

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 937

An Act to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 48, consisting of sections numbered 2.1-769 through 2.1-784 and to repeal Chapter 2.1 (§§ 30-28.01 through 30-28.9:1) of Title 30 of the Code of Virginia, relating to lobbying to influence legislation and executive orders; penalties.

[H 1052]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 48, consisting of sections numbered 2.1-769 through 2.1-784, as follows:

CHAPTER 48.

LOBBYING DISCLOSURE AND REGULATION ACT.

§ 2.1-769. *Statement of intent and purposes.*

The General Assembly finds and declares the following:

1. The operation of open and responsible government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on legislative and executive actions.

2. The identity and expenditures of certain persons who attempt to influence legislative and executive actions with respect to legislation and executive orders should be publicly identified to preserve and maintain the integrity of government.

§ 2.1-770. *Definitions.*

As used in this chapter, unless the context requires a different meaning:

"Anything of value" means:

- 1. A pecuniary item, including money, or a bank bill or note;*
- 2. A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;*
- 3. A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;*
- 4. A stock, bond, note, or other investment interest in an entity;*
- 5. A receipt given for the payment of money or other property;*
- 6. A right in action;*
- 7. A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;*
- 8. A loan or forgiveness of indebtedness;*
- 9. A work of art, antique, or collectible;*
- 10. An automobile or other means of personal transportation;*
- 11. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;*
- 12. An honorarium or compensation for services;*
- 13. A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive or legislative official, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;*
- 14. A promise or offer of employment; or*
- 15. Any other thing of value that is pecuniary or compensatory in value to a person.*

"Anything of value" does not mean a campaign contribution properly received and reported pursuant to Chapter 9 (§ 24.2-900 et seq.) of Title 24.2.

"Compensation" means:

- 1. An advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value; or*
- 2. A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value, for services rendered or to be rendered.*

"Compensation" does not mean reimbursement of expenses if the reimbursement does not exceed the amount actually expended for the expenses and it is substantiated by an itemization of expenses.

"Executive action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by an executive agency or official of legislation or executive orders issued by the Governor.

"Executive agency" means an agency, board, commission, or other body in the executive branch of

state government. "Executive agency" includes the State Corporation Commission, the Virginia Department of Workers' Compensation, and the State Lottery Department.

"Executive official" means:

1. The Governor;
2. The Lieutenant Governor;
3. The Attorney General;
4. Any officer or employee of the office of the Governor or Lieutenant Governor other than a clerical or secretarial employee;
5. The Governor's Secretaries, the Deputy Secretaries, and the chief executive officer of each executive agency; or
6. Members of supervisory and policy boards, commissions and councils, as defined in § 9-6.25, however selected.

"Expenditure" means:

1. A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose;
2. A payment to a lobbyist for salary, fee, reimbursement for expenses, or other purpose by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;
3. A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;
4. A payment that directly benefits an executive or legislative official or a member of the official's immediate family;
5. A payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for or in connection with direct communication with an executive or legislative official;
6. A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive or legislative official; or
7. A payment or reimbursement for categories of expenditures required to be reported pursuant to this chapter.

"Expenditure" does not mean a campaign contribution properly received and reported pursuant to Chapter 9 (§ 24.2-900 et seq.) of Title 24.2.

"Gift" means anything of value to the extent that a consideration of equal or greater value is not received.

"Gift" does not mean:

1. Printed informational or promotional material;
2. A gift that is not used and, no later than sixty days after receipt, is returned to the donor or delivered to a charitable organization and is not claimed as a charitable contribution for federal income tax purposes;
3. A gift, devise, or inheritance from an individual's spouse, child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of that individual, if the donor is not acting as the agent or intermediary for someone other than a person covered by this subdivision; or
4. A gift of a value of twenty-five dollars or less.

"Immediate family" means (i) the spouse and (ii) any other person who resides in the same household as the executive or legislative official and is the dependent of the official.

"Legislative action" means:

1. Preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the General Assembly or a legislative official;
2. Action by the Governor in approving, vetoing, or recommending amendments for a bill passed by the General Assembly; or
3. Action by the General Assembly in overriding or sustaining a veto by the Governor, considering amendments recommended by the Governor, or considering, confirming, or rejecting an appointment of the Governor.

"Legislative official" means:

1. A member or member-elect of the General Assembly;
2. A member of a committee, subcommittee, commission or other entity established by and responsible to the General Assembly or either house of the General Assembly; or
3. Persons employed by the General Assembly or an entity established by and responsible to the General Assembly.

"Lobbying" means:

1. Influencing or attempting to influence executive or legislative action through oral or written communication with an executive or legislative official; or
2. Solicitation of others to influence an executive or legislative official.

"Lobbying" does not mean:

- 1. Requests for appointments, information on the status of pending executive and legislative actions, or other ministerial contacts if there is no attempt to influence executive or legislative actions;*
- 2. Responses to published notices soliciting public comment submitted to the public official designated in the notice to receive the responses;*
- 3. The solicitation of an association by its members to influence legislative or executive action; or*
- 4. Communications between an association and its members and communications between a principal and its lobbyists.*

"Lobbyist" means:

- 1. An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;*
- 2. An individual who represents an organization, association, or other group for the purpose of lobbying; or*
- 3. A local government employee who lobbies.*

"Lobbyist's principal" or "principal" means the entity on whose behalf the lobbyist influences or attempts to influence executive or legislative action. An organization whose employees conduct lobbying activities on its behalf is both a principal and an employer of the lobbyists. In the case of a coalition or association that employs or retains others to conduct lobbying activities on behalf of its membership, the principal is the coalition or association and not its individual members.

"Local government" means:

- 1. Any county, city, town, or other local or regional political subdivision;*
- 2. Any school division;*
- 3. Any organization or entity which exercises governmental powers which is established pursuant to an interstate compact; or*
- 4. Any organization composed of members representing entities listed in subdivision 1, 2, or 3 of this definition.*

"Local government employee" means a public employee of a local government.

"Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.

"Value" means the retail cost or fair market worth of an item or items, whichever is greater.

§ 2.1-771. Exemptions.

The registration and reporting provisions of this chapter do not apply to:

- 1. The Governor, Lieutenant Governor, Attorney General, and their immediate staffs or the Governor's Secretaries and their immediate staffs, acting in an official capacity;*
- 2. Members of the General Assembly and other legislative officials and legislative employees acting in an official capacity;*
- 3. Local elected officials acting in an official capacity;*
- 4. Any employee of a state executive agency acting in an official capacity;*
- 5. A duly elected or appointed official or employee of the United States acting in an official capacity;*
- 6. An individual who limits lobbying solely to (i) formal testimony before a public meeting of an executive agency or legislative body and registers the appearance in the records of the agency or body and (ii) testimony and information compelled by action of an executive agency or legislative body;*
- 7. A person who receives \$500 or less in compensation and reimbursements, excluding personal living and travel expenses, in a calendar year for his lobbying activities;*
- 8. A person who receives no compensation or anything of value for lobbying, and does not expend more than \$500, excluding personal living and travel expenses, in lobbying in the calendar year; or*
- 9. An employee of a business, other entity, or local government whose job duties do not regularly include influencing or attempting to influence legislative or executive action.*

§ 2.1-772. Registration requirements.

A. A lobbyist shall register with the Secretary of the Commonwealth prior to engaging in lobbying. A lobbyist who engages in lobbying entirely outside the capital city shall comply with this section by registering with the Secretary within fifteen days after first engaging in lobbying. Registration shall be required annually and expire May 1.

B. The chief administrative officer of each local government shall register with the Secretary of the Commonwealth and file a statement pursuant to § 2.1-773 if any local government employees will act as lobbyists on its behalf. No registration fee shall be required. Each local government shall file a consolidated report in accordance with the reporting requirements of § 2.1-776 and shall maintain locally a copy of the report which is available for inspection and copying during regular business hours.

§ 2.1-773. Contents of registration statement.

A. The registration statement shall be on a form provided by the Secretary of the Commonwealth and

include the following information:

1. The name and business address and telephone number of the lobbyist;
2. The name and business address and telephone number of the person who will keep custody of the lobbyist's and the lobbyist's principal's accounts and records required to comply with this chapter, and the location and telephone number for the place where the accounts and records are kept;
3. The name and business address and telephone number of the lobbyist's principal;
4. The kind of business of the lobbyist's principal;
5. For each principal, the full name of the individual to whom the lobbyist reports;
6. For each principal, a statement whether the lobbyist is employed or retained and whether exclusively for the purpose of lobbying;
7. The position held by the lobbyist if he is a part-time or full-time employee of the principal;
8. The full name and business address and telephone number of each lobbyist employed by or representing the lobbyist's principal;
9. An identification of the subject matter (with as much specificity as possible) with regard to which the lobbyist or lobbyist's principal will engage in lobbying; and
10. The signed statement by the lobbyist that the information contained on the registration statement is true and correct.

B. Whenever any change, modification or addition to his status as a lobbyist is made, the lobbyist shall, within one week of such change, modification or addition, furnish full information regarding the same to the Secretary of the Commonwealth on forms provided by the Secretary.

C. The Secretary of the Commonwealth shall furnish a copy of this chapter to any individual offering to register as a lobbyist and shall mail by certified mail a copy of this chapter and a copy of the information furnished by the lobbyist to the person whom the lobbyist represents to be his principal.

D. If the principal to whom the information is sent under subsection C of this section does not, within ten days of such mailing, file an affidavit, signed by the person or duly authorized agent of the person, denying that the lobbyist appears on his behalf, such person shall be deemed to have appointed the Secretary of the Commonwealth his agent for service of process in any prosecution arising for violation of this chapter. If such affidavit is filed, the Secretary shall notify the attorney for the Commonwealth of the City of Richmond.

§ 2.1-774. Registration fees.

The Secretary shall collect an annual registration fee of fifty dollars from the lobbyist for each principal for whom, or on whose behalf, the lobbyist will act.

§ 2.1-775. Registration information to be recorded in legislative docket; list of executive officials.

A. The Secretary of the Commonwealth shall maintain in a legislative docket the information filed under § 2.1-773 pertaining to lobbying involving legislative actions during any session of the General Assembly. The Secretary shall furnish current, complete lists thereof to the clerk of each house and to each member of the General Assembly once every two weeks during the session of the General Assembly beginning with the convening of the General Assembly.

B. The Secretary of the Commonwealth shall prepare a list of executive officials, their positions and names, to be revised at least semi-annually and made available to lobbyists to assist them in complying with the provisions of this chapter.

§ 2.1-776. Lobbyist reporting.

A. Each lobbyist shall file a separate annual report of expenditures, including gifts, for each principal for whom he lobbies by July 1 for the preceding twelve-month period ending May 1.

B. Each principal who expends more than \$500 to employ or compensate multiple lobbyists shall be responsible for filing a consolidated lobbyist report pursuant to this section in any case in which the lobbyists are each exempt under the provisions of subdivision 7 or 8 of § 2.1-771 from the reporting requirements of this section.

C. The report shall be on a form provided by the Secretary of the Commonwealth which shall be substantially as follows and shall be accompanied by instructions provided by the Secretary.

LOBBYIST'S DISCLOSURE STATEMENT

PART I:

(1) PRINCIPAL:
 In Part I, item 2a, provide the name of the individual authorizing your employment as a lobbyist. The lobbyist filing this statement MAY NOT list his name in item 2a. THE INDIVIDUAL LISTED IN PART I, ITEM 2A, MUST SIGN THE PRINCIPAL'S STATEMENT.

(2a) Name:

- (2b) Permanent Business Address:
- (2c) Business Telephone:
- (3) Provide a list of executive and legislative actions (with as much specificity as possible) for which you lobbied and a description of activities conducted.
.....
.....
.....
- (4) INCORPORATED FILINGS<eb> If you are filing an incorporated disclosure statement, please complete the following:
Individual filing financial information:
Individuals to be included in the filing:
.....
- (5) Please indicate which schedules will be attached to your disclosure statement:
[] Schedule A: Entertainment Expenses
[] Schedule B: Gifts
[] Schedule C: Other Expenses
- (6) EXPENDITURE TOTALS:
- a) ENTERTAINMENT.....\$.....
b) GIFTS.....\$.....
c) OFFICE EXPENSES.....\$.....
d) COMMUNICATIONS.....\$.....
e) PERSONAL LIVING AND TRAVEL EXPENSES.....\$.....
f) COMPENSATION OF LOBBYISTS.....\$.....
g) HONORARIA.....\$.....
h) REGISTRATION COSTS.....\$.....
i) OTHER.....\$.....
TOTAL.....\$.....

PART II:

- (1a) NAME OF LOBBYIST: <eb>.....
- (1b) Permanent Business Address:
- (1c) Business Telephone:
- (2) As a lobbyist, you are (check one)
[] EMPLOYED (on the payroll of the principal)
[] RETAINED (not on the payroll of the principal, however compensated)
[] NOT COMPENSATED (not compensated; expenses may be reimbursed)
- (3) List all lobbyists other than yourself who registered to represent your principal.
.....
.....
.....
- (4) If you selected "EMPLOYED" as your answer to Part II, item 2, provide your job title.
.....
.....
- (5) If you selected "NOT COMPENSATED" as your answer to Part II, item 2, please indicate why you received no compensation.
.....
.....
.....

PLEASE NOTE: Some lobbyists are not individually compensated for lobbying activities. This may occur when several members of a firm represent a single principal. The principal, in turn, makes a single payment to the firm. If this describes your situation, do not answer Part II, items 6a and 6b. Instead, complete Part III, items 1 and 2.

(6a) What was the DOLLAR AMOUNT OF YOUR COMPENSATION**<ait> <eait><eb>**as a lobbyist? (If you have job responsibilities other than those involving lobbying, you may have to prorate to determine the part of your salary attributable to your lobbying activities.) Transfer your answer to this item to Part I, item 6f.

(6b) Explain how you arrived at your answer to Part II, item 6a.
.....
.....
.....

PART III:

PLEASE NOTE: If you answered Part II, items 6a and 6b, you WILL NOT complete this section.

- (1) List all members of your firm, organization, association, corporation, or other entity who furnished lobbying services to your principal.
.....
.....
.....
- (2) Indicate the total amount paid to your firm, organization, association, corporation or other entity for services rendered. Transfer your answer to this item to Part I, item 6f.....

SCHEDULE A

ENTERTAINMENT EXPENSES

PLEASE** <eb>**NOTE: Any single entertainment event included in the expense totals of the principal, greater than or equal to a total of \$100, should be itemized below. Transfer any totals from this schedule to Part I, item 6a. (Please duplicate as needed.)

Date and Location of Event:

.....
.....

Number of Reportable Guests Invited:

.....

Description of Entertainment:

.....

.....

Food.....\$.....

Beverages.....\$.....

Transportation of Guests.....\$.....

Lodging of Guests.....\$.....

Performers, Speakers, Etc.....\$.....

Displays.....\$.....

Rentals.....\$.....

Service Personnel.....\$.....

Miscellaneous.....\$.....

TOTAL.....\$.....

SCHEDULE B

GIFTS

PLEASE NOTE: Any single gift reported in the expense totals of the principal, greater than or equal to \$25, should be itemized below. Transfer any totals from this schedule to Part I, item 6b. (Please duplicate as needed.)

Date of Gift:

.....

Description of Gift:

PLEASE NOTE: This section is provided for any lobbying-related expenses not covered in Part I, items 6a - 6h. An example of an expenditure to be listed on schedule C would be the rental of a bill box during the General Assembly session. Transfer the total from this schedule to Part I, item 6i. (Please duplicate as needed.)

[illegible]

Both the lobbyist and principal officer must sign the disclosure statement, attesting to its completeness and accuracy. The following items are mandatory and if they are not properly completed, the entire filing will be rejected and returned to the lobbyist:

- STATEMENT OF LOBBYIST

.....
Signature of lobbyist
.....
Date

STATEMENT OF PRINCIPAL

I, the undersigned principal (or an authorized official thereof), do state that the information furnished on this disclosure statement and on all accompanying attachments required to be made thereto is, to the best of my knowledge and belief, complete and accurate.

.....
Signature of principal

.....
Date

D. A person who signs the disclosure statement knowing it to contain a material misstatement of fact shall be guilty of a Class 5 felony.

§ 2.1-777. Filings; inspection.

Registration statements and lobbying reports shall be open to public inspection and copying during the regular business hours of the office of the Secretary of the Commonwealth.

Such statements and reports shall be deemed to have been filed only when actually received in the office of the Secretary or mailed to the Secretary by registered, certified, or regular mail with the sender retaining sufficient proof of mailing, which may be a United States Postal Certificate of Mailing.

§ 2.1-778. Retention of records by a lobbyist or lobbyist's principal.

A lobbyist and a lobbyist's principal shall preserve for a period of two years all accounts, bills, books, papers, receipts, and other documents and records necessary to substantiate the expenditure reports submitted under this chapter.

§ 2.1-779. Termination.

A lobbyist may terminate a lobbyist registration by filing a report required under § 2.1-776 including information through the last day of lobbying activity. A termination report must indicate that the lobbyist intends to use the report as the final accounting of lobbying activity.

§ 2.1-780. Penalties; filing of substituted statement.

A. Every lobbyist failing to file the statement prescribed by § 2.1-776 within the time prescribed therein shall be assessed a civil penalty of fifty dollars, and every individual failing to file the statement within ten days after the time prescribed herein shall be assessed an additional civil penalty of fifty dollars per day from the eleventh day of such default until the statement is filed. Such penalties shall be assessed and collected by the Secretary. The Attorney General shall assist the Secretary in collecting the penalties, upon request.

B. Every lobbyist's principal whose lobbyist fails to file the statement prescribed by § 2.1-776 shall be assessed a civil penalty of fifty dollars, and shall be assessed an additional civil penalty of fifty dollars per day from the eleventh day of such default until the statement is filed. Such penalty shall be assessed and collected by the Secretary. The Attorney General shall assist the Secretary in collecting the penalties, upon request.

C. No individual who has failed to file the statement required by § 2.1-776, or who has failed to pay all penalties assessed pursuant to this section, shall register or act as a lobbyist as long as he remains in default.

D. Whenever any lobbyist is or will be in default under § 2.1-776, and the reasons for such default are or will be beyond his control, or the control of his principal, or both, the Secretary may suspend the assessment of any penalty otherwise assessable and accept a substituted statement, upon the submission of sworn proofs which shall satisfy him that such default has been beyond the control of the lobbyist or his principal, and that such substituted statement contains the most accurate and complete information available after the exercise of due diligence.

E. Penalties collected pursuant to this section shall be payable to the State Treasurer for deposit to the general fund.

§ 2.1-781. Contingent compensation prohibited.

It shall be unlawful for any individual to lobby for compensation which is dependent in any manner upon the outcome of any legislative or executive action.

§ 2.1-782. Prohibited acts; violation a misdemeanor.

A. No lobbyist shall:

- 1. Lobby in violation of the provisions of this chapter;*
- 2. Make any expenditure, or obligate himself to do so, in connection with lobbying, unless he fully discloses the expenditure as required in this chapter; or*
- 3. Misrepresent in any material respect or omit any information required to be reported pursuant to this chapter.*

B. No lobbyist's principal shall:

- 1. Fail to file any statement required to be filed by the provisions of this chapter;*
- 2. Misrepresent in any material respect or omit any information required to be reported pursuant to*

this chapter; or

3. Violate any of the provisions of this chapter.

C. Except as provided in subsection D of § 2.1-776, any lobbyist or lobbyist's principal violating any provision of this chapter shall be guilty of a Class 1 misdemeanor. However, a lobbyist who receives no compensation or anything of value for lobbying shall not be subject to criminal penalties pursuant to this section.

§ 2.1-783. Employment of lobbyists prohibited; exceptions.

Nothing in this chapter shall be construed so as to permit the employment of a lobbyist for compensation by an officer, board, institution or agency of the Commonwealth, and any such employment is expressly prohibited; however, this section shall not apply to any individual who is a full-time or part-time employee of such office, board, department, institution or agency of the Commonwealth.

§ 2.1-784. Prohibition for state party chairman.

The chairman or any full-time paid employee of a state political party, as defined in § 24.2-101, or a member of his immediate family, as defined in § 2.1-639.2, shall not be employed as a lobbyist by any principal.

2. That Chapter 2.1 (§§ 30-28.01 through 30-28.9:1) of Title 30 of the Code of Virginia is repealed.