

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4473**

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[Introduced February 13, 2018; Referred to the  
Committee on the Judiciary.]



1 A BILL to amend and reenact §6B-2B-1, §6B-2B-2 and §6B-2B-4 of the Code of West Virginia,  
2 1931, as amended, all relating to use of state funds for advertising to promote a public  
3 official or government office; defining terms; and clarifying limitations on the production of  
4 educational materials and press releases produced with public funds.

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

**ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL FROM USING HIS OR HER  
NAME OR LIKENESS.**

**§6B-2B-1. Definitions.**

1 As used in this article:

2 (a) "Advertising" means publishing, distributing, disseminating, communicating, or  
3 displaying information to the ~~general~~ public through audio, visual, or other media tools with the  
4 purpose, in whole or in part, of promoting the activities, accomplishments, or efforts of a public  
5 official or a political party. ~~It includes~~ "Advertising" may include, but is not limited to, billboard,  
6 radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social  
7 media, websites, and other forms of publication, dissemination, display, or communication.

8 (b) "Agent" means any volunteer or employee, contractual or permanent, serving at the  
9 discretion of a public official or public employee.

10 (c) "Educational materials" means publications, guides, calendars, handouts, pamphlets,  
11 reports, or booklets intended to provide information about the public official or governmental  
12 office. It includes information or details about the office, services the office provides to the public,  
13 updates on laws and services, and other informational items that are intended to educate the  
14 public.

15 (d) "Instructional material" means written instructions explaining or detailing steps for  
16 completion of a governmental agency document or form.

17 (e) "Likeness" means a photograph, drawing, or other depiction of an individual.

18 (f) "Mass media communication" means communication through audio, visual, or other  
19 media tools, including U.S. mail, electronic mail, and social media, intended for general  
20 dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails and  
21 streaming clips on websites. It does not include: (i) Regular responses to constituent requests or  
22 questions during the normal course of business; or (ii) communications that are authorized or  
23 required by law to be publicly disseminated, such as legal notices.

24 (g) "Press release" means a written, audio, or video communication issued by an official  
25 or agency to members and organizations of the news media to report specific, but brief information  
26 about an event, circumstance, or other happening.

27 ~~(g)~~ (h) "Public employee" means any full-time or part-time employee of any state, or  
28 political subdivision of the state, and their respective boards, agencies, departments, and  
29 commissions, or in any other regional or local governmental agency.

30 ~~(h)~~ (i) "Public official" means any person who is elected or appointed to any state, county,  
31 or municipal office or position, including boards, agencies, departments, and commissions, or in  
32 any other regional or local governmental agency.

33 ~~(i)~~ (j) "Public payroll" means payment of public moneys as a wage or salary from the state,  
34 or political subdivision of the state, or any other regional or local governmental agency, whether  
35 accepted or not.

36 ~~(j)~~ (k) "Social media" means forms of electronic communication through which users create  
37 online communities to share information, ideas, personal messages, and other content. It includes  
38 web and mobile-based technologies which are used to turn communication to interactive dialogue  
39 among organizations, communities, and individuals. Examples include, but are not limited to,  
40 Facebook, Myspace, Twitter, and YouTube.

41 ~~(k)~~ (l) "Trinkets" means items of tangible personal property that are not vital or necessary  
42 to the duties of the public official's or public employee's office, including, but not limited to, the

43 following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files,  
44 matches, and bags.

**§6B-2B-2. Limitations on a public official from using his or her name or likeness.**

1 (a) *Trinkets.* – Public officials, their agents, or anyone on public payroll may not place the  
2 public official's name or likeness on trinkets paid for with public funds: *Provided*, That when  
3 appropriate and reasonable, public officials may expend a minimal amount of public funds for the  
4 purchase of pens, pencils or other markers to be used during ceremonial signings.

5 (b) *Advertising.* – (1) Public officials, their agents, or anyone on public payroll may not use  
6 public funds, including funds of the office held by the public official, public employees, or public  
7 resources to distribute, disseminate, publish, or display the public official's name or likeness for  
8 the purpose of advertising to the ~~general~~ public.

9 (2) Notwithstanding the prohibitions in subdivision (1) of this subsection, the following  
10 conduct is not prohibited:

11 (A) A public official's name and likeness may be used in a public announcement or mass  
12 media communication when necessary, reasonable, and appropriate to relay specific public  
13 safety, health, or emergency information.

14 (B) A public official's name and likeness may appear on an agency's social media and  
15 website ~~provided~~ if it complies with section three of this article.

16 ~~(C) Dissemination of office press releases or agency information via email, social media  
17 or other public media tools for official purposes is not considered advertising or prohibited under  
18 this subsection, if it: (i) Is intended for a legitimate news or informational purpose; (ii) is not  
19 intended as a means of promotion of the public official; and (iii) is not being used as educational  
20 material.~~

21 (3) Banners and table skirts are considered advertising and may not include the public  
22 official's name or likeness.

23 (4) Nothing in this article shall be interpreted as prohibiting public officials from using public  
24 funds to communicate with constituents in the normal course of their duties as public officials if  
25 the communications do not include any reference to voting in favor of the public official in an  
26 election.

27 (c) *Vehicles.* – Public officials, their agents, or any person on public payroll may not use  
28 or place the public official's name or likeness on any publicly owned vehicles.

29 (d) *Educational Materials.* – A public official's name or likeness may not be placed on any  
30 educational material, that is paid for with public funds, in a form, manner or context that would  
31 serve a purpose of advertising by the public official or producer of the materials: *Provided,* That  
32 this prohibition does not apply to the submission of a report required to be issued by law. The  
33 names and likenesses of officials at any level, including, but not limited to, those within an agency  
34 or agencies, may be included in directories, reports, reference books, or other educational  
35 materials, including, but not limited to, publications such as the West Virginia Blue Book and the  
36 Legislative Manual, subject to the following conditions:

37 (1) The primary purpose of the material is to provide information about the processes,  
38 operations, structure, functions, or history of an agency, agencies, or branch of government, or to  
39 provide lists of contact information or other identifying information about multiple individuals; and  
40 if

41 (2) No named official is singled out, given preferential treatment, or otherwise presented  
42 in a form, manner, or context that has the purpose or effect of promoting the activities,  
43 accomplishments, or efforts of that official or of a political party.

44 (e) *Press releases.* – Notwithstanding any other provision of law, the name and likeness  
45 of a public official may be included in a press release, produced with public funds and which is  
46 disseminated by any means, if that press release is intended for a legitimate news or informational  
47 purpose and, considered as a whole, does not feature or present the public official in a form,

48 manner, or context which is intended to promote the official. A press release produced with public  
49 funds may not request, solicit, or promote voting for any official or political party.

**§6B-2B-4. Exceptions to use of name or likeness.**

1 (a) A public official may use his or her name or likeness on any official record or report,  
2 letterhead, document, or certificate or instructional material issued in the course of his or her  
3 duties as a public official: *Provided*, That other official documents used in the normal course of  
4 the agency, including, but not limited to, facsimile cover sheets, press release headers, office  
5 signage, and envelopes may include the public official's name: *Provided, however, if the* That  
6 when official documents are reproduced for distribution or dissemination to the public as  
7 educational material, the items are subject to the prohibitions in subsection (d), section two of this  
8 article.

9 (b) When appropriate and reasonable, the West Virginia Division of Tourism may use a  
10 public official's name and likeness on material used for tourism promotion.

11 (c) The prohibitions contained in this article do not apply to any person who is employed  
12 as a member of the faculty, staff, administration, or president of a public institution of higher  
13 education and who is engaged in teaching, research, consulting, coaching, recruiting, or  
14 publication activities: *Provided*, That the activity is approved as a part of an employment contract  
15 with the governing board of the institution of higher education or has been approved by the  
16 employee's department supervisor or the president of the institution by which the faculty or staff  
17 member is employed.

18 (d) The prohibitions contained in section two of this article do not apply to a public official's  
19 ~~campaign-related expenditures or materials~~ items paid for from the public official's campaign  
20 funds.

21 (e) The prohibitions contained in section two of this article do not apply to items paid for  
22 with the public official's personal money.

- 23 (f) The prohibitions contained in section two of this article do not apply to items or materials  
24 required by law to contain the public official's name or likeness.

NOTE: The purpose of this bill is to clarify the definition of "advertising" relating to the promotion of a public official or government office and to distinguish between advertising and purely educational materials and to make allowances for press releases intended for legitimate news and informational purposes.

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