

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2944

**FISCAL
NOTE**

BY DELEGATE HIGGINBOTHAM

[Introduced March 05, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §6B-3-1, §6B-3-2, §6B-3-3a, §6B-3-3b, §6B-3-3c, §6B-3-4; §6B-3-
2 6; and §6B-3-7 of the Code of West Virginia, 1931, as amended, all relating to the
3 registration of lobbyists and lobbyist interns; defining and specifying criteria for lobbyist
4 interns; providing for registration of lobbyist interns and exemption from registration fees;
5 requiring lobbyists and lobbyist interns under contract to specifying end date of their
6 engagements; including lobbyist interns in conflict of interest prohibitions and training
7 requirements; requiring reporting of activity and expenditures; prohibiting the use of
8 unregistered lobbyists and lobbyist interns; and including lobbyist interns within in the
9 same ethical requirements as lobbyists.

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 (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
18 that may be the subject of action by either house or any committee of the Legislature and all bills
19 or 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
23 be 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 quasi-legislative 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
42 be 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 quasi-legislative 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
59 a 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
61 in this subparagraph and in subparagraph (ii) are intended to permit and encourage citizens of
62 this state to exercise their Constitutional rights to assemble in a peaceable manner, consult for
63 the common good, instruct their representatives, and apply for a redress of grievances.
64 Accordingly, such persons may lobby without incurring any registration or reporting obligation
65 under this article. Any person exempt under this subparagraph or subparagraph (ii) may at his or
66 her option register 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 20 days or parts
69 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
73 or 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) "Lobbyist intern" refers to any individual who engages in lobbying activity and meets
87 the following criteria:

88 (A) The individual serves in a student or trainee role with the objective of gaining
89 experience or educational credit;

90 (B) The individual works under the close supervision of a registered lobbyist employed by
91 the same entity for whom the individual is employed, with or without monetary compensation;

92 (C) The individual is not employed for any other purpose for the employer;

93 (D) The individual will not be employed as an intern for a period or aggregate of periods
94 greater than nine months; and

95 (E) The individual has not previously acted or served as a lobbyist or lobbyist intern in this
96 state or any other jurisdiction of the United States of America.

97 ~~(9)~~ (10) "Person" means any individual, partnership, trust, estate, business trust,
98 association or corporation; any department, commission, board, publicly supported college or
99 university, division, institution, bureau or any other instrumentality of the state; or any county,
100 municipal corporation, 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 30 days after being employed as a
2 lobbyist or lobbyist intern, whichever occurs first, ~~a lobbyist~~ lobbyists and lobbyist interns shall
3 register with the Ethics Commission by filing a lobbyist registration statement. The registration
4 statement shall contain information and be in a form prescribed by the Ethics Commission by
5 legislative rule, including, but not limited to, the 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, lobbyist intern, or is a regular employee performing services for the employer
12 which include, 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) For registrants retained solely as lobbyists and lobbyist interns, a date at which the
22 employment relationship will terminate.

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

29 (c) ~~Whenever~~ Except for those registrants who have previously indicated a definite end
30 date pursuant to subdivision (a)(7) of this section, whenever a change, modification, or termination
31 of the lobbyist's employment occurs, the lobbyist shall, within one week of the change,
32 modification, or termination, furnish full information regarding the change, modification or
33 termination by filing with the commission an 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 paragraph (B), subdivision (7), section one of this article.

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-3-3a. Registration fees.

1 (a) Each lobbyist shall, at the time he or she registers, pay the commission a base
2 registration fee of \$100, plus \$100 for each employer represented, to be filed with the initial
3 registration statement and with each new registration statement filed by the lobbyist in subsequent
4 odd numbered years. Whenever a lobbyist modifies his or her registration to add additional
5 employers, an additional registration fee of \$100 for each additional employer represented shall
6 be paid to the commission.

7 (b) All fees authorized and collected pursuant to this article shall be paid to the Ethics
8 Commission and thereafter deposited pursuant to section six, article one of this chapter.

9 (c) Lobbyist interns are exempt from registration fees and employer fees.

§6B-3-3b. Conflict of interest.

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

6 of a class.

§6B-3-3c. Lobbyist training course.

1 The commission shall provide a training course for registered lobbyists, lobbyist interns,
2 and prospective lobbyists at least twice each year regarding the provisions of the ethics code
3 relevant to lobbyists. One such course shall be conducted during the month of January. In addition
4 to the registration fees authorized in §6B-3-3a of this code, the commission may collect a
5 reasonable fee established by legislative rule authorized pursuant to §29B-3-1 *et seq.* of this code
6 from those attending lobbyist training, which is to be collected by the Ethics Commission and
7 deposited pursuant to §6B-1-6 of this code. To maintain registration and engage in lobbying
8 activities, a lobbyist must complete one such training course during each two-year registration
9 cycle as described in §6B-3-3a of this code: *Provided*, That a lobbyist must attend such training
10 course prior to engaging in lobbying activities.

§6B-3-4. Reporting by lobbyists.

1 (a) A registered lobbyist shall file with the commission reports of his or her lobbying
2 activities, signed by the lobbyist. The reports shall be filed three times a year as follows:

3 (1) On or before May 15, a lobbyist shall report all lobbying activities in which he or she
4 engaged from January 1 through April 30.

5 (2) On or before September 15, a lobbyist shall report all lobbying activities in which he or
6 she engaged from May 1 through August 31;

7 (3) On or before January 15, a lobbyist shall report all lobbying activities in which he or
8 she engaged from September 1 through December 31; and

9 (4) Lobbyist interns shall only be required to file one report for the full period of their
10 employment.

11 (b) If the date on which a lobbyist expenditure report is due falls on a Saturday, Sunday
12 or legal holiday, the report will be considered timely filed if it is postmarked not later than the next
13 business day. If a registered lobbyist files a late report, the lobbyist shall pay the commission a

14 fee of \$10 for each late day, not to exceed a total of \$250. If a registered lobbyist fails to file a
15 report or to pay the required fee for filing an untimely report, the commission may, after written
16 notice sent by certified mail, return receipt requested, suspend the lobbyist's privileges as a
17 registered lobbyist until the lobbyist has satisfactorily complied with all reporting requirements and
18 paid the required fee.

19 (c)(1) Except as otherwise provided in this section, each report filed by a lobbyist shall
20 show the total amount of all expenditures for lobbying activities made or incurred by on behalf of
21 the lobbyist during the period covered by the report. The report shall also show subtotals
22 segregated according to financial category, including meals and beverages; living
23 accommodations; advertising; travel; contributions; gifts to public officials or employees or to
24 members of the immediate family of a public official or employee; and other expenses or services.

25 (2) Lobbyists are not required to report the following:

26 (A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

27 (B) Any expenses incurred for the lobbyist's own living accommodations;

28 (C) Any expenses incurred for the lobbyist's own travel to and from public meetings or
29 hearings of the legislative and executive branches; or

30 (D) Any expenses incurred for telephone and any office expenses, including rent and
31 salaries and wages paid for staff and secretarial assistance.

32 (d) If a lobbyist is employed by more than one employer, the report shall show the
33 proportionate amount of the expenditures in each category incurred on behalf of each of his or
34 her employers.

35 (e) The report shall describe the subject matter of the lobbying activities in which the
36 lobbyist has been engaged during the reporting period.

37 (f) If, during the period covered by the report, the lobbyist made expenditures or
38 expenditures were made or incurred on behalf of the lobbyist in the reporting categories of meals
39 and beverages, living accommodations, travel, gifts or other expenditures, other than for those

40 expenditures governed by subsection (g) of this section, the lobbyist shall report the name of the
41 public official or employee to whom or on whose behalf the expenditures were made, the total
42 amount of the expenditures, and the subject matter of the lobbying activity, if any: *Provided*, That
43 a registered lobbyist who entertains more than one public official or public employee at a time
44 with meals and beverages complies with the provisions of this section if he or she reports the
45 names of the public officials or public employees entertained and the total amount expended for
46 meals and beverages for all of the public officials or public employees entertained: *Provided*,
47 *however*, That where several lobbyists join in entertaining one or more public officials or public
48 employees at a time with meals and beverages, each lobbyist complies with the provisions of this
49 section by reporting the names of the public officials or public employees entertained and his or
50 her proportionate share of the total amount expended for meals and beverages for all of the public
51 officials or public employees entertained. Under this subsection, no portion of the amount of an
52 expenditure for a dinner, party or other function sponsored by a lobbyist's employer need be
53 attributed to a particular public official or employee who attends the function if the sponsor has
54 invited to the function all the members of: (1) The Legislature; (2) either house of the Legislature;
55 (3) a standing or select committee of either house; or (4) a joint committee of the two houses of
56 the Legislature. However, the amount spent for the function shall be added to other expenditures
57 for the purpose of determining the total amount of expenditures reported under subdivision (1),
58 subsection (c) of this section: *Provided further*, That if the expenditure is for a function to which
59 the entire membership of the Legislature has been invited, the lobbyist need only report that fact,
60 the total amount of the expenditure and the subject matter of the lobbying activity.

61 (g) If, during the period covered by the report, the lobbyist made expenditures in the
62 reporting categories of meals and beverages, lodging, travel, gifts and scheduled entertainment
63 for or on behalf of a particular public official or public employee in return for the participation of
64 the public official or employee in a panel or speaking engagement at a meeting, the lobbyist shall
65 report the name of the public official or employee to whom or on whose behalf the expenditures

66 were made and the total amount of the expenditures.

67 (h) Any expenditures made pursuant to this section by a lobbyist intern shall be reported
 68 on the report filed by the supervising lobbyist.

§6B-3-6. Employment of unregistered persons.

1 It shall be a violation of this chapter for any person to employ for pay or any consideration,
 2 or pay or agree to pay any consideration to, a person to lobby who is not registered under this
 3 chapter except upon condition that such person register as a lobbyist or lobbyist intern as provided
 4 by this chapter, and such person does in fact so register as soon as practicable.

§6B-3-7. Duties of lobbyists.

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

NOTE: The purpose of this bill is to provide for the employment or use of lobbyist interns and for registration of them. The bill establishes the registration, reporting, and conduct requirements of lobbyist interns.

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