

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY WV Code 6B-2-5(h)

AMENDMENT TO AN EXISTING RULE: YES X NO

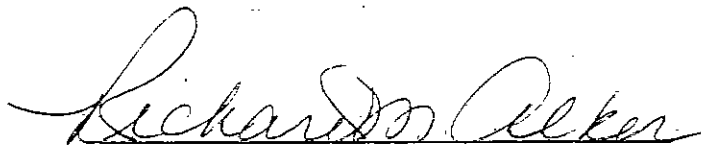
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Employment

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Richard Alker, Ex. Dir.

SERIES 11
EMPLOYMENT

158-11-1 EMPLOYMENT General Provisions

1.1 Scope -- These legislative rules establish the guidelines concerning employment for persons covered by the WV Governmental Ethics Act.

1.2 Authority -- WV Code 6B-2-5(h)

1.3 Filing Date --

1.4 Effective Date --

158-11-2 General Prohibitions

2.1 a. For the purpose of this section "employment" does not include activities of employees and officials for or on behalf of charitable or not for profit public service entities from which they derive no pecuniary benefit.

b. Full-time public employees and officials may not seek employment with or be employed by a person that is or may be regulated by the governmental agency with which they are employed. This prohibition applies only to those employees who exercise policymaking, nonministerial or regulatory authority.

c. The prohibition exists only so long as an employee or official is employed by the regulating agency. Such a person is relieved from the prohibition immediately upon terminating his or her employment with the regulating agency. There is no waiting period.

2.3.2 No regulated person shall offer employment to a full-time employee or official of the regulating agency during their employment with the agency.

~~2.4 The prohibition does not apply to the activities of employees and officials for or on behalf of charitable or not for profit public service entities from which they derive no pecuniary benefit.~~

158-11-3 Definitions

3.1 "Seek employment" Any contact with a regulated person, directly or through an intermediary, relating to the availability or conditions of employment in furtherance of obtaining employment. Responding to unsolicited inquires from a regulated person concerning employment would also constitute seeking employment.

3.2 "Offer employment" Any contact by a regulated person with a full-time employee

or official of a regulating governmental agency, directly or through an intermediary, relating to employment constitutes "offering employment".

3.3 "May be regulated" A person is one who "may be regulated" if there is a **reasonable probability** that the person will be regulated. There must be a showing that the person's activities are of the nature and extent ordinarily regulated by the governmental agency.

158-11-4 Requests for Exemptions

~~4.1 Exemptions will not be granted for secondary employment [moonlighting] with regulated persons.~~

4.2 1 Persons requesting exemptions will be advised that exemptions are granted **only** upon condition that exempted persons ~~give prior written notice to both their immediate supervisor and the Ethics Commission of the names and addresses of all regulated persons with whom they seek employment.~~ not act or fail to take action in a matter affecting a person with whom they are seeking employment.

~~4.3 The Commission shall maintain a record of those persons granted exemptions and the names and addresses of the regulated persons with whom they seek employment. These records will be available for public examination.~~

4.4 2 An application ~~of~~ for exemption shall contain the following information:

- a. the name, address and phone number of the governmental agency by which the ~~requestor~~ applicant is employed
- b. the ~~requestor's~~ applicant's job title and the name of his or her immediate supervisor
- c. "facts" sufficient to support a finding that the prohibition deprives the ~~requestor~~ applicant of "the ability to earn a livelihood in this state outside of the governmental agency"
- d. the names of the ~~regulated persons with whom the requestor expects to seek employment~~ any persons with whom the applicant intends to seek employment who have matters on which the requestor is currently taking official action
- e. a copy of the ~~requestor's~~ applicant's job description
- f. a copy of the ~~requestor's~~ applicant's resume, if he or she has one prepared.

~~4.5 3 If an exemption is granted, the Commission shall notify both the requestor and his or her supervisor. If the Commission denies an exemption request, only the requestor shall be notified. When an exempted person sees that he or she may be required to take official action in regard to a matter affecting a person with whom he or she is seeking employment, he or she is responsible for notifying his or her supervisor of the exemption and seeking to be relieved from further action in regard to such person.~~

~~4.6 Exempted persons are responsible for notifying the Commission of their intention to seek employment with any regulated person. Notice shall be given on disclosure forms provided by the Commission prior to seeking employment with the regulated person.~~

~~4.7 Disclosure forms are to be filed out and signed by the exempted person, acknowledged by his or her supervisor and returned to the Commission. The acknowledgement by the exempted person's supervisor serves as notice to the supervisor that he or she is responsible to limit, to the fullest extent possible, the exempted person's official action on any matter relating to a person with whom the exempted person is seeking employment.~~

~~4.8 It is the responsibility of the exempted person's supervisor to insure that:~~

- ~~a. the exempted person takes no official action on a matter which will have a direct effect on the financial interest of a person with whom the exempted person is seeking employment, or, if that is not possible,~~
- ~~b. the official action of the exempted person be subjected to additional review by the supervisor.~~

~~4.9 It is a violation of the Act for any person granted an exemption to take any official action on a matter which will have a direct effect on the financial interest of a person with whom he or she is seeking employment. If the exempted person has sought and been denied the authorization of his or her supervisor to avoid such action there is no violation.~~

4.4 Once informed that a subordinate has received an exemption, it is the responsibility of the exempted person's supervisor to insure that:

- a. the exempted subordinate takes no action in regard to persons with whom the exempted subordinate is seeking employment, or, if that is not possible,
- b. the official action of the exempted subordinate is subject to additional review by the supervisor.

4.5 Exempted persons are responsible to notify the Ethics Commission if they are required by their supervisors to take official action on matters relating to persons with whom they are seeking employment.

4.6 The Commission will contact supervisors who have been identified pursuant to subsection 4.5 of this rule and advise them of their responsibility to closely supervise the work of their exempted subordinates in regard to persons with whom they are seeking employment.

4.7 It is a violation of WV Code §6B-2-5 for any person granted an exemption to take any official action in regard to persons with whom he or she is seeking employment. If the exempted person has sought and been denied the authorization of his or her supervisor to avoid such action, and has notified the Commission as provided in subsection 4.5 of this rule there is no violation of the law.

4.8 The power to grant exemptions pursuant to this rule is hereby delegated to the Commission Chairman and the Commission's Executive Director and either is authorized to grant such exemptions in the name of the Commission as provided by this rule.

4.9 Requests for exemptions will be decided within ten working days after being received by the Commission, unless additional information is required by the Commission, in which event the request will be decided within five working days after the Commission has received the necessary information.

4.10 Exemptions granted by the Commission Chairman and the Commission's Executive Director pursuant to this rule are for a period of thirty days. Within that thirty day period the exemption will be submitted to the Commission for ratification.

4.11 Persons granted exemptions by the Commission Chairman or the Commission's Executive Director will be notified of the Commission's decision on ratification within ten days of the decision.

4.12 Exemptions ratified by the Commission, or granted by it in the first instance, are subject to no time limit.

4.13 The Commission shall maintain a record of those persons granted exemptions and, where applicable, the names of those persons with whom they seek employment and in regard to whom they have been required by their supervisors to take official action. These records are public records and are available for public examination and copying.

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WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator William R. Wooton, Co-Chair
Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel
Michael McThomas, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

December 9, 1991

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Richard Alker
Executive Director
WV Ethics Commission
1207 Quarrier Street
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Employment

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.