

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3502

By Delegate C. Pritt

[Introduced February 14, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §6B-2-5 of said code; and to amend said code by adding thereto a new article,
3 designated §6B-4-1, §6B-4-2, §6B-4-3, §6B-4-4, §6B-4-5, §6B-4-6, §6B-4-7, §6B-4-8,
4 §6B-4-8a, §6B-4-9, §6B-4-10, §6B-4-11, §6B-4-12, §6B-4-13, and §6B-4-14, all relating to
5 bifurcating the State Ethics Commission by creating a division of the Ethics Commission
6 that is specific to the Legislative branch of the West Virginia government; providing
7 definitions; stating standards, requirements; establishing penalties; establishing criminal
8 penalties.

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 article, 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 a
5 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 how
13 work is to be performed and who is not responsible for the making of policy nor for recommending

14 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, without
21 regard to, or without the exercise of, the individual's own judgment as to the propriety of the action
22 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 the
27 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 The term "public employee" does not include any legislative employee working in either the House
31 of Delegates or the Senate.

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

40 mean any person elected to the State Legislature in either the House of Delegates or the Senate.

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

44 (m) "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother,
45 grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or
46 daughter-in-law.

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

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

66 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 own
7 private gain or that of another person. Incidental use of equipment or resources available to a
8 public official or public employee by virtue of his or her position for personal or business purposes
9 resulting in de minimis private gain does not constitute use of public office for private gain under
10 this subsection. The performance of usual and customary duties associated with the office or
11 position or the advancement of public policy goals or constituent services, without compensation,
12 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 to
22 their office or employment which inures to the benefit of the state and its citizens. Those persons
23 may, in fact, be sought by the state to serve in their office or employment because, through their
24 unusual gifts or traits, they bring stature and recognition to their office or employment and to the
25 state itself. While the office or employment held or to be held by those persons may have its own
26 inherent prestige, it would be unfair to those individuals and against the best interests of the
27 citizens of this state to deny those persons the right to hold public office or to be publicly employed
28 on the grounds that they would, in addition to the emoluments of their office or employment, be in a
29 position to benefit financially from the personal prestige which otherwise inheres to them.
30 Accordingly, the commission is directed, by legislative rule, to establish categories of public
31 officials and public employees, identifying them generally by the office or employment held, and
32 offering persons who fit within those categories the opportunity to apply for an exemption from the
33 application of the provisions of this subsection. Exemptions may be granted by the commission, on
34 a case-by-case basis, when it is shown that: (A) The public office held or the public employment
35 engaged in is not such that it would ordinarily be available or offered to a substantial number of the
36 citizens of this state; (B) the office held or the employment engaged in is such that it normally or
37 specifically requires a person who possesses personal prestige; and (C) the person's employment
38 contract or letter of appointment provides or anticipates that the person will gain financially from
39 activities which are not a part of his or her office or employment.

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

45 (c) Gifts. — (1) A public official or public employee may not solicit any gift unless the

46 solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the
47 official or employee or his or her immediate family: *Provided*, That no public official or public
48 employee may solicit for a charitable purpose any gift from any person who is also an official or
49 employee of the state and whose position is subordinate to the soliciting official or employee:
50 *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a
51 lawful political contribution. No official or employee may knowingly accept any gift, directly or
52 indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to
53 know:

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

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

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

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

66 (A) Meals and beverages;

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

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

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

71 (E) Gifts of tickets or free admission extended to a public official or public employee to

72 attend charitable, cultural, or political events, if the purpose of such gift or admission is a courtesy
73 or ceremony customarily extended to the office;

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

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

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

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

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

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

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

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

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

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

98 ~~and which assist this and other State Legislatures and their staff through any of the following:~~

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

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

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

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

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

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

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

124 ~~(7)~~ (6) Upon written notice to the commission, any member of the board of Public Works
125 may solicit donations for a regional or national organization conference or other function related to
126 the office of the member to be held in the state for the purpose of deferring costs to the state for
127 hosting of the conference or function. The solicitations may only be made in writing. The
128 organization may act as fiscal agent for the conference and receive all donations. In the
129 alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the
130 office of the Board of Public Works member may not be used in conjunction with the fund raising or
131 solicitation effort. The organization for which solicitations are being made shall file with the Joint
132 Committee on Government and Finance, with the Secretary of State for publication in the State
133 Register as provided in §29A-2-1 *et seq.* of this code and with the commission, copies of letters,
134 brochures, and other solicitation documents, along with a complete list of the names and last
135 known addresses of all donors and the amount of donations received. Any solicitation by a
136 member of the board of Public Works shall contain the following disclaimer: "This solicitation is
137 endorsed by (name of member of Board of Public Works). This endorsement does not imply
138 support of the soliciting organization, nor of the sponsors who may respond to the solicitation.
139 Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on
140 Government and Finance, with the West Virginia Secretary of State and with the West Virginia
141 Ethics Commission and are available for public review." Any moneys in excess of those donations
142 needed for the conference or function shall be deposited in the Capitol Dome and Capitol
143 Improvement Fund established in §5A-4-2 *et seq.* of this code.

144 (d) Interests in public contracts. — (1) In addition to the provisions of §61-10-15 of this
145 code, no elected or appointed public official or public employee or member of his or her immediate
146 family or business with which he or she is associated may be a party to or have an interest in the
147 profits or benefits of a contract which the official or employee may have direct authority to enter
148 into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to
149 prevent or make unlawful the employment of any person with any governmental body: *Provided*,

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

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

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

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

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

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

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

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

198 (g) Limitation on practice before a board, agency, commission or department. — Except as
199 otherwise provided in §8A-2-3, §8A-2-4, or §8A-2-5 of this code: (1) No elected or appointed public
200 official and no full-time staff attorney or accountant shall, during his or her public service or public
201 employment or for a period of one year after the termination of his or her public service or public

202 employment with a governmental entity authorized to hear contested cases or promulgate or
203 propose rules, appear in a representative capacity before the governmental entity in which he or
204 she serves or served or is or was employed in the following matters:

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

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

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

208 (D) A rate-making proceeding; and

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

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

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

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

227 (5) (4) An elected or appointed public official, full-time staff attorney or accountant who

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

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

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

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

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

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

246 (ii) Recommending selection of the vendor;

247 (iii) Conducting inspections or investigations;

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

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

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

252 (2) Within the meaning of this section, the term "employment" includes professional
253 services and other services rendered by the public official or public employee, whether rendered

254 as employee or as an independent contractor; "seek employment" includes responding to
255 unsolicited offers of employment as well as any direct or indirect contact with a potential employer
256 relating to the availability or conditions of employment in furtherance of obtaining employment;
257 and "subordinate" includes only those agency personnel over whom the public official or public
258 employee has supervisory responsibility.

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

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

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

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

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

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

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

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

285 (j) (i) Limitations on voting. — (1) Public officials, excluding members of the Legislature
286 who are governed by subsection (i) of this section §6B-4-1, et seq., may not vote on a matter:

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

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

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

301 (D) The appropriations of public moneys or the awarding of a contract to a nonprofit
302 corporation if the public official or an immediate family member is employed by, or a compensated
303 officer or board member of, the nonprofit: *Provided*, That if the public official or immediate family
304 member is an uncompensated officer or board member of the nonprofit, then the public official
305 shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or

306 award of contract to the nonprofit: *Provided, however,* That for purposes of this paragraph, public
307 disclosure shall mean disclosure of the public official's, or his or her immediate family member's,
308 relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if
309 known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the
310 minutes of the meeting.

311 (2) A public official may vote:

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

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

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

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

322 (3) For a public official's recusal to be effective, it is necessary to excuse him or herself
323 from participating in the discussion and decision-making process by physically removing him or
324 herself from the room during the period, fully disclosing his or her interests, and recusing him or
325 herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

326 (k) Limitations on participation in licensing and rate-making proceedings. — No public
327 official or employee may participate within the scope of his or her duties as a public official or
328 employee, except through ministerial functions as defined in §6B-1-3 of this code, in any license or
329 rate-making proceeding that directly affects the license or rates of any person, partnership, trust,
330 business trust, corporation, or association in which the public official or employee or his or her
331 immediate family owns or controls more than 10 percent. No public official or public employee may

332 participate within the scope of his or her duties as a public official or public employee, except
333 through ministerial functions as defined §6B-1-3 of this code, in any license or rate-making
334 proceeding that directly affects the license or rates of any person to whom the public official or
335 public employee or his or her immediate family, or a partnership, trust, business trust, corporation
336 or association of which the public official or employee, or his or her immediate family, owns or
337 controls more than 10 percent, has sold goods or services totaling more than \$1,000 during the
338 preceding year, unless the public official or public employee has filed a written statement
339 acknowledging such sale with the public agency and the statement is entered in any public record
340 of the agency's proceedings. This subsection shall not be construed to require the disclosure of
341 clients of attorneys or of patients or clients of persons licensed pursuant to §30-3-1 *et seq.*, §30-8-
342 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*
343 *seq.*, §30-21-1 *et seq.*, or §30-31-1 *et seq.* of this code.

344 (I) Certain compensation prohibited. — (1) A public employee may not receive additional
345 compensation from another publicly-funded state, county, or municipal office or employment for
346 working the same hours, unless:

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

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

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

354 (D) A part-time public employee who does not have regularly scheduled work hours or a
355 public employee who is authorized by one public employer to make up, outside of regularly
356 scheduled work hours, time missed to perform the duties of another public office or employment
357 maintains time records, verified by the public employee and his or her immediate supervisor at

358 least once every pay period, showing the hours that the public employee did, in fact, work for each
359 public employer. The public employer shall submit these time records to the Ethics Commission on
360 a quarterly basis.

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

364 (m) Certain expenses prohibited. — No public official or public employee shall knowingly
365 request or accept from any governmental entity compensation or reimbursement for any expenses
366 actually paid by a lobbyist and required by the provisions of this article to be reported, or actually
367 paid by any other person.

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

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

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

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

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

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

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

391 (q) This article does not apply to the West Virginia legislators or the employees of the
392 Legislature, which is governed by §6B-4-1, et seq.of this code.

ARTICLE 4. WEST VIRGINIA LEGISLATIVE ETHICS ACT.

§6B-4-1. Short title.

1 This article shall be known as the "West Virginia Legislative Ethics Act".

§6B-4-2. Legislative findings, purpose, declaration, and intent.

1 (a) The Legislature hereby finds that the holding of a legislative seat or legislative
2 employment is a public trust. Independence and impartiality of public officials and public
3 employees are essential for the maintenance of the confidence of our citizens in the operation of a
4 democratic government. The decisions and actions of legislators and legislative employees must
5 be made free from undue influence, favoritism or threat, at every level of government. Legislators
6 and employees of the legislature who exercise the powers of their office or employment for
7 personal gain beyond the lawful emoluments of their position or who seek to benefit narrow
8 economic or political interests at the expense of the public at large undermine public confidence in
9 the integrity of a democratic government.

10 (b) It is the purpose of this article to maintain confidence in the integrity and impartiality of
11 the governmental process in the State of West Virginia and its political subdivisions and to aid
12 elected legislators and legislative employees in the exercise of their official duties and
13 employment; to define and establish minimum ethical standards for elected legislators and

14 legislative employees; to eliminate actual conflicts of interest; to provide a means to define ethical
15 standards; to provide a means of investigating and resolving ethical violations; and to provide
16 administrative and criminal penalties for specific ethical violations herein found to be unlawful.

17 (c) The Legislature finds that it has many part-time employees serving in elected and
18 appointed capacities; and that certain conflicts of interest are inherent in part-time service and do
19 not, in every instance, disqualify a legislator or employee of the legislature from the responsibility
20 of voting or deciding a matter; however, when such conflict becomes personal to a particular
21 legislator, such person should seek to be excused from voting, recused from deciding, or
22 otherwise relieved from the obligation of acting as a public representative charged with deciding or
23 acting on a matter.

24 (d) It is declared that high moral and ethical standards among legislators and legislative
25 staff are essential to the conduct of free government; that the Legislature believes that a code of
26 ethics for the guidance of legislators and legislative employees will help them avoid conflicts
27 between their personal interests and their public responsibilities, will improve standards of public
28 service and will promote and strengthen the faith and confidence of the people of this state in their
29 public officials and public employees.

30 (e) It is the intent of the Legislature that in its operations the West Virginia Legislative Ethics
31 Commission created under this article shall protect to the fullest extent possible the rights of
32 individuals _____ affected.

§6B-4-3. Definitions.

1 As used in this article, 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 a
5 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 how
13 work is to be performed and who is not responsible for the making of policy nor for recommending
14 official action.

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

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

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

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

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

29 (j) "Legislative employee" means any full-time or part-time employee of the Legislature.

30 (k) "Legislative volunteer" means any person who, without compensation, performs
31 services on behalf of the Legislature and who is granted or vested with powers, privileges, or
32 authorities ordinarily reserved to public officials.

33 (l) "Legislator" means any person who is elected to the House of Delegates or the West
34 Virginia Senate.

35 (m) "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother,
36 grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or
37 daughter-in-law.

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

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

§6B-4-4. Remedies and penalties in addition to other applicable remedies and penalties.

1 The provisions of this article shall be in addition to any other applicable provisions of this
2 code and except for the immunity provided by §6B-2-3 of this code shall not be deemed to be in
3 derogation of or as a substitution for any other provisions of this code, including, but not limited to,
4 §61-5a-1, et seq. of this code and except for the immunity provided by §6B-2-3 of this code, the
5 remedies and penalties provided in this article shall be in addition to any other remedies or
6 penalties which may be applicable to any circumstances relevant to both.

§6B-4-5. Severability.

1 The provisions of §2-2-10(cc) of this code shall apply to the provisions of this article to the
2 same extent as if the same were set forth in extenso herein.

§6B-4-6. Deposit of funds.

1 All moneys collected pursuant to this article except fines imposed pursuant to §6B-4-14 of
2 this code shall be deposited in the General Revenue Fund in the State Treasury pursuant to the
3 provisions of §12-2-2 of this code.

§6B-4-7. West Virginia Legislative Ethics Commission created; members; appointment,
term of office and oath; compensation and reimbursement for expenses; meetings
and quorum.

1 (a) The West Virginia Legislative Ethics Commission is established. The members of the
2 commission shall be appointed by the Governor with the advice and consent of the Senate.

3 (b) No person may be appointed to the commission or continue to serve as a member of
4 the commission who:

5 (1) Holds elected or appointed office under the government of the United States, the State
6 of West Virginia or any of its political subdivisions;

7 (2) Is a candidate for any political office;

8 (3) Is otherwise subject to the provisions of this article other than by reason of his or her
9 appointment to or service on the commission; or

10 (4) Holds any political party office or participates in a campaign relating to a referendum or

11 other ballot issue: *Provided*, That a member may contribute to a political campaign.

12 (c) Commencing July 1, 2023, the Ethics Commission shall consist of the following nine
13 members, appointed with staggered terms:

14 (1) One member who served as a member of the West Virginia Legislature;

15 (2) One member who served as an elected or appointed county official;

16 (3) One member who served as an elected or appointed municipal official;

17 (4) One member who served as an elected county school board member;

18 (5) One member from a rural area; and

19 (6) Four citizen members.

20 (d) Any commission member in office on June 30, 2023, who meets one of the categories
21 for membership set out in subsection (c) of this section, may be reappointed. No more than five
22 members of the commission shall be of the same political party and no more than two members
23 shall be from the same state senatorial district.

24 (e) After the initial staggered terms, the term of office for a commission member is five
25 years. No member shall serve more than two consecutive full or partial terms. No person may be
26 reappointed to the commission until at least two years have elapsed after the completion of the
27 second consecutive term. A member may continue to serve until a successor has been appointed
28 and qualified.

29 (f) All appointments shall be made by the Governor in a timely manner so as not to create a
30 vacancy for longer than 60 days.

31 (g) Each member must be a resident of this state during the appointment term.

32 (h) Five members of the commission constitutes a quorum.

33 (i) Each member of the commission shall take and subscribe to the oath or affirmation
34 required pursuant to section five, article IV of the Constitution of West Virginia.

35 (j) A member may be removed by the Governor for substantial neglect of duty, gross
36 misconduct in office or a violation of this article, after written notice and opportunity for reply.

37 (k) The commission, as appointed on July 1, 2023, shall meet before August 1, 2023, at a
38 time and place to be determined by the Governor, who shall designate a member to preside at that
39 meeting until a chairperson is elected. At the first meeting, the commission shall elect a
40 chairperson and any other officers as are necessary. The commission shall within 90 days after the
41 first meeting adopt rules for its procedures. The commission may use the rules in place on July 1,
42 2023, until those rules are amended or revoked.

43 (l) Members of the commission shall receive the same compensation and expense
44 reimbursement as is paid to members of the Legislature for their interim duties as recommended
45 by the Citizens Legislative Compensation Commission and authorized by law for each day or
46 portion thereof engaged in the discharge of official duties: *Provided*, That to be eligible for
47 compensation and expense reimbursement, the member must participate in a meeting or
48 adjudicatory session: *Provided, however*, That the member is not eligible for expense
49 reimbursement if he or she does not attend a meeting or adjudicatory session in person.

50 (m) The commission shall appoint an executive director to assist the commission in
51 carrying out its functions in accordance with commission rules and with applicable law. The
52 executive director shall be paid a salary fixed by the commission or as otherwise provided by law.
53 The commission shall appoint and discharge counsel and employees and shall fix the
54 compensation of employees and prescribe their duties. Counsel to the commission shall advise
55 the commission on all legal matters and on the instruction of the commission may commence
56 appropriate civil actions: *Provided*, That no counsel shall both advise the commission and act in a
57 representative capacity in any proceeding.

58 (n) The commission may delegate authority to the chairperson or the executive director to
59 act in the name of the commission between meetings of the commission, except that the
60 commission shall not delegate the power to hold hearings and determine violations to the
61 chairperson or the executive director.

62 (o) The principal office of the commission shall be in the seat of government, but it or its

63 designated subcommittees may meet and exercise its power at any other place in the state.

64 Meetings of the commission shall be public unless:

65 (1) They are required to be private by the provisions of this article relating to confidentiality;

66 or

67 (2) They involve discussions of commission personnel, planned or ongoing litigation, and
68 planned or ongoing investigations.

69 (p) Meetings of the commission shall be upon the call of the chairperson and may be
70 conducted by telephonic or other electronic conferencing means: *Provided*, That when the
71 commission is acting as a hearing board under this article, or when the Probable Cause Review
72 Board meets to receive an oral response as authorized by this article, members may not
73 participate or vote by telephonic means: *Provided, however*, That participation and voting may be
74 permitted if the member attends and participates via video conferencing that allows the witness
75 and the member to observe and communicate with one another. Members shall be given notice of
76 meetings held by telephone or other electronic conferencing in the same manner as meetings at
77 which the members are required to attend in person. Telephone or other electronic conferences
78 shall be electronically recorded and the recordings shall be retained by the commission in
79 accordance with its record retention policy.

§6B-4-8. Advisory opinions; enforcement; applicability; legislative review; rulemaking.

1 (a) A person subject to the provisions of this article may make application in writing to the
2 Legislative Ethics Commission for an advisory opinion on whether an action or proposed action
3 violates the provisions of this article or the provisions of §61-10-15 of this code and would thereby
4 expose the person to sanctions by the commission or criminal prosecution. The commission shall
5 respond within 30 days from the receipt of the request by issuing an advisory opinion on the matter
6 raised in the request. All advisory opinions shall be published and indexed in the code of state
7 rules by the Secretary of State: *Provided*, That before an advisory opinion is made public, any
8 material which may identify the person who is the subject of the opinion shall, to the fullest extent

9 possible, be deleted and the identity of the person shall not be revealed. A person subject to the
10 provisions of this article may rely upon the published guidelines or an advisory opinion of the
11 commission, and any person acting in good faith reliance on any such guideline or opinion shall be
12 immune from the sanctions of this article and the sanctions of §61-10-15 of this code, and shall
13 have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon
14 any such opinion or guideline in regard to the sanctions of this article and the sanctions of §61-10-
15 15 of this code.

16 (b) By the first day of the third month of the calendar year, the Legislative Ethics
17 Commission shall annually furnish copies of all advisory opinions issued during the preceding
18 calendar year to the archives and history section of the Division of Culture and History, the office of
19 the Clerk of the West Virginia House of Delegates, the office of the Clerk of the West Virginia
20 Senate and the West Virginia Supreme Court of Appeals Law Library. Accompanying the initial
21 delivery of the previous calendar year's advisory opinions after the enactment of this subsection,
22 the commission shall supply each of these offices with copies of all advisory opinions issued
23 subsequent to the creation of the commission.

§6B-4-8a.**Complaints.**

1 (a) The commission may commence an investigation, pursuant to §6B-4-4 of this code, on
2 the filing of a complaint duly verified by oath or affirmation, by any person.

3 (b) The commission may order the executive director to prepare a complaint, upon a
4 majority affirmative vote of its members, if it receives or discovers credible information which, if
5 true, would merit an inquiry into whether a violation of this article has occurred.

6 (c) (1) No complaint may be accepted or initiated by the commission against an elected
7 Legislator or legislative employee during the 60 days before a primary or general election at which
8 the public official or public employees is a candidate for elective office.

9 (2) If a complaint is pending against a public official or public employee who is also a
10 candidate for public office, then the commission shall stay the processing of the complaint for the

11 60-day time period preceding the primary election or general election, or both, unless the
12 candidate waives the stay in writing. If the commission receives a written waiver of the stay at least
13 60 days prior to the election, and if the Review Board has not yet ruled whether probable cause
14 exists to believe there has been a violation of the Ethics Act, then the Review Board will process
15 the complaint and make a probable cause determination at least 30 days prior to the election:
16 Provided, That, the stay provisions of this subdivision do not apply to complaints which have
17 already been adjudicated by the commission and are pending on appeal.

18 (3) For purposes of this subsection, any provisions of this article setting time periods for
19 initiating a complaint or for performing any other action are considered tolled until after the election
20 at which the public official or public employee candidate stands for elective office.

§6B-4-9. Processing complaints; dismissals; hearings; disposition; judicial review.

1 (a) Upon the filing of a complaint, the executive director of the commission or his or her
2 designee shall, within three working days, acknowledge the receipt of the complaint by first-class
3 mail unless the complaint was initiated by the commission or the complainant or his or her
4 representative personally filed the complaint with the commission and was given a receipt or other
5 acknowledgment evidencing the filing of the complaint. No political party or officer, employee or
6 agent of a political party acting in his or her official capacity may file a complaint for a violation of
7 this article with the commission. Nothing in this section prohibits a private citizen, acting in that
8 capacity, from filing a verified complaint with the commission under this section. Within 14 days
9 after the receipt of a complaint, the executive director shall refer the complaint to the Review Board
10 created pursuant to §6B-2-2a of this code.

11 (b) Upon the referral of a complaint by the executive director pursuant to subsection (a) of
12 this section, the Review Board shall determine whether the allegations of the complaint, if taken as
13 true, would constitute a violation of law upon which the commission could properly act under the
14 provisions of this article. If the complaint is determined by a majority vote of the Review Board to
15 be insufficient in this regard, the Review Board shall dismiss the complaint.

16 (c) Upon a finding by the Review Board that the complaint is sufficient, the executive
17 director shall give notice of a pending investigation to the complainant, if any, and to the
18 respondent. The notice of investigation shall be mailed to the parties and, in the case of the
19 respondent, shall be mailed as certified mail, return receipt requested, marked "Addressee only,
20 personal and confidential". The notice shall describe the conduct of the respondent which is
21 alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the
22 respondent. Each notice of investigation shall inform the respondent that the purpose of the
23 investigation is to determine whether probable cause exists to believe that a violation of law has
24 occurred which may subject the respondent to administrative sanctions by the commission,
25 criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that
26 he or she has a right to appear before the Review Board and that he or she may respond in writing
27 to the commission within 30 days after the receipt of the notice, but that no fact or allegation shall
28 be taken as admitted by a failure or refusal to timely respond.

29 (d) Within the 45-day period following the mailing of a notice of investigation, the Review
30 Board shall proceed to consider: (1) The allegations raised in the complaint; (2) any timely
31 received written response of the respondent; and (3) any other competent evidence gathered by or
32 submitted to the Review Board which has a proper bearing on the issue of probable cause. A
33 respondent may appear before the Review Board and make an oral response to the complaint.
34 The commission shall promulgate rules prescribing the manner in which a respondent may
35 present his or her oral response. The commission and Review Board may ask a respondent to
36 disclose specific amounts received from a source and request other detailed information not
37 otherwise required to be set forth in a statement or report filed under the provisions of this article if
38 the information sought is considered to be probative as to the issues raised by a complaint or an
39 investigation initiated by the commission. Any information thus received shall be confidential
40 except as provided by subsection (f) of this section. If a person asked to provide information fails or
41 refuses to furnish the information to the commission or Review Board, the commission or Review

42 Board may exercise their subpoena power as provided in this article and any subpoena issued by
43 the commission or Review Board shall have the same force and effect as a subpoena issued by a
44 circuit court of this state. Enforcement of any subpoena may be had upon application to a circuit
45 court of the county in which the Review Board is conducting an investigation through the issuance
46 of a rule or an attachment against the respondent as in cases of contempt.

47 (e) Unless consented to by both the respondent and complainant, or unless the
48 commission makes a good cause determination in writing the investigation and a determination as
49 to probable cause shall not exceed 18 months.

50 (f) (1) All investigations, complaints, reports, records, proceedings, and other information
51 received by the commission or Review Board and related to complaints made to the commission
52 or investigations conducted by the commission or Review Board pursuant to this section, including
53 the identity of the complainant or respondent, are confidential and may not be knowingly and
54 improperly disclosed by any current or former member or employee of the commission or the
55 Review Board except as follows:

56 (A) Once there has been a finding that probable cause exists to believe that a respondent
57 has violated the provisions of this article and the respondent has been served by the commission
58 with a copy of the Review Board's order and the statement of charges prepared pursuant to the
59 provisions of subsection (h) of this section, the complaint and all reports, records, nonprivileged
60 and nondeliberative material introduced at any probable cause hearing held pursuant to the
61 complaint cease to be confidential.

62 (B) After a finding of probable cause, any subsequent hearing held in the matter for the
63 purpose of receiving evidence or the arguments of the parties or their representatives shall be
64 open to the public and all reports, records and nondeliberative materials introduced into evidence
65 at the hearing, as well as the commission's orders, are not confidential.

66 (C) The commission may release any information relating to an investigation at any time if
67 the release has been agreed to in writing by the respondent.

68 (D) The complaint and the identity of the complainant shall be disclosed to a person named
69 as respondent immediately upon the respondent's request.

70 (E) Where the commission is otherwise required by the provisions of this article to disclose
71 information or to proceed in such a manner that disclosure is necessary and required to fulfill those
72 requirements.

73 (2) If, in a specific case, the commission finds that there is a reasonable likelihood that the
74 dissemination of information or opinion in connection with a pending or imminent proceeding will
75 interfere with a fair hearing or otherwise prejudice the due administration of justice, the
76 commission shall order that all or a portion of the information communicated to the commission to
77 cause an investigation and all allegations of ethical misconduct or criminal acts contained in a
78 complaint shall be confidential and the person providing the information or filing a complaint shall
79 be bound to confidentiality until further order of the commission.

80 (g) If the members of the Review Board fail to find probable cause, the proceedings shall
81 be dismissed by the commission in an order signed by the members of the Review Board. Copies
82 of the order of dismissal shall be sent to the complainant and served upon the respondent
83 forthwith. If the Review Board decides by a unanimous vote that there is probable cause to believe
84 that a violation under this article has occurred, the members of the Review Board shall sign an
85 order directing the commission staff to prepare a statement of charges and assign the matter for
86 hearing to the commission or a hearing examiner as the commission may subsequently direct. The
87 commission shall then schedule a hearing, to be held within 90 days after the date of the order, to
88 determine the truth or falsity of the charges. The commission's review of the evidence presented
89 shall be de novo. For the purpose of this section, service of process upon the respondent is
90 obtained at the time the respondent or the respondent's agent physically receives the process,
91 regardless of whether the service of process is in person or by certified mail.

92 (h) At least 80 days prior to the date of the hearing, the commission shall serve the
93 respondent by certified mail, return receipt requested, with the statement of charges and a notice

94 of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be
95 continued only upon a showing of good cause by the respondent or under other circumstances as
96 the commission, by legislative rule, directs.

97 (i) The commission may sit as a hearing board to adjudicate the case or may permit an
98 assigned hearing examiner employed by the commission to preside at the taking of evidence. The
99 commission shall, by legislative rule, establish the general qualifications for hearing examiners.
100 The legislative rule shall also contain provisions which ensure that the functions of a hearing
101 examiner will be conducted in an impartial manner and describe the circumstances and
102 procedures for disqualification of hearing examiners.

103 (j) A member of the commission or a hearing examiner presiding at a hearing may:

104 (1) Administer oaths and affirmations, compel the attendance of witnesses and the
105 production of documents, examine witnesses and parties and otherwise take testimony and
106 establish a record;

107 (2) Rule on offers of proof and receive relevant evidence;

108 (3) Take depositions or have depositions taken when the ends of justice will be served;

109 (4) Regulate the course of the hearing;

110 (5) Hold conferences for the settlement or simplification of issues by consent of the parties;

111 (6) Dispose of procedural requests or similar matters;

112 (7) Accept stipulated agreements;

113 (8) Take other action authorized by the Ethics Commission consistent with the provisions
114 of this article.

115 (k) With respect to allegations of a violation under this article, the complainant has the
116 burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this
117 state shall be given like effect in hearings held before the commission or a hearing examiner. The
118 commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due
119 process to a respondent. Hearings before a hearing examiner shall be recorded electronically.

120 When requested by either of the parties, the presiding officer shall order a transcript, verified by
121 oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a
122 record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by
123 the commission, the cost of preparing a transcript shall be paid by the party requesting the
124 transcript. Upon a showing of indigency, the commission may provide a transcript without charge.
125 Within 15 days following the hearing, either party may submit to the hearing examiner that party's
126 proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed
127 findings of fact and make copies of the findings available to the parties. The hearing examiner shall
128 then submit the entire record to the commission for final decision.

129 (l) The recording of the hearing or the transcript of testimony, as the case may be, and the
130 exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of
131 fact of the hearing examiner and the parties, constitute the exclusive record for decision by the
132 commission, unless by leave of the commission a party is permitted to submit additional
133 documentary evidence or take and file depositions or otherwise exercise discovery.

134 (m) The commission shall set a time and place for the hearing of arguments by the
135 complainant and respondent, or their respective representatives, and shall notify the parties
136 thereof. Briefs may be filed by the parties in accordance with procedural rules promulgated by the
137 commission. The commission shall issue a final decision in writing within 45 days of the receipt of
138 the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary
139 hearing held by the commission acting as a hearing board in lieu of a hearing examiner, within 21
140 days following the close of the evidence.

141 (n) A decision on the truth or falsity of the charges against the respondent and a decision to
142 impose sanctions must be approved by at least six members of the commission.

143 (o) Members of the commission shall recuse themselves from a particular case upon their
144 own motion with the approval of the commission or for good cause shown upon motion of a party.
145 The remaining members of the commission may, by majority vote, select a temporary member to

146 replace a recused member: *Provided*, That the temporary member selected to replace a recused
147 member shall be a person of the same status or category, provided by subsection (c), section one
148 of this article, as the recused member.

149 (p) Except for statements made in the course of official duties to explain commission
150 procedures, no member or employee or former member or employee of the commission may
151 make any public or nonpublic comment about any proceeding previously or currently before the
152 commission. Any member or employee or former member or employee of the commission who
153 violates this subsection is subject to the penalties contained in §6B-4-13 of this code. In addition,
154 violation of this subsection by a current member or employee of the commission is grounds for
155 immediate removal from office or termination of employment.

156 (q) A complainant may be assisted by a member of the commission staff assigned by the
157 commission after a determination of probable cause.

158 (r) No employee of the commission assigned to prosecute a complaint may participate in
159 the commission deliberations or communicate with commission members or the public concerning
160 the merits of a complaint.

161 (s) (1) If the commission finds by clear and convincing evidence that the facts alleged in the
162 complaint are true and constitute a material violation of this article, it may impose one or more of
163 the following sanctions:

164 (A) Public reprimand;

165 (B) Cease and desist orders;

166 (C) Orders of restitution for money, things of value, or services taken or received in
167 violation of this article;

168 (D) Fines not to exceed \$5,000 per violation; or

169 (E) Reimbursement to the commission for the actual costs of investigating and prosecuting
170 a violation. Any reimbursement ordered by the commission for its costs under this paragraph shall
171 be collected by the commission and deposited into the special revenue account created pursuant

172 to §6B-1-6.

173 (2) In addition to imposing the above-specified sanctions, the commission may
174 recommend to the appropriate governmental body that a respondent be terminated from
175 employment or removed from office.

176 (3) The commission may institute civil proceedings in the circuit court of the county in which
177 a violation occurred for the enforcement of sanctions.

178 (t) At any stage of the proceedings under this section, the commission may enter into a
179 conciliation agreement with a respondent if the agreement is deemed by a majority of the
180 members of the commission to be in the best interest of the state and the respondent. Any
181 conciliation agreement must be disclosed to the public: *Provided*, That negotiations leading to a
182 conciliation agreement, as well as information obtained by the commission during the
183 negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

184 (u) Decisions of the commission involving the issuance of sanctions may be appealed to
185 the circuit court of Kanawha County, only by the respondent and only upon the grounds set forth in
186 §29A-5-4 of this code.

187 (v) (1) Any person who in good faith files a verified complaint or any person, official or
188 agency who gives credible information resulting in a formal complaint filed by commission staff is
189 immune from any civil liability that otherwise might result by reason of such actions.

190 (2) If the commission determines, by clear and convincing evidence, that a person filed a
191 complaint or provided information which resulted in an investigation knowing that the material
192 statements in the complaint or the investigation request or the information provided were not true;
193 filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth
194 or falsity of the statements contained therein; or filed one or more unsubstantiated complaints
195 which constituted abuse of process, the commission shall:

196 (A) Order the complainant or informant to reimburse the respondent for his or her
197 reasonable costs;

198 (B) Order the complainant or informant to reimburse the respondent for his or her
199 reasonable attorney fees; and

200 (C) Order the complainant or informant to reimburse the commission for the actual costs of
201 its investigation. In addition, the commission may decline to process any further complaints
202 brought by the complainant, the initiator of the investigation or the informant.

203 (3) The sanctions authorized in this subsection are not exclusive and do not preclude any
204 other remedies or rights of action the respondent may have against the complainant or informant
205 under the law.

206 (w) (1) If at any stage in the proceedings under this section it appears to a Review Board, a
207 hearing examiner or the commission that there is credible information or evidence that the
208 respondent may have committed a criminal violation, the matter shall be referred to the full
209 commission for its consideration. If, by a vote of two-thirds of the members of the full commission,
210 it is determined that probable cause exists to believe a criminal violation has occurred, the
211 commission shall refer the matter to the appropriate county prosecuting attorney having
212 jurisdiction for a criminal investigation and possible prosecution. Deliberations of the commission
213 with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private
214 and confidential. Notwithstanding any other provision of this article, once a referral for criminal
215 investigation is made under the provisions of this subsection, the ethics proceedings shall be held
216 in abeyance until action on the referred matter is concluded. If the referral of the matter to the
217 prosecuting attorney results in a criminal conviction of the respondent, the commission may
218 resume its investigation or prosecution of the ethics violation, but may not impose a fine as a
219 sanction if a violation is found to have occurred.

220 (2) If fewer than two-thirds of the full commission determine that a criminal violation has
221 occurred, the commission shall remand the matter to the Review Board, the hearing examiner or
222 the commission itself as a hearing board, as the case may be, for further proceedings under this
223 article.

224 (x) The provisions of this section shall apply to violations of this article occurring after
225 January 1, 2024, and within one year before the filing of a complaint: *Provided*, That the applicable
226 statute of limitations for violations is five years after the date on which the alleged violation
227 occurred.

§6B-4-10. Ethical standards for elected and appointed officials and public employees.

1 (a) Persons subject to section. — The provisions of this section apply to all legislator and
2 legislative employees.

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

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

16 (3) A legislator or legislative employee may not show favoritism or grant patronage in the
17 employment or working conditions of his or her relative or a person with whom he or she resides:
18 *Provided*, That as used in this subdivision, "employment or working conditions" shall only apply to
19 legislative employment.

20 (c) Gifts. — (1) A legislator or legislative employee may not solicit any gift unless the
21 solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the

22 legislator or employee or his or her immediate family: *Provided*, That no legislator or legislative
23 employee may solicit for a charitable purpose any gift from any person who is also an official or
24 employee of the state and whose position is subordinate to the soliciting official or employee:
25 *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a
26 lawful political contribution. No legislator or legislative employee may knowingly accept any gift,
27 directly or indirectly, from a lobbyist or from any person whom the official or employee knows or
28 has reason to know:

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

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

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

34 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a
35 legislator or legislative employee may accept a gift described in this subdivision, and there shall be
36 a presumption that the receipt of such gift does not impair the impartiality and independent
37 judgment of the person. This presumption may be rebutted only by direct objective evidence that
38 the gift did impair the impartiality and independent judgment of the person or that the person knew
39 or had reason to know that the gift was offered with the intent to impair his or her impartiality and
40 independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

41 (A) Meals and beverages;

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

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

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

46 (E) Gifts of tickets or free admission extended to a public official or public employee to
47 attend charitable, cultural, or political events, if the purpose of such gift or admission is a courtesy

48 or ceremony customarily extended to the office;

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

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

51 (3) The commission shall, through legislative rule promulgated pursuant to chapter 29A of

52 this code, establish guidelines for the acceptance of a reasonable honorarium by legislators. The

53 rule promulgated shall be consistent with this section. Any legislator may accept an honorarium

54 only when:

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

56 (B) The fee is for services provided by the legislator that are related to his or her regular,

57 nonpublic trade, profession, occupation, hobby, or avocation; and

58 (C) The honorarium is not provided in exchange for any promise or action on the part of the

59 legislator.

60 (4) Nothing in this section shall be construed to prohibit the giving of a lawful political

61 contribution as defined by law.

62 (5) Upon prior approval of the Joint Committee on Government and Finance, any member

63 of the Legislature may solicit donations for a regional or national legislative organization

64 conference or other legislative organization function to be held in the state for the purpose of

65 deferring costs to the state for hosting of the conference or function. Legislative organizations are

66 bipartisan regional or national organizations in which the Joint Committee on Government and

67 Finance authorizes payment of dues or other membership fees for the Legislature's participation

68 and which assist this and other State Legislatures and their staff through any of the following:

69 (A) Advancing the effectiveness, independence, and integrity of Legislatures in the states

70 of the United States;

71 (B) Fostering interstate cooperation and facilitating information exchange among State

72 Legislatures;

73 (C) Representing the states and their Legislatures in the American federal system of

74 government;

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

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

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

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

94 (d) Interests in public contracts. — (1) In addition to the provisions of §61-10-15 of this
95 code, no legislator or legislative or member of his or her immediate family or business with which
96 he or she is associated may be a party to or have an interest in the profits or benefits of a contract
97 which the official or employee may have direct authority to enter into, or over which he or she may
98 have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the
99 employment of any person with any governmental body: *Provided, however*, That nothing herein

100 shall be construed to prohibit a member of the Legislature from entering into a contract with any
101 governmental body.

102 (2) In the absence of bribery or a purpose to defraud, a legislator or legislative employee or
103 a member of his or her immediate family or a business with which he or she is associated shall not
104 be considered as having a prohibited financial interest in a public contract when such a person has
105 a limited interest as an owner, shareholder, or creditor of the business which is awarded a public
106 contract. A limited interest for the purposes of this subsection is:

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

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

111 (3) If a legislator or legislative employee has an interest in the profits or benefits of a
112 contract, then he or she may not make, participate in making, or in any way attempt to use his
113 office or employment to influence a government decision affecting his or her financial or limited
114 financial interest. Legislators shall also comply with the voting rules prescribed in subsection (j) of
115 this section.

116 (4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the
117 loss of a quorum in a vote in either or both the House of Delegates and the Senate, the affected
118 body or bodies may make written application to the Ethics Commission for an exemption from
119 subdivisions (1) and (2) of this subsection.

120 (e) Confidential information. — No present or former legislator or legislative employee may
121 knowingly and improperly disclose any confidential information acquired by him or her in the
122 course of his or her official duties nor use such information to further his or her personal interests
123 or the interests of another person.

124 (f) Limitation on practice before a board, agency, commission, or department. — Except as
125 otherwise provided in §8A-2-3, §8A-2-4, or §8A-2-5 of this code: (1) No legislator official and no

126 full-time staff attorney or accountant shall, during his or her public service or public employment or
127 for a period of one year after the termination of his or her public service or public employment with
128 a governmental entity authorized to hear contested cases or promulgate or propose rules, appear
129 in a representative capacity before the governmental entity in which he or she serves or served or
130 is or was employed in the following matters:

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

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

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

134 (D) A rate-making proceeding; and

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

136 (2) As used in this subsection, "represent" includes any formal or informal appearance
137 before, or any written or oral communication with, any public agency on behalf of any person:

138 Provided, That nothing contained in this subsection shall prohibit, during any period, a former
139 legislator or legislative employee from being retained by or employed to represent, assist or act in
140 a representative capacity on behalf of the Legislature. Nothing in this subsection shall be
141 construed to prevent a former legislator or legislative employee from representing another state,
142 county, municipal, or other governmental entity before the governmental entity in which he or she
143 served or was employed within one year after the termination of his or her employment or service
144 in the entity.

145 (3) A present or former legislator or legislative employee may appear at any time in a
146 representative capacity before the Legislature, a county commission, city or town council, or
147 county school board in relation to the consideration of a statute, budget, ordinance, rule,
148 resolution, or enactment.

149 (4) Members and former members of the Legislature and professional employees and
150 former professional employees of the Legislature shall be permitted to appear in a representative
151 capacity on behalf of clients before any governmental agency of the state or of county or municipal

152 governments, including county school boards.

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

161 (g) Employment by regulated persons and vendors. —

162 (1) No full-time legislator or legislative employee may seek employment with, be employed
163 by, or seek to purchase, sell or lease real or personal property to or from any person who is a
164 vendor to the legislature, or a subordinate of the official or public employee, exercises authority or
165 control over a public contract with such vendor, including, but not limited to:

166 (A) Drafting bid specifications or requests for proposals;

167 (B) Recommending selection of the vendor;

168 (C) Conducting inspections or investigations;

169 (D) Approving the method or manner of payment to the vendor;

170 (E) Providing legal or technical guidance on the formation, implementation, or execution of
171 the contract; or

172 (F) Taking other nonministerial action which may affect the financial interests of the vendor.

173 (2) Within the meaning of this section, the term "employment" includes professional
174 services and other services rendered by the legislator or legislative employee, whether rendered
175 as employee or as an independent contractor; "seek employment" includes responding to
176 unsolicited offers of employment as well as any direct or indirect contact with a potential employer
177 relating to the availability or conditions of employment in furtherance of obtaining employment;

178 and "subordinate" includes only those agency personnel over whom the public official or public
179 employee has supervisory responsibility.

180 (3) A full-time legislator or full-time legislative employee who would be adversely affected
181 by the provisions of this subsection may apply to the Legislative Ethics Commission for an
182 exemption from the prohibition contained in subdivision (1) of this subsection.

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

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

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

192 (4) A legislator or full-time legislative employee may not personally participate in a
193 decision, approval, disapproval, recommendation, rendering advice, investigation, inspection, or
194 other substantial exercise of nonministerial administrative discretion involving a vendor with whom
195 he or she is seeking employment or has an agreement concerning future employment.

196 (5) A legislator or full-time legislative employee may not receive private compensation for
197 providing information or services that he or she is required to provide in carrying out his or her
198 public job responsibilities.

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

204 (i) Certain compensation prohibited. — (1) A legislator or legislative employee may not
205 receive additional compensation from another publicly-funded state, county, or municipal office or
206 employment for working the same hours, unless:

207 (A) The legislator or legislative employee's compensation from one public employer is
208 reduced by the amount of compensation received from the other public employer;

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

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

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

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

224 (j) Certain expenses prohibited. — No public official or public employee shall knowingly
225 request or accept from any governmental entity compensation or reimbursement for any expenses
226 actually paid by a lobbyist and required by the provisions of this article to be reported, or actually
227 paid by any other person.

228 (k) Except as provided in this section, a person who is a legislator or legislative employee
229 may not solicit private business from a subordinate public official or public employee whom he or

230 she has the authority to direct, supervise, or control. A person who is a public official or public
231 employee may solicit private business from a subordinate public official or public employee whom
232 he or she has the authority to direct, supervise, or control when:

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

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

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

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

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

§6B-4-11. Financial disclosure statement; filing requirements.

1 (a) The financial disclosure statement shall be filed prior to March 1 of each calendar year
2 to cover the period of the preceding calendar year, except insofar as may be otherwise provided
3 herein. All elected legislators must file the financial disclosure statement required by this section
4 with the Legislative Ethics Commission.

5 A legislator who is required to file a financial disclosure statement under this section by
6 virtue of becoming an elected or appointed delegate or senator, and who assumes the office less
7 than 10 days before a filing date established herein or who assumes the office after the filing date,
8 shall file a financial disclosure statement for the previous 12 months no later than 30 days after the
9 date on which the person assumes the duties of the office, unless the person has filed a financial
10 disclosure statement with the commission during the 12-month period before he or she assumed
11 office.

12 (b) A candidate for Senate or House of Delegates shall file a financial disclosure statement
13 for the previous calendar year with the Legislative Ethics Commission no later than 10 days after
14 he or she files a certificate of announcement, unless he or she has previously filed a financial
15 disclosure statement with the Legislative Ethics Commission for the previous calendar year.

16 The Legislative Ethics Commission shall file a duplicate copy of the financial disclosure
17 statement required in this section in the following offices within 10 days of the receipt of the
18 candidate's statement of disclosure:

19 (1) Legislative candidates in single county districts in the office of the clerk of the county
20 commission of the county in which the candidate is seeking office;

21 (2) Legislative candidates from multi-county districts and congressional candidates in the
22 office of the clerk of the county commission of the county of the candidate's residence.

23 After a 90-day period following any election, the clerks who receive the financial disclosure
24 statements of candidates may destroy or dispose of those statements filed by candidates who
25 were unsuccessful in the election.

26 (c) No candidate for legislative office may maintain his or her place on a ballot or take the
27 oath of office or enter or continue upon his or her duties or receive compensation from public funds
28 unless he or she has filed a financial disclosure statement with the state Ethics Commission by
29 February 1 of the year of the election in which the candidate is running, in compliance with §6B-2-6
30 of this code.

31 (d) The Legislative Ethics Commission may, upon request of an elected legislator required
32 to file a financial disclosure statement, and for good cause shown, extend the deadline for filing
33 such statement for a reasonable period of time: *Provided*, That no extension of time shall be
34 granted to a candidate who has not filed a financial disclosure statement for the preceding filing
35 period.

36 (e) No person shall fail to file a statement required by this section.

37 (f) No person shall knowingly file a materially false statement that is required to be filed

38 under this section.

39 (g) The Legislative Ethics Commission shall publish either on the Internet or by printed
40 document made available to the public, a list of all persons who have violated any Legislative
41 Ethics Commission's financial disclosure statement filing deadline.

42 (h) The Legislative Ethics Commission shall, in addition to making all financial disclosure
43 statements available for inspection upon request:

44 (1) Publish on the Internet all financial disclosure statements filed by members of the
45 Legislature and candidates for legislative office, commencing with those reports filed on or after
46 January 1, 2024; and

47 (2) The commission shall redact financial disclosure statements published on the Internet
48 to exclude from publication personal information such as signatures, home addresses, and mobile
49 and home telephone numbers.

§6B-4-12. Financial disclosure statement; contents.

1 (a) The financial disclosure statement required under this article shall contain the following
2 information:

3 (1) The name, residential and business addresses of the person filing the statement and of
4 his or her spouse and all names under which the person or the person's spouse, or both, do
5 business. For purposes of this section, the word "spouse" means any individual who is legally
6 married to and cohabits with the person filing the statement.

7 (2) For each position of employment held by the person filing the statements and the
8 person's spouse:

9 (A) The name of the employer;

10 (B) The address of the employer;

11 (C) The job title; and

12 (D) A general description of job duties.

13 (3) The name and address of each business in which the person filing the statement or that

14 person's spouse has or had in the last year an interest of at least \$10,000 at fair market value.

15 (A) For the purposes of this subsection, business interests include, but are not limited to,
16 an interest in:

17 (i) Nonpublicly owned businesses;

18 (ii) Publicly or privately traded stocks, bonds or securities, including those held in self-
19 directed retirement accounts; and

20 (iii) Commercial real estate.

21 (B) For the purposes of this subsection, business interests do not include mutual funds,
22 specific holdings in mutual funds or retirement accounts.

23 (4) The name, address, and brief description of a nonprofit organization in which the
24 individual or spouse is a director or officer.

25 (5) The identification, by category, of every source of income over \$1,000, including
26 distributions from retirement accounts received during the preceding calendar year, in his or her
27 own name or by any other person for his or her use or benefit, by the person filing the statement, or
28 that person's spouse, and a brief description of the nature of the income producing activities for
29 which the income was received. This subdivision does not require a person filing the statement
30 who derives income from a business, profession or occupation, or whose spouse derives income
31 from a business, profession, or occupation, to disclose the individual sources and items of income
32 that constitute the gross income of that business, profession, or occupation.

33 (6) If the person filing the statement, or that person's spouse, profited or benefitted in the
34 year before the date of filing from a contract for the sale of goods or services to a state, county,
35 municipal, or other local governmental agency either directly or through a partnership, corporation,
36 or association in which the person, or that person's spouse, owned or controlled more than 10
37 percent, the person shall describe the nature of the goods or services and identify the
38 governmental agencies which purchased the goods or services.

39 (7) Each interest group or category listed below doing business in this state with which the

40 person filing the statement, did business or furnished services and from which the person filing the
41 statement, or that person's spouse, received more than 20 percent of his or her gross income
42 during the preceding calendar year. The groups or categories are electric utilities, gas utilities,
43 telephone utilities, water utilities, cable television companies, interstate transportation companies,
44 intrastate transportation companies, oil or gas retail, wholesale, exploration, production or drilling
45 companies, banks, savings and loan associations, loan or finance companies, manufacturing
46 companies, surface mining companies, deep mining companies, mining equipment companies,
47 chemical companies, insurance companies, retail companies, beer, wine or liquor companies or
48 distributors, recreation related companies, timbering companies, hospitals or other health care
49 providers, trade associations, professional associations, associations of public employees or
50 public officials, counties, cities or towns, labor organizations, waste disposal companies,
51 wholesale companies, groups or associations promoting gaming or lotteries, advertising
52 companies, media companies, race tracks, promotional companies, lobbying, economic
53 development entities, state government, construction, information technology and legal service
54 providers.

55 (8) The names of all persons, excluding that person's immediate family, parents or
56 grandparents residing or transacting business in the state to whom the person filing the statement,
57 owes, on the date of execution of this statement in the aggregate in his or her own name or in the
58 name of any other person more than \$5,000: *Provided*, That nothing herein requires the disclosure
59 of a mortgage on the person's primary and secondary residences or of automobile loans on
60 automobiles maintained for the use of the person's immediate family, or of a student loan, nor does
61 this section require the disclosure of debts which result from the ordinary conduct of the person's
62 business, profession or occupation or of debts of the person filing the statement to any financial
63 institution, credit card company or business, in which the person has an ownership interest:
64 *Provided, however*, That the previous proviso does not exclude from disclosure loans obtained
65 pursuant to the linked deposit program provided in §12-1A-1, *et seq.* of this code or any other loan

66 or debt incurred which requires approval of the state or any of its political subdivisions.

67 (9) The names of all persons except immediate family members, parents, and
68 grandparents residing or transacting business in the state (other than a demand or savings
69 account in a bank, savings and loan association, credit union or building and loan association or
70 other similar depository) who owes on the date of execution of this statement more than, in the
71 aggregate, \$5,000 to the person filing the statement, either in his or her own name or to any other
72 person for his or her use or benefit. This subdivision does not require the disclosure of debts owed
73 to the person filing the statement which debts result from the ordinary conduct of the person's
74 business, profession, or occupation or of loans made by the person filing the statement to any
75 business in which the person has an ownership interest.

76 (10) The source of each gift, including those described in subdivision (2), subsection (c),
77 section five of this article, having a value of over \$100, received from a person having a direct and
78 immediate interest in a governmental activity over which the person filing the statement has
79 control, shall be reported by the person filing the statement when the gift is given to that person in
80 his or her name or for his or her use or benefit during the preceding calendar year: *Provided, That*
81 any person filing a statement required to be filed pursuant to this section is not required to report
82 those gifts described in subdivision (2), §6B-4-9 of this article that are otherwise required to be
83 reported by a registered lobbyist under §6B-3-4 of this code: *Provided, however, That* gifts
84 received by will or by virtue of the laws of descent and distribution, or received from one's spouse,
85 child, grandchild, parents, or grandparents, or received by way of distribution from an inter vivos or
86 testamentary trust established by the spouse or child, grandchild or by an ancestor of the person
87 filing the statement are not required to be reported. As used in this subdivision, any series or
88 plurality of gifts which exceeds in the aggregate the sum of \$100 from the same source or donor,
89 either directly or indirectly, and in the same calendar year are regarded as a single gift in excess of
90 that aggregate amount.

91 (11) The name of each for-profit business of which the person filing the statement, or that

92 person's spouse, serves as a member of the board of directors or an officer, as well as a general
93 description of the type of business.

94 (12) The name and business address of any child or step-child who is 18 years or older and
95 employed by state, county, or municipal government.

96 (13) The signature of the person filing the statement.

§6B-4-13. Exceptions to financial disclosure requirements and conflicts of interest provisions.

1 (a) Any person regulated by the provisions of this article need not report the holdings of or
2 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 sections six or seven of this
11 article.

12 (b) The provisions of subsection (d), section five of this article shall not apply to holdings
13 which are assets within the trusts referred to in subsection (a) of this section.

14 (c) For purposes of this section, the term "qualified blind trust" includes a trust in which a
15 regulated person or immediate family has a beneficial interest in the principal or income, and
16 which meets the following requirements:

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

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

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

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

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

29 (3) The trust instrument which establishes the trust provides that --

30 (A) Except to the extent provided in paragraph (F) of this subdivision the trustee in the
31 exercise of his authority and discretion to manage and control the assets of the trust shall not
32 consult or notify any interested party;

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

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

38 (D) The trust tax return shall be prepared by the trustee or his designee, and such return
39 and any information relating thereto (other than the trust income summarized in appropriate
40 categories necessary to complete an interested party's tax return), shall not be disclosed to any
41 interested party;

42 (E) An interested party shall not receive any report on the holdings and sources of income
43 of the trust, except a report at the end of each calendar quarter with respect to the total cash value
44 of the interest of the interested party in the trust or the net income or loss of the trust or any reports
45 necessary to enable the interested party to complete an individual tax return required by law, but

46 such report shall not identify any asset or holding;

47 (F) Except for communications which solely consist of requests for distribution of cash or
48 other unspecified assets of the trust, there shall be no direct or indirect communication between
49 the trustee and an interested party with respect to the trust unless such communication is in writing
50 and unless it relates only (i) to the general financial interest and needs of the interested party
51 (including, but not limited to, an interest in maximizing income or long-term capital gain), (ii) to the
52 notification of the trustee of a law or regulation subsequently applicable to the reporting individual
53 which prohibits the interested party from holding an asset, which notification directs that the asset
54 not be held by the trust, or (iii) to directions to the trustee to sell all of an asset initially placed in the
55 trust by an interested party which in the determination of the reporting individual creates a conflict
56 of interest or the appearance thereof due to the subsequent assumption of duties by the reporting
57 individual (but nothing herein shall require any such direction); and

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

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

§6B-4-14. Violations and penalties.

1 (a) Any person who violates the provisions of subsection (e), (f) or (g), section five of this
2 article or violates the provisions of subdivision (1), subsection (f), section four of this article is guilty
3 of a misdemeanor and, upon conviction, shall be confined in jail for a period not to exceed six
4 months or shall be fined not more than \$1,000, or both. A member or employee of the commission
5 or the Review Board convicted of violating said subdivision is subject to immediate removal from
6 office or discharge from employment.

7 (b) Any person who violates the provisions of subsection (f), section six of this article by
8 willfully and knowingly filing a false financial statement or knowingly and willfully concealing a

9 material fact in filing the statement is guilty of a misdemeanor and, upon conviction, shall be fined
10 not more than \$1,000, or confined in jail not more than one year, or both.

11 (c) Any person who knowingly fails or refuses to file a financial statement required by
12 section six of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less
13 than \$100 nor more than \$1,000.

14 (d) If any commission member or staff knowingly violates subsection (p), section four of
15 this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and, shall be
16 fined not less than \$100 nor more than \$1,000.

17 (e) Any person who violates the provisions of subdivision (2), subsection (f), section four of
18 this article by knowingly and willfully disclosing any information made confidential by an order of
19 the commission is subject to administrative sanction by the commission as provided in subsection
20 (s) of said section.

21 (f) Any person who knowingly gives false or misleading material information to the
22 commission or who induces or procures another person to give false or misleading material
23 information to the commission is subject to administrative sanction by the commission as provided
24 in subsection (s), section four of this article.

NOTE: The purpose of this bill is to bifurcate the Ethics Commission, establishing a Legislative Ethics Commission.

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