

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4064

BY DELEGATES HILL, PACK, BATES, D. JEFFRIES, D.

JENNINGS, AND FLEISCHAUER

[Introduced January 08, 2020; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §6B-3-1, §6B-3-3b, §6B-3-7, and §6B-3-9 of the Code of West
 2 Virginia, 1931, as amended, all relating to lobbyist; requiring notification of potential
 3 conflict of interests; and providing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

1 As used in this article, unless the context in which used clearly indicates otherwise:

2 ~~(1)~~ “Compensation” means money or any other thing of value received or to be received
 3 by a lobbyist from an employer for services rendered.

4 “Conflict of interest” means a situation in which the concerns, aims or interests of two
 5 different parties are incompatible or directly adverse.

6 ~~(2)~~ “Employer” or “lobbyist's employer” means any person who employs or retains a
 7 lobbyist.

8 ~~(3)~~ “Expenditure” means payment, distribution, loan, advance deposit, reimbursement, or
 9 gift of money, real or personal property or any other thing of value; or a contract, promise or
 10 agreement, whether or not legally enforceable.

11 ~~(4)~~ “Government officer or employee” means a member of the Legislature, a legislative
 12 employee, the Governor and other members of the Board of Public Works, heads of executive
 13 departments and any other public officer or public employee under the legislative or executive
 14 branch of state government who is empowered or authorized to make policy and perform
 15 nonministerial functions. In the case of elected offices included herein, the term “government
 16 officer or employee” includes candidates who have been elected but who have not yet assumed
 17 office.

18 ~~(5)~~ “Legislation” means bills, resolutions, motions, amendments, nominations and other
 19 matters pending or proposed in either house of the Legislature and includes any other matters
 20 that may be the subject of action by either house or any committee of the Legislature and all bills

21 or resolutions that, having passed both houses, are pending approval or veto by the Governor.

22 ~~(6)~~ "Lobbying" or "lobbying activity" means the act of communicating with a government
23 officer or employee to promote, advocate or oppose or otherwise attempt to influence:

24 ~~(i)~~ (A) The passage or defeat or the executive approval or veto of any legislation which
25 may be considered by the Legislature of this state; or

26 ~~(ii)~~ (B) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee
27 or other delegated legislative or quasi-legislative action to be taken or withheld by any executive
28 department.

29 ~~(7)~~ "Lobbying firm" means any business entity, including an individual contract lobbyist,
30 which meets either of the following criteria:

31 (A) The business entity receives or becomes entitled to receive any compensation, other
32 than reimbursement for reasonable travel expenses, for the purpose of lobbying on behalf of any
33 other person, and any partner, owner, officer or employee of the business entity.

34 (B) The business entity receives or becomes entitled to receive any compensation, other
35 than reimbursement for reasonable travel expenses, to communicate directly with any elected
36 state official, agency official or legislative official for the purpose of lobbying on behalf of any other
37 person.

38 ~~(8)(A)~~ "Lobbyist" means any individual employed by a lobbying firm or who is otherwise
39 employed or contracts for economic consideration, other than reimbursement for reasonable
40 travel expenses, to communicate directly or through his or her agents with any elective state
41 official, agency official or legislative official for the purpose of promoting, advocating, opposing or
42 otherwise attempting to influence:

43 ~~(i)~~ (A) The passage or defeat or the executive approval or veto of any legislation which
44 may be considered by the Legislature of this state; or

45 ~~(ii)~~ (B) The adoption or rejection of any rule, legislative rule, standard, rate, fee or other
46 delegated legislative or quasi-legislative action to be taken or withheld by any executive

47 department.

48 ~~(B)~~ The term “lobbyist” does not include the following persons, who are exempt from the
49 registration and reporting requirements set forth in this article, unless they engage in activities
50 which would otherwise subject them to the registration and reporting requirements:

51 ~~(i)~~ (A) Persons who limit their lobbying activities to appearing before public sessions of
52 committees of the Legislature, or public hearings of state agencies, are exempt.

53 ~~(ii)~~ (B) Persons who limit their lobbying activities to attending receptions, dinners, parties
54 or other group functions and make no expenditure in connection with such lobbying are exempt.

55 ~~(iii)~~ (C) Persons who engage in news or feature reporting activities and editorial comment
56 as working members of the press, radio or television and persons who publish or disseminate
57 such news, features or editorial comment through a newspaper, book, regularly published
58 periodical, radio station or television station are exempt.

59 ~~(iv)~~ (D) Persons who lobby without compensation or other consideration, other than
60 reimbursement for reasonable travel expenses, for acting as lobbyists, who are not employed by
61 a lobbying firm or lobbyist employer, and whose total expenditures in connection with lobbying
62 activities do not exceed \$150 during any calendar year, are exempt. The exemptions contained
63 in this subparagraph and in subparagraph (ii) are intended to permit and encourage citizens of
64 this state to exercise their Constitutional rights to assemble in a peaceable manner, consult for
65 the common good, instruct their representatives, and apply for a redress of grievances.
66 Accordingly, such persons may lobby without incurring any registration or reporting obligation
67 under this article. Any person exempt under this subparagraph or subparagraph (ii) may at his or
68 her option register and report under this article.

69 ~~(v)~~ (E) Persons who lobby on behalf of a nonprofit organization with regard to legislation,
70 without compensation, and who restrict their lobbying activities to no more than 20 days or parts
71 thereof during any regular session of the Legislature, are exempt. The commission may
72 promulgate a legislative rule to require registration and reporting by persons who would otherwise

73 be exempt under this subparagraph, if it determines that such rule is necessary to prevent
74 frustration of the purposes of this article. Any person exempt under this subparagraph may, at his
75 or her option, register and report under this article.

76 ~~(vi)~~ (F) The Governor, members of the Governor's staff, members of the board of Public
77 Works, officers and employees of the executive branch who communicate with a member of the
78 Legislature on the request of that member, or who communicate with the Legislature, through the
79 proper official channels, requests for legislative action or appropriations which are deemed
80 necessary for the efficient conduct of the public business or which are made in the proper
81 performance of their official duties, are exempt.

82 ~~(vii)~~ (G) Members of the Legislature are exempt.

83 ~~(viii)~~ (H) Persons employed by the Legislature for the purpose of aiding in the preparation
84 or enactment of legislation or the performance of legislative duties are exempt.

85 ~~(ix)~~ (I) Persons rendering professional services in drafting proposed legislation or in
86 advising or rendering opinions to clients as to the construction and effect of proposed or pending
87 legislation are exempt.

88 ~~(9)~~ "Person" means any individual, partnership, trust, estate, business trust, association
89 or corporation; any department, commission, board, publicly supported college or university,
90 division, institution, bureau or any other instrumentality of the state; or any county, municipal
91 corporation, school district or any other political subdivision of the state.

§6B-3-3b. Conflict of interest.

1 (a) A lobbyist or a lobbyist's immediate family member may not participate in any decision
2 as a member of a state or county board, council, commission or public service district if the
3 lobbyist may receive direct, personal economic or pecuniary benefit from a decision of that state
4 or county board, council, commission or public service district. The lobbyist's economic or
5 pecuniary benefit must affect him or her directly and not merely as a member of a class.

6 (b) A lobbyist who is registered to represent multiple clients and experiences a potential

7 conflict of interest on legislation shall immediately notify both clients in writing about the potential
8 conflict of interest. Each client shall waive the potential conflict of interest for the lobbyist to
9 continue representation. Such waiver shall be made in writing after informed consent.

§6B-3-7. Duties of lobbyists.

1 A person required to register as a lobbyist under this article also has the following
2 obligations, the violation of which constitutes cause for revocation of his or her registration and
3 termination of his or her lobbying privileges and may subject the person, and the person's
4 employer, if employer aids, abets, ratifies or confirms the violation, to other civil liabilities as
5 provided by this chapter.

6 (1) Any person required to register as a lobbyist shall obtain, preserve and make available
7 for inspection by the commission at any time all accounts, bills, receipts, books, papers and
8 documents necessary to substantiate the financial reports required to be made under this article
9 for a period of at least two years from the date of the filing of the statement to which those items
10 relate: *Provided*, That if a lobbyist is required under the terms of his or her employment contract
11 to turn any records over to his or her employer, responsibility for the preservation of the records
12 under this subsection shall rest with the employer.

13 (2) In addition, a person required to register as a lobbyist may not:

14 (A) Engage in any lobbying activity before registering as a lobbyist;

15 (B) Knowingly deceive or attempt to deceive any government officer or employee as to
16 any fact pertaining to a matter which is the subject of lobbying activity;

17 (C) Cause or influence the introduction of any legislation for the purpose of thereafter
18 being employed to secure its defeat;

19 (D) Exercise any undue influence, extortion or unlawful retaliation upon any government
20 officer or employee by reason of the government officer or employee's position with respect to, or
21 his or her vote upon, any matter which is the subject of lobbying activity;

22 (E) Exercise undue influence upon any legislator or other privately employed government

23 officer or employee through communications with the person's employer;

24 (F) Give a gift to any government officer or employee in excess of or in violation of any
25 limitations on gifts set forth in §6B-2-5(c) of this code or give any gift, whether lawful or unlawful,
26 to a government officer or employee without the government officer or employee's knowledge and
27 consent; or

28 (G) Represent a client when a potential conflict of interest exists without informing the
29 client and obtaining a written waiver.

§6B-3-9. Penalties.

30 (a) Any person who is required under the provisions of this article to file an application,
31 statement or report and who willfully and knowingly makes a false statement, conceals a material
32 fact or otherwise commits a fraud in the application, statement or report is guilty of a misdemeanor
33 and, upon conviction thereof, shall be fined not more than \$1,000, or confined in ~~a county or~~
34 ~~regional~~ jail not more than one year, or both.

35 (b) A person who is subject to the registration and reporting requirements of this article
36 and who fails or refuses to register or who fails or refuses to file a required statement or report or
37 who otherwise violates the provisions of this article may be the subject of a complaint filed with
38 the Ethics Commission and may be proceeded against in the same manner and to the same ends
39 as a public officer or public employee under the provisions of this chapter.

40 (c) A person who willfully and knowingly files a false report under the provisions of this
41 article is liable in a civil action to any government officer or employee who sustains damage as a
42 result of the filing or publication of the report.

43 (d) A person who is subject to the registration requirements of this article and who fails or
44 refuses to inform a client of a potential conflict of interest or who fails or refuses to obtain a written
45 waiver of a potential conflict of interest may be the subject of a complaint filed with the Ethics
46 Commission and may be proceeded against in the same manner and to the same ends as a
47 public officer or public employee under the provisions of this chapter.

NOTE: The purpose of this bill is to require a lobbyist who is registered to represent multiple clients and experiences a potential conflict of interest on legislation to immediately notify both clients in writing about the potential conflict of interest.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.