complaint, the finding must be reported to the Attorney General. The wilful filing of a groundless complaint is a misdemeanor and, upon conviction, the 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 section, 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.

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

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

(1) The State Ethics Commission, upon receipt of information, may initiate a complaint upon an affirmative vote of the commission or shall accept notarized complaints referred from the Commission on Judicial Conduct or from an individual, whether personally or on behalf of an organization or governmental body, that states the name of a person alleged to have committed a violation of the Canons of Judicial Conduct, Chapter 17, Title 2 and Chapter 13, Title 8, as applicable, 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 the respondent within ten days of the filing of the complaint.

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

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

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

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

(6) The commission may order testimony to be taken in any investigation or hearing by deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas by approval of the chairman, subject to judicial enforcement, and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency’s investigation by approval of the chairman, subject to judicial enforcement. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued under this section.

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

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

Section 8‑13‑650. Upon completion of the commission’s investigation, the commission shall make a recommendation as to whether there is probable cause to believe a violation of the Canons of Judicial Conduct, Chapter 17, Title 2 and Chapter 13, Title 8, as applicable, has occurred. The commission shall forward a copy of its recommendation, along with a copy of all relevant reports, evidence, and testimony, to the Commission on Judicial Conduct and the Supreme Court for disposition pursuant to its rules.”

SECTION 6. This act takes effect on July 1, 2015, except that the election or appointment of members of the State Ethics Commission as provided for in Section 8‑13‑310 of the 1976 Code, as amended by this act, may take place upon the signature of this act by the Governor so that these members may take office and begin serving on July 1, 2015.

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