

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **Senate Bill 135**

BY SENATOR OJEDA

[Introduced January 9, 2019; Referred  
to the Committee on Government Organization; and then  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §6B-3-2, §6B-3-7, and §6B-3-9 of the Code of West Virginia, 1931,  
2 as amended; and to amend said code by adding thereto a new section, designated §6B-  
3 3-3d, all relating to regulation of lobbyists; requiring registered lobbyists to purchase and  
4 wear body-mounted cameras at the Capitol and in certain other circumstances; requiring  
5 certain certifications be made by registered lobbyists; prohibiting lobbyists from making  
6 certain campaign donations; prohibiting lobbyists from loitering in the Capitol with certain  
7 exceptions; prohibiting lobbyists from making certain expenditures to benefit legislators;  
8 making body-mounted camera video and audio recordings subject to inspection by the  
9 Ethics Commission and subject to the provisions of the West Virginia Freedom of  
10 Information Act; authorizing random inspections of lobbyist body-mounted cameras;  
11 setting certain compliance requirements for lobbyists; creating a misdemeanor offense for  
12 failure to comply with certain requests for video and audio from body-mounted cameras;  
13 and creating penalties relating to access to the Capitol complex by lobbyists for violation  
14 of certain prohibited conduct.

*Be it enacted by the Legislature of West Virginia:*

### **ARTICLE 3. LOBBYISTS.**

#### **§6B-3-2. Registration of lobbyists.**

1 (a) Before engaging in any lobbying activity, or within 30 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  
20 the lobbyist's employment and the subjects on which the employer is to be represented; and

21 (7) A certification, under penalty of perjury, that the registrant has purchased a body-  
22 mounted camera at his or her own expense and that he or she will wear the body-mounted camera  
23 and record audio and video of all lobbying activity.

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

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

34 (d) Each lobbyist who has registered shall file a new registration statement, revised as  
35 appropriate, on the Monday preceding the second Wednesday in January of each odd-numbered

36 year and failure to do so terminates his or her authorization to lobby. Until the registration is  
37 renewed, the person may not engage in lobbying activities unless he or she is otherwise exempt  
38 under §6B-3-1(7)(B) of this code.

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

41 (1) Members of the Legislature;

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

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

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

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

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

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

**§6B-3-3d. Prohibited conduct.**

1 Notwithstanding any other provisions of code to the contrary, lobbyists are hereby  
2 prohibited from:

3 (1) Directly or indirectly making any political campaign donations to persons running for  
4 public office in West Virginia;

5 (2) Setting foot on Capitol grounds without wearing a body-mounted camera that is  
6 recording at all times while he or she is on the Capitol grounds and as otherwise required in §6B-  
7 3-7 of this code;

8           (3) Loitering in the Capitol without a specific scheduled meeting with a legislator or without  
9 a bill of interest to a disclosed client on a specific committee agenda or floor calendar on that day;

10           (4) Hosting events that provide food, refreshments, or anything of value to legislators;

11           (5) Providing meals, refreshments, or anything of value at the Capitol complex to  
12 legislators; and

13           (6) Paying for or providing anything of value to legislators for attendance at any event or  
14 function on or off the Capitol premises.

**§6B-3-7. Duties of lobbyists.**

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

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

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

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

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

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

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

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

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

42 (3) Every lobbyist shall wear and record with his or her body-mounted camera at all times  
43 they are within the Capitol and record all conversations held with any legislator whether at the  
44 Capitol or in another location that involve any lobbying efforts. The commission may inspect the  
45 lobbyist body-mounted camera and recorded audio and video at any time and the audio and  
46 video, by and through the commission, are subject to the provisions of the West Virginia Freedom  
47 of Information Act, as contained in §29B-1-1, et seq., of this code. If the commission receives a  
48 request for the video under the provisions of that article, it shall contact the lobbyist within 24  
49 hours and request the relevant audio and video be provided within 48 hours. If the lobbyist fails  
50 to provide the required audio and video, the credentials of that lobbyist shall be revoked and the  
51 conduct shall be treated as concealing a material fact or otherwise committing a fraud in the  
52 application pursuant to §6B-3-9 of this code. Any member or employee of the commission may  
53 conduct random inspections of the lobbyist body-mounted camera at the Capitol complex or any  
54 other location, as directed by the commission.

**§6B-3-9. Penalties.**

1 (a) Any person who is required under the provisions of this article to file an application,  
2 statement or report and who willfully and knowingly makes a false statement, conceals a material  
3 fact or otherwise commits a fraud in the application, statement or report is guilty of a misdemeanor

4 and, upon conviction thereof, shall be fined not more than \$1,000, or confined in ~~a county or~~  
5 ~~regional~~ jail not more than one year, or both fined and confined.

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

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

14 (d) In addition to any other relevant penalty, a lobbyist who performs any of the prohibited  
15 conduct contained in §6B-3-3d of this code shall be barred from the Capitol complex for 30 days  
16 and the punishment shall be enforced by Capitol Police. For a second violation, the lobbyist shall  
17 be barred for two years. For a third violation, the lobbyist shall be barred for life.

NOTE: The purpose of this bill is to modernize the regulation of lobbyists. The bill requires registered lobbyists to purchase and wear body-mounted cameras at the Capitol and in certain other circumstances. It prohibits lobbyists from making certain campaign donations and from loitering in the Capitol with certain exceptions. It prohibits lobbyists from making certain expenditures to benefit legislators. The bill provides that body-mounted camera video and audio recordings are subject to inspection by the Ethics Commission and subject to the provisions of the West Virginia Freedom of Information Act. It authorizes random inspections of lobbyist body-mounted cameras and sets certain compliance requirements for lobbyists. The bill creates a misdemeanor offense for failure to comply with certain requests for video and audio from body-mounted cameras, and creates penalties relating to access to the Capitol complex by lobbyists for violation of certain prohibited conduct.

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