

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 636

BY SENATORS PREZIOSO, IHLENFELD, JEFFRIES, LINDSAY,

PALUMBO, ROMANO, AND STOLLINGS

[Introduced January 28, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §6B-2-8 of the Code of West Virginia, 1931, as amended, relating
 2 to blind trusts by public officials; requiring the Governor to transfer all or a portion of his or
 3 her assets to a blind trust; permitting other officials to voluntarily transfer assets to a blind
 4 trust; setting forth the responsibilities of a trustee; clarifying the contents and aspects to
 5 trust instrument; providing for the contents of statement to be filed with West Virginia
 6 Ethics Commission; requiring quarterly reports of the aggregate market value of assets in
 7 the trust; creating requirements related to communications regarding blind trust; granting
 8 the West Virginia Ethics Commission the authority to inspect records; and limiting a
 9 trustee's liability.

Be it enacted by the Legislature of West Virginia:

**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-2-8. Exceptions to financial disclosure requirements and conflicts of interest
 provisions; qualified blind trusts.**

1 (a) Any person regulated by the provisions of this article need not report the holdings of
 2 or the source of income from any of the holdings of:

3 (1) Any qualified blind trust; or

4 (2) A trust. –

5 (A) Which was not created directly by such individual, his spouse, or any dependent child,
 6 and

7 (B) The holdings or sources of income of which such individual, or a member of his or her
 8 immediate family, have no knowledge.

9 Failure to report the holdings of or the source of income of any trust referred to herein in

10 good faith reliance upon this section shall not constitute a violation of §6B-2-6 or §6B-2-7 of this
11 code.

12 (b) The provisions of §6B-2(d) ~~shall~~ do not apply to holdings which are assets within the
13 trusts referred to in subsection (a) of this section.

14 (c) A public official may, and the Governor shall, transfer all or a portion of the official's
15 assets as described in subsection (d) of this section, to a qualified blind trust for the duration of
16 service in public office. The original assets placed in the blind trust shall be listed by the official in
17 a statement filed with the commission, together with a description of the actual or potential
18 conflicts of interest, or appearance of conflict, that the official seeks to avoid by the use of the
19 trust. A copy of the instrument creating the blind trust must be included with the statement.

20 ~~(e)~~ (d) For purposes of this section, the term qualified blind trust includes a trust in which
21 a regulated person or immediate family has a beneficial interest in the principal or income, and
22 which meets the following requirements:

23 (1) The trustee of the trust is a financial institution, an attorney, a certified public
24 accountant, a broker or an investment adviser, who (in the case of a financial institution or
25 investment company, any officer or employee involved in the management or control of the trust):

26 (A) Is independent of and unassociated with any interested party so that the trustee cannot
27 be controlled or influenced in the administration of the trust by any interested party;

28 (B) Is not or has not been an employee of any interested party, or any organization
29 affiliated with any interested party and is not a partner of, or involved in any joint venture or other
30 investment with, any interested party; and

31 (C) Is not a relative of any interested party.

32 (2) Any asset transferred to the trust by an interested party is free of any restriction with
33 respect to its transfer or sale unless such restriction is expressly approved by the Ethics
34 Commission;

35 (3) The trust instrument which establishes the trust provides that. –

36 (A) ~~Except to the extent provided in paragraph (F) of this subdivision the trustee in the~~
37 ~~exercise of his authority and discretion to manage and control the assets of the trust shall not~~
38 ~~consult or notify any interested party~~ The trustee has full authority to manage the trust, including
39 the purchase, sale and exchange of its assets in accordance with fiduciary principles and, without
40 exception under any circumstances, notwithstanding this section, the prudent investment rule set
41 out in §44-6C-1 et seq. of this code;

42 (B) The trust shall not contain any asset the holding of which by an interested party is
43 prohibited by any law or regulation;

44 (C) The trustee shall promptly notify the regulated person and the Ethics Commission
45 when the holdings of any particular asset transferred to the trust by any interested party are
46 disposed of;

47 (D) ~~The trust tax return shall be prepared by the trustee or his designee, and such return~~
48 ~~and any information relating thereto (other than the trust income summarized in appropriate~~
49 ~~categories necessary to complete an interested party's tax return), shall not be disclosed to any~~
50 ~~interested party~~ The trustee shall prepare the income tax return of the trust and may participate
51 in the audit of the trust's returns with authority to compromise a tax liability of the trust, but may
52 not disclose the return or information related to the return, except, promptly after the close of each
53 taxable year of the trust, the trustee shall provide the settlor with an annual report summarizing
54 information concerning the trust, including net income or loss, expenses, capital gains and capital
55 losses of the trust, as necessary to enable the settlor to prepare and file tax returns required by
56 law; however, the summary may not directly or indirectly identify a security or other property that
57 is an asset or former asset of the trust;

58 (E) An interested party shall may not receive any report on the holdings and sources of
59 income of the trust, except a report at the end of each calendar quarter with respect to the total
60 cash value of the interest of the interested party in the trust or the net income or loss of the trust
61 or any reports necessary to enable the interested party to complete an individual tax return

62 required by law, but such report shall not identify any asset or holding;

63 ~~(F) Except for communications which solely consist of requests for distribution of cash or~~
64 ~~other unspecified assets of the trust, there shall be no direct or indirect communication between~~
65 ~~the trustee and an interested party with respect to the trust unless such communication is in writing~~
66 ~~and unless it relates only (i) to the general financial interest and needs of the interested party~~
67 ~~(including, but not limited to, an interest in maximizing income or long-term capital gain), (ii) to the~~
68 ~~notification of the trustee of a law or regulation subsequently applicable to the reporting individual~~
69 ~~which prohibits the interested party from holding an asset, which notification directs that the asset~~
70 ~~not be held by the trust, or (iii) to directions to the trustee to sell all of an asset initially placed in~~
71 ~~the trust by an interested party which in the determination of the reporting individual creates a~~
72 ~~conflict of interest or the appearance thereof due to the subsequent assumption of duties by the~~
73 ~~reporting individual (but nothing herein shall require any such direction); and During the term of~~
74 ~~the trust, a settlor or other beneficiary of the trust may not communicate with the trustee except~~
75 ~~in writing and only regarding: (i) A request for a distribution in cash or another unspecified asset~~
76 ~~of the trust; (ii) the general financial requirements regarding distributions from the trust as a whole;~~
77 ~~(iii) direction to the trustee that, because a law, executive order or regulation prohibits the settlor~~
78 ~~from holding an asset, the asset may not be held by the trust; or (iv) direction to the trustee to sell~~
79 ~~all of an asset initially placed in the trust because the settlor has determined the sale is necessary~~
80 ~~to avoid a conflict of interest, the appearance of impropriety, or an ethical violation. Quarterly, the~~
81 ~~trustee may provide to the settlor a written report of the aggregate market value of the trust's~~
82 ~~assets and property but may not disclose to the settlor or other beneficiary of the trust, or any~~
83 ~~other interested party, any information about the identity and nature of any of the assets in the~~
84 ~~trust, and the trustee shall be required to report any known breach of this confidentiality;~~

85 (G) A clear statement that its purpose is to remove from the settlor control and knowledge
86 of investment of trust assets so that conflicts between the settlor's responsibilities and duties as
87 a public official and the settlor's personal or financial interests will be eliminated;

88 (H) The trustee will give the commission access to any records or information related to
89 the trust that is necessary when investigating or hearing an accusation alleging a violation of this
90 article;

91 (I) The trust shall terminate only upon order of the commission, the death or incompetence
92 of the settlor, the termination of the settlor's status as a public official, or revocation approved in
93 advance by the commission; the trustee shall be required to promptly report any termination of
94 the trust to the commission;

95 (J) The trustee shall be directed to avoid knowingly making any investment in a
96 corporation, business or venture over which the settlor is likely to take action by virtue of the
97 settlor's official position;

98 (K) For the duration of the trust, a settlor or other beneficiary may not pledge, mortgage
99 or otherwise encumber a person's interests in an asset that is part of the trust, the settlor may not
100 retain control over the trustee, and the settlor is not permitted to make any recommendations or
101 suggestions as to the trust property;

102 (L) The trustee shall report to the commission the beginning and ending value of the trust,
103 and, if the commission requests, the trustee shall prepare under seal a detailed description of
104 transactions and holdings of the trust; the document prepared by the trustee under seal is not
105 public information unless an accusation under this article relevant to the blind trust is filed with
106 the commission;

107 (M) The trust may not become effective until the trust instrument is submitted and
108 approved by the commission; and

109 ~~(G)~~ (N) The interested parties shall make no effort to obtain information with respect to the
110 holdings of the trust, including obtaining a copy of any trust tax return filed or any information
111 relating thereto except as otherwise provided in this section.

112 (4) The original assets placed in the blind trust shall be listed by the public official in a
113 statement filed under this section, together with a description of the actual or potential conflicts of

114 interest, or appearance of conflict, that the official seeks to avoid by the use of the trust. A copy
115 of the instrument creating the blind trust must be included with the statement.

116 (5) A quarterly report of aggregate market value under paragraph (F), subdivision (3) of
117 this subsection may include, in addition to the aggregate market value of the trust's assets and
118 property, the percentage of that aggregate market value attributable to the settlor and each
119 beneficiary, by name. Within 30 days after receipt from the trustee of the quarterly report of
120 aggregate market value, the settlor may, notwithstanding the limitations on a communication's
121 subject under subdivision (3) of this subsection, provide a written instruction to the trustee that,
122 with respect to the trust as a whole and not a particular asset or property of the trust, the settlor
123 prefers that the trustee adopt an investment approach that is conservative, moderate or
124 aggressive.

125 (6) A person initiating a written communication under this subsection shall cause a copy
126 of the communication to be filed with the commission within five days after the date of the
127 communication.

128 (7) The trustee shall maintain and make available for inspection by the commission at the
129 commission's request the trust's tax returns, books of account, and other records and, on or
130 before May 15 of each year, shall file with the commission a notarized document certifying
131 compliance with this section for the preceding calendar year.

132 (8) Except as permitted by this subsection, the trustee shall make no accounting to the
133 settlor until the date the trust terminates, and, following the termination, the trustee shall promptly
134 make a full accounting to the settlor and turn over to the settlor all assets remaining in the trust at
135 termination.

136 (9) The trustee may not at any time be held liable for an act or omission of the trustee or
137 for any loss or depreciation of the value of an asset or property of the trust unless the trustee fails
138 to exercise good faith, due diligence and the ordinary skill, care and judgment a prudent fiduciary
139 would exercise.

140 ~~(4)~~ (10) The proposed trust instrument and the proposed trustee is approved by the Ethics
141 Commission and approval shall be given if the conditions of this section are met.

NOTE: The purpose of this bill is to require the Governor to transfer all or some of his or her assets to a blind trust. The bill permits other officials to voluntarily transfer assets to a blind trust. The bill sets forth the responsibilities of a trustee. The bill clarifies the contents and aspects to trust instrument. The bill provides for the contents of statement to be filed with West Virginia Ethics Commission. The bill requires quarterly reports of the aggregate market value of assets in the trust. The bill creates requirements related to communications regarding blind trust. The bill grants the West Virginia Ethics Commission the authority to inspect records. The bill limits a trustee's liability. The bill amends the current law with regard to blind trusts for public officials and more significantly requires the Governor to transfer all or a portion of his or her assets to a blind trust for the duration of service in public office.

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