



Understanding the New Lobbying Laws: Senate Bill 6

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www.ethics.ky.gov

The Executive Branch Code of Ethics

Provisions relating to Lobbying:

- KRS 11A.201 through KRS 11A.246
 - 2019 Senate Bill 6
- 9 KAR 1:040
- Penalties: KRS 11A.100 and 11A.990

EXECUTIVE BRANCH ONLY

- LEGISLATIVE LOBBYING:

Legislative Ethics Commission

#22 Mill Creek Park

Frankfort, Kentucky 40601

(502) 573-2863

<https://klec.ky.gov>

- LOCAL LOBBYING ON THE COUNTY OR CITY LEVEL:

Department for Local Government

Ethics Ordinances:

http://kydlgweb.ky.gov/Legal/16_EthicsSearch.cfm

What is Professional Lobbying?

Anyone *who is paid* by a client or employer to influence the decisions of Executive Branch elected officials or state agency officials.

What is Executive Agency Lobbying?

Anyone who is paid to attempt to

- Promote, oppose, or influence
- The outcome of an executive agency decision
- By making contacts to officials

BUT ONLY IF the decision involves either:

☐ The expenditure of state funds over \$5000

OR

☐ Would financially impact your client or employer

Two Thresholds

(If these don't apply, then nothing else in this session will apply to you.)

1. You are paid (not a volunteer);

AND

2. The state decisions you are trying to influence will benefit your employer or client financially.

Senate Bill 6

Expands definitions

- Executive Agency Decision
- Executive Agency Lobbyist
- Executive Agency Lobbyist Activity
- Substantial Issue



Senate Bill 6

Lobbying statutes affected:

- Registration Statements
 - Must now list the compensation they receive
 - Must certify that they have not received a contingency fee
- Contingency fees further explained

Executive Agency Decision

A decision made by an Executive Branch state agency to:

- Spend state funds by awarding a contract, grant, lease, or other financial arrangement
- Decide the parameters of contracts or agreements with the state
- Request future or existing budget provisions
- Issue administrative regulations or rules
- Issue an executive order
- Influence legislation
- Make other public policy decisions

What If the Executive Agency Decision Has Already Been Made

If the decision has already been made and the only contacts you are going to have are part of the ordinary process, you do not have to register.

EXAMPLES

- Submitting a bid to an RFP
- Submitting a comment during an open comment period
- Attending an open meeting
- Making comments at an open meeting
- Attending committee meetings
- Speaking for or against legislation in an open meeting

Who should register as an Executive Agency Lobbyist or EAL?

An *Executive Agency Lobbyist* or *EAL* is

- any person
- who is engaged
- to influence executive agency decisions or to conduct executive agency lobbying activity
- by making contacts to agency officials
- as one of his or her main purposes
- regarding a substantial issue



Who should register as an EAL?

Let's Break This
Down
By Each Term

Who should register as an EAL?

Continued

A "PERSON"

- An Individual
- Business, proprietorship, firm, partnership, or limited partnership
- Joint venture, joint stock company, or syndicate
- Statutory trust, donative trust, or estate
- Company, corporation, or LLC
- Association, club, committee, or organization (whether or not for profit)
- Group of persons acting in concert

Who should register as an EAL?

Continued

A person who is "ENGAGED"

What does this mean?

You have an arrangement either with your employer or a client in which you are **PAID** to influence Executive Branch state agency decisions.

Who should register as an EAL?

Continued

Being “paid” means you receive “compensation” through a salary by your employer or payment from your client, this includes money, things of value, or economic benefit in return for your services.

- Contingency Fee Arrangements are strictly prohibited!!
(more on this later)

Who should register as an EAL?

Continued

A person who is engaged to “influence Executive Branch state agency decisions or to engage in EXECUTIVE AGENCY LOBBYING ACTIVITY.”

What does this mean?

You make contacts to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation or otherwise influence the outcome of an executive agency decision by direct communication with an elected or appointed executive branch official or his or her staff.

Who should register as an EAL?

Continued

A person who is engaged to influence executive agency decisions by making contacts to agency officials as one of his or her “main purposes regarding a substantial issue.”

What does this mean?

You make these contacts on behalf of your employer or client to influence a decision that involves:

- state funds of \$5,000 or more in a calendar year

OR

- any budget provision, administrative regulation or rule, legislative matter or other public policy matter that financially impacts your employer or client.



What Does “Financially Impact” Mean?

This term is not defined in statute. In general, it would mean a decision by the state that would have a positive or negative affect on the financial position of your employer or client.

Who should register as an EAL?

Continued

Executive Agency Lobbyist also includes:

- Representatives of associations, coalitions, or public interest entities formed to promote or influence executive agency decisions
- **PLACEMENT AGENTS:** Those hired to influence the investments of the Kentucky Retirement Systems or the Kentucky Teachers' Retirement System
- **UNREGULATED PLACEMENT AGENTS:** A placement agent who is prohibited by federal securities laws and regulations from receiving compensation for soliciting a government agency



What is an Executive Agency?

- Elected constitutional officers
- Cabinets listed in KRS 12.250
- An agency, department, board, or commission controlled or directed by an elected executive official.

"Executive agency" does not include the Judicial, the Legislative Branch, local governments, or higher education.

Who is an Employer of an EAL?

An ***employer*** means any ***person*** who employs or engages an executive agency lobbyist.

- For example, this can be the firm for which the EAL works on a permanent basis or it can be the client of the lobbyist.

What is a Real Party in Interest?

A ***Real Party in Interest*** is the person or organization on whose behalf the EAL is acting, if that person is not the employer.

- For example, if the ABC Corporation engages XYZ Consulting Company which, in turn, hires John Smith to influence decisions or conduct executive agency lobbying on behalf of ABC Corporation: (a) John Smith is the EAL; (b) XYZ Consulting Company is the “employer;” and (c) ABC Corporation is the “real party in interest.”

Who is exempt from filing?

- Unpaid lobbyists.
- Persons exercising their constitutional right to assemble with others for their common good and petition state executive branch agencies for redress of grievances.
- A person whose contacts with state officials are for the sole purpose of submitting Open Records requests.
- A person whose lobbying is done only during appearances before executive agencies during public meetings.
- A person submitting public comments to an executive agency during the public comment period of administrative regulations or rules.

Who is exempt from filing?

- A person whose contacts are limited to those employees whose official duties **do not include** policy formulation, administrative or supervisory authority, or expenditure authorization.
- A person who is an elected or appointed officer or employee of federal, state, or local government, state college and university, when acting within his or her official duties.

Who is exempt from filing?

- Statements published in newspapers, journals, or magazines, or broadcast over radio or television.
- A person or entity that is gathering or furnishing information and news by bona fide reporters, correspondents, or news bureaus to news media.
- Publications of associations or charitable or fraternal nonprofit corporations.
- Professional services performed in preparing executive agency decisions, preparing arguments regarding executive agency decisions, or in advising clients and rendering opinions regarding proposed or pending executive agency decisions, if the services are not otherwise connected to lobbying.

Who is exempt from filing?

Continued

- A person whose job does not include lobbying as a “main purpose.” Example: an engineer for a public utility who sometimes is in contact with state highway officials about moving utility lines for right of way, but whose main duties do not include lobbying.
- A person acting to promote, oppose or otherwise influence the outcome of a decision of the Cabinet for Economic Development relating to programs or economic incentive packages.

How to register

The *Initial Registration Statement* is available by PDF on the Executive Branch Ethics Commission's website at

<http://ethics.ky.gov/>.

The *Initial Registration Statement* can be submitted by mail, email or fax to the following:

EXECUTIVE BRANCH ETHICS COMMISSION
1025 CAPITAL CENTER DRIVE, SUITE #104
FRANKFORT, KENTUCKY 40601
FAX: (502)696-5091
EMAIL: ETHICSFILER@KY.GOV

The *Initial Registration Statement* must be printed, signed by both the Executive Agency Lobbyist and the employer contact, and submitted via regular mail, email, or fax.

Initial Filing

Each EAL must file an ***Initial Registration Statement*** that will register the lobbyist, the employer, and the real party in interest at the same time.

- There is no fee that is filed with the initial filing.
- An EAL engaged by more than one employer or real party in interest must file a separate Initial Registration Statement for each employer or client.
- Employers must ensure that each individual EAL engaged to represent the employer files an Initial Registration Statement.

When should you register?

Each EAL, employer, and, if applicable, real party in interest, is required to file, jointly, an Initial Registration Statement **within ten (10) days** of the engagement of the EAL.

Initial Registration Statement

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INITIAL REGISTRATION STATEMENT

EXECUTIVE AGENCY LOBBYIST/EMPLOYER/REAL PARTY IN INTEREST

After completing, submit your Initial Registration Statement by mail, fax, or email to the location below:

Commonwealth of Kentucky
EXECUTIVE BRANCH ETHICS COMMISSION
1025 Capital Center Drive, Suite 104
Frankfort, Kentucky 40601
PHONE (502) 564-7954, FAX (502) 696-5091, EMAIL: ebec@ky.gov

ATTENTION FORMER EXECUTIVE BRANCH EMPLOYEES:
Please review the post-employment provisions in KRS 11A.045(7) & (8) before completing this form.

This statement must be filed with the Executive Branch Ethics Commission within ten (10) days of engagement. Please read instructions and review Kentucky Revised Statutes 11A.211 prior to filing. Upon termination of this engagement, there is an affirmative duty to notify the Executive Branch Ethics Commission within thirty (30) days. Any person who knowingly files a false statement is in violation of state law and subject to fines and other penalties.

A. Executive Agency Lobbyist Information

1. Full Name: _____
2. Occupation: _____ 3. Title: _____
4. Firm Name: _____
5. Business Address: _____
6. Business Telephone: _____ 7. E-Mail Address: _____
8. Cell/Mobile Telephone: _____
9. Permanent Residential Address: _____
10. Date of Engagement as Executive Agency Lobbyist with this Employer: _____

B. Employer Information

1. Full name of company/organization: _____
2. Type of Industry: _____
3. Business Address: _____
4. Employer Contact: Name and title of person responsible for completing the *Updated Registration Statement/Employer of Executive Agency Lobbyist* (each Employer should name one person as a contact).
Name: _____ Title: _____
Address (if different from Employer above): _____
Telephone: _____ E-mail Address: _____

C. Real Party in Interest Information (if applicable)

1. Full name of company/organization: _____
2. Type of Industry: _____
3. Business Address: _____
4. Name and title of person responsible for completing the *Updated Registration Statement/Real Party in Interest* (each Real Party should name one person as a contact).
Name: _____ Title: _____
Address (if different from Real Party above): _____
Telephone: _____ E-mail Address: _____

How long is a registration valid?

After the Statement is processed, the EAL will be issued a registration card by the Commission effective from the date of its issuance until the next July 31.

Until an EAL files a Termination Notification with the Commission, the lobbyist and his/her employer and real party interest are considered “active” and are required to file Updated Registration Statements and pay the \$500 fee between July 1 through July 31 of each year.

Who must file an Updated Registration Statement

EALs, employers, and real parties in interest are each required to file ***Updated Registration Statements*** annually.


The Updated Registration Statements are different for each type of filer:

- EALs file **EBEC-EAL-202**. This form contains information for each of the EAL's employers.
- Each Employer files the **EBEC-EAL-203** for all of their engaged EALs.
- If an EAL has only one employer/client, then they complete the EBEC-EAL-204, a combined document.
- Each Real Party in Interest files the **EBEC-EAL-205** for all of their engaged EAL's.

Updated Registration Statements

Forms:

- EBEC-EAL-202: Updated Registration Statement - Executive Agency Lobbyist
- EBEC-EAL-203: Updated Registration Statement - Employer of EAL
- EBEC-EAL-204: Updated Registration Statement - COMBINED
- EBEC-EAL-205: Updated Registration Statement - Real Party in Interest



When to file the Updated Statement

A reporting year runs from July 1 through June 30.

- Updated Registration Statements are due between July 1 and July 31 for the previous reporting period.
- Statements filed before July 1 will be rejected.

Registration Fee

Each Employer of one or more lobbyists, and each Real Party in Interest, must pay a registration fee of **\$500** upon the filing of an **Updated Registration Statement** due by **July 31** each year.

EALs do not pay the fee.

Failure to File Updates or Pay Fee

Both the Initial Registration Statement and Updated Registration Statements must be complete when filed.

- If you fail to file or the form is not complete, the Commission will send written notification by certified mail to the person or entity who failed to file the Statement regarding such failure.
- You will have 15 days to correct the error. Failure to comply may result in an investigation of the matter. If an investigation is initiated, the Commission will also notify each elected official and cabinet secretary.

Parties Must Report the Following:

- **Confirmation** of the continuing existence of each engagement described in the Initial Registration Statement
- A **list of the specific executive agency decisions** that the lobbyist sought to influence under the engagement during the period covered by the Updated Registration Statement
- A **statement of expenditures**
- Details of any **financial transactions**
- **Compensation** paid to the lobbyist by the employer

What is a financial transaction?

A financial transaction includes business that is conduct between:

1. An executive agency lobbyist, his employer, a real party in interest, or a member of the immediate family AND
2. Any executive agency employee (including elected and appointed officials) UNLESS such transaction is available to the general public on the same terms.

Financial Transactions must be reported

- At least ten (10) days before the date on which the statement is filed, the filer shall deliver a copy of the statement to the official or employee with whom or for whose benefit the financial transaction was made.
- The official or employee may dispute the information contained in the statement.

Disputes

- Disputes between executive branch officials, employees, real parties in interest, employers, or EALs may be investigated by the Commission upon the filing of a complaint by any party.
- A complaint must be filed at least 3 days prior to the time a Statement is required to be filed with the Commission.

EALs with only one employer

When an EAL has only one employer and that employer has only one EAL, and the EAL is also listed as the Employer Contact , then the EAL/Employer may file the ***Updated Registration Statement Lobbyist/Employer "COMBINED"*** instead of filing two separate updated registration statements.

The ***"COMBINED"*** form may only be used if neither the EAL nor the employer has expenses or financial transactions to report.

The employer is still required to pay the \$500 registration fee even if the employer qualifies to complete the ***"COMBINED"*** form.

Termination

- An EAL is required to notify the Commission within **30 days** after the termination of an engagement by filing a *Termination Notification Form*. The form should be completed, signed, and attached to the EAL's final Updated Registration Statement.
- If the engagement exists for even one day into a new reporting period, they must file Updated Registration Statements for that period.

Termination Notification Statement

FORM EBEC - EAL - 206 (Rev. 5/2019)

Commonwealth of Kentucky
EXECUTIVE BRANCH ETHICS COMMISSION
**TERMINATION NOTIFICATION
AS EXECUTIVE AGENCY LOBBYIST**

You must file a final Updated Registration Statement Executive Agency Lobbyist EBEC-EAL-203 with the Termination Notification to report your activity from July 1 of the current reporting period through your date of termination.

Full Name: _____ EAL #: _____

Residential Address: _____
Street City State Zip Code

I wish to inform the Executive Branch Ethics Commission that I am no longer engaged to represent the employer and/or real party in interest named below, as of _____. (Termination Date)

Name of Employer: _____

Address: _____
Street City State Zip Code

Name of Real Party In Interest (if applicable) _____

Address: _____
Street City State Zip Code

COMPENSATION: List final compensation paid to each executive agency lobbyist by each employer:
["Compensation" means "any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another." KRS 11A.201(1)].

CERTIFICATION: I certify that the employer and agent have complied with KRS 11A.236 and the information contained in this termination notification is complete and accurate. Any person who knowingly files a false statement is in violation of state law and subject to fines and penalties.¹

Signature of Executive Agency Lobbyist Date

Please send completed Termination Notification and final Updated Registration Statement to:
Executive Branch Ethics Commission, 1925 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601 by hand-delivery or U.S. Mail or by FAX to (502) 696-5091 or by EMAIL to ethics@ky.gov.

¹ KRS 11A.990
(6) Any executive agency lobbyist, employee, or real party in interest who violates any provision in KRS 11A.206 shall for the first violation be subject to a civil penalty not to exceed five thousand dollars (\$5,000). For the second and each subsequent violation, he shall be guilty of a Class D felony.
(7) Any executive agency lobbyist, employee, or real party in interest who fails to file the initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216, or who fails to remedy a delinquency in any filing in a timely manner, may be fined by the court in an amount not to exceed one hundred dollars (\$100) per day, up to a maximum total fine of one thousand dollars (\$1,000).
(8) Any executive agency lobbyist, employee, or real party in interest who intentionally fails to register, or who intentionally files an initial registration statement or updated registration statement required by KRS 11A.211 or 11A.216 which he knows to contain false information or to omit required information shall be guilty of a Class D felony.
(9) An executive agency lobbyist, employee, or real party in interest who files a false statement of expenditures or details of a financial transaction under KRS 11A.221 or 11A.225 is liable to a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.

Termination Fee

- When an employer or real party in interest has terminated the engagement of all EALs registered on their behalf, they have consequently terminated their registrations with the Commission.
- A final **Updated Registration Statement** and **\$500 registration fee** must be submitted to the Commission.



Record Keeping Requirements

Executive Agency Lobbyists, employers, and real parties in interest shall retain receipts or maintain records for all expenditures that are required to be reported to the Commission.

These receipts or records shall be maintained for a period ending on the 30th day of June of the 2nd fiscal year after the year in which the expenditure was made.

Campaign Contributions Are Not Prohibited

Nothing in the Ethics Code prohibits an elected official from soliciting or accepting a contribution from *any person*, even an Executive Agency Lobbyist, employer, or real party in interest, if the contribution is legal under the campaign finance laws.

Campaign contributions to elected officials are not considered prohibited gifts.

Penalties

FAILING TO TIMELY FILE FORMS OR REMEDY DEFICIENCIES:

- Failing to file the *Initial Registration* or Updated Registration or failing to remedy a error in a timely manner, could result in a \$100 per day fine, up to a maximum of \$1,000.

FAILURE TO MAINTAIN RECORDS:

- Intentionally failing to register, knowingly failing to keep a receipt or maintain required records, or knowingly failing to file an Updated Statement could result in a \$5,000. Each subsequent violation could be a Class D felony.

Penalties

FAILURE TO pay \$500 fee, file Initial Registration or Updated Registration Statements, or providing false information or omitting required information could result in a \$5,000 fine. Each subsequent violation is a Class D felony.

INTENTIONALLY FILING FALSE STATEMENT OF EXPENDITURES: You could be liable in a civil action to any official or employee who sustains damage as a result of the filing or publication of the statement.

VOIDING OF CONTRACTS: If the Commission determines that a violation of this chapter has occurred in a case involving a contract with state government, the secretary of the Finance and Administration Cabinet may void any contract related to that case.



Contingency Arrangements are Prohibited!

You cannot receive compensation that is contingent in any way on the outcome of an executive agency decision you are trying to influence. This includes payment based on the awarding of a contract or payment of a percentage of a government contract awarded.

Violation is a Class D felony.

Contingency Arrangements are Prohibited!

An employer who enters into a contingency arrangement with a lobbyist shall be barred from doing business with the Commonwealth for a period of five (5) years from the date on which such a payment is revealed to the Executive Branch Ethics Commission.

Violation is a Class D felony.

Questions

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