

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1029

By: Reps. M. Jones and Wingfield

For An Act To Be Entitled

"AN ACT TO AMEND VARIOUS SECTIONS OF INITIATED ACT 1
OF 1988 TO INCLUDE LOCAL OFFICIALS AND TO LIMIT EXEMPTIONS
TO WHO MUST FILE AS A LOBBYIST; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Subchapter 4 of Initiated Act 1 of 1988 is hereby amended to read as follows:

"SUBCHAPTER 4. GENERAL PROVISIONS

21-8-401. Subchapters four through eight of this chapter may be referred to and cited as 'The Disclosure Act for Lobbyists and State and Local Officials.'

21-8-402. As used in subchapters four through eight of this chapter:

(a) 'Administrative action' means any decision on, or proposal, consideration, or making of any rule, regulation, ratemaking proceeding or policy action by a governmental body. 'Administrative action' does not include ministerial action.

(b) 'Business' means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, receivership, trust, or any legal entity through which business is conducted.

(c) 'County government' means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a county.

(d) 'Family' means an individual's spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse.

(e) (1) 'Gift' means any payment, entertainment, advance, services or anything of value, unless consideration of equal or greater value has been given therefor.

(2) The term 'gift' does not include:

(A) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a public servant regarding his or her official duties. Payments for travel or reimbursement for any expenses are not informational material.

(B) The giving or receiving of food, lodging or travel which bears a relationship to the public servant's office and when appearing in an official capacity.

(C) Gifts which are not used and which, within thirty (30) days after receipt, are returned to the donor.

(D) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this paragraph.

(E) Campaign contributions.

(F) Any devise or inheritance.

(G) Anything with a value of less than one hundred dollars (\$100.00).

(f) 'Governmental body' means any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof.

(g) 'Income' or 'compensation' means any money or anything of value received, or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof.

(h) 'Legislative action' means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination, appointment, report or other matter pending or proposed before a

committee or house of the Arkansas General Assembly, a quorum court or a city council or board of directors of a municipality.

(i) 'Legislator' means any person who is a member of the Arkansas General Assembly, a quorum court of any county, or the city council or board of directors of any municipality.

(j) 'Lobbying' means communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action.

(k) 'Lobbyist' means a person who:

(1) Receives income or reimbursement in a combined amount of two hundred fifty dollars (\$250.00) or more in a calendar quarter for lobbying one or more governmental bodies; or

(2) Expends two hundred fifty dollars (\$250.00) or more in a calendar quarter for lobbying one or more governmental bodies excluding the cost of personal travel, lodging, meals, or dues; or

(3) Expends two hundred fifty dollars (\$250.00) or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with any public servant to influence any legislative action or administrative action of one or more governmental bodies unless the communication has been filed with the Secretary of State or the communication has been published in the news media. If the communication is filed with the Secretary of State, the filing shall include the approximate number of recipients.

(l) 'Municipal government' means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a municipality.

(m) 'Person' means a business, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.

(n) 'Public appointee' means an individual who is appointed to a governmental body and does not receive a salary for his or her services. 'Public appointee' shall not include an individual appointed to an elective office.

(o) 'Public employee' means an individual who is employed by a governmental body or who is appointed to serve a governmental body. 'Public employee' shall not include public officials or public appointees.

(p) 'Public official' means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office.

(q) 'Public servant' means all public officials, public employees and public appointees.

(r) 'Registered lobbyist' means a lobbyist registered pursuant to the provisions of subchapters four through eight of this chapter.

(s) 'State government' means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas.

21-8-403. Any person who violates any provision of subchapters four through eight of this chapter shall be deemed guilty of a Class A misdemeanor. The culpable mental state required shall be a purposeful violation.

21-8-404. The Prosecuting Attorney of the District wherein an alleged violation occurred shall have the authority to investigate the alleged violations of this chapter.

21-8-405. Subchapters four through eight of this chapter shall be supplemental to all other laws pertaining to ethics, conflicts of interest, and shall not repeal any other laws, except for laws specifically repealed by subchapters four through eight of this chapter."

SECTION 2. Subchapter 6 of Initiated Act 1 of 1988 is hereby amended to read as follows:

"SUBCHAPTER 6. LOBBYIST REGISTRATION AND DISCLOSURE.

21-8-601. (a) (1) A lobbyist shall register within five (5) days after beginning lobbying.

(2) A lobbyist shall not be required to register if he or she engages in no lobbying other than the following activities:

(A) The publishing or broadcasting, by news media executives or their employees or agents , in the ordinary course of business, of news items, editorials, or other comments or paid advertisements which directly or

indirectly urge legislative action or administrative action;

(B) Engaging in lobbying exclusively on behalf of an Arkansas church which qualifies as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code when lobbying solely for the purpose of protecting the rights of members or adherence to practice the religious doctrines of the church;

(C) Action in a person's official capacity as a public servant. However, a public servant shall be required to register as a lobbyist if he or she:

(i) receives income from a nongovernmental person in excess of two hundred fifty dollars (\$250.00) in a quarter for lobbying, or

(ii) expends or is reimbursed in excess of two hundred fifty dollars (\$250.00), regardless of the source, in a quarter for lobbying, excluding the cost of personal travel, lodging, meals, dues, or informational material;

(D) Drafting legislation;

(E) Appearing in:

(i) a judicial proceeding;

(ii) a proceeding or hearing if the appearance is a matter of public record; or

(iii) any hearing or appeal proceeding conducted pursuant to the Arkansas Tax Procedure Act.

(F) Assisting an executive agency, at the written request of the agency, in drafting administrative regulations or in publicizing or assisting in the implementation of final administrative actions;

(G) Testifying as an individual at a public hearing in support of or in opposition to legislation or administrative action; testifying on behalf of a corporation, partnership, association, or other organization with which the person is regularly associated as an employee, officer, member or partner; or testifying at the request of a legislative committee; or

(H) Actions by contractors or employees of contractors while engaged in selling to a governmental body by demonstrating or describing commodities or services or inquiring as to specifications or terms and conditions of a particular purchase unless such contractor or its employees expend in excess of two hundred fifty dollars (\$250.00) in a calendar quarter for food, lodging, travel, or gifts to benefit public servants who purchase

commodities or services on behalf of a governmental body.

(3) A person whose only act of lobbying is to compensate or reimburse a registered lobbyist in the person's behalf shall not be required to register as a lobbyist.

(b) Upon the termination of a registered lobbyist's employment or designation as a lobbyist, the termination shall be conveyed by the registered lobbyist in writing to the public official with whom the lobbyist is registered.

(c) Each registered lobbyist whose employment or designation as a lobbyist has not terminated shall re-register by January 15 of each year.

21-8-602. (a) A lobbyist who lobbies public servants of state government shall register and make other filings with the Secretary of State.

(b) A lobbyist who lobbies public servants of municipal government shall register and make other filings with the city clerk or recorder of the municipality, as the case may be.

(c) A lobbyist who lobbies public servants of county government or any government body not otherwise covered by this section shall register and make other filings with the county clerk of the county.

(d) A lobbyist who lobbies public servants of a governmental body covering a district which includes all or part of more than one county shall file with the Secretary of State and the county clerk of his or her principal place of business or residence within the state; and

(e) A lobbyist who would be required to register and file with more than one (1) public official under this section may, in lieu of registering with each public official, register and make other filings with the Secretary of State and the county clerk of his or her principal place of business or residence within the state.

21-8-603. (a) (1) Within fifteen (15) days after the end of each calendar quarter, each registered lobbyist shall file a complete and detailed statement, signed and sworn to, concerning his or her lobbying activities during the previous calendar quarter.

(2) In addition to the quarterly lobbyist activity report, a registered lobbyist who lobbies members of the General Assembly shall file a monthly lobbyist activity report, signed and sworn to, for any month in which

the General Assembly is in session. The monthly lobbyist activity report shall be filed within ten (10) days after the end of each month.

(b) Lobbyist activity reports shall be open to public inspection.

21-8-604. The lobbyist activity reports shall be signed and sworn to by the registered lobbyist. The reports shall contain:

(a) The total of all expenditures made or incurred by the registered lobbyist or on behalf of the registered lobbyist by his or her employer during the preceding period. These totals shall be itemized according to financial category and employers and clients, including food and refreshments, entertainment, living accommodations, advertising, printing, postage, travel, telephone, and other expenses or services. Registered lobbyists shall not be required to report office expenses other than office expenses specifically required to be reported under this section. Registered lobbyists are not required to report unreimbursed personal living and travel expenses not incurred directly for lobbying.

(b) (1) An itemized listing of each:

(A) Gift given to a public servant or on behalf of the public servant;

(B) Payment for food, lodging, or travel in excess of twenty-five dollars (\$25.00) on behalf of a public servant; and

(C) Any other item paid or given to a public servant or on behalf of the public servant, except for campaign contributions, having a value in excess of twenty-five dollars (\$25.00) unless consideration of equal or greater value has been given therefor.

(2) Each item shall be identified by date, amount paid and/or value, and the name of the individual receiving or to be benefited by the item and a description of the item.

(3) In the case of special events, including parties, dinners, athletic events, entertainment, and other functions, expenses need not be allocated by individuals but the date of the event, location, name of the governmental body or groups of public servants invited, and total expense shall be stated.

(c) A detailed statement of any money loaned or promised or line of credit established to a public servant or to anyone on behalf of the public servant in excess of twenty-five dollars (\$25.00) per individual. Money

loaned or a line of credit established that is issued in the ordinary course of business by a financial institution or a person who regularly and customarily extends credit shall not be required to be disclosed.

(d) A statement detailing the direct business association or partnership with any public servant before whom the lobbyist may engage in lobbying.

21-8-605. A registered lobbyist shall maintain and preserve all accounts, bills, receipts, and any other documents necessary to substantiate the financial reports required by subchapters four through eight of this chapter for a period of at least three (3) years from the date of the filing of the statement or report.

21-8-606. The Secretary of State, each county clerk, and each city clerk or recorder shall:

(a) Provide forms approved by the Attorney General for registration and for statements required by subchapters four through eight of this chapter to all persons required to file;

(b) Issue a certificate of registration to a lobbyist registered under the provisions of subchapters four through eight of this subchapter; and

(c) Make all statements and reports filed available for public inspection and copying, at a reasonable cost, during regular office hours.

21-8-607. (a) No person shall purposely employ any lobbyist who is required to register as a registered lobbyist but is not registered pursuant to this chapter.

(b) No person engaging in lobbying shall:

(1) Influence or attempt to influence, by coercion, bribery, or threat of economic sanction, any public servant in the discharge of the duties of his or her office.

(2) Purposely provide false information to any public servant as to any material fact pertaining to any legislative or administrative action.

(3) Purposely omit, conceal, or falsify in any manner information required by the registration and lobbyist activity reports.

(c) Any person convicted for violation of any provision of this subchapter is prohibited from acting as a registered lobbyist for a period of three (3) years from the date of the conviction. Any person violating this

three (3) year ban shall be deemed guilty of a violation of this chapter."

SECTION 3. Subchapter 7 of Initiated Act 1 of 1988 is hereby amended to read as follows:

"SUBCHAPTER 7. STATEMENT OF FINANCIAL INTEREST

21-8-701. (a) The following persons shall file a written statement of financial interest:

- (1) A public official, as defined in subchapter four of this chapter;
- (2) A candidate for elective office;
- (3) A municipal judge or city attorney, whether elected or appointed;
- (4) Any agency head, department director or division director of state government;
- (5) Any public appointee to any state board or commission who is authorized or charged by law with the exercise of regulatory authority or is authorized to receive or dispense state or federal funds; and
- (6) Any public appointee serving a governmental body, other than an entity of state government, who is authorized or charged by law with the exercise of regulatory authority through rulemaking or adjudication or is authorized to receive or dispense state or federal funds except for those persons serving without compensation on a nonregulatory board.

(c) The statement of financial interest shall be filed by January 31 of each year; except that a candidate for elective office shall file the statement of financial interest within thirty (30) days after the deadline for filing for office for which he seeks election. The statement of financial interest shall include the following:

- (1) The name of the public servant and his or her spouse and all names under which they do business.
- (2) Identification of each employer and of each other source of income amounting to more than one thousand dollars (\$1,000.00) annually received by the person or his or her spouse in their own names, or by any other person for the use or benefit of the public servant or his or her spouse and a brief description of the nature of the services for which the compensation was received, except that this paragraph shall not be construed

to require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the public servant or his or her spouse derives income; and in addition thereto, shall identify each source of income as described above of more than twelve thousand five hundred dollars (\$12,500.00), except that this shall not be construed to require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the public servant or his or her spouse derives income.

(3) The name of every business in which the public servant and his or her spouse or any other person for the use or benefit of the public servant or his or her spouse, have an investment or holdings of over one thousand dollars (\$1,000.00) at fair market value as of the date of the statement, and in addition thereto, shall identify each source as described above which has a fair market value of over twelve thousand five hundred dollars (\$12,500.00) on the date of the statement.

(4) Every office or directorship held by the public servant or his or her spouse, in any business, corporation, firm, or enterprise subject to jurisdiction of a regulatory agency of this State, or of any of its political subdivisions.

(5) The name and address of each creditor to whom the value of five thousand dollars (\$5,000.00) or more was personally owed or personally obligated and is still outstanding by the public servant. Loans made in the ordinary course of business by either a financial institution or a person who regularly and customarily extends credit shall not be required to be disclosed. Debts owed to the members of the public servant's family need not be included.

(6) The name and address of each guarantor or co-maker, other than a member of the public servant's family, who has guaranteed a debt of the public servant that is still outstanding. This requirement shall be applicable only to debt guaranties for debts assumed or arising after January 1, 1989. Guaranteed debts existing prior to January 1, 1989, which are extended or refinanced shall become subject to disclosure in the annual financing statement due to be filed after the conclusion of the year in which such extension or refinancing occurred.

(7) The source, date, and description of each gift of more than one hundred dollars (\$100.00) received by the public servant or his or her spouse,

except that, for the financial statement required to be filed by January 31, 1989, this requirement shall apply only to gifts received after November 8, 1988.

(8) Each nongovernmental source of payment of the public servant's expenses for food, lodging, or travel which bears a relationship to the public servant's office when the public servant is appearing in his or her official capacity when the expenses incurred exceed one hundred fifty dollars (\$150.00), except that, for the financial statement required to be filed by January 31, 1989, this requirement shall apply only to such payments received after November 8, 1988. The public servant shall identify the name and business address of the person or organization paying the public servant's expenses and the date and nature of that expenditure if not compensated by the entity for which the public servant serves.

(9) Any public servant who is employed by any business which is under direct regulation or subject to direct control by the governmental body which he serves shall set out such employment and the fact that the business is regulated by or subject to control of the governmental body on the statement of financial interest.

(10) If a public servant or any business in which he or she or his or her spouse is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, or partner shall sell any goods or services having a total annual value in excess of one thousand dollars (\$1,000.00) to the governmental body in which the public servant serves or is employed, then the public servant shall set out in detail the goods or services sold, the governmental body to which they were sold, and the compensation paid for each category of goods or services sold.

21-8-702. Forms used by persons in filing statements as required in this subchapter shall provide for the signature of the person, under penalty of perjury, with respect to the truth and accuracy of the statements made on the form.

21-8-703. The statement of financial interest shall be filed as follows:

(1) State or district public servants required to file shall file with the Secretary of State;

(2) County, township, or school district public servants required to file

shall file with the county clerks;

(3) Municipal public servants required to file shall file with the city clerk or recorder, as the case may be; and

(4) All municipal judges or city attorneys, whether elected or appointed, shall file with the city clerk of the municipality within which they serve."

SECTION 4. Subchapter 8 of Initiated Act 1 of 1988 is hereby amended to read as follows:

"SUBCHAPTER 8. CONFLICT OF INTEREST.

21-8-801. No public servant shall:

(a) Receive a gift or compensation as defined in subchapter four of this chapter, other than income and benefits from the governmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position;

(b) Purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant's official duties, to secure anything of material value or benefit for himself or herself or his or her family.

21-8-802. (a) No legislator shall appear for compensation on behalf of another person, firm, corporation or entity before any entity of:

(1) State government if the legislator is a member of the General Assembly;

(2) The legislator's county government if the legislator is a member of a quorum court; or

(3) The legislator's municipal government if the legislator is a member of a city council or board of directors of a municipality.

(b) This section shall not:

(1) Apply to any judicial proceeding or to any hearing or proceeding which is adversarial in nature or character;

(2) Apply to any hearing or proceeding on which a record is made by the entity of State government, county government or municipal government;

(3) Apply to an appearance which is a matter of public record;

(4) Apply to ministerial actions; or

(5) Preclude a legislator from acting on behalf of a constituent to determine the status of a matter without accepting compensation.

(c) An appearance which is a matter of public record as provided in A.C.A. 21-8-802(b) (3) may be made by:

(1) Filing a written statement within twenty-four (24) hours with the agency head of the entity of state government, county government, or municipal government before which an appearance is sought. In the event that a written statement cannot be provided to the agency head prior to the meeting, telephonic notice must be given the agency head or his office; or

(2) Filing a quarterly statement with the agency head of the entity of state government before which an appearance is sought.

(d) A statement filed under A.C.A. 21-8-802(c) shall identify the client on behalf of whom the appearance is made and contain a general statement of the action sought from the governmental body. The statements shall be retained by the agency head and shall be a matter of public record. If the agency head determines that the release of the client's name would be an unwarranted invasion of individual privacy or would give advantage to competitors for bidding, the agency head may withhold the name until appropriate.

21-8-803. A legislator who is required to take an action in the discharge of his official duties that may affect his financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, partner or employee, which is distinguishable from the effects of the action on the public generally or a broad segment of the public shall:

(1) Prepare a written statement describing the matter requiring action and stating the potential conflict;

(2) Deliver a copy of the statement to the Secretary of State to be filed with statement of financial interest. The copy of the statement may be delivered in person by the public official, by mail or by a person authorized by the public official to deliver the copy.

(3) The obligation to report a potential conflict of interest under this section arises as soon as the legislator is aware of the conflict. If the statement of financial interest filed by the legislator makes the conflict

readily apparent, then no report need be filed.

SECTION 5. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 6. Repealer. Arkansas Code 21-8-305 through 21-8-309 pertaining to financial disclosure is hereby repealed.