

**H. B. 2996**

(By Delegate Moffatt)

[Introduced February 24, 2015; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6B-2-5 of said code, all relating to governmental ethics; prohibiting public officials and employees from using public funds for self promotion; prohibiting knowingly and intentionally placing the names or likenesses of public officials and employees on trinkets; prohibiting knowingly and intentionally placing the names or likenesses of public officials and employees on certain publically financed advertising during an election period; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

That §6B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §6B-2-5 of said code be amended and reenacted, all to read as follows:

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

1 **§6B-1-3. Definitions.**

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

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

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

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

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

14 (e) "Directed by law" means the public servant or entity is directed to include certain  
15 information by statute, rule, court order or federal regulation.

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

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

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

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

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

9           ~~(h)~~ (k) "Person" means an individual, corporation, business entity, labor union, association,  
10 firm, partnership, limited partnership, committee, club or other organization or group of persons,  
11 irrespective of the denomination given such organization or group.

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

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

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

20           ~~(k)~~ (o) "Public official" means any person who is elected or appointed to any state, county  
21 or municipal office or position and who is responsible for the making of policy or takes official  
22 action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or

1 procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning  
2 or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where  
3 the official action has an economic impact of greater than a de minimis nature on the interest or  
4 interests of any person.

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

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

10 ~~(n)~~ (r) "Thing of value", "other thing of value" or "anything of value" means and includes:  
11 (1) Money, bank bills or notes, United States treasury notes and other bills, bonds or notes issued  
12 by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3)  
13 promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment  
14 of money or the forbearance of money due or owing; (4) receipts given for the payment of money  
15 or other property; (5) any right or chose in action; (6) chattels real or personal or things which savor  
16 of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce  
17 thereof or affixed thereto, although there may be no interval between the severing and the taking  
18 away thereof; (7) any interest in realty, including, but not limited to, fee simple estates, life estates,  
19 estates for a term or period of time, joint tenancies, cotenancies, tenancies in common, partial  
20 interests, present or future interests, contingent or vested interests, beneficial interests, leasehold  
21 interests or any other interest or interests in realty of whatsoever nature; (8) any promise of  
22 employment, present or future; (9) donation or gift; (10) rendering of services or the payment

1 thereof; (11) any advance or pledge; (12) a promise of present or future interest in any business or  
 2 contract or other agreement; or (13) every other thing or item, whether tangible or intangible, having  
 3 economic worth. "Thing of value", "other thing of value" or "anything of value" shall not include  
 4 anything which is de minimis in nature nor a lawful political contribution reported as required by  
 5 law.

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

9 **ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;**  
 10 **DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS**  
 11 **AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES;**  
 12 **CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

13 **§6B-2-5. Ethical standards for elected and appointed officials and public employees.**

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

18 (b) *Use of public office for private gain.* -- (1) A public official or public employee may not  
 19 knowingly and intentionally use his or her office or the prestige of his or her office for his or her own  
 20 private gain or that of another person. Incidental use of equipment or resources available to a public  
 21 official or public employee by virtue of his or her position for personal or business purposes resulting  
 22 in de minimis private gain does not constitute use of public office for private gain under this

1 subsection. The performance of usual and customary duties associated with the office or position  
2 or the advancement of public policy goals or constituent services, without compensation, does not  
3 constitute the use of prestige of office for private gain.

4 (2) Notwithstanding the general prohibition against use of office for private gain, public  
5 officials and public employees may use bonus points acquired through participation in frequent  
6 traveler programs while traveling on official government business: *Provided*, That the official's or  
7 employee's participation in such program, or acquisition of such points, does not result in additional  
8 costs to the government.

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

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

9 (c) *Gifts.* -- (1) A public official or public employee may not solicit any gift unless the  
10 solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the  
11 official or employee or his or her immediate family: *Provided,* That no public official or public  
12 employee may solicit for a charitable purpose any gift from any person who is also an official or  
13 employee of the state and whose position is subordinate to the soliciting official or employee:  
14 *Provided, however,* That nothing herein shall prohibit a candidate for public office from soliciting  
15 a lawful political contribution. No official or employee may knowingly accept any gift, directly or  
16 indirectly, from a lobbyist or from any person whom the official or employee knows or has reason  
17 to know:

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

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

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

1 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a  
2 public official or public employee may accept a gift described in this subdivision, and there shall be  
3 a presumption that the receipt of such gift does not impair the impartiality and independent judgment  
4 of the person. This presumption may be rebutted only by direct objective evidence that the gift did  
5 impair the impartiality and independent judgment of the person or that the person knew or had reason  
6 to know that the gift was offered with the intent to impair his or her impartiality and independent  
7 judgment. The provisions of subdivision (1) of this subsection do not apply to:

8 (A) Meals and beverages;

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

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

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

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

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

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

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

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



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

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

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

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

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

12 (6) Upon prior approval of the Joint Committee on Government and Finance, any member  
13 of the Legislature may solicit donations for a regional or national legislative organization conference  
14 or other legislative organization function to be held in the state for the purpose of deferring costs to  
15 the state for hosting of the conference or function. Legislative organizations are bipartisan regional  
16 or national organizations in which the Joint Committee on Government and Finance authorizes  
17 payment of dues or other membership fees for the Legislature's participation and which assist this  
18 and other State Legislatures and their staff through any of the following:

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

21 (B) Fostering interstate cooperation and facilitating information exchange among State  
22 Legislatures;

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

3 (D) Improving the operations and management of State Legislatures and the effectiveness  
4 of legislators and legislative staff, and to encourage the practice of high standards of conduct by  
5 legislators and legislative staff;

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

8 The solicitations may only be made in writing. The legislative organization may act as fiscal  
9 agent for the conference and receive all donations. In the alternative, a bona fide banking institution  
10 may act as the fiscal agent. The official letterhead of the Legislature may not be used by the  
11 legislative member in conjunction with the fund raising or solicitation effort. The legislative  
12 organization for which solicitations are being made shall file with the Joint Committee on  
13 Government and Finance and with the Secretary of State for publication in the State Register as  
14 provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other  
15 solicitation documents, along with a complete list of the names and last known addresses of all  
16 donors and the amount of donations received. Any solicitation by a legislative member shall contain  
17 the following disclaimer:

18 "This solicitation is endorsed by [name of member]. This endorsement does not imply  
19 support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A  
20 copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on  
21 Government and Finance, and with the Secretary of State and are available for public review."

22 (7) Upon written notice to the commission, any member of the board of Public Works may

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

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

21 (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code,  
22 no elected or appointed public official or public employee or member of his or her immediate family

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

11 (2) In the absence of bribery or a purpose to defraud, an elected or appointed public official  
12 or public employee or a member of his or her immediate family or a business with which he or she  
13 is associated shall not be considered as having a prohibited financial interest in a public contract  
14 when such a person has a limited interest as an owner, shareholder or creditor of the business which  
15 is awarded a public contract. A limited interest for the purposes of this subsection is:

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

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

20 (3) If a public official or employee has an interest in the profits or benefits of a contract, then  
21 he or she may not make, participate in making, or in any way attempt to use his or her office or  
22 employment to influence a government decision affecting his or her financial or limited financial

1 interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this  
2 section.

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

8 (e) *Confidential information.* -- No present or former public official or employee may  
9 knowingly and improperly disclose any confidential information acquired by him or her in the course  
10 of his or her official duties nor use such information to further his or her personal interests or the  
11 interests of another person.

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

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

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

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

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

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

17 (D) A rate-making proceeding; and

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

19 (2) As used in this subsection, "represent" includes any formal or informal appearance before,  
20 or any written or oral communication with, any public agency on behalf of any person: *Provided,*  
21 That nothing contained in this subsection shall prohibit, during any period, a former public official  
22 or employee from being retained by or employed to represent, assist or act in a representative

1 capacity on behalf of the public agency by which he or she was employed or in which he or she  
2 served. Nothing in this subsection shall be construed to prevent a former public official or employee  
3 from representing another state, county, municipal or other governmental entity before the  
4 governmental entity in which he or she served or was employed within one year after the termination  
5 of his or her employment or service in the entity.

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

9 (4) Members and former members of the Legislature and professional employees and former  
10 professional employees of the Legislature shall be permitted to appear in a representative capacity  
11 on behalf of clients before any governmental agency of the state or of county or municipal  
12 governments, including county school boards.

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

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

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

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

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

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

9 (ii) Recommending selection of the vendor;

10 (iii) Conducting inspections or investigations;

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

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

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

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

22 (3) A full-time public official or full-time public employee who would be adversely affected



1 by the provisions of this subsection may apply to the Ethics Commission for an exemption from the  
2 prohibition contained in subdivision (1) of this subsection.

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

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

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

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

14 (5) A full-time public official or full-time public employee may not personally participate in  
15 a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or  
16 other substantial exercise of nonministerial administrative discretion involving a vendor with whom  
17 he or she is seeking employment or has an agreement concerning future employment.

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

21 (i) *Members of the Legislature required to vote.* -- Members of the Legislature who have  
22 asked to be excused from voting or who have made inquiry as to whether they should be excused

1 from voting on a particular matter and who are required by the presiding officer of the House of  
2 Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be  
3 guilty of any violation of ethics under the provisions of this section for a vote so cast.

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

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

7 (A) In which they, an immediate family member, or a business with which they or an  
8 immediate family member is associated have a financial interest. Business with which they are  
9 associated means a business of which the person or an immediate family member is a director,  
10 officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or  
11 more of the total outstanding stocks of any class.

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

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

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

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

1 (A) If the public official, his or her spouse, immediate family members or relatives or  
2 business with which they are associated are affected as a member of, and to no greater extent than  
3 any other member of a profession, occupation, class of persons or class of businesses. A class shall  
4 consist of not fewer than five similarly situated persons or businesses; or

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

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

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

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

15 *(k) Limitations on participation in licensing and rate-making proceedings.* -- No public  
16 official or employee may participate within the scope of his or her duties as a public official or  
17 employee, except through ministerial functions as defined in section three, article one of this chapter,  
18 in any license or rate-making proceeding that directly affects the license or rates of any person,  
19 partnership, trust, business trust, corporation or association in which the public official or employee  
20 or his or her immediate family owns or controls more than ten percent. No public official or public  
21 employee may participate within the scope of his or her duties as a public official or public  
22 employee, except through ministerial functions as defined in section three, article one of this chapter,

1 in any license or rate-making proceeding that directly affects the license or rates of any person to  
2 whom the public official or public employee or his or her immediate family, or a partnership, trust,  
3 business trust, corporation or association of which the public official or employee, or his or her  
4 immediate family, owns or controls more than ten percent, has sold goods or services totaling more  
5 than \$1,000 during the preceding year, unless the public official or public employee has filed a  
6 written statement acknowledging such sale with the public agency and the statement is entered in  
7 any public record of the agency's proceedings. This subsection shall not be construed to require the  
8 disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three,  
9 eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this  
10 code.

11 (l) *Certain compensation prohibited.* --

12 (1) A public employee may not receive additional compensation from another  
13 publicly-funded state, county or municipal office or employment for working the same hours, unless:

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

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

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

21 (D) A part-time public employee who does not have regularly scheduled work hours or a  
22 public employee who is authorized by one public employer to make up, outside of regularly

1 scheduled work hours, time missed to perform the duties of another public office or employment  
2 maintains time records, verified by the public employee and his or her immediate supervisor at least  
3 once every pay period, showing the hours that the public employee did, in fact, work for each public  
4 employer. The public employer shall submit these time records to the Ethics Commission on a  
5 quarterly basis.

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

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

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

20 (o) Except as provided in this section, a person who is a public official or public employee  
21 may not solicit private business from a subordinate public official or public employee whom he or  
22 she has the authority to direct, supervise or control. A person who is a public official or public

1 employee may solicit private business from a subordinate public official or public employee whom  
2 he or she has the authority to direct, supervise or control when:

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

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

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

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

12 (p) Self Promotion. -- (1) A public official or employee may not knowingly and intentionally  
13 place or allow the use of his or her personal name or likeness to be placed on a trinket that is  
14 purchased with public moneys and/or distributed by a public entity. However, the prohibition  
15 against self-promotion does not apply to incidental office items such as business cards, letterhead  
16 stationary, envelopes, door signs or plates, or other office insignia where the inclusion of the  
17 officeholder's name is appropriate.

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

22 ~~(p)~~ (q) The commission may, by legislative rule promulgated in accordance with chapter

1 twenty-nine-a of this code, define further 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.