

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0817.01 Bob Lackner x4350

HOUSE BILL 14-1258

HOUSE SPONSORSHIP

Stephens,

SENATE SPONSORSHIP

(None),

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE PROTECTION OF THE LEGAL RIGHTS OF
102 RESPONDENTS IN CONNECTION WITH PROCEEDINGS BEFORE THE
103 INDEPENDENT ETHICS COMMISSION ADJUDICATING COMPLAINTS
104 ALLEGING ETHICAL VIOLATIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill provides the following protections to public officers, members of the general assembly, local government officials, or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

government employees (IEC respondents) where a complaint against such individuals alleging official misconduct has been filed with the independent ethics commission (IEC):

- ! **Section 2** of the bill waives principles of sovereign immunity to make any member of the IEC (commissioner) personally liable for participating in a violation of the legal rights of an IEC respondent under the United States or state constitution or under state law if:
 - ! The legal rights of a particular respondent that were violated were clearly established at the time of the violation; and
 - ! The act or omission causing the violation was reckless, intentional, or willful.
- ! The bill specifies that a commissioner has not participated in a violation if the commissioner abstained from the act or omission causing the violation.
- ! **Section 4** of the bill requires the IEC to offer any IEC respondent at the expense of the state a legal defense to any complaint filed against the respondent. This section of the bill prohibits the IEC from conducting a public hearing on the complaint without first confirming that the IEC respondent has been offered a legal defense at state expense. This section of the bill also makes the commissioners of the IEC jointly and severally liable, in their personal capacities, for participating in any violation of these requirements of the bill if the act or omission causing the violation was reckless, intentional, or willful.
- ! Once the commission has made a determination that a complaint filed against an IEC respondent is not frivolous, the bill requires the IEC to promptly mail to the respondent written notice of the legal elements of the ethical violation that is the basis of the complaint.
- ! Upon the completion of its investigation, if the IEC determines that the IEC respondent may have committed one or more additional ethical violations beyond those identified in the complaint, the bill requires the IEC to:
 - ! Prior to any public hearing on the additional violation, promptly mail to the respondent written notice of the legal elements of the additional violation; and
 - ! Defer holding a public hearing on the additional violation until a period after the notice has been served upon the IEC respondent and to defer issuing any findings and determinations on the additional violation until it has conducted the public hearing.

- ! The IEC commissioners are jointly and severally liable, in their personal capacities, for participating in any violations of the requirements of the bill relating to notice of the elements of the complaint if the act or omission causing the violation was reckless, intentional, or willful.
- ! Finally, during the pendency of a complaint, the bill allows an IEC respondent to seek injunctive relief in federal court against any further violation of his or her legal rights arising under federal law.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-10-103, **add** (1.6)
3 and (1.7) as follows:

4 **24-10-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (1.6) "INDEPENDENT ETHICS COMMISSION" MEANS THE
7 COMMISSION CREATED IN SECTION 5 (1) OF ARTICLE XXIX OF THE STATE
8 CONSTITUTION.

9 (1.7) "IEC RESPONDENT" MEANS ANY PUBLIC OFFICER, MEMBER OF
10 THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR
11 GOVERNMENT EMPLOYEE AGAINST WHOM A COMPLAINT HAS BEEN FILED
12 WITH THE INDEPENDENT ETHICS COMMISSION UNDER SECTION 5 (3) (a) OF
13 ARTICLE XXIX OF THE STATE CONSTITUTION ALLEGING THAT THE
14 OFFICER, MEMBER, OFFICIAL, OR EMPLOYEE HAS FAILED TO COMPLY WITH
15 SUCH ARTICLE OR UNDER ANY OTHER STANDARD OF CONDUCT OR
16 REPORTING REQUIREMENT AS PROVIDED BY LAW.

17 **SECTION 2.** In Colorado Revised Statutes, **add** 24-10-106.3 as
18 follows:

19 **24-10-106.3. Partial waiver of sovereign immunity - members**
20 **of the independent ethics commission.** (1) NOTWITHSTANDING ANY

1 OTHER PROVISION OF LAW, BUT SUBJECT TO THE PROVISIONS OF
2 SUBSECTIONS (2) AND (3) OF THIS SECTION, ANY MEMBER OF THE
3 INDEPENDENT ETHICS COMMISSION, REFERRED TO IN THIS SECTION AS A
4 "COMMISSIONER", IS PERSONALLY LIABLE FOR PARTICIPATING IN A
5 VIOLATION OF THE LEGAL RIGHTS OF AN IEC RESPONDENT UNDER THE
6 UNITED STATES CONSTITUTION OR STATE CONSTITUTION OR UNDER STATE
7 LAW.

8 (2) A COMMISSIONER IS LIABLE UNDER SUBSECTION (1) OF THIS
9 SECTION IF:

10 (a) THE LEGAL RIGHTS OF AN IEC RESPONDENT THAT WERE
11 VIOLATED WERE CLEARLY ESTABLISHED AT THE TIME OF THE VIOLATION;
12 AND

13 (b) THE ACT OR OMISSION CAUSING THE VIOLATION WAS RECKLESS,
14 INTENTIONAL, OR WILLFUL.

15 (3) FOR PURPOSES OF THIS SECTION, A COMMISSIONER HAS NOT
16 PARTICIPATED IN A VIOLATION IF THE COMMISSIONER ABSTAINED FROM
17 THE ACT OR OMISSION CAUSING THE VIOLATION.

18 **SECTION 3.** In Colorado Revised Statutes, 24-18.5-101, **add** (1)
19 (c), (1) (d), and (1) (e) as follows:

20 **24-18.5-101. Independent ethics commission - establishment**
21 **- membership - subpoena power - definitions.** (1) As used in this
22 article, unless the context otherwise requires:

23 (c) "COMMISSIONER" MEANS A MEMBER OF THE COMMISSION.

24 (d) "ETHICS VIOLATION" MEANS A VIOLATION OF ARTICLE XXIX
25 OF THE STATE CONSTITUTION OR UNDER ANY OTHER STANDARD OF
26 CONDUCT OR REPORTING REQUIREMENT AS PROVIDED BY LAW.

27 (e) "IEC RESPONDENT" MEANS ANY PUBLIC OFFICER, MEMBER OF

1 THE GENERAL ASSEMBLY, LOCAL GOVERNMENT OFFICIAL, OR
2 GOVERNMENT EMPLOYEE AGAINST WHOM A COMPLAINT HAS BEEN FILED
3 WITH THE COMMISSION ALLEGING THAT THE OFFICER, MEMBER, OFFICIAL,
4 OR EMPLOYEE HAS FAILED TO COMPLY WITH ARTICLE XXIX OF THE STATE
5 CONSTITUTION OR ANY OTHER STANDARD OF CONDUCT OR REPORTING
6 REQUIREMENTS AS PROVIDED BY LAW.

7 **SECTION 4.** In Colorado Revised Statutes, **add** 24-18.5-102 as
8 follows:

9 **24-18.5-102. Rights of IEC respondents - state-provided**
10 **representation - notice of elements of charges - relief in federal court.**

11 (1) (a) THE COMMISSION SHALL OFFER ANY IEC RESPONDENT, AT THE
12 EXPENSE OF THE STATE, LEGAL REPRESENTATION IN CONNECTION WITH
13 ANY COMPLAINT FILED WITH THE COMMISSION AGAINST WHICH THE
14 RESPONDENT STANDS ACCUSED OF AN ETHICAL VIOLATION. THE LEGAL
15 REPRESENTATION REQUIRED BY THIS PARAGRAPH (a) MUST BE OFFERED TO
16 THE RESPONDENT PRIOR TO THE FIRST OF ANY PUBLIC HEARINGS ON THE
17 COMPLAINT.

18 (b) THE COMMISSION SHALL NOT CONDUCT A PUBLIC HEARING ON
19 A COMPLAINT WITHOUT FIRST CONFIRMING THAT THE IEC RESPONDENT
20 HAS BEEN OFFERED THE LEGAL DEFENSE AUTHORIZED UNDER THIS
21 SUBSECTION (1).

22 (2) THE COMMISSIONERS ARE JOINTLY AND SEVERALLY LIABLE, IN
23 THEIR PERSONAL CAPACITIES, FOR PARTICIPATING IN ANY VIOLATION OF
24 SUBSECTION (1) OF THIS SECTION IF THE ACT OR OMISSION CAUSING THE
25 VIOLATION WAS RECKLESS, INTENTIONAL, OR WILLFUL. LIABILITY UNDER
26 THIS SUBSECTION (2) INCLUDES REIMBURSEMENT OF THE RESPONDENT'S
27 COSTS AND REASONABLE ATTORNEY FEES.

1 (3) ONCE THE COMMISSION HAS MADE A DETERMINATION UNDER
2 SECTION 5 (3) (b) OF ARTICLE XXIX OF THE STATE CONSTITUTION THAT
3 THE COMPLAINT IS NOT FRIVOLOUS, THE COMMISSION SHALL PROMPTLY
4 MAIL TO THE RESPONDENT BY CERTIFIED MAIL WRITTEN NOTICE OF THE
5 LEGAL ELEMENTS OF THE ETHICAL VIOLATION THAT IS THE BASIS OF THE
6 COMPLAINT.

7 (4) UPON THE COMPLETION OF ITS INVESTIGATION, IF THE
8 COMMISSION DETERMINES THAT THE IEC RESPONDENT MAY HAVE
9 COMMITTED ONE OR MORE ADDITIONAL ETHICAL VIOLATIONS BEYOND
10 THOSE IDENTIFIED IN THE COMPLAINT, THE COMMISSION SHALL:

11 (a) PRIOR TO ANY PUBLIC HEARING ON THE ALLEGED ADDITIONAL
12 VIOLATION, PROMPTLY MAIL TO THE RESPONDENT BY CERTIFIED MAIL
13 WRITTEN NOTICE OF THE LEGAL ELEMENTS OF ANY ADDITIONAL
14 VIOLATIONS;

15 (b) DEFER HOLDING A PUBLIC HEARING ON ANY SUCH ADDITIONAL
16 VIOLATION UNTIL TWENTY-ONE DAYS AFTER THE NOTICE REQUIRED BY
17 PARAGRAPH (a) OF THIS SUBSECTION (4) HAS BEEN SERVED UPON THE IEC
18 RESPONDENT; AND

19 (c) DEFER ISSUING ANY FINDINGS AND DETERMINATIONS ON ANY
20 SUCH ADDITIONAL VIOLATION UNTIL THE COMMISSION HAS CONDUCTED
21 THE PUBLIC HEARING.

22 (5) THE COMMISSIONERS ARE JOINTLY AND SEVERALLY LIABLE, IN
23 THEIR PERSONAL CAPACITIES, FOR PARTICIPATING IN ANY VIOLATION OF
24 SUBSECTION (3) OR (4) OF THIS SECTION IF THE ACT OR OMISSION CAUSING
25 THE VIOLATION WAS RECKLESS, INTENTIONAL, OR WILLFUL.

26 (6) DURING THE PENDENCY OF A COMPLAINT THAT HAS BEEN FILED
27 WITH THE COMMISSION AGAINST AN IEC RESPONDENT, THE RESPONDENT

1 MAY REQUEST INJUNCTIVE RELIEF IN FEDERAL COURT SEEKING TO ENJOIN
2 THE COMMISSIONERS FROM FURTHER VIOLATING ANY LEGAL RIGHTS OF A
3 RESPONDENT ARISING UNDER FEDERAL LAW.

4 **SECTION 5. Effective date - applicability.** This act takes effect
5 July 1, 2014, and applies to complaints alleging an ethical violation filed
6 with the independent ethics commission on or after said date.

7 **SECTION 6. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.