

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4424**

BY DELEGATES MILEY, MR. SPEAKER (MR. ARMSTEAD),

SHOTT, FLEISCHAUER, LANE, ROWE, HANSHAW, BOGGS,

HAMILTON, CAPUTO AND CAMPBELL

[Passed March 10, 2018; in effect ninety days from passage.]



1 AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §6B-2-5 of said code, all relating to providing that the West Virginia  
3 Governmental Ethics Act applies to public servant volunteers; defining terms; and  
4 providing that the requirements of the West Virginia Governmental Ethics Act apply to a  
5 person who is granted or vested with powers, privileges or authorities ordinarily reserved  
6 to public officials or who performs services, without compensation, on behalf of a public  
7 official.

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

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

**§6B-1-3. Definitions.**

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

2 (a) "Review Board" means the Probable Cause Review Board created by §6B-2-2a of this  
3 code.

4 (b) "Business" means any entity through which business for-profit is conducted including  
5 a corporation, partnership, proprietorship, franchise, association, organization, or self-employed  
6 individual.

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

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

15 (e) "Ethics Commission" or "commission" means the West Virginia Ethics Commission.

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

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

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

26 (i) "Political contribution" means and has the same definition as is given that term under  
27 the provisions of §3-8-1 *et seq.* of this code.

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

30 (k) "Public official" means any person who is elected to, appointed to, or given the authority  
31 to act in any state, county, or municipal office or position, whether compensated or not, and who  
32 is responsible for the making of policy or takes official action which is either ministerial or  
33 nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services;  
34 (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting,  
35 licensing, regulating, or auditing any person; or (5) any other activity where the official action has  
36 an economic impact of greater than a de minimis nature on the interest or interests of any person.  
37 The term "public official" includes a public servant volunteer.

38 (l) "Public servant volunteer" means any person who, without compensation, performs  
39 services on behalf of a public official and who is granted or vested with powers, privileges, or  
40 authorities ordinarily reserved to public officials.

41 (m) "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother,  
42 grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or  
43 daughter-in-law.

44 (n) "Respondent" means a person who is the subject of an investigation by the commission  
45 or against whom a complaint has been filed with the commission.

46 (o) "Thing of value", "other thing of value," or "anything of value" means and includes: (1)  
47 Money, bank bills, or notes, United States treasury notes and other bills, bonds or notes issued  
48 by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3)  
49 promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment  
50 of money, or the forbearance of money due or owing; (4) receipts given for the payment of money  
51 or other property; (5) any right or chose in action; (6) chattels real or personal or things which  
52 savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance  
53 or produce thereof or affixed thereto, although there may be no interval between the severing and  
54 the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates,  
55 life estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in  
56 common, partial interests, present or future interests, contingent or vested interests, beneficial  
57 interests, leasehold interests, or any other interest or interests in realty of whatsoever nature; (8)  
58 any promise of employment, present or future; (9) donation or gift; (10) rendering of services or  
59 the payment thereof; (11) any advance or pledge; (12) a promise of present or future interest in  
60 any business or contract or other agreement; or (13) every other thing or item, whether tangible  
61 or intangible, having economic worth. "Thing of value", "other thing of value" or "anything of value"  
62 shall not include anything which is *de minimis* in nature nor a lawful political contribution reported  
63 as required by law.

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

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

1           (a) *Persons subject to section.* — The provisions of this section apply to all public officials  
2 and public employees, whether full or part-time and whether compensated or not, in state, county,  
3 municipal governments and their respective boards, agencies, departments, and commissions  
4 and in any other regional or local governmental agency, including county school boards.

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

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

18           (3) The Legislature, in enacting this subsection, recognizes that there may be certain  
19 public officials or public employees who bring to their respective offices or employment their own  
20 unique personal prestige which is based upon their intelligence, education, experience, skills and

21 abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige  
22 to their office or employment which inures to the benefit of the state and its citizens. Those  
23 persons may, in fact, be sought by the state to serve in their office or employment because,  
24 through their unusual gifts or traits, they bring stature and recognition to their office or employment  
25 and to the state itself. While the office or employment held or to be held by those persons may  
26 have its own inherent prestige, it would be unfair to those individuals and against the best interests  
27 of the citizens of this state to deny those persons the right to hold public office or to be publicly  
28 employed on the grounds that they would, in addition to the emoluments of their office or  
29 employment, be in a position to benefit financially from the personal prestige which otherwise  
30 inheres to them. Accordingly, the commission is directed, by legislative rule, to establish  
31 categories of public officials and public employees, identifying them generally by the office or  
32 employment held, and offering persons who fit within those categories the opportunity to apply for  
33 an exemption from the application of the provisions of this subsection. Exemptions may be  
34 granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office  
35 held or the public employment engaged in is not such that it would ordinarily be available or  
36 offered to a substantial number of the citizens of this state; (B) the office held or the employment  
37 engaged in is such that it normally or specifically requires a person who possesses personal  
38 prestige; and (C) the person's employment contract or letter of appointment provides or  
39 anticipates that the person will gain financially from activities which are not a part of his or her  
40 office or employment.

41 (4) A public official or public employee may not show favoritism or grant patronage in the  
42 employment or working conditions of his or her relative or a person with whom he or she resides:  
43 *Provided*, That as used in this subdivision, "employment or working conditions" shall only apply  
44 to government employment: *Provided, however*, That government employment includes only  
45 those governmental entities specified in subsection (a) of this section.

46 (c) *Gifts*. — (1) A public official or public employee may not solicit any gift unless the  
47 solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon  
48 the official or employee or his or her immediate family: *Provided*, That no public official or public  
49 employee may solicit for a charitable purpose any gift from any person who is also an official or  
50 employee of the state and whose position is subordinate to the soliciting official or employee:  
51 *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting  
52 a lawful political contribution. No official or employee may knowingly accept any gift, directly or  
53 indirectly, from a lobbyist or from any person whom the official or employee knows or has reason  
54 to know:

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

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

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

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

67 (A) Meals and beverages;

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

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

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

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

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

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

77 (3) The commission shall, through legislative rule promulgated pursuant to chapter 29A of  
78 this code, establish guidelines for the acceptance of a reasonable honorarium by public officials  
79 and elected officials. The rule promulgated shall be consistent with this section. Any elected public  
80 official may accept an honorarium only when:

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

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

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

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

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

89 (5) The Governor or his designee may, in the name of the State of West Virginia, accept  
90 and receive gifts from any public or private source. Any gift so obtained shall become the property  
91 of the state and shall, within 30 days of the receipt thereof, be registered with the commission and  
92 the Division of Culture and History.

93 (6) Upon prior approval of the Joint Committee on Government and Finance, any member  
94 of the Legislature may solicit donations for a regional or national legislative organization  
95 conference or other legislative organization function to be held in the state for the purpose of  
96 deferring costs to the state for hosting of the conference or function. Legislative organizations are  
97 bipartisan regional or national organizations in which the Joint Committee on Government and

98 Finance authorizes payment of dues or other membership fees for the Legislature's participation  
99 and which assist this and other State Legislatures and their staff through any of the following:

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

102 (B) Fostering interstate cooperation and facilitating information exchange among State  
103 Legislatures;

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

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

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

111 The solicitations may only be made in writing. The legislative organization may act as  
112 fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking  
113 institution may act as the fiscal agent. The official letterhead of the Legislature may not be used  
114 by the legislative member in conjunction with the fund raising or solicitation effort. The legislative  
115 organization for which solicitations are being made shall file with the Joint Committee on  
116 Government and Finance and with the Secretary of State for publication in the State Register as  
117 provided in §29A-2-1 *et seq.* of this code, copies of letters, brochures, and other solicitation  
118 documents, along with a complete list of the names and last known addresses of all donors and  
119 the amount of donations received. Any solicitation by a legislative member shall contain the  
120 following disclaimer:

121 "This solicitation is endorsed by [name of member]. This endorsement does not imply  
122 support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A

123 copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on  
124 Government and Finance, and with the Secretary of State and are available for public review."

125 (7) Upon written notice to the commission, any member of the board of Public Works may  
126 solicit donations for a regional or national organization conference or other function related to the  
127 office of the member to be held in the state for the purpose of deferring costs to the state for  
128 hosting of the conference or function. The solicitations may only be made in writing. The  
129 organization may act as fiscal agent for the conference and receive all donations. In the  
130 alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of  
131 the office of the Board of Public Works member may not be used in conjunction with the fund  
132 raising or solicitation effort. The organization for which solicitations are being made shall file with  
133 the Joint Committee on Government and Finance, with the Secretary of State for publication in  
134 the State Register as provided in §29A-2-1 *et seq.* of this code and with the commission, copies  
135 of letters, brochures, and other solicitation documents, along with a complete list of the names  
136 and last known addresses of all donors and the amount of donations received. Any solicitation by  
137 a member of the board of Public Works shall contain the following disclaimer: "This solicitation is  
138 endorsed by (name of member of Board of Public Works.) This endorsement does not imply  
139 support of the soliciting organization, nor of the sponsors who may respond to the solicitation.  
140 Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on  
141 Government and Finance, with the West Virginia Secretary of State and with the West Virginia  
142 Ethics Commission and are available for public review." Any moneys in excess of those donations  
143 needed for the conference or function shall be deposited in the Capitol Dome and Capitol  
144 Improvement Fund established in §5A-4-2 *et seq.* of this code.

145 (d) *Interests in public contracts.* — (1) In addition to the provisions of §61-10-15 of this  
146 code, no elected or appointed public official or public employee or member of his or her immediate  
147 family or business with which he or she is associated may be a party to or have an interest in the  
148 profits or benefits of a contract which the official or employee may have direct authority to enter

149 into, or over which he or she may have control: *Provided*, That nothing herein shall be construed  
150 to prevent or make unlawful the employment of any person with any governmental body:  
151 *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature  
152 from entering into a contract with any governmental body, or prohibit a part-time appointed public  
153 official from entering into a contract which the part-time appointed public official may have direct  
154 authority to enter into or over which he or she may have control when the official has not  
155 participated in the review or evaluation thereof, has been recused from deciding or evaluating and  
156 has been excused from voting on the contract and has fully disclosed the extent of his or her  
157 interest in the contract.

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

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

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

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

173 (4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the  
174 loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other

175 substantial interference with the operation of a state, county, municipality, county school board,  
176 or other governmental agency, the affected governmental body or agency may make written  
177 application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this  
178 subsection.

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

183 (f) *Prohibited representation.* — No present or former elected or appointed public official  
184 or public employee shall, during or after his or her public employment or service, represent a client  
185 or act in a representative capacity with or without compensation on behalf of any person in a  
186 contested case, rate-making proceeding, license or permit application, regulation filing or other  
187 particular matter involving a specific party or parties which arose during his or her period of public  
188 service or employment and in which he or she personally and substantially participated in a  
189 decision-making, advisory or staff support capacity, unless the appropriate government agency,  
190 after consultation, consents to such representation. A staff attorney, accountant or other  
191 professional employee who has represented a government agency in a particular matter shall not  
192 thereafter represent another client in the same or substantially related matter in which that client's  
193 interests are materially adverse to the interests of the government agency, without the consent of  
194 the government agency: *Provided*, That this prohibition on representation shall not apply when  
195 the client was not directly involved in the particular matter in which the professional employee  
196 represented the government agency, but was involved only as a member of a class. The  
197 provisions of this subsection shall not apply to legislators who were in office and legislative staff  
198 who were employed at the time it originally became effective on July 1, 1989, and those who have  
199 since become legislators or legislative staff and those who shall serve hereafter as legislators or  
200 legislative staff.

201           (g) *Limitation on practice before a board, agency, commission or department.* — Except  
202 as otherwise provided in §8A-2-3, §8A-2-4, or §8A-2-5 of this code: (1) No elected or appointed  
203 public official and no full-time staff attorney or accountant shall, during his or her public service or  
204 public employment or for a period of one year after the termination of his or her public service or  
205 public employment with a governmental entity authorized to hear contested cases or promulgate  
206 or propose rules, appear in a representative capacity before the governmental entity in which he  
207 or she serves or served or is or was employed in the following matters:

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

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

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

211           (D) A rate-making proceeding; and

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

213           (2) As used in this subsection, “represent” includes any formal or informal appearance  
214 before, or any written or oral communication with, any public agency on behalf of any person:  
215 *Provided,* That nothing contained in this subsection shall prohibit, during any period, a former  
216 public official or employee from being retained by or employed to represent, assist or act in a  
217 representative capacity on behalf of the public agency by which he or she was employed or in  
218 which he or she served. Nothing in this subsection shall be construed to prevent a former public  
219 official or employee from representing another state, county, municipal, or other governmental  
220 entity before the governmental entity in which he or she served or was employed within one year  
221 after the termination of his or her employment or service in the entity.

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

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

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

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

241 (A) Had a matter on which he or she took, or a subordinate is known to have taken,  
242 regulatory action within the preceding 12 months; or

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

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

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

249 (ii) Recommending selection of the vendor;

250 (iii) Conducting inspections or investigations;

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

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

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

256 (2) Within the meaning of this section, the term “employment” includes professional  
257 services and other services rendered by the public official or public employee, whether rendered  
258 as employee or as an independent contractor; “seek employment” includes responding to  
259 unsolicited offers of employment as well as any direct or indirect contact with a potential employer  
260 relating to the availability or conditions of employment in furtherance of obtaining employment;  
261 and “subordinate” includes only those agency personnel over whom the public official or public  
262 employee has supervisory responsibility.

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

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

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

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

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

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

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

284 (i) *Members of the Legislature required to vote.* — Members of the Legislature who have  
285 asked to be excused from voting or who have made inquiry as to whether they should be excused  
286 from voting on a particular matter and who are required by the presiding officer of the House of  
287 Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be  
288 guilty of any violation of ethics under the provisions of this section for a vote so cast.

289 (j) *Limitations on voting.* — (1) Public officials, excluding members of the Legislature who  
290 are governed by subsection (i) of this section, may not vote on a matter:

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

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

303 (C) The employment or working conditions of the public official's relative or person with  
304 whom the public official resides.

305 (D) The appropriations of public moneys or the awarding of a contract to a nonprofit  
306 corporation if the public official or an immediate family member is employed by, or a compensated  
307 officer or board member of, the nonprofit: *Provided*, That if the public official or immediate family  
308 member is an uncompensated officer or board member of the nonprofit, then the public official  
309 shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or  
310 award of contract to the nonprofit: *Provided, however*, That for purposes of this paragraph, public  
311 disclosure shall mean disclosure of the public official's, or his or her immediate family member's,  
312 relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract,  
313 if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the  
314 minutes of the meeting.

315 (2) A public official may vote:

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

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

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

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

326 (3) For a public official's recusal to be effective, it is necessary to excuse him or herself  
327 from participating in the discussion and decision-making process by physically removing him or

328 herself from the room during the period, fully disclosing his or her interests, and recusing him or  
329 herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

330 (k) *Limitations on participation in licensing and rate-making proceedings.* — No public  
331 official or employee may participate within the scope of his or her duties as a public official or  
332 employee, except through ministerial functions as defined in §6B-1-3 of this code, in any license  
333 or rate-making proceeding that directly affects the license or rates of any person, partnership,  
334 trust, business trust, corporation, or association in which the public official or employee or his or  
335 her immediate family owns or controls more than 10 percent. No public official or public employee  
336 may participate within the scope of his or her duties as a public official or public employee, except  
337 through ministerial functions as defined §6B-1-3 of this code, in any license or rate-making  
338 proceeding that directly affects the license or rates of any person to whom the public official or  
339 public employee or his or her immediate family, or a partnership, trust, business trust, corporation  
340 or association of which the public official or employee, or his or her immediate family, owns or  
341 controls more than 10 percent, has sold goods or services totaling more than \$1,000 during the  
342 preceding year, unless the public official or public employee has filed a written statement  
343 acknowledging such sale with the public agency and the statement is entered in any public record  
344 of the agency's proceedings. This subsection shall not be construed to require the disclosure of  
345 clients of attorneys or of patients or clients of persons licensed pursuant to §30-3-1 *et seq.*, §30-  
346 8-1 *et seq.*, §30-14-1 *et seq.*, §30-14A-1 *et seq.*, §30-15-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et*  
347 *seq.*, §30-21-1 *et seq.*, or §30-31-1 *et seq.* of this code.

348 (l) *Certain compensation prohibited.* — (1) A public employee may not receive additional  
349 compensation from another publicly-funded state, county, or municipal office or employment for  
350 working the same hours, unless:

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

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

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

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

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

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

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

379           (o) Except as provided in this section, a person who is a public official or public employee  
380 may not solicit private business from a subordinate public official or public employee whom he or  
381 she has the authority to direct, supervise or control. A person who is a public official or public  
382 employee may solicit private business from a subordinate public official or public employee whom  
383 he or she has the authority to direct, supervise or control when:

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

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

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

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

393           (p) The commission may, by legislative rule promulgated in accordance with chapter 29A  
394 of this code, define further exemptions from this section as necessary or appropriate.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2018.

.....  
*Governor*