

Form #7

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Authorized Signature



EMERGENCY RULE QUESTIONNAIRE

DATE: May 12, 2015

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Rebecca L. Stepto, West Virginia Ethics Commission
210 Brooks St., Suite 300
Charleston, WV 25301-1804

EMERGENCY RULE TITLE: PUBLIC USE OF NAME OR LIKENESS

1. Date of filing May 12, 2015
2. Statutory authority for promulgating emergency rule:
W. Va. Code § 6B-2-5c(e)
3. Date of filing of proposed legislative rule: May 12, 2015
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Adopts new language
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

W. Va. Code § 6B-2-5c(e) provides that the Ethics Commission may propose rules and emergency rules for Legislative approval to effectuate W. Va. Code § 6B-2-5c by July 1, 2015.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

W. Va. Code § 6B-2-5c takes effect on May 28, 2015. Emergency rules are necessary to enable the Ethics Commission to interpret, to provide guidance on, and to enforce W. Va. Code § 6B-2-5c. Without emergency rules, the new statute will take effect on May 28, 2015, with legally significant undefined terms which would leave public officials and employees affected by W. Va. Code 6B-2-5c without proper guidance regarding compliance.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 158, Series 21
PUBLIC USE OF NAME OR LIKENESS

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Ethics Commission

Address: 210 Brooks St., Suite 300
Charleston, WV 25301-1804

Phone Number: (304) 558-0664 Email: ethics@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Title 158, Series 21
PUBLIC USE OF NAME OR LIKENESS

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

None

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule affects the interpretation of new legislation. It does not fiscally impact the operation of the Ethics Commission.

Date: May 12, 2015

Signature of Agency Head or Authorized Representative

Rebecca Stepien

RULE SUMMARY

TITLE 158

LEGISLATIVE RULE

WEST VIRGINIA ETHICS COMMISSION

SERIES 21

PUBLIC USE OF NAME OR LIKENESS

The purpose of this proposed Legislative Rule is to establish guidelines concerning limitations on a public official's use of his or her name or likeness pursuant to W. Va. Code § 6B-2-5c.

The Legislative Rule is intended to delineate which individuals are subject to W. Va. Code § 6B-2-5c; to provide a *de minimis* exception to the statute; to define "advertising" and "within forty-five days;" to exempt certain activities from the term "entertainment activities;" and to clarify that pens, pencils and other writing supplies which are technically "vital and necessary" to the performance of a public official's job may not feature a public official's name or likeness unless used for ceremonial purposes.

Statement of Circumstances Causing Emergency

W. Va. Code § 6B-2-5c takes effect on May 28, 2015. These emergency rules are to enable the Ethics Commission to interpret, provide guidance on, and enforce W. Va. Code § 6B-2-5c. Without emergency rules, the new statute will take effect on May 28, 2015, with significant undefined terms which would leave public officials and employees affected by W. Va. Code § 6B-2-5c without proper guidance regarding compliance.

INTERESTED PARTIES

**TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION**

**SERIES 21
PUBLIC USE OF NAME OR LIKENESS**

The above-styled legislative rule is expected to be of interest to the following parties:

- The general public
- The news media
- State, county and municipal government officials
- State, county and municipal government employees
- Agents of public officials or employees

**TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION**

**SERIES 21
PUBLIC USE OF NAME OR LIKENESS**

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 158-21-1. General.

- 1.1. Scope. – This legislative rule establishes guidelines concerning limitations on a public official using his or her name or likeness pursuant to W. Va. Code § 6B-2-5c.
- 1.2. Authority. – W. Va. Code § 6B-2-5c.
- 1.3. Filing Date. – _____, 2015.
- 1.4. Effective Date. – _____, 2015.

§ 158-21-2. Persons subject to W. Va. Code 6B-2-5c.

- 2.1. The provisions of this section apply to all elected and appointed public officials and public employees, their agents, and any other person on the public payroll, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

§ 158-21-3. Exceptions.

- 3.1. Incidental use of public resources for personal or business purposes resulting in *de minimis* private gain to a person subject to this section or another person does not constitute a violation of this section.
- 3.2. Nothing in W. Va. Code § 6B-2-5c shall require the removal of names or likenesses of public officials which appear on publicly-owned vehicles as of May 28, 2015.

§ 158-21-4. Advertising.

- 4.1. "Advertising," for purposes of W. Va. Code § 6B-2-5c(a)(3), means any form of publication or media communication intended for general dissemination to the public that has the primary intent or effect of promoting a public official. Dissemination of office press releases or official information via e-mail, social media or other public media tools for official purposes is not considered advertising under W. Va. Code § 6B-2-5(a)(3).

- 4.2. This section does not prohibit communications released by college and university staff, for marketing, development, recruiting or other advertising purposes.

§ 158-21-5. Entertainment Activities.

- 5.1. "Within forty-five days," for purposes of W. Va. Code § 6B-2-5c(a)(4), means forty-five days prior to a primary, general, or special election.
- 5.2. The term "entertainment activities," for purposes of W. Va. Code § 6B-2-5c(a)(4), does not include any activity considered usual and customary to the official's position, an activity with a charitable purpose that does not directly benefit a person subject to this act, or an activity that primarily advances public policy or constituent services.
- 5.3. Nothing in W. Va. Code § 6B-2-5c(a)(4) shall be construed to infer that the expenditure of public funds on private entertainment activities is otherwise permitted under the Ethics Act.

§ 158-21-6. Trinkets.

- 6.1. Nothing in W. Va. Code § 6B-2-5c(b)(4) shall be construed to permit persons subject to this section to purchase with public funds pens, pencils or other markers featuring a public official's name or likeness. However, public officials are not prohibited from expending public funds to purchase pens, pencils or other markers used during ceremonial signings.