

# THE GOVERNOR

## Title 4—ADMINISTRATION

### PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 7]

[EXECUTIVE ORDER 1980-18, REVISION NO. 4]

#### Code of Conduct

March 15, 2006


Executive Order 1980-18, Part II, is revised to add Part II-A:

*Whereas*, the citizens of the Commonwealth are entitled to confidence in the integrity of the government, including the process by which decisions and administrative actions are rendered by employees of the Commonwealth. Such confidence in the integrity of the government demands that significant contact between Commonwealth executive employees and special interests, lobbyists and those who employ lobbyists seeking to influence the decisions and administrative actions of such employees, be regulated and publicly disclosed, and

*Whereas*, the Constitution of Pennsylvania vests supreme executive power in the Governor, which power includes the prerogative to govern practices and proceedings before executive agencies and to regulate efforts to influence the actions of the executive, creating the responsibility of ensuring that undue or inappropriate influence is not exerted upon employees of the Commonwealth, which could affect the outcome of decisions and administrative actions, and

*Whereas*, the Code of Conduct adopted by Executive Order 1980-18 as amended to the date of this Order ("Code of Conduct"), restricts and requires disclosure of the receipt by employees, appointees and officials of the Executive Branch of the Commonwealth of gifts, gratuities, favors, entertainment, loans or any other thing of monetary value, including in-kind gifts, from persons doing or seeking to do business with the Commonwealth or with interests substantially affected by decisions of Commonwealth officials.

*Now, Therefore*, I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby reaffirm the Code of Conduct for Commonwealth employees, and promulgate the following amendments to such Code of Conduct to create provisions regarding Lobbying Disclosure, and order and direct as follows:



Governor

**Fiscal Note:** GOV 06-4. (1) General Fund; (2) Implementing Year 2005-06 is \$138,300; (3) 1st Succeeding Year 2006-07 is \$40,300; 2nd Succeeding Year 2007-08 is \$40,300; 3rd Succeeding Year 2008-09 is \$40,300; 4th Succeeding Year 2009-10 is \$40,300; 5th Succeeding Year 2010-11 is \$40,300; (4) 2004-05 Program—\$N/A; 2003-04 Program—\$ N/A; 2002-03 Program—\$N/A; (7) Commonwealth Technology Services; (8) recommends adoption.

## Annex A

## TITLE 4. ADMINISTRATION

## PART I. GOVERNOR'S OFFICE

## CHAPTER 7. MISCELLANEOUS PROVISIONS

Subchapter K. CODE OF CONDUCT FOR APPOINTED OFFICIALS AND  
STATE EMPLOYEES

## FINANCIAL DISCLOSURE

**§ 7.164. Required disclosures.**

A person subject to this subchapter shall disclose the following information, as well as information as may be required by the State Ethics Commission:

(1) *Real estate property interests.* In-State and out-of-State real estate property interests including revenue-producing leased facilities and interests in gas, oil, coal or other mineral royalty or lease. The home of principal residence is to be excluded. The required schedule must include, for each disclosed interest:

(i) The name and nature of the property, its street or mailing address and a description thereof.

(ii) The nature and extent of the interest held, including conditions or encumbrances upon the property interest and partners in the interest.

(iii) The identity of the person from whom the interest was acquired, the data thereof and the manner of the transfer or conveyance.

(iv) The transfer of real property interest since the last required report was filed or since appointment or election, whichever occurs later. A description of the transferred interest, consideration received for it and the identity of the transferee is required.

(2) *Personal economic interests.* Investments, including, but not limited to, stocks, notes, bonds, consulting arrangements and the like, in an in-State or out-of-State business entity, whether or not the entity is involved in a transaction involving the Commonwealth. The required schedule must include for each interest:

(i) The name and address of the principal office of the business entity.

(ii) The nature of interest held, including conditions and encumbrances.

(iii) The transfer of an interest or portion of an interest since the last required report was filed or since appointment or election, whichever is later. A description of the transferred interest and the identity of the transferee must be required.

(3) *Business interests.* Interests, including, but not limited to, stocks, notes, bonds, partnerships, joint ownerships, proprietorships and the like in a business entity or not-for-profit entity doing business with the Commonwealth, if known. For purposes of this schedule, the term includes not only a personal economic interest but also interests such as nonpaid memberships on boards of directors of business entities or not-for-profit entities. The required schedule shall include for each interest:

(i) The name and address of the principal office of the business entity.

(ii) The nature and dollar value of interest held, including conditions and encumbrances on it.

(iii) The transfer of an interest or portion of an interest since the last required report was filed or since appointment or election, whichever is later. A description of the transferred interest and the identity of the transferee is required.

(4) *Gifts.* Gifts of a value in excess of \$100, including the forgiveness of a debt, received since the last required report was filed or since appointment or election, whichever is later. For the purposes of this section, a gift from a family member is not required to be disclosed. The required schedule must include:

(i) The nature and value of the gift.

(ii) The identity of the person from whom, or on behalf of whom directly or indirectly, the gift was received.

(5) *Employment—excluding Commonwealth employment.* Payments, compensation or consideration of any nature for services rendered or to be rendered. Payments, compensation or consideration includes, but is not limited to, offices, directorships, salaried employment, consultant fees, honoraria, travel and related expenses and other fees earned since the last required report was filed or since appointment or election, whichever is later. This required report must include:

(i) The name and address of the office of the person for whom the services are or will be rendered.

(ii) The title or nature of the service.

(iii) The total amount of compensation or consideration received.

(6) *Liabilities.* Liabilities owed to a person or institution since the last required report was filed, or since appointment or election, whichever is later, excluding retail credit accounts, commercial banks, savings and loan and finance companies. This required schedule must include:

(i) The identity of the person or institution to whom the liability is owed.

(ii) The terms of payment of the liability.

(iii) The amount of liability.

(iv) The manner in which the liability was secured.

(v) Changes in the nature or amount of a liability since the last required report was filed.

(7) *Severance arrangements and proceeds received.* In addition to the information in paragraphs (1)—(6), individuals required to file statements of financial interest shall, within 30 days from the date they assume office, disclose severance payments received or to be received, or proceeds received or to be received from the sale or redemption of their interest in a corporation—which represents 5% or more of the common stock or assets of the corporation—professional corporation, partnership or other entity, which payments or proceeds result from the termination of employment or withdrawal from a corporation, professional corporation, partnership or other entity upon the assumption of public office. The individual shall file with the statement of financial interest copies of agreements relating to the receipt of the severance payments or proceeds.

(8) *Severance arrangements concluded 30 days after assuming office.* If a severance arrangement or sale or redemption of an interest specified in paragraph (7) is concluded more than 30 days following the date on which an individual assumes office, he shall, within 10 days following the conclusion of this transaction, update the information provided under paragraph (7) by disclosing payments or proceeds received or to be received and filing agreements relating to the payments or proceeds.

(9) *Current officeholders or employees.* Individuals required to file statements of financial interest, currently holding office or employed by the Commonwealth, who have not previously filed the information required under paragraphs (7) and (8), shall file the information by November 3, 1987.

(10) *Lobbying disclosure.*

(i) *Scope.* The Governor may require lobbyists to file lobbying disclosure statements and expense reports with respect to their activities and attempts to influence Commonwealth employees under the jurisdiction of the Governor who have decision-making authority over certain decisions and administrative actions.

(ii) *Lobbyist registration and financial disclosure.*

(A) *Registration requirement.* A lobbyist, as of March 15, 2006, or anytime prior to March 31, 2006, shall register with the Office of Administration within 5 days after March 31, 2006. After March 31, 2006, a lobbyist required to register under this paragraph shall register within 5 days prior to lobbying an employee. Registrations must be in electronic form, except as provided in subparagraph (iii). An individual who engages in lobbying activities with respect to the executive branch shall register as a lobbyist whether or not the corporation, firm or principal with whom he is employed or engaged has registered or employs other registered lobbyists. Registration shall be biennial, except for calendar year 2006, and shall expire on November 30 of each even-numbered year. The required registration must include the name of the lobbyist, the lobbyist's business address, employer, and daytime telephone number, and the name, principal business address and daytime telephone number of each principal the lobbyist represents. Any subsequent change in the registration information, including a termination of representation, shall be made within 14 days of the change.

(B) *Previous employment.* The lobbyist shall include information about any previous employment by any Commonwealth agency or the General Assembly.

(C) *Lobbying coalition.* If the lobbyist is a member of a lobbying coalition as defined in this paragraph, the lobbyist shall register his participation in the lobbying coalition, and shall list the names of all lobbyists and organizations participating in the coalition and the subject matter of the action that they are attempting to influence.

(D) *Exclusion from registration.* The following individuals and activities are exempt from registration and reporting under this paragraph:

(I) An individual who limits lobbying activities to preparing testimony and testifying before an agency within the executive branch.

(II) An individual who is an employee of an entity engaged in the business of publishing, broadcasting or televising while engaged in the gathering and dissemination of news and comment thereon to the general public in the ordinary course of business.

(III) Any of the following:

(-a-) An individual who does not receive compensation, other than traveling expenses, for lobbying.

(-b-) An individual whose compensation for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any calendar quarter of the previous 24 months.

(-c-) An individual who engages in lobbying on behalf of the individual's employer and whose lobbying activity involves expense less than \$2,500 of the value of the employee's time during any calendar quarter of the previous 24 months, based on an hourly proration of the employee's annual compensation.

(-d-) An individual, other than a lobbyist, whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

(IV) Any of the following:

(-a-) An elected State officer acting in an official capacity.

(-b-) A State executive officer appointed by the Governor acting in an official capacity.

(-c-) An elected or appointed official or employee of a political subdivision of this Commonwealth acting in an official capacity.

(-d-) An employee of the Commonwealth or independent agency of the Commonwealth acting in an official capacity.

(V) Submitting material in connection with the Regulatory Review Act (71 P. S. §§ 745.1—745.15) or similar statute when comments are already subject to public scrutiny.

(VI) An employee, who is not a registered lobbyist, of a corporation, which meets the following conditions:

(-a-) Is a principal under this rule.

(-b-) Has one or more registered lobbyists.

(-c-) Includes that employee's expenses related to lobbying in the reports of the registered lobbyists.

(VII) Any individual representing a bona fide church of which the individual is a member who engages in lobbying solely for the purpose of protecting the constitutional right to the free exercise of religion.

(E) *Expense reports.*

(I) A registered lobbyist shall, under oath or affirmation, file in electronic form (except as provided in subparagraph (iii)) quarterly expense reports with the Secretary of the Office of Administration. Expense reports must list, by each principal represented by the lobbyist, the general subject matters or issues being lobbied, including the legislative bill number, if any. A quarterly expense report shall be filed no later than 30 days following the end of each calendar quarter reflecting expenses incurred during the preceding calendar quarter beginning with the quarter ended June 30, 2006. A lobbyist shall retain all documents reasonably necessary to substantiate the reports to be made under this section for at least 4 years from the date of filing the subject report. Upon request by the Secretary, these materials shall be made available for inspection within a reasonable period of time. Expense reports must include the following categories for each principal and by subject matter, including, the legislative bill number when applicable:

(-a-) A single aggregate good faith estimate of the total amount spent for personnel and office expenses related to lobbying all Commonwealth employees subject to this paragraph.

(-b-) A single aggregate good faith estimate of the total amount spent for direct communication to all Commonwealth employees subject to this paragraph.

(-c-) A single aggregate good faith estimate of the total amount spent for indirect communication to all Commonwealth employees subject to this paragraph.

(-d-) The total costs for gifts, entertainment, meals, transportation, lodging and receptions, given or provided to all employees subject to this paragraph; together with a description of the assumptions or methodology used to make the estimate required by items (-a-)—(-c-). Each estimate must be based on reasonable allocations of costs consistently applied.

(II) The expense report must also identify, by name, position and each occurrence, a Commonwealth employee subject to this paragraph who receives from a lobbyist anything of value, including in-kind gifts, which must be included in the statement under 65 Pa.C.S. § 1105(b)(6) and (7) (relating to statement of financial interests) as implemented by 65 Pa.C.S. § 1105(d). For the purpose of this paragraph, the amount referred to in 65 Pa.C.S. § 1105(b)(7) shall be considered an aggregate amount per year. Written notice shall be given to each Commonwealth employee subject to this paragraph referenced in the expense report within 7 days of the report's submission to the Office of Administration. A notice must include the information which will enable the Commonwealth employee subject to this paragraph to comply with 65 Pa.C.S. § 1105(b)(6) and (7).

(III) Nothing in this paragraph prohibits a lobbyist from reporting expenses in greater detail than required by this rule nor from reporting information not required by this paragraph.

(iii) *Registry and forms.*

(A) The Office of Administration shall create a lobbyist registry in electronic form which shall be the repository for all registration statements and expense reports for lobbyists required to register under this subpara-

graph. The Secretary shall develop and make available forms and procedures for registration in electronic form of lobbyists and lobbying coalitions, and quarterly expense reports to be filed electronically. If, at any time, the Office of Administration does not have registration and expense report forms available, lobbyists shall provide the basic information listed in subparagraph (ii) to the Office of Administration on the lobbyist's letterhead.

(B) The Secretary shall publish this paragraph and the entire Code of Conduct on the Commonwealth's Internet website, and shall send a notice to every lobbyist currently registered with the Senate, notifying the lobbyist of the requirements of this paragraph.

(IV) *Public access.* By September 11, 2006, and in the absence of legislation which may provide similar or greater reporting requirements than this paragraph, the Secretary shall:

(-a-) Make all lobbying registration forms, lobbying coalition forms and expense reports available for public inspection, and provide copies of these documents at a price which may not exceed the actual cost of copying.

(-b-) Maintain and from time to time but not less than annually publish a listing of registered lobbyists.

(-c-) Develop a database on the basis of information reported under subparagraph (iii), and make the database available to the public on the Commonwealth's Internet website. The database must be capable of being searched according to any of the following categories: lobbyist, principal and subject matter, including legislative bill number.

(V) *Definitions.* The following words and terms, when used in this paragraph, have the following meanings, unless the context clearly indicates otherwise:

*Agency*—A Commonwealth agency, board, commission, authority or department within the executive branch under the Governor's jurisdiction or to which the Governor makes nominations or appointments, or both.

*Contact*—Direct or indirect contact with a lobbyist, and initiated by a lobbyist, the purpose of which is to influence a decision or administrative action for which the employee has decision-making authority or a duty to act.

*Decision or administrative action*—A matter over which an employee has decision-making authority or influence and which is currently pending or expected to occur in the future, including, but not limited to:

(i) Legislative-related matters, including:

(A) The Governor's approval, veto or consideration of legislation.

(B) Negotiation of the elements of, or support or opposition to, legislation with any members or staff of the General Assembly.

(C) Any action by a Commonwealth employee which is intended to influence or attempt to influence the decisions of the General Assembly.

(ii) Budgetary matters, including:

(A) The inclusion or exclusion of items in the Governor's Budget.

(B) Any expenditure of funds after enactment of the Budget.

(C) Any expenditure of capital funds.

(iii) Administrative matters, including:

(A) Implementation of a statute.

(B) Proposal, consideration, promulgation, amendment, approval, rejection or rescission of a regulation.

(C) Development or modification of a guideline or a statement of policy or any amendment thereto.

(D) The Governor's proposal, consideration, promulgation, amendment, approval, rejection or rescission of an executive order.

(E) The nomination or appointment by the Governor of an individual as an officer or employee or appointee of the Commonwealth.

(F) Seeking to influence the awarding, rejection or rescission of a grant, loan, or contract or any amendment thereto.

(G) Seeking to influence an employee with respect to decisions before independent agencies, boards or commissions, including those over which the Governor has the power to appoint one or more members.

*Decision-making authority*—The responsibility and authority to act on behalf of the Commonwealth involving the exercise of discretion and not mere performance of a ministerial duty.

*Direct communication*—An effort, whether written, oral or by any other medium, made or commissioned by a lobbyist, directed to a member or employee of the executive branch, the purpose or foreseeable effect of which is to influence executive branch decisions or administrative actions.

*Employee*—Any of the following officials and employees of the Commonwealth who have decision making authority:

(i) The Governor.

(ii) The Lieutenant Governor.

(iii) Heads of agencies and departments, their respective deputy secretaries, all Commonwealth officials or employees at the level of division chief and above, and all attorneys, press secretaries, legislative liaisons, and executive and special assistants.

(iv) Chairpersons and members of boards, councils, and commissions or the like, under the Governor's jurisdiction, except those serving on advisory boards having no authority to expend funds or otherwise exercise the power of the Commonwealth.

(v) Executive directors, counsel and administrative secretaries of compensated boards and commissions under the Governor's jurisdiction.

(vi) Employees of all classes required to file financial disclosure under 65 Pa.C.S. Chapter 11 (relating to Public Official and Employee Ethics Act).

*Indirect communication*—

(i) An effort, whether written, oral or by any medium other than direct communication, made or commissioned by a lobbyist or a principal, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence executive branch decisions or administrative action.

(ii) The term includes letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues.

(iii) The term does not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.

*Lobbying*—Action taken for the purpose of influencing the exercise of discretion by an employee with respect to a decision or administrative action.

*Lobbyist*—

(i) Any individual, firm, association, lobbying coalition, corporation, partnership, business trust or business entity that engages in lobbying on behalf of a principal for economic consideration.

(ii) For purposes of this paragraph, the term includes any person or entity that has registered as a lobbyist in compliance with the Rules of the Senate or with the Rules of the House of Representatives, if so required, and an attorney who engages in activities which are not the practice of law, but which are lobbying and which may be regulated consistent with 204 Pa. Code Rule 1.19 (relating to lawyers acting as lobbyists) of the Rules of Professional Conduct of the Supreme Court.

*Lobbyist coalition—*

(i) Three or more lobbyists or principals, or both, who are formally acting together to influence a decision or administrative action.

(ii) The term includes, but is not limited to, a group of three or more persons formed primarily to influence legislative or administrative action, whose members make payments to the coalition for the purpose of sharing the expenses of employing a lobbyist or contracting for the services of a lobbyist.

*Principal—*Any individual, firm, association, corporation, partnership, business trust or business entity who expends more than \$2,500 on lobbying per quarter during any quarter of a reporting 24-month period and meets one of the following conditions:

(i) On whose behalf a lobbyist influences or attempts to influence a decision or administrative action.

(ii) Who engages in lobbying on his own behalf.

*Secretary—*The Secretary of the Office of Administration.

[Pa.B. Doc. No. 06-561. Filed for public inspection April 7, 2006, 9:00 a.m.]

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## GOVERNOR'S OFFICE

### Notice of Veto

March 24, 2006

*To the Honorable Senate  
of the Commonwealth of Pennsylvania*

I am returning Senate Bill 435 without my approval.

The doctrine of joint and several liability has been handed down to us from English common law and has prevailed in this country for over 200 years. But it has become apparent in our industrialized society that this doctrine has produced inequitable and unfair results that have had a detrimental impact on businesses. Several years ago, a Pennsylvania company, Crown Cork & Seal, was held responsible for 100 percent of the damages in an asbestos class action when it had caused less than three percent of the injuries. The other companies that had caused the vast majority of harm were bankrupt and out of business, leaving Crown Cork & Seal with the responsibility of paying nearly \$250 million in damages. This is not an isolated example by any means. A business leader for whom I have the utmost respect, Alan Miller of Universal Health Systems, sent me several examples of hospitals that were forced to pay 100 percent of significant damage claims where the hospital liability was nominal.<sup>1</sup>

For these reasons, I said in my campaign for Governor that I believed Pennsylvania must enact some limits on the doctrine of joint and several liability to protect Pennsylvania businesses from such unfair and inequitable results.

I still believe that we need these limits. But I am vetoing Senate Bill 435 because it does not effectively balance the critical needs of victims who should be adequately compensated for their injuries with the reasonable needs of businesses to limit their exposure to liability for damages caused by other parties.

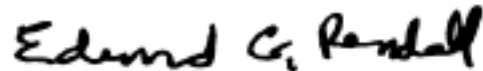
<sup>1</sup> I also note that while Senate Bill 435 could benefit some businesses with substantial resources, it would put many other businesses—particularly smaller companies—at risk. In fact, this bill offers sophisticated, well-financed corporations defending themselves against negligence claims a strong incentive to join smaller companies who have fewer financial resources as parties to the litigation. By joining a smaller business, the large corporation can limit its exposure because the presence of the joined party as a defendant will likely reduce the joining corporation's liability under the 60 percent threshold set by Senate Bill 435 for assignment of joint and several liability. As a result, while the larger corporation's exposure may be limited, the smaller business is trapped in a lawsuit that it may have never been party to if Senate Bill 435 were not law. Senate Bill 435 also ignores the needs of small businesses in another way. It fails to protect responsible retailers and suppliers who unwittingly sell a defective product. Proposed amendments to the bill would have shielded such suppliers and retailers from liability, but these amendments were defeated. Without these important protections, I believe that Pennsylvania's independent retailers and suppliers will continue to suffer from unfair lawsuits at perhaps an even higher rate because large manufacturers will increasingly join retailers in an effort to ensure no one entity is assigned more than 60 percent of the liability.



In the days since the passage of Senate Bill 435, I have received letters from many business associations and business leaders whom I greatly respect all urging me to sign this legislation into law. I have also received many letters from union and consumer groups (such as the American Association of Retired Persons and Mothers Against Drunk Driving) all urging me to veto this legislation. Just as our businesses have given me telling examples of the unfairness and harm that is caused to them by the current law, consumer organizations have given me just as telling examples of how victims—many times the children of parents killed by negligent actions—would be left without adequate compensation for their loss.

I believe we must find a better way—a law that will balance the equities between our businesses and the victims of negligence. During the debate on this issue, there were bipartisan attempts in both chambers of the General Assembly to achieve an appropriate balance, but both failed narrowly. Senator Stewart Greenleaf, and Representative Thomas Gannon, both thoughtful Republican legislators, championed these efforts. Though these proposals were not perfect, they sought to achieve a fair balance.

Too often in today's society we are faced with two sides dramatically opposed that are totally polarized and unwilling to work together to resolve differences. While I am vetoing Senate Bill 435, I believe that legislative leaders and I should convene a meeting of business leaders, union leaders, representatives of consumer groups, legal associations and other interested parties to work out legislation that will resolve these differences and strike the appropriate balance.



*Governor*

[Pa.B. Doc. No. 06-562. Filed for public inspection April 7, 2006, 9:00 a.m.]