WEST virginia legislature

2021 regular session

Introduced

House Bill 3183

By Delegates J. Pack, Householder, Summers, and Steele

[Introduced March 16, 2021; Referred to the Committee on the Judiciary]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

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

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

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

~~(2)~~ (3) “Employer” or “lobbyist’s employer” means any person who employs or retains a lobbyist.

~~(3)~~ (4) “Expenditure” means payment, distribution, loan, advance deposit, reimbursement, or gift of money, real or personal property or any other thing of value; or a contract, promise or agreement, whether or not legally enforceable.

~~(4)~~ (5) “Government officer or employee” means a member of the Legislature, a legislative employee, the Governor and other members of the board of Public Works, heads of executive departments and any other public officer or public employee under the legislative or executive branch of state government who is empowered or authorized to make policy and perform nonministerial functions. In the case of elected offices included herein, the term “government officer or employee” includes candidates who have been elected but who have not yet assumed office.

~~(5)~~ (6) “Legislation” means bills, resolutions, motions, amendments, nominations and other matters pending or proposed in either house of the Legislature and includes any other matters that may be the subject of action by either house or any committee of the Legislature and all bills or resolutions that, having passed both houses, are pending approval or veto by the Governor.

~~(6)~~ (7)“Lobbying” or “lobbying activity” means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

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

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

~~(7)~~ (8) “Lobbying firm” means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

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

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

~~(8)~~(9)(A) “Lobbyist” means any individual employed by a lobbying firm or who is otherwise employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of promoting, advocating, opposing or otherwise attempting to influence:

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

(ii) The adoption or rejection of any rule, legislative rule, standard, rate, fee or other delegated legislative or quasilegislative action to be taken or withheld by any executive department.

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

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

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

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

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

(v) Persons who lobby on behalf of a nonprofit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt. The Commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt under this subparagraph, if it determines that such rule is necessary to prevent frustration of the purposes of this article. Any person exempt under this subparagraph may, at his or her option, register and report under this article.

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

(vii) Members of the Legislature are exempt.

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

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

(10) “Person” means any individual, partnership, trust, estate, business trust, association or corporation; any department, commission, board, publicly supported college or university, division, institution, bureau or any other instrumentality of the state; or any county, municipal corporation, school district or any other political subdivision of the state.

§6B-3-3b. Conflict of interest.

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

(b) A lobbyist who is registered to represent multiple clients and experiences a potential conflict of interest on legislation shall immediately notify both clients in writing about the potential conflict of interest. Each client shall waive the potential conflict of interest for the lobbyist to continue representation. Such waiver shall be made in writing after informed consent.

§6B-3-7. Duties of lobbyists.

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

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

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

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

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

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

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

(E) Exercise undue influence upon any legislator or other privately employed government officer or employee through communications with the person’s employer;

(F) Give a gift to any government officer or employee in excess of or in violation of any limitations on gifts set forth in subsection (c), section five, article two of this chapter or give any gift, whether lawful or unlawful, to a government officer or employee without the government officer or employee’s knowledge and consent.

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

§6B-3-9. Penalties.

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

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

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

(d) A person who is subject to the registration requirements of this article and who fails or refuses to inform a client of a potential conflict of interest or who fails or refuses to obtain a written waiver of a potential conflict of interest may be the subject of a complaint filed with the Ethics Commission and may be proceeded against in the same manner and to the same ends as a 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.