

1 and reenacted, all to read as follows:

2 **ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT;**
3 **CONSTRUCTION AND APPLICATION OF CHAPTER;**
4 **SEVERABILITY.**

5 **§6B-1-3. Definitions.**

6 As used in this chapter, unless the context in which used
7 clearly requires otherwise:

8 (a) "Review Board" means the Probable Cause Review Board
9 created by section two-a, article two of this chapter.

10 (b) "Broad-based" means communications on specific issues
11 (other than regular responses to constituent requests or ongoing
12 litigation or legal matters) designed to reach more than fifty
13 people at one time.

14 ~~(b)~~ (c) "Business" means any entity through which business
15 for-profit is conducted including a corporation, partnership,
16 proprietorship, franchise, association, organization or self-
17 employed individual.

18 ~~(c)~~ (d) "Compensation" means money, thing of value or
19 financial benefit. The term "compensation" does not include
20 reimbursement for actual reasonable and necessary expenses incurred
21 in the performance of one's official duties.

22 (e) "Directed by law" means the public servant or entity is

1 directed to include certain information by statute, rule, court
2 order or federal regulation.

3 (f) "Election period" means the time period between the
4 deadline for filing for public office and the general election.

5 ~~(d)~~ (g) "Employee" means any person in the service of another
6 under any contract of hire, whether express or implied, oral or
7 written, where the employer or an agent of the employer or a public
8 official has the right or power to control and direct such person
9 in the material details of how work is to be performed and who is
10 not responsible for the making of policy nor for recommending
11 official action.

12 ~~(e)~~ (h) "Ethics Commission" or "commission" means the West
13 Virginia Ethics Commission.

14 ~~(f)~~ (i) "Immediate family", with respect to an individual,
15 means a spouse with whom the individual is living as husband and
16 wife and any dependent child or children, dependent grandchild or
17 grandchildren and dependent parent or parents.

18 ~~(g)~~ (j) "Ministerial functions" means actions or functions
19 performed by an individual under a given state of facts in a
20 prescribed manner in accordance with a mandate of legal authority,
21 without regard to, or without the exercise of, the individual's own
22 judgment as to the propriety of the action being taken.

23 ~~(h)~~ (k) "Person" means an individual, corporation, business

1 entity, labor union, association, firm, partnership, limited
2 partnership, committee, club or other organization or group of
3 persons, irrespective of the denomination given such organization
4 or group.

5 ~~(i)~~ (l) "Political contribution" means and has the same
6 definition as is given that term under the provisions of article
7 eight, chapter three of this code.

8 (m) "Public advertising" means radio, television, newspaper,
9 billboards, signs, or other media intended to convey a message or
10 information relating to the public agency, commission, department
11 or organization. However, dissemination of office press releases
12 and information via email, social media, or other public relations
13 tools for official purposes is not public advertising.

14 ~~(j)~~ (n) "Public employee" means any full-time or part-time
15 employee of any state, county or municipal governmental body or any
16 political subdivision thereof, including county school boards.

17 ~~(k)~~ (o) "Public official" means any person who is elected or
18 appointed to any state, county or municipal office or position and
19 who is responsible for the making of policy or takes official
20 action which is either ministerial or nonministerial, or both, with
21 respect to: (1) Contracting for, or procurement of, goods or
22 services; (2) administering or monitoring grants or subsidies; (3)
23 planning or zoning; (4) inspecting, licensing, regulating or

1 auditing any person; or (5) any other activity where the official
2 action has an economic impact of greater than a de minimis nature
3 on the interest or interests of any person.

4 ~~(t)~~ (p) "Relative" means spouse, mother, father, sister,
5 brother, son, daughter, grandmother, grandfather, grandchild,
6 mother-in-law, father-in-law, sister-in-law, brother-in-law, son-
7 in-law or daughter-in-law.

8 ~~(m)~~ (q) "Respondent" means a person who is the subject of an
9 investigation by the commission or against whom a complaint has
10 been filed with the commission.

11 ~~(n)~~ (r) "Thing of value", "other thing of value" or "anything
12 of value" means and includes: (1) Money, bank bills or notes,
13 United States treasury notes and other bills, bonds or notes issued
14 by lawful authority and intended to pass and circulate as money;
15 (2) goods and chattels; (3) promissory notes, bills of exchange,
16 orders, drafts, warrants, checks, bonds given for the payment of
17 money or the forbearance of money due or owing; (4) receipts given
18 for the payment of money or other property; (5) any right or chose
19 in action; (6) chattels real or personal or things which savor of
20 realty and are, at the time taken, a part of a freehold, whether
21 they are of the substance or produce thereof or affixed thereto,
22 although there may be no interval between the severing and the
23 taking away thereof; (7) any interest in realty, including, but not

1 limited to, fee simple estates, life estates, estates for a term or
2 period of time, joint tenancies, cotenancies, tenancies in common,
3 partial interests, present or future interests, contingent or
4 vested interests, beneficial interests, leasehold interests or any
5 other interest or interests in realty of whatsoever nature; (8) any
6 promise of employment, present or future; (9) donation or gift;
7 (10) rendering of services or the payment thereof; (11) any advance
8 or pledge; (12) a promise of present or future interest in any
9 business or contract or other agreement; or (13) every other thing
10 or item, whether tangible or intangible, having economic worth.
11 "Thing of value", "other thing of value" or "anything of value"
12 shall not include anything which is de minimis in nature nor a
13 lawful political contribution reported as required by law.

14 (s) "Trinket" means a small tangible item, ornament, or thing
15 of trivial value, including, but not limited to, pens, pencils,
16 magnets, pill box holders, key-chains, nail files, matches, piggy
17 banks, gun locks and bags.

18 **ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;**
19 **DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC**
20 **OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC**
21 **AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW**
22 **JUDGES.**

1 **§6B-2-5. Ethical standards for elected and appointed officials and**
2 **public employees.**

3 (a) *Persons subject to section.* -- The provisions of this
4 section apply to all elected and appointed public officials and
5 public employees, whether full or part time, in state, county,
6 municipal governments and their respective boards, agencies,
7 departments and commissions and in any other regional or local
8 governmental agency, including county school boards.

9 (b) *Use of public office for private gain.* -- (1) A public
10 official or public employee may not knowingly and intentionally use
11 his or her office or the prestige of his or her office for his or
12 her own private gain or that of another person. Incidental use of
13 equipment or resources available to a public official or public
14 employee by virtue of his or her position for personal or business
15 purposes resulting in de minimis private gain does not constitute
16 use of public office for private gain under this subsection. The
17 performance of usual and customary duties associated with the
18 office or position or the advancement of public policy goals or
19 constituent services, without compensation, does not constitute the
20 use of prestige of office for private gain.

21 (2) Notwithstanding the general prohibition against use of
22 office for private gain, public officials and public employees may
23 use bonus points acquired through participation in frequent

1 traveler programs while traveling on official government business:
2 *Provided*, That the official's or employee's participation in such
3 program, or acquisition of such points, does not result in
4 additional costs to the government.

5 (3) The Legislature, in enacting this subsection, recognizes
6 that there may be certain public officials or public employees who
7 bring to their respective offices or employment their own unique
8 personal prestige which is based upon their intelligence,
9 education, experience, skills and abilities, or other personal
10 gifts or traits. In many cases, these persons bring a personal
11 prestige to their office or employment which inures to the benefit
12 of the state and its citizens. Those persons may, in fact, be
13 sought by the state to serve in their office or employment because,
14 through their unusual gifts or traits, they bring stature and
15 recognition to their office or employment and to the state itself.
16 While the office or employment held or to be held by those persons
17 may have its own inherent prestige, it would be unfair to those
18 individuals and against the best interests of the citizens of this
19 state to deny those persons the right to hold public office or to
20 be publicly employed on the grounds that they would, in addition to
21 the emoluments of their office or employment, be in a position to
22 benefit financially from the personal prestige which otherwise
23 inheres to them. Accordingly, the commission is directed, by

1 legislative rule, to establish categories of public officials and
2 public employees, identifying them generally by the office or
3 employment held, and offering persons who fit within those
4 categories the opportunity to apply for an exemption from the
5 application of the provisions of this subsection. Exemptions may
6 be granted by the commission, on a case-by-case basis, when it is
7 shown that: (A) The public office held or the public employment
8 engaged in is not such that it would ordinarily be available or
9 offered to a substantial number of the citizens of this state; (B)
10 the office held or the employment engaged in is such that it
11 normally or specifically requires a person who possesses personal
12 prestige; and (C) the person's employment contract or letter of
13 appointment provides or anticipates that the person will gain
14 financially from activities which are not a part of his or her
15 office or employment.

16 (c) *Gifts.* -- (1) A public official or public employee may not
17 solicit any gift unless the solicitation is for a charitable
18 purpose with no resulting direct pecuniary benefit conferred upon
19 the official or employee or his or her immediate family: *Provided,*
20 That no public official or public employee may solicit for a
21 charitable purpose any gift from any person who is also an official
22 or employee of the state and whose position is subordinate to the
23 soliciting official or employee: *Provided, however,* That nothing

1 herein shall prohibit a candidate for public office from soliciting
2 a lawful political contribution. No official or employee may
3 knowingly accept any gift, directly or indirectly, from a lobbyist
4 or from any person whom the official or employee knows or has
5 reason to know:

6 (A) Is doing or seeking to do business of any kind with his or
7 her agency;

8 (B) Is engaged in activities which are regulated or controlled
9 by his or her agency; or

10 (C) Has financial interests which may be substantially and
11 materially affected, in a manner distinguishable from the public
12 generally, by the performance or nonperformance of his or her
13 official duties.

14 (2) Notwithstanding the provisions of subdivision (1) of this
15 subsection, a person who is a public official or public employee
16 may accept a gift described in this subdivision, and there shall be
17 a presumption that the receipt of such gift does not impair the
18 impartiality and independent judgment of the person. This
19 presumption may be rebutted only by direct objective evidence that
20 the gift did impair the impartiality and independent judgment of
21 the person or that the person knew or had reason to know that the
22 gift was offered with the intent to impair his or her impartiality
23 and independent judgment. The provisions of subdivision (1) of

1 this subsection do not apply to:

2 (A) Meals and beverages;

3 (B) Ceremonial gifts or awards which have insignificant
4 monetary value;

5 (C) Unsolicited gifts of nominal value or trivial items of
6 informational value;

7 (D) Reasonable expenses for food, travel and lodging of the
8 official or employee for a meeting at which the official or
9 employee participates in a panel or has a speaking engagement;

10 (E) Gifts of tickets or free admission extended to a public
11 official or public employee to attend charitable, cultural or
12 political events, if the purpose of such gift or admission is a
13 courtesy or ceremony customarily extended to the office;

14 (F) Gifts that are purely private and personal in nature; or

15 (G) Gifts from relatives by blood or marriage, or a member of
16 the same household.

17 (3) The commission shall, through legislative rule promulgated
18 pursuant to chapter twenty-nine-a of this code, establish
19 guidelines for the acceptance of a reasonable honorarium by public
20 officials and elected officials. The rule promulgated shall be
21 consistent with this section. Any elected public official may
22 accept an honorarium only when:

23 (A) That official is a part-time elected public official;

1 (B) The fee is not related to the official's public position
2 or duties;

3 (C) The fee is for services provided by the public official
4 that are related to the public official's regular, nonpublic trade,
5 profession, occupation, hobby or avocation; and

6 (D) The honorarium is not provided in exchange for any promise
7 or action on the part of the public official.

8 (4) Nothing in this section shall be construed so as to
9 prohibit the giving of a lawful political contribution as defined
10 by law.

11 (5) The Governor or his designee may, in the name of the State
12 of West Virginia, accept and receive gifts from any public or
13 private source. Any gift so obtained shall become the property of
14 the state and shall, within thirty days of the receipt thereof, be
15 registered with the commission and the Division of Culture and
16 History.

17 (6) Upon prior approval of the Joint Committee on Government
18 and Finance, any member of the Legislature may solicit donations
19 for a regional or national legislative organization conference or
20 other legislative organization function to be held in the state for
21 the purpose of deferring costs to the state for hosting of the
22 conference or function. Legislative organizations are bipartisan
23 regional or national organizations in which the Joint Committee on

1 Government and Finance authorizes payment of dues or other
2 membership fees for the Legislature's participation and which
3 assist this and other State Legislatures and their staff through
4 any of the following:

5 (A) Advancing the effectiveness, independence and integrity of
6 Legislatures in the states of the United States;

7 (B) Fostering interstate cooperation and facilitating
8 information exchange among State Legislatures;

9 (C) Representing the states and their Legislatures in the
10 American federal system of government;

11 (D) Improving the operations and management of State
12 Legislatures and the effectiveness of legislators and legislative
13 staff, and to encourage the practice of high standards of conduct
14 by legislators and legislative staff;

15 (E) Promoting cooperation between State Legislatures in the
16 United States and Legislatures in other countries.

17 The solicitations may only be made in writing. The legislative
18 organization may act as fiscal agent for the conference and receive
19 all donations. In the alternative, a bona fide banking institution
20 may act as the fiscal agent. The official letterhead of the
21 Legislature may not be used by the legislative member in
22 conjunction with the fund raising or solicitation effort. The
23 legislative organization for which solicitations are being made

1 shall file with the Joint Committee on Government and Finance and
2 with the Secretary of State for publication in the State Register
3 as provided in article two of chapter twenty-nine-a of the code,
4 copies of letters, brochures and other solicitation documents,
5 along with a complete list of the names and last known addresses of
6 all donors and the amount of donations received. Any solicitation
7 by a legislative member shall contain the following disclaimer:
8 "This solicitation is endorsed by [name of member]. This
9 endorsement does not imply support of the soliciting organization,
10 nor of the sponsors who may respond to the solicitation. A copy of
11 all solicitations are on file with the West Virginia Legislature's
12 Joint Committee on Government and Finance, and with the Secretary
13 of State and are available for public review."

14 (7) Upon written notice to the commission, any member of the
15 board of Public Works may solicit donations for a regional or
16 national organization conference or other function related to the
17 office of the member to be held in the state for the purpose of
18 deferring costs to the state for hosting of the conference or
19 function. The solicitations may only be made in writing. The
20 organization may act as fiscal agent for the conference and receive
21 all donations. In the alternative, a bona fide banking institution
22 may act as the fiscal agent. The official letterhead of the office
23 of the board of Public Works member may not be used in conjunction

1 with the fund raising or solicitation effort. The organization for
2 which solicitations are being made shall file with the Joint
3 Committee on Government and Finance, with the Secretary of State
4 for publication in the State Register as provided in article two of
5 chapter twenty-nine-a of the code and with the commission, copies
6 of letters, brochures and other solicitation documents, along with
7 a complete list of the names and last known addresses of all donors
8 and the amount of donations received. Any solicitation by a member
9 of the Board of Public Works shall contain the following
10 disclaimer: "This solicitation is endorsed by (name of member of
11 Board of Public Works.) This endorsement does not imply support of
12 the soliciting organization, nor of the sponsors who may respond to
13 the solicitation. Copies of all solicitations are on file with the
14 West Virginia Legislature's Joint Committee on Government and
15 Finance, with the West Virginia Secretary of State and with the
16 West Virginia Ethics Commission and are available for public
17 review." Any moneys in excess of those donations needed for the
18 conference or function shall be deposited in the Capitol Dome and
19 Capitol Improvement Fund established in section two, article four
20 of chapter five-a of this code.

21 (d) *Interests in public contracts.* --

22 (1) In addition to the provisions of section fifteen, article
23 ten, chapter sixty-one of this code, no elected or appointed public

1 official or public employee or member of his or her immediate
2 family or business with which he or she is associated may be a
3 party to or have an interest in the profits or benefits of a
4 contract which the official or employee may have direct authority
5 to enter into, or over which he or she may have control: *Provided,*
6 That nothing herein shall be construed to prevent or make unlawful
7 the employment of any person with any governmental body: *Provided,*
8 *however,* That nothing herein shall be construed to prohibit a
9 member of the Legislature from entering into a contract with any
10 governmental body, or prohibit a part-time appointed public
11 official from entering into a contract which the part-time
12 appointed public official may have direct authority to enter into
13 or over which he or she may have control when the official has not
14 participated in the review or evaluation thereof, has been recused
15 from deciding or evaluating and has been excused from voting on the
16 contract and has fully disclosed the extent of his or her interest
17 in the contract.

18 (2) In the absence of bribery or a purpose to defraud, an
19 elected or appointed public official or public employee or a member
20 of his or her immediate family or a business with which he or she
21 is associated shall not be considered as having a prohibited
22 financial interest in a public contract when such a person has a
23 limited interest as an owner, shareholder or creditor of the

1 business which is awarded a public contract. A limited interest
2 for the purposes of this subsection is:

3 (A) An interest which does not exceed \$1,000 in the profits or
4 benefits of the public contract or contracts in a calendar year;

5 (B) An interest as a creditor of a public employee or official
6 who exercises control over the contract, or a member of his or her
7 immediate family, if the amount is less than \$5,000.

8 (3) If a public official or employee has an interest in the
9 profits or benefits of a contract, then he or she may not make,
10 participate in making, or in any way attempt to use his office or
11 employment to influence a government decision affecting his or her
12 financial or limited financial interest. Public officials shall
13 also comply with the voting rules prescribed in subsection (j) of
14 this section.

15 (4) Where the provisions of subdivisions (1) and (2) of this
16 subsection would result in the loss of a quorum in a public body or
17 agency, in excessive cost, undue hardship, or other substantial
18 interference with the operation of a state, county, municipality,
19 county school board or other governmental agency, the affected
20 governmental body or agency may make written application to the
21 Ethics Commission for an exemption from subdivisions (1) and (2) of
22 this subsection.

23 (e) *Confidential information.* -- No present or former public

1 official or employee may knowingly and improperly disclose any
2 confidential information acquired by him or her in the course of
3 his or her official duties nor use such information to further his
4 or her personal interests or the interests of another person.

5 (f) *Prohibited representation.* -- No present or former elected
6 or appointed public official or public employee shall, during or
7 after his or her public employment or service, represent a client
8 or act in a representative capacity with or without compensation on
9 behalf of any person in a contested case, rate-making proceeding,
10 license or permit application, regulation filing or other
11 particular matter involving a specific party or parties which arose
12 during his or her period of public service or employment and in
13 which he or she personally and substantially participated in a
14 decision-making, advisory or staff support capacity, unless the
15 appropriate government agency, after consultation, consents to such
16 representation. A staff attorney, accountant or other professional
17 employee who has represented a government agency in a particular
18 matter shall not thereafter represent another client in the same or
19 substantially related matter in which that client's interests are
20 materially adverse to the interests of the government agency,
21 without the consent of the government agency: *Provided,* That this
22 prohibition on representation shall not apply when the client was
23 not directly involved in the particular matter in which the

1 professional employee represented the government agency, but was
2 involved only as a member of a class. The provisions of this
3 subsection shall not apply to legislators who were in office and
4 legislative staff who were employed at the time it originally
5 became effective on July 1, 1989, and those who have since become
6 legislators or legislative staff and those who shall serve
7 hereafter as legislators or legislative staff.

8 (g) *Limitation on practice before a board, agency, commission*
9 *or department.* -- Except as otherwise provided in section three,
10 four or five, article two, chapter eight-a of this code: (1) No
11 elected or appointed public official and no full-time staff
12 attorney or accountant shall, during his or her public service or
13 public employment or for a period of one year after the termination
14 of his or her public service or public employment with a
15 governmental entity authorized to hear contested cases or
16 promulgate or propose rules, appear in a representative capacity
17 before the governmental entity in which he or she serves or served
18 or is or was employed in the following matters:

19 (A) A contested case involving an administrative sanction,
20 action or refusal to act;

21 (B) To support or oppose a proposed rule;

22 (C) To support or contest the issuance or denial of a license
23 or permit;

1 (D) A rate-making proceeding; and

2 (E) To influence the expenditure of public funds.

3 (2) As used in this subsection, "represent" includes any
4 formal or informal appearance before, or any written or oral
5 communication with, any public agency on behalf of any person:
6 *Provided*, That nothing contained in this subsection shall prohibit,
7 during any period, a former public official or employee from being
8 retained by or employed to represent, assist or act in a
9 representative capacity on behalf of the public agency by which he
10 or she was employed or in which he or she served. Nothing in this
11 subsection shall be construed to prevent a former public official
12 or employee from representing another state, county, municipal or
13 other governmental entity before the governmental entity in which
14 he or she served or was employed within one year after the
15 termination of his or her employment or service in the entity.

16 (3) A present or former public official or employee may appear
17 at any time in a representative capacity before the Legislature, a
18 county commission, city or town council or county school board in
19 relation to the consideration of a statute, budget, ordinance,
20 rule, resolution or enactment.

21 (4) Members and former members of the Legislature and
22 professional employees and former professional employees of the
23 Legislature shall be permitted to appear in a representative

1 capacity on behalf of clients before any governmental agency of the
2 state or of county or municipal governments, including county
3 school boards.

4 (5) An elected or appointed public official, full-time staff
5 attorney or accountant who would be adversely affected by the
6 provisions of this subsection may apply to the Ethics Commission
7 for an exemption from the one year prohibition against appearing in
8 a representative capacity, when the person's education and
9 experience is such that the prohibition would, for all practical
10 purposes, deprive the person of the ability to earn a livelihood in
11 this state outside of the governmental agency. The Ethics
12 Commission shall by legislative rule establish general guidelines
13 or standards for granting an exemption or reducing the time period,
14 but shall decide each application on a case-by-case basis.

15 (h) *Employment by regulated persons and vendors.* -- (1) No
16 full-time official or full-time public employee may seek employment
17 with, be employed by, or seek to purchase, sell or lease real or
18 personal property to or from any person who:

19 (A) Had a matter on which he or she took, or a subordinate is
20 known to have taken, regulatory action within the preceding twelve
21 months; or

22 (B) Has a matter before the agency on which he or she is
23 working or a subordinate is known by him or her to be working.

1 (C) Is a vendor to the agency where the official serves or
2 public employee is employed and the official or public employee, or
3 a subordinate of the official or public employee, exercises
4 authority or control over a public contract with such vendor,
5 including, but not limited to:

6 (i) Drafting bid specifications or requests for proposals;

7 (ii) Recommending selection of the vendor;

8 (iii) Conducting inspections or investigations;

9 (iv) Approving the method or manner of payment to the vendor;

10 (v) Providing legal or technical guidance on the formation,
11 implementation or execution of the contract; or

12 (vi) Taking other nonministerial action which may affect the
13 financial interests of the vendor.

14 (2) Within the meaning of this section, the term "employment"
15 includes professional services and other services rendered by the
16 public official or public employee, whether rendered as employee or
17 as an independent contractor; "seek employment" includes responding
18 to unsolicited offers of employment as well as any direct or
19 indirect contact with a potential employer relating to the
20 availability or conditions of employment in furtherance of
21 obtaining employment; and "subordinate" includes only those agency
22 personnel over whom the public official or public employee has
23 supervisory responsibility.

1 (3) A full-time public official or full-time public employee
2 who would be adversely affected by the provisions of this
3 subsection may apply to the Ethics Commission for an exemption from
4 the prohibition contained in subdivision (1) of this subsection.

5 (A) The Ethics Commission shall by legislative rule establish
6 general guidelines or standards for granting an exemption, but
7 shall decide each application on a case-by-case basis;

8 (B) A person adversely affected by the restriction on the
9 purchase of personal property may make such purchase after seeking
10 and obtaining approval from the commission or in good faith
11 reliance upon an official guideline promulgated by the commission,
12 written advisory opinions issued by the commission, or a
13 legislative rule.

14 (C) The commission may establish exceptions to the personal
15 property purchase restrictions through the adoption of guidelines,
16 advisory opinions or legislative rule.

17 (4) A full-time public official or full-time public employee
18 may not take personal regulatory action on a matter affecting a
19 person by whom he or she is employed or with whom he or she is
20 seeking employment or has an agreement concerning future
21 employment.

22 (5) A full-time public official or full-time public employee
23 may not personally participate in a decision, approval,

1 disapproval, recommendation, rendering advice, investigation,
2 inspection or other substantial exercise of nonministerial
3 administrative discretion involving a vendor with whom he or she is
4 seeking employment or has an agreement concerning future
5 employment.

6 (6) A full-time public official or full-time public employee
7 may not receive private compensation for providing information or
8 services that he or she is required to provide in carrying out his
9 or her public job responsibilities.

10 (i) *Members of the Legislature required to vote.* -- Members of
11 the Legislature who have asked to be excused from voting or who
12 have made inquiry as to whether they should be excused from voting
13 on a particular matter and who are required by the presiding
14 officer of the House of Delegates or Senate of West Virginia to
15 vote under the rules of the particular house shall not be guilty of
16 any violation of ethics under the provisions of this section for a
17 vote so cast.

18 (j) *Limitations on voting.* --

19 (1) Public officials, excluding members of the Legislature who
20 are governed by subsection (i) of this section, may not vote on a
21 matter:

22 (A) In which they, an immediate family member, or a business
23 with which they or an immediate family member is associated have a

1 financial interest. Business with which they are associated means
2 a business of which the person or an immediate family member is a
3 director, officer, owner, employee, compensated agent, or holder of
4 stock which constitutes five percent or more of the total
5 outstanding stocks of any class.

6 (B) If a public official is employed by a financial
7 institution and his or her primary responsibilities include
8 consumer and commercial lending, the public official may not vote
9 on a matter which directly affects the financial interests of a
10 customer of the financial institution if the public official is
11 directly involved in approving a loan request from the person or
12 business appearing before the governmental body or if the public
13 official has been directly involved in approving a loan for that
14 person or business within the past 12 months: *Provided*, That this
15 limitation only applies if the total amount of the loan or loans
16 exceeds \$15,000.

17 (C) A personnel matter involving the public official's spouse
18 or relative;

19 (D) The appropriations of public moneys or the awarding of a
20 contract to a nonprofit corporation if the public official or an
21 immediate family member is employed by the nonprofit.

22 ~~(H)~~ (2) A public official may vote:

23 (A) If the public official, his or her spouse, immediate

1 family members or relatives or business with which they are
2 associated are affected as a member of, and to no greater extent
3 than any other member of a profession, occupation, class of persons
4 or class of businesses. A class shall consist of not fewer than
5 five similarly situated persons or businesses; or

6 (B) If the matter affects a publicly traded company when:

7 (i) The public official, or dependent family members
8 individually or jointly own less than five percent of the issued
9 stock in the publicly traded company and the value of the stocks
10 individually or jointly owned is less than \$10,000; and

11 (ii) Prior to casting a vote the public official discloses his
12 or her interest in the publicly traded company.

13 (3) For a public official's recusal to be effective, it is
14 necessary to excuse him or herself from participating in the
15 discussion and decision-making process by physically removing him
16 or herself from the room during the period, fully disclosing his or
17 her interests, and recusing him or herself from voting on the
18 issue.

19 (k) *Limitations on participation in licensing and rate-making*
20 *proceedings.* -- No public official or employee may participate
21 within the scope of his or her duties as a public official or
22 employee, except through ministerial functions as defined in
23 section three, article one of this chapter, in any license or rate-

1 making proceeding that directly affects the license or rates of any
2 person, partnership, trust, business trust, corporation or
3 association in which the public official or employee or his or her
4 immediate family owns or controls more than ten percent. No public
5 official or public employee may participate within the scope of his
6 or her duties as a public official or public employee, except
7 through ministerial functions as defined in section three, article
8 one of this chapter, in any license or rate-making proceeding that
9 directly affects the license or rates of any person to whom the
10 public official or public employee or his or her immediate family,
11 or a partnership, trust, business trust, corporation or association
12 of which the public official or employee, or his or her immediate
13 family, owns or controls more than ten percent, has sold goods or
14 services totaling more than \$1,000 during the preceding year,
15 unless the public official or public employee has filed a written
16 statement acknowledging such sale with the public agency and the
17 statement is entered in any public record of the agency's
18 proceedings. This subsection shall not be construed to require the
19 disclosure of clients of attorneys or of patients or clients of
20 persons licensed pursuant to article three, eight, fourteen,
21 fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one,
22 chapter thirty of this code.

23 (1) *Certain compensation prohibited.* -- (1) A public employee

1 may not receive additional compensation from another publicly-
2 funded state, county or municipal office or employment for working
3 the same hours, unless:

4 (A) The public employee's compensation from one public
5 employer is reduced by the amount of compensation received from the
6 other public employer;

7 (B) The public employee's compensation from one public
8 employer is reduced on a pro rata basis for any work time missed to
9 perform duties for the other public employer;

10 (C) The public employee uses earned paid vacation, personal or
11 compensatory time or takes unpaid leave from his or her public
12 employment to perform the duties of another public office or
13 employment; or

14 (D) A part-time public employee who does not have regularly
15 scheduled work hours or a public employee who is authorized by one
16 public employer to make up, outside of regularly scheduled work
17 hours, time missed to perform the duties of another public office
18 or employment maintains time records, verified by the public
19 employee and his or her immediate supervisor at least once every
20 pay period, showing the hours that the public employee did, in
21 fact, work for each public employer. The public employer shall
22 submit these time records to the Ethics Commission on a quarterly
23 basis.

1 (2) This section does not prohibit a retired public official
2 or public employee from receiving compensation from a publicly-
3 funded office or employment in addition to any retirement benefits
4 to which the retired public official or public employee is
5 entitled.

6 (m) *Certain expenses prohibited.* -- No public official or
7 public employee shall knowingly request or accept from any
8 governmental entity compensation or reimbursement for any expenses
9 actually paid by a lobbyist and required by the provisions of this
10 chapter to be reported, or actually paid by any other person.

11 (n) Any person who is employed as a member of the faculty or
12 staff of a public institution of higher education and who is
13 engaged in teaching, research, consulting or publication activities
14 in his or her field of expertise with public or private entities
15 and thereby derives private benefits from such activities shall be
16 exempt from the prohibitions contained in subsections (b), (c) and
17 (d) of this section when the activity is approved as a part of an
18 employment contract with the governing board of the institution or
19 has been approved by the employee's department supervisor or the
20 president of the institution by which the faculty or staff member
21 is employed.

22 (o) Except as provided in this section, a person who is a
23 public official or public employee may not solicit private business

1 from a subordinate public official or public employee whom he or
2 she has the authority to direct, supervise or control. A person
3 who is a public official or public employee may solicit private
4 business from a subordinate public official or public employee whom
5 he or she has the authority to direct, supervise or control when:

6 (A) The solicitation is a general solicitation directed to the
7 public at large through the mailing or other means of distribution
8 of a letter, pamphlet, handbill, circular or other written or
9 printed media; or

10 (B) The solicitation is limited to the posting of a notice in
11 a communal work area; or

12 (C) The solicitation is for the sale of property of a kind
13 that the person is not regularly engaged in selling; or

14 (D) The solicitation is made at the location of a private
15 business owned or operated by the person to which the subordinate
16 public official or public employee has come on his or her own
17 initiative.

18 (p) Self Promotion. -- (1) A public official or employee may
19 not knowingly and intentionally place or allow the use of his or
20 her personal name or likeness to be placed on a trinket that is
21 purchased with public moneys and/or distributed by a public entity.
22 However, the prohibition against self-promotion does not apply to
23 incidental office items such as business cards, letterhead

1 stationary, envelopes, door signs or plates, or other office
2 insignia where the inclusion of the officeholder's name is
3 appropriate.

4 (2) During any election period in which he or she is a
5 candidate, a public official or employee may not knowingly and
6 intentionally place or allow the use of his or her personal name or
7 likeness on any broad-based public advertising paid for with public
8 moneys and/or distributed on behalf of a public entity.

9 ~~(p)~~ (q) The commission may, by legislative rule promulgated in
10 accordance with chapter twenty-nine-a of this code, define further
11 exemptions from this section as necessary or appropriate.

NOTE: The purpose of this bill is to prohibit public officials and employees from using public funds for self promotion. The bill prohibits knowingly and intentionally placing the names or likenesses of public officials and employees on trinkets. The bill prohibits knowingly and intentionally placing the names or likenesses of public officials and employees on certain publically-financed advertising during an election period. The bill makes these prohibitions violations of the West Virginia Governmental Ethics Act. The bill also defines terms.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.