

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4957

By Delegates Smith and Fehrenbacher

[Introduced ; referred to
the Committee on]

1 A BILL to amend and reenact §6B-2-2 of the Code of West Virginia, 1931, as amended, and to
 2 amend and reenact §6B-3-1, §6B-3-2, §6B-3-3, §6B-3-3a, and §6B-3-5 of said code, all
 3 relating to the Ethics Commission's rulemaking requirements; modifying the definition of
 4 lobbying; removing ability of commission to promulgate rule regarding registration of
 5 persons exempt from the Act; removing requirement that lobbyist photograph
 6 specifications be established by rule; removing requirement that Commission establish fee
 7 for lobbyist training by rule; and establishing that sponsors of grassroots lobbying
 8 campaigns report certain information on expenditures over \$5,000.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;
 DISCLOSURE OF FINANCIAL INTEREST BY EQPUBLIC OFFICIALS AND
 EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF
 CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

§6B-2-2. Same – General powers and duties.

1 (a) The commission shall ~~shall~~ may propose rules for promulgation in accordance with the
 2 provisions of §29A-1-1 *et seq.* of this code, to carry out the purposes of this ~~article~~ chapter.

3 (b) The commission may initiate or receive complaints and make investigations, as
 4 provided in §6B-2-4 of this code, and upon complaint by an individual of an alleged violation of this
 5 chapter by a public official or public employee, refer the complaint to the Review Board as
 6 provided in §6B-2-2a of this code. Any person charged with a violation of this chapter is entitled to
 7 the administrative hearing process contained in §6B-2-4 of this code.

8 (c) The commission may subpoena witnesses, compel their attendance and testimony,
 9 administer oaths and affirmations, take evidence and require by subpoena the production of
 10 books, papers, records or other evidence needed for the performance of the commission's duties
 11 or exercise of its powers, including its duties and powers of investigation.

12 (d) The commission shall, in addition to its other duties:

13 (1) Prescribe forms for reports, statements, notices and other documents required by law;

14 (2) Prepare and publish manuals and guides explaining the duties of individuals covered
15 by this law; and giving instructions and public information materials to facilitate compliance with,
16 and enforcement of, this act; and

17 (3) Provide assistance to agencies, officials and employees in administering the provisions
18 of this act.

19 (e) The commission may:

20 (1) Prepare reports and studies to advance the purpose of the law;

21 (2) Contract for any services which cannot satisfactorily be performed by its employees;

22 (3) Require the Attorney General to provide legal advice without charge to the commission;

23 (4) Employ additional legal counsel;

24 (5) Request appropriate agencies of state to provide any professional assistance the
25 commission may require in the discharge of its duties: *Provided*, That the commission shall
26 reimburse any agency other than the Attorney General the cost of providing assistance; and

27 (6) Share otherwise confidential documents, materials or information with appropriate
28 agencies of state government, provided that the recipient agrees to maintain the confidentiality
29 and privileged status of the document, material or information.

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 by
3 a lobbyist from an employer for services rendered.

4 (2) "Employer" or "lobbyist's employer" means any person who employs or retains a
5 lobbyist.

6 (3) "Expenditure" means payment, distribution, loan, advance deposit, reimbursement, or
7 gift of money, real or personal property or any other thing of value; or a contract, promise or

8 agreement, whether or not legally enforceable.

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

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

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

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

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

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

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

32 (B) The business entity receives or becomes entitled to receive any compensation, other
33 than reimbursement for reasonable travel expenses, to communicate directly with any elected

34 state official, agency official or legislative official for the purpose of lobbying on behalf of any other
35 person.

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

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

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

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

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

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

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

57 (iv) Persons who lobby without compensation or other consideration, other than
58 reimbursement for reasonable travel expenses, for acting as lobbyists, who are not employed by a
59 lobbying firm or lobbyist employer, and whose total expenditures in connection with lobbying

60 activities do not exceed \$150 during any calendar year, are exempt. The exemptions contained in
61 this subparagraph and in subparagraph (ii) are intended to permit and encourage citizens of this
62 state to exercise their Constitutional rights to assemble in a peaceable manner, consult for the
63 common good, instruct their representatives, and apply for a redress of grievances. Accordingly,
64 such persons may lobby without incurring any registration or reporting obligation under this article.
65 Any person exempt under this subparagraph or subparagraph (ii) may at his or her option register
66 and report under this article.

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

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

80 (vii) Members of the Legislature are exempt.

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

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

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

§6B-3-2. Registration of lobbyists.

1 (a) Before engaging in any lobbying activity, or within thirty days after being employed as a
2 lobbyist, whichever occurs first, a lobbyist shall register with the Ethics Commission by filing a
3 lobbyist registration statement. The registration statement shall contain information and be in a
4 form prescribed by the Ethics Commission, ~~by legislative rule~~ including, but not limited to, the
5 following information:

6 (1) The registrant's name, business address, telephone numbers and any temporary
7 residential and business addresses and telephone numbers used or to be used by the registrant
8 while lobbying during a legislative session;

9 (2) The name, address and occupation or business of the registrant's employer;

10 (3) A statement as to whether the registrant is employed or retained by his or her employer
11 solely as a lobbyist or is a regular employee performing services for the employer which include,
12 but are not limited to, lobbying;

13 (4) A statement as to whether the registrant is employed or retained by his or her employer
14 under any agreement, arrangement or understanding according to which the registrant's
15 compensation, or any portion of the registrant's compensation, is or will be contingent upon the
16 success of his or her lobbying activity;

17 (5) The general subject or subjects, if known, on which the registrant will lobby or employ
18 some other person to lobby in a manner which requires registration under this article; and

19 (6) An appended written authorization from each of the lobbyist's employers confirming the
20 lobbyist's employment and the subjects on which the employer is to be represented.

21 (b) Any lobbyist who receives or is to receive compensation from more than one person for

22 services as a lobbyist shall file a separate notice of representation with respect to each person
23 compensating him or her for services performed as a lobbyist. When a lobbyist whose fee for
24 lobbying with respect to the same subject is to be paid or contributed by more than one person,
25 then the lobbyist may file a single statement, in which he or she shall detail the name, business
26 address and occupation of each person paying or contributing to the fee.

27 (c) Whenever a change, modification or termination of the lobbyist's employment occurs,
28 the lobbyist shall, within one week of the change, modification or termination, furnish full
29 information regarding the change, modification or termination by filing with the commission an
30 amended registration statement.

31 (d) Each lobbyist who has registered shall file a new registration statement, revised as
32 appropriate, on the Monday preceding the second Wednesday in January of each odd-numbered
33 year and failure to do so terminates his or her authorization to lobby. Until the registration is
34 renewed, the person may not engage in lobbying activities unless he or she is otherwise exempt
35 under §6B-3-1(B)(7) of this code.

36 (e) The following public officers or employees may not, during or up to one year after the
37 termination of their public employment or service, be allowed to register as lobbyists:

38 (1) Members of the Legislature;

39 (2) Members of the Executive Department as referenced in article VII, section one of the
40 Constitution of West Virginia;

41 (3) Will and pleasure professional employees of the Legislature under the direct
42 supervision of a member of the Legislature;

43 (4) Will and pleasure professional employees of members of the Executive Department
44 under the direct supervision of the Executive Department officer and who regularly, personally and
45 substantially participates in a decision-making or advisory capacity regarding agency or
46 department policy;

47 (5) Members of the Supreme Court of Appeals;

48 (6) Any department secretary of an executive branch department created by the provisions
49 of §5F-1-2 of this code; and

50 (7) Heads of any state departments or agencies.

§6B-3-3. Photograph and information-booklet-publication.

1 Each lobbyist shall, at the time he or she registers, submit to the commission a recent
2 photograph of the lobbyist, ~~of a size and format as determined by rule of the commission~~ together
3 with the name of the lobbyist's employer, a brief biographical description, and any other
4 information the lobbyist may wish to submit, not to exceed 50 words in length. The photograph and
5 information shall be published at least annually in a booklet form by the commission for distribution
6 to government officers or employees, lobbyists, and to the public. The method of distribution is in
7 the discretion of the commission, which is not required to compile and maintain a distribution list of
8 all persons who may be entitled to receive the booklet.

§6B-3-3c. Lobbyist training course.

1 The commission shall provide a training course for registered lobbyists and prospective
2 lobbyists at least twice each year regarding the provisions of the ethics code relevant to lobbyists.
3 One such course shall be conducted during the month of January. ~~In addition to the registration
4 fees authorized in section three-a of this article, the commission may collect a reasonable fee
5 established by legislative rule authorized pursuant to article three, chapter twenty-nine-a of this
6 code from those attending lobbyist training, which is to be collected by the Ethics Commission and
7 deposited pursuant to section six, article one of this chapter~~ To maintain registration and engage in
8 lobbying activities, a lobbyist must complete one such training course during each two-year
9 registration cycle as described in §6B-3-3a of this code: *Provided*, That a lobbyist must attend
10 such training course prior to engaging in lobbying activities.

§6B-3-5. Grass roots lobbying campaigns.

1 (1) Any person who has made expenditures, not required to be reported under other
2 sections of this chapter, exceeding \$5,000 in the aggregate within any three-month period or

3 exceeding \$1,000 in the aggregate within any one-month period in presenting a program
4 addressed to the public, a substantial portion of which is intended, designed, or calculated
5 primarily to influence legislation, shall be required to register and report, as provided in subsection
6 (2) of this section, as a sponsor of a grass roots lobbying campaign.

7 (2) Within 30 days after becoming a sponsor of a grass roots lobbying campaign, the
8 sponsor shall register by filing with the Ethics Commission a registration statement, in such detail
9 as the commission shall prescribe, showing:

10 (a) The sponsor's name, address and business or occupation, and, if the sponsor is not an
11 individual, the names, addresses, and titles of the controlling persons responsible for managing
12 the sponsor's affairs;

13 (b) The names, addresses and business or occupation of all persons organizing and
14 managing the campaign, or hired to assist the campaign, including any public relations or
15 advertising firms participating in the campaign, and the terms of compensation for all such
16 persons;

17 (c) The names and addresses of each person contributing \$1,000 or more made for the
18 purpose of furthering the campaign and the aggregate amount contributed;

19 (d) The purpose of the campaign, including the specific legislation, rules, rates, standards
20 or proposals that are the subject matter of the campaign;

21 (e) The totals of all expenditures made or incurred to date on behalf of the campaign, which
22 totals shall be segregated according to financial category, including, but not limited to, the
23 following: Advertising, segregated by media, and, in the case of large expenditures over \$5,000,
24 ~~(as provided by legislative rule of the commission)~~ by outlet; contributions; entertainment,
25 including meals and beverages; office expenses, including rent and the salaries and wages paid
26 for staff and secretarial assistance, or the proportionate amount thereof paid or incurred for
27 lobbying campaign activities; consultants; and printing and mailing expenses.

28 (3) Every sponsor who has registered under this section shall file reports with the

29 commission, which reports shall be filed for the same time periods required for the filing of
30 lobbyists' reports under the provisions of §6B-3-4 of this code.

31 (4) When the campaign has been terminated, the sponsor shall file a notice of termination
32 with the final monthly report, which notice shall state the totals of all contributions and
33 expenditures made on behalf of the campaign, in the same manner as provided for in the
34 registration statement.

NOTE: The purpose of this bill is to make changes regarding Ethics Commission's rulemaking requirements; modify the definition of lobbying; remove ability of commission to promulgate rule regarding registration of persons exempt from lobbying requirements; removing requirement that lobbyist's photographs meet specifications established by rule; removing requirement that commission establish fee for lobbyist training by rule; and establishing that sponsors of grassroots lobbying campaigns report certain information on expenditures over \$5,000.

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