

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

Do Not Mark In this Box

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1992 APR 29 PM 1:19  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 12

TITLE OF RULE BEING PROPOSED: Lobbying

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 1

SECTION 64-2-8(d), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: June 1, 1992

*Ron Allen*

2.80

1 one, modified by the ethics commission to meet the objections of  
2 the legislative rule-making review committee and refiled in the  
3 state register on the thirty-first day of October, one thousand  
4 nine hundred ninety-one, relating to the ethics commission  
5 (lobbying), are authorized, with the amendment set forth below:

Ad.

6 On page three, subsection 4.3, after the words "copies of  
7 forms" by inserting a period and striking out the remainder of  
8 the sentence.

9 (e) The legislative rules filed in the state register on the  
10 thirty-first day of January, one thousand nine hundred ninety-  
11 one, modified by the ethics commission to meet the objections of  
12 the legislative rule-making review committee and refiled in the  
13 state register on the seventeenth day of December, one thousand  
14 nine hundred ninety-one, relating to the ethics commission  
15 (private gain), are authorized, with the amendments set forth  
16 below:

Ad.

17 On page one, subsection 2.2, after the words "A public  
18 official" by inserting "acting in his or her capacity as a public  
19 official";

20 On page one, subsection 2.2, after the words "the public  
21 official." by adding a new sentence to read as follows: "The  
22 provisions of this subsection shall not apply to a public  
23 official acting in his or her private capacity."

24 On pages one and two, by striking out all of section three;

**SERIES 12**  
**LOBBYING**

**158-12-1 LOBBYING General**

1.1 Scope -- These legislative rules establish the guidelines concerning lobbying under the WV Governmental Ethics Act.

1.2 Authority -- WV Code sections 6B-3-2, 6B-3-3, 6B-3-4, and 6B-3-7

1.3 Filing Date --

1.4 Effective Date --

**158-12-2 General Legislative Intent**

2.1 It is the expressed intent of the Legislature that citizens be permitted and encouraged to consult with their government representatives without incurring registration or reporting obligations under the West Virginia Governmental Ethics Act.

2.2 Persons who lobby without compensation **and** make no expenditure for or on behalf of any government officer or employee in connection with such lobbying are not required to register or report as Lobbyists.

**158-12-3 Definitions**

3.1 "Lobbyist": a person who, through communication with a government officer or employee, promotes, advocates or opposes or otherwise attempts to influence:

- a. ~~The~~ the passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this State; or
- b. ~~The~~ the adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee, or other delegated legislative or quasi-legislative action to be taken or withheld by any executive department.

The term "Lobbyist" shall not include the following persons, who are exempt from the registration and reporting requirements set forth in this rule, unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:

(i) persons who limit their lobbying activities to appearing before public sessions of committees of the Legislature, or public hearings of state agencies.

(ii) persons who engage in news or feature reporting activities and editorial comment as

working members of the press, radio, or television, and persons who publish or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station, or television station.

(iii) persons who lobby without compensation or other consideration for acting as lobbyists, when such persons make no expenditure for or on behalf of any government officer or employee in connection with such lobbying. The exemption contained in this subdivision is intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this rule. Any person exempt under this subdivision may at his or her option register and report under this rule.

(iv) persons who lobby on behalf of a non-profit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature. Any person exempt under this subdivision may at his or her option register and report under this rule.

(v) the governor, members of the governor's staff, members of the board of public works, officers and employees of the executive branch who communicate with a member of the Legislature on the request of that member, or who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are considered necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties.

(vi) members of the Legislature.

(vii) persons employed by the Legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties.

(viii) persons rendering professional services in drafting proposed legislation or in advising or rendering opinions to clients as to the construction and effect of proposed or pending legislation.

3.2 "Government officer or employee": any public officer or employee of the executive or legislative branch of state government who is empowered to make policy and perform nonministerial functions. The term includes candidates who have been elected but not yet assumed office.

3.3 "Person": any individual, partnership, trust, estate, business trust, association, or corporation; any department, commission, board, publicly supported college or university division, institution, bureau, or any other instrumentality of the State; or any county, municipal corporation, school district, or any other political subdivision of the State

## 158-12-4 Registration

4.1 Before engaging in any lobbying activity, or within 30 days after being employed as a Lobbyist, whichever occurs first, a Lobbyist shall register with the West Virginia Ethics Commission.

4.2 ~~Lobbying is not permitted until registration with the Commission is completed. A person may not lobby until he or she has registered with the Ethics Commission. The Ethics Commission will notify Lobbyists will receive written notification in writing when their registration is completed. Lobbying prior to registration is a violation of the law. WV Code §6B-3-9(b).~~

4.3 ~~Registration as a~~ A Lobbyist must ~~be done~~ register on original forms provided by the Commission. ~~Do not use~~ The Commission will not accept copies of forms are not acceptable. ~~Lobbyists may not submit~~ Registration and reporting forms ~~may not be submitted~~ by facsimile machine (FAX).

4.4 A lobbyist satisfies ~~the Act's~~ requirement of WV Code §6B-3-2 that copies of the Lobbyist Registration Statement and Lobbyist Activities Reports be filed with the House and Senate ~~is satisfied~~ by submitting an original to the Commission. The Commission will provides copies to the House and Senate.

4.5 ~~The Commission will process~~ Registration forms ~~will be processed the same day they are received within 24 hours of receipt by the Commission.~~ The Commission will return incomplete applications ~~will be returned~~ without action and lobbying privileges will be delayed.

4.6 ~~An~~ Application for registration requires the submission of **all** the following:

- a. ~~A~~ completed, signed and notarized Lobbyist Registration Statement.
- b. ~~Three~~ recent 2" x 2" **BLACK & WHITE** passport style photographs of the Lobbyist.
- c. ~~A~~ a Lobbyist Employer Authorization for each of the employers identified on the Lobbyist Registration Statement.
- d. ~~A~~ a check for the \$20 registration fee, required by WV Code §6B-3-3, payable to the WV Ethics Commission.

4.7 Registered Lobbyists must **reregister** by the 2nd Monday in January of each odd-numbered year. Failure to do so terminates the Lobbyist's registration and ~~no lobbying may be done~~ the person may not lobby until the registration is renewed.

4.8 ~~It is not necessary~~ A lobbyist does not need to submit photographs with a reregistration, if the Commission received photographs from the Lobbyist within the previous calendar year.

4.9 Lobbyists ~~are required to~~ must report any change or termination of employment to the Commission within one week by filing an Amended Registration Statement.

4.10 Lobbyist ~~are required to~~ must report the termination of any employment relationship included on the Lobbyist Registration Statement by filing a Notice of Termination with the Commission within one week of the termination.

4.11 Any person wishing to engage in lobbying activities ~~may be registered~~ register as a lobbyist with the Commission, notwithstanding there is no requirement to do so.

#### 158-12-5 Lobbyist Booklet

5.1 At least annually, the Commission ~~shall publish~~ publishes a booklet containing each registered Lobbyist's name and address, photo and employer and lobbying information. The Commission will include lobbyists ~~Lobbyists~~ who are registered by the second Friday in January ~~will be included~~ in the booklet.

5.2 Midway though a regular legislative session the Commission may publish a supplement to the booklet ~~may be published~~, if a significant number of lobbyists have been registered since publication of the booklet.

5.3 The Commission will mail copies ~~Copies~~ of the booklet and any supplement are ~~mailed~~ to registered lobbyists at the "Business Address" shown on their Lobbyist Registration Statement.

#### 158-12-6 Reporting

6.1 ~~Lobbyist~~ Lobbyists are required to file with the Commission periodic reports of their lobbying activities, signed under oath or affirmation by the Lobbyist.

6.2 All ~~Lobbyist~~ Lobbyists ~~are required to~~ must file an annual report on or before the second Monday in January of their activities of the prior calendar year.

6.3 Lobbyists engaged in legislative lobbying must also make a report:

- a. on or before the 45th day of a regular session, of their activities ~~from~~ from the first of the year through the 42nd day of the session and,
- b. on or before the 21st day after the adjournment of the regular session, of their activities from the first of the year, or since filing their last report, through the end of the session and,
- c. on or before the 21st day after the adjournment of any extraordinary session, of their activities from the first of the year, or since filing their last report, through the end of the session.

6.4 With the exception of the annual report, ~~a lobbyist is not required to file a report need not be filed~~ if no lobbying activity took place during the reporting period. If lobbying activity occurred, the lobbyist must file a report ~~must be filed~~ even though no lobbying expenditures were made.

6.5 The Commission will send Lobbyist Activities Report forms and Notice of No Activity forms to all registered Lobbyists as required. It is the responsibility of the Lobbyist to complete and return either the Report or the Notice on a timely basis.

6.6 If the Commission has not received the required Report or Notice within 5 working days of the due date, it shall notify the Lobbyist in writing ~~shall be given written notice of the delinquency.~~

6.7 If the Commission has not received the required Report or Notice within 10 working days of the date on which Notice of Delinquency was mailed, the Commission shall suspend the Lobbyist's registration ~~shall be suspended.~~ The Lobbyist may not engage in lobbying activities until the Report or Notice is received by the Commission and registration is restored.

6.8 The Commission shall prepare a composite report of the ~~returns of registered Lobbyists~~ Lobbyist Activities Reports filed for each reporting period within 10 working days of the due date. The report shall contain the names of those making returns and list of any expenditures reported. The Commission shall identify and list separately those ~~Those failing to report or give required notice are to be identified as delinquent, and listed separately.~~

6.9 The Commission shall send copies ~~Copies of the composite report shall be sent the to~~ both the House and Senate Clerks for distribution to the members. The Commission shall also provide copies ~~Copies shall also be provided to~~ the press.

#### **158-12-7 Lobbyist Duties**

7.1 A Lobbyist who is not exempt from registration shall register with and make all required reports to the Commission in a professional and timely manner, so that the members of the Legislature and the public may be kept aware of lobbying activities in the State.

7.2 A registered Lobbyist shall obtain and preserve for five years all accounts, bills, receipts, books, papers and documents necessary to substantiate financial reports filed with the Commission. These shall be made available for inspection by the Commission at any time.

#### **158-12-8 Employer Duties**

8.1 ~~It shall be~~ is a violation for any person to employ another to lobby who is not registered with the Commission, except upon condition that such person register and the person does in fact so register as soon as practical.

8.2 No Lobbyist may be registered to lobby on behalf of another without having filed

with the Commission a Lobbyist Employer Authorization signed by the employer.

8.3 Any person who employs a registered Lobbyist and makes expenditures on behalf of the Lobbyist's lobbying activities ~~shall be~~ is responsible to insure that such expenditures are included on the Lobbyist Activities Report(s) filed by the Lobbyist.

8.4 Employers who require their Lobbyist to turn over to them the records necessary to substantiate the filed Lobbyist Activities Reports ~~filed~~ must preserve those records for a period of at least five years.

#### **158-12-9 Grass Roots Lobbying Campaigns**

9.1 A grass roots lobbying campaign is a program addressed to the public, a substantial portion of which is intended primarily to influence legislation by the West Virginia Legislature. Such programs are directed at the public rather than legislators or other governmental policy makers.

9.2 Any person who spends more than \$200 in one month, or more than \$500 in a three month period, presenting a grass roots lobbying campaign is required to register with the Commission within 30 days of making the expenditures.

9.3 Sponsors of grass roots lobbying campaigns are required to report their activities to the Commission for the same time periods required of registered Lobbyists. The Commission will mail forms ~~Forms~~ necessary for reporting ~~will be mailed~~ to Sponsors as required.

9.4 Sponsors must, within 30 days of the termination of the campaign, give notice of termination and make a final report including total contributions and expenditures made on behalf of the campaign.

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Bill Ethics, Lobbying 158-12

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H. B. 4274

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the  
Committee on the Judiciary)

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to authorizing the ethics commission to promulgate legislative rules relating to lobbying.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight, to read as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-8. Ethics commission.

The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-

4577

1 one, modified by the ethics commission to meet the objections of  
2 the legislative rule-making review committee and refiled in the  
3 state register on the thirty-first day of October, one thousand  
4 nine hundred ninety-one, relating to the ethics commission  
5 (lobbying) are authorized.

6

7 NOTE: The purpose of this bill is to authorize the Ethics  
8 Commission to promulgate legislative rules relating to lobbying.

9

10 This section is new; therefore, strike-throughs and  
11 underscoring have been omitted.



ETHICS COMMISSION

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WILLIAM H. HARRINGTON  
Chief of Staff

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DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

TO: Lucy

AGENCY: Ethics Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 15, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 12 TITLE: 158 Ethics Commission

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. † THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: EX. DIR.

DATE: OCT. 22 1992

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

† Correction needed PAGE 3