

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

*As Engrossed: H3/17/15*

# A Bill

HOUSE BILL 1901

5 By: Representative Sabin  
6 By: Senator J. Woods  
7

## For An Act To Be Entitled

9 AN ACT AMENDING ARKANSAS LAWS PERTAINING TO ETHICS;  
10 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### Subtitle

14 AMENDING ARKANSAS LAWS PERTAINING TO  
15 ETHICS; AND TO DECLARE AN EMERGENCY.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. *Arkansas Code § 7-6-217(g), concerning the authority of the*  
21 *Arkansas Ethics Commission and resulting from Initiated Act No. 1 of 1990 and*  
22 *as amended by Acts 2015, No. 47, is amended to read as follows:*

23 (g) *The commission shall have the authority to:*

24 (1) *Pursuant to the Arkansas Administrative Procedure Act, § 25-*  
25 *15-201 et seq., promulgate reasonable rules and regulations to implement and*  
26 *administer the requirements of this subchapter, as well as § 7-9-401 et seq.,*  
27 *§ 21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-*  
28 *8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq.,*  
29 *~~and~~ § 21-8-1001 et seq., and Sections 28, 29, and 30 of Article 19 of the*  
30 *Arkansas Constitution, and to govern procedures before the commission,*  
31 *matters of commission operations, and all investigative and disciplinary*  
32 *procedures and proceedings;*

33 (2) *Issue advisory opinions and guidelines on the requirements*  
34 *of § 7-1-103(a)(1)-(4), (6), and (7), this subchapter, § 7-9-401 et seq., §*  
35 *21-8-301 et seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-*  
36 *601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., §*



1 *21-8-1001 et seq., and Sections 28, 29, and 30 of Article 19 of the Arkansas*  
2 *Constitution;*

3 (3) *After a citizen complaint has been submitted to the*  
4 *commission, investigate alleged violations of § 7-1-103(a)(1)-(4), (6), and*  
5 *(7), this subchapter, § 7-9-401 et seq., § 21-1-401 et seq., § 21-8-301 et*  
6 *seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq.,*  
7 *§ 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., and § 21-8-1001*  
8 *et seq., and Sections 28, 29, and 30 of Article 19 of the Arkansas*  
9 *Constitution and render findings and disciplinary action thereon;*

10 (4) *Pursuant to commission investigations, subpoena any person*  
11 *or the books, records, or other documents being held by any person and take*  
12 *sworn statements;*

13 (5) *Administer oaths for the purpose of taking sworn testimony*  
14 *of witnesses and conduct hearings;*

15 (6) *Hire a staff and retain legal counsel;*

16 (7) *Approve forms prepared by the Secretary of State pursuant to*  
17 *this subchapter, § 7-9-401 et seq., § 21-8-301 et seq., § 21-8-401 et seq., §*  
18 *21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-*  
19 *801 et seq., § 21-8-901 et seq., and § 21-8-1001 et seq.; and*

20 (8)(A) *File suit in the Pulaski County Circuit Court or in the*  
21 *circuit court of the county wherein the respondent resides or, pursuant to §*  
22 *16-17-706, in the small claims division established in any district court in*  
23 *the State of Arkansas, to obtain a judgment for the amount of any fine*  
24 *imposed pursuant to § 7-6-218(b)(4)(B)(i)-(iii), or to enforce an order of*  
25 *the commission requiring the filing or amendment of a disclosure form.*

26 (B) *Said action by the court shall not involve further*  
27 *judicial review of the commission's actions.*

28 (C) *The fee normally charged for the filing of a suit in*  
29 *any of the circuit courts in the State of Arkansas shall be waived on behalf*  
30 *of the commission.*

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32 *SECTION 2. Arkansas Code § 7-6-218, resulting from Initiated Act No. 1*  
33 *of 1990, is amended to read as follows:*

34 *7-6-218. Citizen complaints.*

35 (a)(1) *Any citizen may file a complaint with the Arkansas Ethics*  
36 *Commission against a person covered by this subchapter, by § 7-1-103(a)(1)-*

1 (4), (6), or (7), § 7-9-401 et seq., § 21-1-401 et seq., or § 21-8-301 et  
2 seq., § 21-8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq.,  
3 § 21-8-701 et seq., § 21-8-801 et seq., § 21-8-901 et seq., ~~and~~ § 21-8-1001  
4 et seq., and Sections 28, 29, and 30 of Article 19 of the Arkansas  
5 Constitution, for an alleged violation of the subchapters or sections. For  
6 purposes of this subdivision (a)(1), the Arkansas Ethics Commission shall be  
7 considered a citizen.

8 (2) A complaint must be filed within four (4) years after the  
9 alleged violation occurred. If the alleged violation is the failure to file a  
10 report or the filing of an incorrect report, the complaint must be filed  
11 within four (4) years after the date the report was due.

12 (b)(1)(A) Upon a complaint stating facts constituting an alleged  
13 violation signed under penalty of perjury by any person, the commission shall  
14 investigate the alleged violation of this subchapter or § 7-1-103(a)(1)-(4),  
15 (6), or (7), § 7-9-401 et seq., § 21-1-401 et seq., § 21-8-301 et seq., § 21-  
16 8-401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701  
17 et seq., § 21-8-801 et seq., § 21-8-901 et seq., ~~and~~ § 21-8-1001 et seq., and  
18 Sections 28, 29, and 30 of Article 19 of the Arkansas Constitution.

19 (B) The commission shall immediately notify any person  
20 under investigation of the investigation and of the nature of the alleged  
21 violation.

22 (C) The commission in a document shall advise the  
23 complainant and the respondent of the final action taken, together with the  
24 reasons for the action, and such document shall be a public record.

25 (D) Filing of a frivolous complaint shall be a violation  
26 of this subchapter. For purposes of this section, "frivolous" means clearly  
27 lacking any basis in fact or law. In any case in which the commission has  
28 dismissed a complaint, the respondent may request in writing that the  
29 commission make a finding as to whether or not the complaint filed was  
30 frivolous. In the event that the commission finds that the complaint was  
31 frivolous, the respondent may file a complaint seeking sanctions as provided  
32 in § 7-6-218(b)(4).

33 (2) If, after the investigation, the commission finds that  
34 probable cause exists for a finding of a violation, the respondent may  
35 request a hearing. The hearing shall be a public hearing.

36 (3)(A) The commission shall keep a record of its investigations,

1 *inquiries, and proceedings.*

2 *(B)(i) Except as provided in subdivision (b)(3)(B)(ii) of*  
3 *this section, all proceedings, records, and transcripts of any investigations*  
4 *or inquiries shall be kept confidential by the commission, unless the*  
5 *respondent requests disclosure of documents relating to investigation of the*  
6 *case, in case of a hearing under subdivision (b)(2) of this section, or in*  
7 *case of judicial review of a commission decision pursuant to § 25-15-212.*

8 *(ii)(a) Through its members or staff, the commission*  
9 *may disclose confidential information to proper law enforcement officials,*  
10 *agencies, and bodies or as may be required to conduct its investigation.*

11 *(b) If an investigation or inquiry concerns an*  
12 *attorney or judge, the commission may, through its members or staff, disclose*  
13 *confidential information to the Supreme Court Committee on Professional*  
14 *Conduct or the Judicial Discipline and Disability Commission.*

15 *(C) Thirty (30) days after any final adjudication in which*  
16 *the commission makes a finding of a violation, all records relevant to the*  
17 *investigation and upon which the commission has based its decision, except*  
18 *working papers of the commission and its staff, shall be open to public*  
19 *inspection.*

20 *(4) If the commission finds a violation of this subchapter, § 7-*  
21 *1-103(a)(1)-(4), (6), or (7), § 21-1-401 et seq., § 21-8-301 et seq., § 21-8-*  
22 *401 et seq., § 21-8-501 et seq. [repealed], § 21-8-601 et seq., § 21-8-701 et*  
23 *seq., § 21-8-801 et seq., § 21-8-901 et seq., ~~and~~ § 21-8-1001 et seq., or*  
24 *Sections 28, 29, or 30 of Article 19 of the Arkansas Constitution, then the*  
25 *commission shall do one (1) or more of the following, unless good cause be*  
26 *shown for the violation:*

27 *(A) Issue a public letter of caution or warning or*  
28 *reprimand;*

29 *(B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-*  
30 *409, 21-8-403, and 21-8-903, impose a fine of not less than fifty dollars*  
31 *(\$50.00) nor more than two thousand dollars (\$2,000) for negligent or*  
32 *intentional violation of this subchapter or § 21-8-301 et seq., § 21-8-401 et*  
33 *seq., § 21-8-601 et seq., § 21-8-701 et seq., § 21-8-801 et seq., ~~and~~ § 21-8-*  
34 *901 et seq., or Sections 28, 29, or 30 of Article 19 of the Arkansas*  
35 *Constitution.*

36 *(ii) The commission shall adopt rules governing the*

1 *imposition of such fines in accordance with the provisions of the Arkansas*  
2 *Administrative Procedure Act, § 25-15-201 et seq.*

3 *(iii) All moneys received by the commission in*  
4 *payment of fines shall be deposited into the State Treasury as general*  
5 *revenues;*

6 *(C) Order the respondent to file or amend a statutorily*  
7 *required disclosure form; or*

8 *(D)(i) Report its finding, along with such information and*  
9 *documents as it deems appropriate, and make recommendations to the proper law*  
10 *enforcement authorities.*

11 *(ii) When exercising the authority provided in this*  
12 *subdivision (b)(4), the commission is not required to make a finding of a*  
13 *violation of the laws under its jurisdiction.*

14 *(5)(A) The commission shall complete its investigation of a*  
15 *complaint filed pursuant to this section and take final action within one*  
16 *hundred fifty (150) days of the filing of the complaint. If a hearing under*  
17 *subdivision (b)(2) of this section or other hearing of adjudication is*  
18 *conducted, all action on the complaint by the commission shall be completed*  
19 *within one hundred eighty (180) days.*

20 *(B) However, such time shall be tolled during the pendency*  
21 *of any civil action, civil appeal, or other judicial proceeding involving*  
22 *those particular commission proceedings.*

23 *(c) Any final action of the commission under this section shall*  
24 *constitute an adjudication for purposes of judicial review under § 25-15-212.*

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26 *SECTION 3. EMERGENCY CLAUSE. It is found and determined by the*  
27 *General Assembly of the State of Arkansas that the people of Arkansas adopted*  
28 *Arkansas Constitution, Amendment 94, at the 2014 General Election, which*  
29 *added Sections 28, 29, and 30 to Article 19 of the Arkansas Constitution;*  
30 *that Amendment 94 requires the General Assembly to provide by law that*  
31 *Arkansas Constitution, Article 19, Sections 28, 29, and 30 be under the*  
32 *jurisdiction of the Arkansas Ethics Commission; and that this act should*  
33 *become effective at the earliest opportunity to allow the commission to*  
34 *enforce Arkansas Constitution, Article 19, Sections 28, 29, and 30 and issue*  
35 *guidance to affected public officials. Therefore, an emergency is declared to*  
36 *exist, and this act being immediately necessary for the preservation of the*

1 public peace, health, and safety shall become effective on:  
2 (1) The date of its approval by the Governor;  
3 (2) If the bill is neither approved nor vetoed by the Governor,  
4 the expiration of the period of time during which the Governor may veto the  
5 bill; or  
6 (3) If the bill is vetoed by the Governor and the veto is  
7 overridden, the date the last house overrides the veto.

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