# WEST VIRGINIA CODE CHAPTER 4 ARTICLE 1A

WV Legislature

## §4-1A-1. Purpose; legislative findings and declarations.

(a) The purpose of this article is to describe the scope and limitations of legislative immunity provided by:

(1) English common law;

(2) The Speech or Debate Clause of the United States Constitution, Article I, Section 6;

(3) Decisions regarding legislative immunity as developed in federal common law by the federal judiciary in interpreting the Speech or Debate Clause of the United States Constitution, Article I, Section 6;

(5) The Speech or Debate Clause of the West Virginia Constitution, Article VI, Section 17;

(6) The Separation of Powers Doctrine and the system of checks and balances embodied in the United States Constitution; and

(7) The Division of Powers set forth in the West Virginia Constitution, Article V, Section 1.

(b) The Legislature finds and declares as follows:

(1) That the privilege of Speech or Debate has been recognized as an important protection of the independence and integrity of the Legislature.

(2) That the ancestry of this privilege traces back to a clause in the English Bill of Rights of 1689 and the history traces even further back, almost to the beginning of the development of the English Parliament as an independent force.

(3) That in the American governmental structure, privileges arising under the Speech or Debate Clause reinforce the Separation of Powers Doctrine and the system of checks and balances that was so deliberately established by the founding fathers and was carried over into the West Virginia Constitution.

(4) That the protections provided by the Speech or Debate Clause and the Separation of Powers Doctrine were not written into the national and state Constitutions simply for the personal or private benefit of members of Congress, the State Legislatures and local governing bodies, but were intended to protect the integrity of the legislative process by insuring the independence of individual legislators.

WV Legislature

## §4-1A-2. Applicability of definitions.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

WV Legislature

## §4-1A-3. Legislative act defined.

"Legislative act" means an act that is generally to be performed by the Legislature in relation to the investigative, deliberative and decision-making business before it. A "legislative act":

(1) Is an integral part of the processes by which members participate in proceedings that come before the Senate or House of Delegates or a committee thereof; and

(2) Relates to the consideration and passage or rejection of proposed legislation; or

(3) Relates to other matters that Constitutional law places within the jurisdiction of either the Senate, the House of Delegates or the legislative branch of state government as a whole.

WV Legislature

## §4-1A-4. Legislative sphere defined.

The "legislative sphere" includes all activities that are an integral part of the deliberative and communicative processes by which members of the Legislature participate in committee and house proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either house.

WV Legislature

## §4-1A-5. Political act defined.

"Political act" means an act, nonetheless legitimate, that is political in nature rather than being a legislative act as defined in section three of this article.

WV Legislature

## §4-1A-6. Scope of legislative immunity generally.

(a) Legislative immunity, affording protection under the Separation of Powers Doctrine and the Speech or Debate privilege, extends to all of a legislator's legislative acts, as defined in section three of this article.

(b) The Speech or Debate privilege, when it applies, is absolute and has two aspects:

(1) A member of the Legislature has immunity extending both to civil suits and criminal prosecutions for all actions within the legislative sphere, even though the conduct, if performed in other than a legislative context, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes; and

(2) A member of the Legislature is provided a testimonial privilege that operates to protect those to whom it applies from being compelled to give testimony as to privileged matters and from being compelled to produce privileged documents.

WV Legislature

## §4-1A-7. Legislative immunity in specific instances.

The scope of legislative immunity includes, but is not limited to, the following legislative acts:

(1) Introducing and voting for legislation;

(2) Failing or refusing to vote or enact legislation;

(3) Voting to seat or unseat a member;

(4) Voting on the confirmation of an executive appointment;

(5) Making speeches;

(6) Enforcing the rules of the Senate or House of Delegates or the joint rules of the Legislature;

(7) Serving as a member of a committee or subcommittee;

(8) Conducting hearings and developing legislation;

(9) Investigating the conduct of executive agencies;

(10) Publishing and distributing reports;

(11) Composing and sending letters;

(12) Drafting memoranda and documents;

(13) Lobbying other legislators to support or oppose legislation;

(14) Abolishing personnel positions; and

(15) Hiring and firing employees.

WV Legislature

## §4-1A-8. Actions taken without lawful authority are not immune.

Legislative immunity does not extend to activities by legislators that are without lawful authority under Constitutional law, statutory law or rules of the Legislature, including, but not limited to, the following:

(1) Using an unconstitutional procedure to enact legislation;

(2) Conducting an illegal investigation or an unlawful search or seizure;

(3) Performing another otherwise valid legislative act without proper legislative authority;

(4) Filing a false or incomplete report, disclosure or claim regarding an otherwise valid legislative act; or

(5) Using legislative office for private gain in violation of the provisions of chapter six-b of this code that define and enforce governmental ethics.

WV Legislature

## §4-1A-9. Political acts are not privileged.

Legislative immunity does not extend to political acts, including, but not limited to, the following:

(1) Communications to the press through letters, electronic mail, newsletters or news releases: Provided, That the release of pending legislation, committee reports, journals, acts and other official legislative reports and documents is a legitimate legislative activity;

(2) Privately releasing a republication of a speech made within the legislative sphere;

(3) Holding a press conference;

(4) Making speeches or giving interviews outside of the legislative sphere; or

(5) Assisting a constituent or supporter through constituent services, including, but not limited to, making appointments with government agencies, attempting to influence discretionary acts of a government officer or providing assistance in securing government contracts.

WV Legislature

## §4-1A-10. Administrative acts are not immune.

(a) Legislative immunity does not extend to activities by legislators that are administrative in nature rather than legislative. If the underlying facts on which a decision is based are legislative facts involving establishment of a general policy or state of affairs, then the decision is legislative. If the facts used in the decision making are more specific, such as those that relate to particular individuals or situations, then the decision is administrative.

(b) With regard to legislative personnel matters, whether a personnel decision regarding a legislative employee is shielded by legislative immunity depends upon the nature of the duties of the employee about whom the personnel decision is made. Personnel decisions regarding a legislative employee are afforded immunity if the employee's duties are directly related to the functioning of the legislative process and the duties:

(1) Involve work that significantly informs or influences the shaping of laws, such as when the employee has an opportunity for meaningful input into the legislative process; or

(2) Are peculiar to a legislator's work as a legislator or intimately cognate to the legislative process.

WV Legislature

## §4-1A-11. Certain offers of proof about legislative activities not prohibited.

(a) Proof of a person's status as a member of the Legislature is not prohibited.

(b) A member of the Legislature who chooses to offer evidence of legislative acts as a defense to a criminal prosecution has not been "questioned", even though the member thereby subjects himself or herself to cross-examination.

WV Legislature

## §4-1A-12. Legislative acts of legislative staff, aides or assistants.

Legislative immunity extends to legislative staff, aides or assistants working on behalf of a legislator. Inquiry is prohibited into things done as a legislator's staff member, aide or assistant which would have been legislative acts if performed by the legislator personally.

WV Legislature

## §4-1A-13. Legislative immunity from ultimate relief.

Legislative immunity may be invoked to shield a legislator from judicially ordered relief, including, but not limited to, the following:

(1) Criminal prosecution for his or her legislative acts;

(2) Liability for damages for his or her legislative acts;

(3) Declaratory judgments with respect to his or her legislative acts;

(4) Injunctive relief with respect to his or her legislative acts; and

(5) Extraordinary writs with respect to his or her legislative acts.

WV Legislature

## §4-1A-14. Testimonial immunity.

(a) Testimonial immunity is an aspect of legislative immunity that protects a legislator from questioning elsewhere than in the legislative forum.

(b) When a legislator has been improperly questioned before a grand jury concerning legislative acts, the counts in a criminal indictment that are based on the testimony must be dismissed.

(c) When a legislator is found to be immune from a civil complaint, the relief to be granted is to have the complaint dismissed or to have a writ of prohibition issued to stop further proceedings.

(d) In the case of a subpoena that seeks to improperly question a legislator's conduct as to legislative acts, to depose a legislator or to seek disclosure as to any matters pertaining to the memoranda, documents or actions by a legislator which are or were in connection with the legislative process, the subpoenas may be quashed or the court may grant a motion for a protective order.

WV Legislature

## §4-1A-15. Right to interlocutory appeal.

Denial of a claim of legislative immunity is immediately appealable under the collateral order doctrine because the Speech or Debate Clause is designed to protect legislators not only from the consequences of litigation's results but also from the burden of defending themselves.

WV Legislature

## §4-1A-16. Common law regarding legislative immunity not affected by the enactment of this article.

The Legislature of the State of West Virginia, in codifying certain elements and doctrines of the common law regarding legislative immunity through the enactment of this article, does not intend to narrow the common law definition of legislative immunity that is afforded the Legislature under the speech or debate privilege and the separation or division of powers, and does not, with the enactment of this article, otherwise revoke or abrogate any portion of the common law. This article shall not be construed so as to narrow, restrict, revoke or abrogate the common law.

WV Legislature