

No. 104

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 104

(By Mr. Speaker, Mr. Chambers, & Del. Burk
[By Request of the Executive])

— ● —

Passed Feb. 1, 1989

In Effect July 1, 1989 ~~Passage~~

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COMMITTEE SUBSTITUTE
FOR
H. B. 104

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed February 1, 1989; in effect July 1, 1989.]

AN ACT to amend and reenact section six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one-a by adding thereto a new section, designated section seven; and to amend and reenact chapter six-b of said code, all relating generally to ethical standards of governmental officials and employees and disclosure of financial interests of such persons; requiring financial disclosure by candidates for public office; the duties and authority of the secretary of state with respect thereto; providing a short title with respect to said chapter six-b; definition of certain terms with respect thereto; providing for certain legislative findings and purposes; clarifying that the remedies provided in said chapter six-b are in addition to other applicable remedies in said code; providing for the severability of the provisions of said chapter; creating within state government a West Virginia ethics commission and providing for its membership; providing for the appointment of such members and their respective terms of office; requiring that such persons take an oath of office; providing for their compensation and reimbursement of expenses; establishing certain rules

with respect to the meetings of the commission; providing rules with respect to voting procedures of the commission and a quorum thereof; describing the powers, duties and authority of the commission and providing for its facilities and staff; requiring the commission to promulgate legislative rules and regulations to carry out the purposes of said chapter six-b and the time within such rules and regulations are to be promulgated; authorizing the commission to issue advisory opinions and the effect thereof with respect to persons acting pursuant thereto; the powers of the commission with respect to the hearing of complaints brought against public officials and employees; authorizing the commission to employ hearing examiners, issuing subpoenas and subpoenas duces tecum; the authority of the commission to impose certain administrative sanctions for violations of said chapter; conciliation agreements; providing for procedures with respect to the filing of complaints against persons subject to said chapter and the conducting of hearings with respect thereto; providing for confidentiality requirements as to commission members and staff; providing for confidentiality of certain proceedings of the commission; penalties; requiring a record of hearings conducted by the commission; penalties; permitting commission members to recuse themselves in certain instances; authority to recommend prosecution; authority to commence civil proceedings; judicial review; civil actions against complainants; effective dates; statute of limitations; providing ethical standards for elected and appointed officials, as well as certain public employees; prohibiting the use of public office for private gain; exceptions; limitation on gifts; exceptions; limiting the right of certain elected and appointed officials or employees to contract with certain governmental agencies and providing for certain exceptions with respect thereto; prohibiting the disclosure of confidential information; limiting the rights of certain public officials and employees to represent certain persons before any agency by whom such officials and employees are or were employed; exemption; prohibiting certain public officials and employees from seeking

employment with persons whom they regulate; exemptions; clarifying when members of the Legislature are required to vote upon disclosure of an interest in a matter before the Legislature; limiting the rights of certain public officials and employees in licensing or rate-making proceedings in certain cases; requiring the filing of financial disclosure statements by certain public officials, public employees and candidates, the contents thereof and the time when such statements are to be filed; providing for the appointment of special prosecutors in certain cases; and providing for penalties for violations of said chapter; providing for termination of commission; providing for registration and reporting requirements for lobbyists; defining certain terms relating to lobbyists and lobbying activities; prescribing the information required of lobbyists upon registration; providing for an information booklet identifying registered lobbyists; establishing reporting requirements for lobbyists; providing for registration and reporting by grass roots lobbying campaigns; making it a violation of law to pay a person to lobby who is not registered; describing the duties of lobbyists and defining certain acts which are violations; limiting lobbying within the legislative chambers; defining certain crimes and establishing the penalties therefor; and authorizing municipalities to enact ordinances regulating lobbyists.

Be it enacted by the Legislature of West Virginia:

That section six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article one-a be further amended by adding thereto a new section, designated section seven; and that chapter six-b be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

1 The secretary of state shall be the chief election
2 official of the state. He shall have authority, after

3 consultation with the state election commission, of which
4 he is a member, to make, amend and rescind such rules,
5 regulations and orders as may be necessary to carry out
6 the policy of the Legislature, as contained in this
7 chapter. In order to avoid conflicting provisions between
8 regulations promulgated by the secretary of state and
9 the state commission on ethics the rules and regulations
10 promulgated under this section shall be legislative rules
11 and shall be promulgated pursuant to the provisions of
12 chapter twenty-nine-a of the code of West Virginia. All
13 regulations adopted prior to the first day of January, one
14 thousand nine hundred eighty-nine shall be submitted
15 on or before the first day of August, one thousand nine
16 hundred eighty-nine to the Legislature for review by the
17 legislative rule-making review committee and approval
18 by the Legislature.

19 It shall be the duty of all election officials, county
20 commissions, clerks of county commissions, clerks of
21 circuit courts, boards of ballot commissioners, election
22 commissioners and poll clerks to abide by such rules,
23 regulations and orders, which shall include:

24 (a) Uniform rules of procedure for registrars and
25 other registration officials in the performance of their
26 duties, as to time and manner of performance;

27 (b) Uniform rules for the purging of registration
28 records;

29 (c) Uniform rules for challenging registrants; and

30 (d) Any other rules, regulations or directions neces-
31 sary to standardize and make effective the administra-
32 tion of the provisions of this chapter.

33 The secretary of state also shall have authority to
34 require collection and report of statistical information
35 and to require other reports by county commissions,
36 clerks of county commissions and clerks of circuit
37 courts.

38 It shall be his further duty to advise with election
39 officials; to furnish to the election officials a sufficient
40 number of indexed copies of the current election laws
41 of West Virginia and the administrative orders and

42 rules and regulations issued or promulgated thereunder;
43 to investigate the administration of election laws, frauds
44 and irregularities in any registration or election; to
45 report violations of election laws to the appropriate
46 prosecuting officials; and to prepare an annual report.

47 The secretary of state shall also have the power to
48 administer oaths and affirmations, issue subpoenas for
49 the attendance of witnesses, issue subpoena duces tecum
50 to compel the production of books, papers, records,
51 registration records and other evidence, and fix the time
52 and place for hearing any matters relating to the
53 administration and enforcement of this chapter, or the
54 rules, regulations and directions promulgated or issued
55 hereunder by the secretary of state as the chief election
56 official of the state. In case of disobedience to a subpoena
57 or subpoena duces tecum, he may invoke the aid of any
58 circuit court in requiring the attendance, evidence and
59 testimony of witnesses and the production of papers,
60 books, records, registration records and other evidence.

61 All powers and duties vested in the secretary of state
62 under this article may be exercised by appointees of the
63 secretary of state at his discretion, but the secretary of
64 state shall be responsible for their acts.

§3-1A-7. Candidate's financial disclosure statement.

1 Candidates for election to any state, county or
2 municipal office, county school board, district school
3 board, or to the position of county or district school
4 board superintendent, shall file a financial disclosure
5 statement with the ethics commission as may be
6 required under subsection (a), section six, article two,
7 chapter six-b of this code.

**CHAPTER 6B.
PUBLIC OFFICERS AND EMPLOYEES;
ETHICS; CONFLICTS OF INTEREST;
FINANCIAL DISCLOSURE.**

**ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PUR-
POSES AND INTENT; CONSTRUCTION AND AP-
PLICATION OF CHAPTER; SEVERABILITY.**

§6B-1-1. Short title.

1 This chapter shall be known as the "West Virginia

2 Governmental Ethics Act”.

§6B-1-2. Legislative findings, purpose, declaration and intent.

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

16 (b) It is the purpose of this chapter to maintain
17 confidence in the integrity and impartiality of the
18 governmental process in the state of West Virginia and
19 its political subdivisions and to aid public officials and
20 public employees in the exercise of their official duties
21 and employment; to define and establish minimum
22 ethical standards for elected and appointed public
23 officials and public employees; to eliminate actual
24 conflicts of interest; to provide a means to define ethical
25 standards; to provide a means of investigating and
26 resolving ethical violations; and to provide administra-
27 tive and criminal penalties for specific ethical violations
28 herein found to be unlawful.

29 (c) The Legislature finds that the state government
30 and its many public bodies and local governments have
31 many part-time public officials and public employees
32 serving in elected and appointed capacities; and that
33 certain conflicts of interest are inherent in part-time
34 service and do not, in every instance, disqualify a public
35 official or public employee from the responsibility of
36 voting or deciding a matter; however, when such conflict
37 becomes personal to a particular public official or public

38 employee, such person should seek to be excused from
39 voting, recused from deciding, or otherwise relieved
40 from the obligation of acting as a public representative
41 charged with deciding or acting on a matter.

42 (d) It is declared that high moral and ethical stand-
43 ards among public officials and public employees are
44 essential to the conduct of free government; that the
45 Legislature believes that a code of ethics for the
46 guidance of public officials and public employees will
47 help them avoid conflicts between their personal
48 interests and their public responsibilities, will improve
49 standards of public service and will promote and
50 strengthen the faith and confidence of the people of this
51 state in their public officials and public employees.

52 (e) It is the intent of the Legislature that in its
53 operations the West Virginia ethics commission created
54 under this chapter shall protect to the fullest extent
55 possible the rights of individuals affected.

§6B-1-3. Definitions.

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

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

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

16 (c) "Ethics commission", "commission on ethics" or
17 "commission" means the West Virginia ethics
18 commission.

19 (d) "Immediate family", with respect to an individual,

20 means a spouse residing in the individual's household
21 and any dependent child or children and dependent
22 parent or parents.

23 (e) "Ministerial functions" means actions or functions
24 performed by an individual under a given state of facts
25 in a prescribed manner in accordance with a mandate
26 of legal authority, without regard to, or without the
27 exercise of, such individual's own judgment as to the
28 propriety of the action being taken.

29 (f) "Person" means an individual, corporation, busi-
30 ness entity, labor union, association, firm, partnership,
31 limited partnership, committee, club or other organiza-
32 tion or group of persons, irrespective of the denomina-
33 tion given such organization or group.

34 (g) "Political contribution" means and has the same
35 definition as is given that term under the provisions of
36 article eight, chapter three of this code.

37 (h) "Public employee" means any full-time or part-
38 time employee of any governmental body or any political
39 subdivision thereof, including county school boards.

40 (i) "Public official" means any person who is elected
41 or appointed and who is responsible for the making of
42 policy or takes official action which is either ministerial
43 or nonministerial, or both, with respect to
44 (i) contracting for, or procurement of, goods or services,
45 (ii) administering or monitoring grants or subsidies,
46 (iii) planning or zoning, (iv) inspecting, licensing,
47 regulating or auditing any person, or (v) any other
48 activity where the official action has an economic impact
49 of greater than a *de minimis* nature on the interest or
50 interests of any person.

51 (j) "Respondent" means a person who is the subject of
52 an investigation by the commission or against whom a
53 complaint has been filed with the commission.

54 (k) "Thing of value", "other thing of value", or
55 "anything of value" means and includes (i) money, bank
56 bills or notes, United States treasury notes, and other
57 bills, bonds or notes issued by lawful authority and
58 intended to pass and circulate as money; (ii) goods and

59 chattels; (iii) promissory notes, bills of exchange, orders,
 60 drafts, warrants, checks, bonds given for the payment
 61 of money or the forbearance of money due or owing;
 62 (iv) receipts given for the payment of money or other
 63 property; (v) any right or chose in action; (vi) chattels
 64 real or personal or things which savor of realty and are,
 65 at the time taken, a part of a freehold, whether they are
 66 of the substance or produce thereof or affixed thereto,
 67 although there may be no interval between the severing
 68 and the taking away thereof; (vii) any interest in realty,
 69 including, but not limited to, fee simple estates, life
 70 estates, estates for a term or period of time, joint
 71 tenancies, cotenancies, tenancies in common, partial
 72 interests, present or future interests, contingent or
 73 vested interests, beneficial interests, leasehold interests,
 74 or any other interest or interests in realty of whatsoever
 75 nature; (viii) any promise of employment, present or
 76 future; (ix) donation or gift; (x) rendering of services or
 77 the payment thereof; (xi) any advance or pledge; (xii) a
 78 promise of present or future interest in any business or
 79 contract or other agreement; or (xiii) every other thing
 80 or item, whether tangible or intangible, having eco-
 81 nomic worth. "Thing of value", "other thing of value" or
 82 "anything of value" shall not include anything which is
 83 *de minimis* in nature nor a lawful political contribution
 84 reported as required by law.

§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.

1 The provisions of this chapter shall be in addition to
 2 any other applicable provisions of this code and shall not
 3 be deemed to be in derogation of or as a substitution for
 4 any other provisions of this code, including but not
 5 limited to article five-a, chapter sixty-one of this code
 6 and the remedies and penalties provided in this chapter
 7 shall be in addition to any other remedies or penalties
 8 which may be applicable to any circumstances relevant
 9 to both.

§6B-1-5. Severability.

1 The provisions of subsection (cc), section ten, article
 2 two, chapter two of this code shall apply to the

3 provisions of this chapter to the same extent as if the
4 same were set forth in extenso herein.

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS
AND DUTIES; DISCLOSURE OF FINANCIAL
INTEREST BY PUBLIC OFFICIALS AND EM-
PLOYEES; APPEARANCES BEFORE PUBLIC
AGENCIES.**

**§6B-2-1. West Virginia ethics commission created;
members; appointment, term of office and
oath; compensation and reimbursement for
expenses; meetings and quorum.**

1 (a) There is hereby created the West Virginia ethics
2 commission, consisting of twelve members, no more than
3 seven of whom shall be members of the same political
4 party. The members of the commission shall be ap-
5 pointed by the governor with the advice and consent of
6 the Senate. Within thirty days of the effective date of
7 this section, the governor shall make the initial appoint-
8 ments to the commission. No person may be appointed
9 to the commission or continue to serve as a member of
10 the commission, who holds elected or appointed office
11 under the government of the United States, the state of
12 West Virginia or any of its political subdivisions, or who
13 is a candidate for any of such offices, or who is otherwise
14 subject to the provisions of this chapter other than by
15 reason of his or her appointment to or service on the
16 commission. A member may contribute to a political
17 campaign, but no member shall hold any political party
18 office, or participate in a campaign relating to a
19 referendum or other ballot issue.

20 (b) At least two members of the commission shall
21 have served as a member of the West Virginia Legis-
22 lature; at least two members of the commission shall
23 have been employed in a full-time elected or appointed
24 office in state government; at least one member shall
25 have served as an elected official in a county or
26 municipal government or on a county school board; at
27 least one member shall have been employed full time as
28 a county or municipal officer or employee; and at least
29 two members shall have served part time as a member
30 or director of a state, county or municipal board,

31 commission or public service district and at least four
32 members shall be selected from the public at large. No
33 more than four members of the commission shall reside
34 in the same congressional district.

35 (c) Of the initial appointments made to the commis-
36 sion, two shall be for a term ending one year after the
37 effective date of this section, two for a term ending two
38 years after the effective date of this section, two for a
39 term ending three years after the effective date of this
40 section, three for a term ending four years after the
41 effective date of this section, and three shall be for terms
42 ending five years after the effective date of this section.
43 Thereafter, terms of office shall be for five years, each
44 term ending on the same day of the same month of the
45 year as did the term which it succeeds. Each member
46 shall hold office from the date of his or her appointment
47 until the end of the term for which he or she was
48 appointed or until his or her successor qualifies for
49 office. When a vacancy occurs as a result of death,
50 resignation, or removal in the membership of this
51 commission, it shall be filled by appointment within
52 thirty days of the vacancy for the unexpired portion of
53 the term in the same manner as original appointments.
54 No member shall serve more than two consecutive full
55 or partial terms, and no person may be reappointed to
56 the commission until at least two years have elapsed
57 after the completion of a second successive term.

58 (d) Each member of the commission shall take and
59 subscribe to the oath or affirmation required pursuant
60 to Section 5, Article IV of the Constitution of West
61 Virginia. A member may be removed by the governor
62 for substantial neglect of duty, gross misconduct in
63 office or violation of this chapter, after written notice
64 and opportunity for reply.

65 (e) The commission shall meet within thirty days of
66 the initial appointments to the commission at a time and
67 place to be determined by the governor, who shall
68 designate a member to preside at that meeting until a
69 chairman is elected. At its first meeting, the commission
70 shall elect a chairman and such other officers as are
71 necessary. The commission shall within ninety days

72 after its first meeting adopt rules for its procedures.

73 (f) Seven members of the commission shall constitute
74 a quorum, except that when the commission is sitting
75 as a hearing board pursuant to section four of this
76 article, then five members shall constitute a quorum.
77 Except as may be otherwise provided in this article, a
78 majority of the total membership shall be necessary to
79 act at all times.

80 (g) Members of the commission shall receive one
81 hundred dollars for each day actually devoted to the
82 business of the commission and, in addition thereto,
83 shall be reimbursed for expenses actually and necessar-
84 ily incurred in the performance of their official duties
85 as such members.

86 (h) The commission shall appoint an executive direc-
87 tor to assist the commission in carrying out its functions
88 in accordance with commission rules and regulations
89 and with applicable law. Said executive director shall
90 be paid such salary as may be fixed by the commission
91 or as otherwise provided by law. The commission shall
92 appoint and discharge counsel and employees and shall
93 fix the compensation of employees and prescribe their
94 duties. Counsel to the commission shall advise the
95 commission on all legal matters and on the instruction
96 of the commission may commence such civil actions as
97 may be appropriate: *Provided*, That no counsel shall
98 both advise the commission and act in a representative
99 capacity in any proceeding.

100 (i) The commission may delegate authority to the
101 chairman or executive director to act in the name of the
102 commission between meetings of the commission, except
103 that the commission shall not delegate the power to hold
104 hearings and determine violations to the chairman or
105 executive director.

106 (j) The chairman shall have the authority to designate
107 subcommittees of three persons, no more than two of
108 whom may be members of the same political party. Said
109 subcommittees shall be investigative panels which shall
110 have the powers and duties set forth hereinafter in this
111 article.

112 (k) The principal office of the commission shall be in
113 the seat of government but it or its designated subcom-
114 mittees may meet and exercise its power at any other
115 place in the state. Meetings of the commission shall be
116 public unless such meetings or hearings are required to
117 be private in conformity with the provisions of this
118 chapter relating to confidentiality, except that the
119 commission shall exclude the public from attendance at
120 discussions of commission personnel, planned or ongoing
121 litigation and planned or ongoing investigations.

122 (l) Meetings of the commission shall be upon the call
123 of the chairman and shall be conducted by the personal
124 attendance of the commission members and no meeting
125 shall be conducted by telephonic or other electronic
126 conferencing, nor shall any member be allowed to vote
127 by proxy: *Provided*, That telephone conferencing and
128 voting may be held for the purpose of approving or
129 rejecting any proposed advisory opinions prepared by
130 the commission, or for voting on issues involving the
131 administrative functions of the commission. Meetings
132 held by telephone conferencing shall require notice to
133 members in the same manner as meetings to be
134 personally attended, shall be electronically recorded,
135 and the recordings shall be made a permanent part of
136 the commission records. Members shall not be compen-
137 sated for meetings other than those personally attended.

§6B-2-2. Same—general powers and duties.

1 (a) The commission shall promulgate rules and
2 regulations to carry out the purposes of this article
3 within six months of the effective date of this section.
4 Such rules and regulations shall be legislative rules
5 subject to legislative rule-making review and subject to
6 the provisions of the administrative procedures act.

7 (b) The commission may subpoena witnesses, compel
8 their attendance and testimony, administer oaths and
9 affirmations, take evidence and require by subpoena the
10 production of books, papers, records or other evidence
11 needed for the performance of the commission's duties
12 or exercise of its powers, including its duties and powers
13 of investigation.

14 (c) The commission shall, in addition to its other
15 duties:

16 (1) Prescribe forms for reports, statements, notices,
17 and other documents required by law;

18 (2) Prepare and publish manuals and guides explain-
19 ing the duties of individuals covered by this law; and
20 giving instructions and public information materials to
21 facilitate compliance with, and enforcement of, this act;
22 and

23 (3) Provide assistance to agencies, officials and
24 employees in administering the provisions of this act.

25 (d) The commission may:

26 (1) Prepare reports and studies to advance the
27 purpose of the law;

28 (2) Contract for any services which cannot satisfactor-
29 ily be performed by its employees;

30 (3) Request the attorney general to provide legal
31 advice without charge to the commission, and the
32 attorney general shall comply with the request;

33 (4) Employ additional legal counsel; and

34 (5) Request appropriate agencies of state government
35 to provide such professional assistance as it may require
36 in the discharge of its duties: *Provided*, That any agency
37 providing such assistance other than the attorney
38 general shall be reimbursed by the West Virginia ethics
39 commission the cost of such assistance.

§6B-2-3. Advisory opinions.

1 A person subject to the provisions of this chapter may
2 make application in writing to the ethics commission for
3 an advisory opinion on whether an action or proposed
4 action violates the provisions of this chapter, and would
5 thereby expose the person to sanctions by the commis-
6 sion or criminal prosecution. The commission shall
7 respond within thirty days from the receipt of the
8 request by issuing an advisory opinion on the matter
9 raised in the request. All advisory opinions shall be
10 published and indexed in the code of state rules by the

11 secretary of state: *Provided*, That before an advisory
 12 opinion is made public, any material which may identify
 13 the person who is the subject of the opinion, shall to the
 14 fullest extent possible, be deleted and the identity of the
 15 person shall not be revealed. A person subject to the
 16 provisions of this chapter may rely upon the published
 17 guidelines or an advisory opinion of the commission, and
 18 any person acting in good faith reliance on any such
 19 guideline or opinion shall be immune from the sanctions
 20 of this chapter, and shall have an absolute defense to any
 21 criminal prosecution for actions taken in good faith
 22 reliance upon any such opinion or guideline.

**§6B-2-4. Complaints; dismissals; hearings; disposition;
 judicial review.**

1 (a) Upon the filing by any person with the commission
 2 of a complaint which is duly verified by oath or
 3 affirmation, the executive director of the commission or
 4 his or her designee shall, within three working days,
 5 acknowledge the receipt of the complaint by first class
 6 mail, unless the complainant or his or her representative
 7 personally filed the complaint with the commission and
 8 was given a receipt or other acknowledgement evidenc-
 9 ing the filing. Within fourteen days after the receipt of
 10 a complaint, an investigative panel shall be appointed
 11 to investigate the substance of the allegations in the
 12 complaint and to determine whether there is probable
 13 cause to believe that a violation of this chapter has
 14 occurred. The method of selecting and rotating appoint-
 15 ments of members to investigative panels shall be
 16 established by legislative rule of the commission.

17 (b) In the absence of a filed complaint, if the commis-
 18 sion otherwise receives or discovers information which
 19 may merit an inquiry as to whether a violation of this
 20 chapter has occurred, the commission may, by the
 21 affirmative vote of seven of its members, appoint an
 22 investigative panel on its own initiative to investigate
 23 such matters and to determine whether there is
 24 probable cause to believe that a violation of this chapter
 25 has occurred.

26 (c) In the case of a filed complaint, the first inquiry

27 of the investigative panel shall be a question as to
28 whether or not the allegations of the complaint, if taken
29 as true, would constitute a violation of law upon which
30 the commission could properly act under the provisions
31 of this chapter. If the complaint is determined by a
32 majority vote of the investigative panel to be insufficient
33 in this regard, the investigative panel shall dismiss the
34 complaint. A dismissal under this subsection shall not
35 preclude the commission from initiating an investiga-
36 tion on its own initiative under the provisions of
37 subsection (b) of this section.

38 (d) After the commission receives a complaint found
39 by the investigative panel to be sufficient, or makes a
40 decision to investigate possible violations on its own
41 initiative, the executive director shall give notice of a
42 pending investigation by the investigative panel to the
43 complainant and respondent. The notice of investigation
44 shall be mailed to the parties, and, in the case of the
45 respondent, shall be mailed as certified mail, return
46 receipt requested, marked "Addressee only, personal
47 and confidential". The notice shall describe the conduct
48 of the respondent which is the basis for an alleged
49 violation of law, and if a complaint has been filed, a copy
50 of the complaint shall be appended to the notice mailed
51 to the respondent. Each notice of investigation shall
52 inform the respondent that the purpose of the investi-
53 gation is to determine whether probable cause exists to
54 believe that a violation of law has occurred which may
55 subject the respondent to administrative sanctions by
56 the commission, criminal prosecution by the state, or
57 civil liability. The notice shall further inform the
58 respondent that he or she has a right to appear before
59 the investigative panel, and that he or she may respond
60 in writing to the commission within thirty days after the
61 receipt of the notice, but that no fact or allegation shall
62 be taken as admitted by a failure or refusal to timely
63 respond.

64 (e) Within the forty-five day period following the
65 mailing of a notice of investigation, the investigative
66 panel shall proceed to consider (1) the allegations raised
67 in the complaint or by the commission's inquiry, (2) any

68 timely received written response of the respondent, and
69 (3) any other competent evidence gathered by or
70 submitted to the commission which has a proper bearing
71 on the issue of probable cause. A respondent shall be
72 afforded the opportunity to appear before the investig-
73 ative panel and make an oral response to the complaint.
74 The commission shall, in promulgating legislative rules
75 pursuant to the provisions of subsection (a), section two
76 of this article, prescribe the manner in which a
77 respondent may present his oral response to the
78 investigatory panel. The commission may request a
79 respondent to disclose specific amounts received from a
80 source, and other detailed information not otherwise
81 required to be set forth in a statement or report filed
82 under the provisions of this chapter, if the information
83 sought is deemed to be probative as to the issues raised
84 by a complaint or an investigation initiated by the
85 commission. Any information thus received shall be
86 confidential. If the person so requested fails or refuses
87 to furnish the information to the commission, the
88 commission may exercise its subpoena power as pro-
89 vided for elsewhere in this chapter, and any subpoena
90 issued thereunder shall have the same force and effect
91 as a subpoena issued by a circuit court of this state, and
92 enforcement of any such subpoena may be had upon
93 application to a circuit court of the county in which the
94 investigatory panel is conducting an investigation,
95 through the issuance of a rule or an attachment against
96 the respondent as in cases of contempt.

97 (f) (1) Members of the commission and its staff shall
98 not disclose any information relating to a complaint,
99 including the identity of the complainant or respondent,
100 except that the commission may release any information
101 at any time if the release has been agreed to in writing
102 by the respondent, and the identity of the complainant
103 shall be released to the respondent immediately upon
104 request. No present or former member of the commis-
105 sion or present or former employee of the commission
106 may knowingly and improperly disclose any confidential
107 information acquired by him or her in the course of his
108 or her official duties.

109 (2) If, in a specific case, the commission finds that
110 there is a reasonable likelihood that the dissemination
111 of information or opinion in connection with a pending
112 or imminent proceeding will interfere with a fair
113 hearing or otherwise prejudice the due administration
114 of justice, the commission may order that all or a portion
115 of the information communicated to the commission to
116 cause an investigation and all allegations of ethical
117 misconduct or criminal acts contained in a complaint
118 shall be confidential, and the person providing such
119 information or filing a complaint shall be bound to
120 confidentiality until further order of the commission.

121 (g) If a majority of the members of the investigative
122 panel fails to find probable cause, the proceedings shall
123 be dismissed by the commission in an order signed by
124 the majority members of the panel, and copies of the
125 order of dismissal shall be sent to the complainant and
126 the respondent forthwith. If the investigative panel
127 decides by a majority vote that there is probable cause
128 to believe that a violation under this chapter has
129 occurred, the majority members of the investigatory
130 panel shall sign an order directing the commission staff
131 to prepare a statement of charges, to assign the matter
132 for hearing to the commission or a hearing examiner as
133 the commission may subsequently direct, and to sche-
134 dule a hearing to determine the truth or falsity of the
135 charges, such hearing to be held within ninety days
136 after the date of the order.

137 (h) At least eighty days prior to the date of the
138 hearing, the respondent shall be served by certified
139 mail, return receipt requested, with the statement of
140 charges and a notice of hearing setting forth the date,
141 time and place for the hearing. The scheduled hearing
142 may be continued only upon a showing of good cause by
143 the respondent or under such other circumstances as the
144 commission shall, by legislative rule, direct.

145 (i) The commission members who have not served as
146 members of an investigatory panel in a particular case
147 may sit as a hearing board to adjudicate the case or may
148 permit an assigned hearing examiner employed by the
149 commission to preside at the taking of evidence. The

150 commission shall, by legislative rule, establish the
151 general qualifications for hearing examiners. Such
152 legislative rule shall also contain provisions which seek
153 to insure that the functions of a hearing examiner will
154 be conducted in an impartial manner, and shall describe
155 the circumstances and procedures for disqualification of
156 hearing examiners.

157 (j) A member of the commission or a hearing exa-
158 miner presiding at a hearing may:

159 (1) Administer oaths and affirmations, compel the
160 attendance of witnesses and the production of docu-
161 ments, examine witnesses and parties, and otherwise
162 take testimony and establish a record;

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

165 (3) Take depositions or have depositions taken when
166 the ends of justice may be served;

167 (4) Regulate the course of the hearing;

168 (5) Hold conferences for the settlement or simplifica-
169 tion of issues by consent of the parties;

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

171 (7) Accept stipulated agreements;

172 (8) Take other action authorized by the ethics commis-
173 sion consistent with the provisions of this chapter.

174 (k) With respect to allegations of a violation under
175 this chapter, the complainant has the burden of proof.
176 The West Virginia rules of evidence as used to govern
177 proceedings in the courts of this state, shall be given like
178 effect in hearings held before the commission or a
179 hearing examiner. The commission shall, by legislative
180 rule, regulate the conduct of hearings so as to provide
181 full procedural due process to a respondent. Hearings
182 before a hearing examiner shall be recorded electron-
183 ically. When requested by either of the parties, the
184 presiding officer shall make a transcript, verified by
185 oath or affirmation, of each hearing held and so
186 recorded. In the discretion of the commission, a record

187 of the proceedings may be made by a certified court
188 reporter. Unless otherwise ordered by the commission,
189 the cost of preparing a transcript shall be paid by the
190 party requesting the transcript. Upon a showing of
191 indigency, the commission may provide a transcript
192 without charge. Within fifteen days following the
193 hearing, either party may submit to the hearing
194 examiner that party's proposed findings of fact. The
195 hearing examiner shall thereafter prepare his or her
196 own proposed findings of fact, and make copies of the
197 findings available to the parties. The hearing examiner
198 shall then submit the entire record to the commission
199 for final decision.

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

209 (m) The commission shall set a time and place for the
210 hearing of arguments by the complainant and respond-
211 ent, or their respective representatives, and shall notify
212 the parties thereof, and briefs may be filed by the
213 parties in accordance with procedural rules promul-
214 gated by the commission. The final decision of the
215 commission shall be made in writing within forty-five
216 days of the receipt of the entire record of a hearing held
217 before a hearing examiner or, in the case of an
218 evidentiary hearing held by the board in lieu of a
219 hearing examiner, within twenty-one days following the
220 close of the evidence.

221 (n) A decision to impose sanctions must be approved
222 by at least six members of the commission.

223 (o) Members of the commission shall recuse them-
224 selves from a particular case upon their own motion
225 with the approval of the commission or for good cause
226 shown upon motion of a party. The remaining members

227 of the commission shall, by majority vote, select a
228 temporary member of the commission to replace a
229 recused member.

230 (p) A complainant may be assisted by a member of
231 the commission staff assigned by the commission after
232 a determination of probable cause.

233 (q) No member of the commission staff may partic-
234 ipate in the commission deliberations or communicate
235 with commission members concerning the merits of a
236 complaint after being assigned to prosecute a complaint.

237 (r) If the commission finds by evidence beyond a
238 reasonable doubt that the facts alleged in the complaint
239 are true and constitute a material violation of this
240 article, it may impose one or more of the following
241 sanctions:

242 (1) Public reprimand;

243 (2) Cease and desist orders;

244 (3) Orders of restitution for money, things of value, or
245 services taken or received in violation of this chapter;
246 or

247 (4) Fines not to exceed one thousand dollars per
248 violation.

249 In addition to imposing such sanctions, the commis-
250 sion may recommend to the appropriate governmental
251 body that a respondent be terminated from employment
252 or removed from office.

253 The commission may institute civil proceedings in the
254 circuit court of the county wherein a violation occurred
255 for the enforcement of sanctions.

256 (s) At any stage of the proceedings under this section,
257 the commission may enter into a conciliation agreement
258 with a respondent if such agreement is deemed by a
259 majority of the members of the commission to be in the
260 best interest of the state and the respondent.

261 (t) Decisions of the commission involving the issuance
262 of sanctions may be appealed to the circuit court of
263 Kanawha County, West Virginia, or to the circuit court

264 of the county where the violation is alleged to have
265 occurred, only by the respondent, and only upon the
266 grounds set forth in section four, article five, chapter
267 twenty-nine-a of this code.

268 (u) In the event the commission finds in favor of the
269 person complained against, the commission shall order
270 reimbursement of all actual costs incurred, including,
271 but not limited to, attorney fees to be paid to the person
272 complained against by the complainant, if the commis-
273 sion finds that the complaint was brought or made in
274 bad faith. In addition, the aggrieved party shall have a
275 cause of action and be entitled to compensatory dam-
276 ages, punitive damages, costs and attorney fees for a
277 complaint made or brought in bad faith.

278 (v) If at any stage in the proceedings under this
279 section, it appears to an investigative panel, a hearing
280 examiner or the commission that a criminal violation
281 may have been committed by a respondent, such
282 situation shall be brought before the full commission for
283 its consideration. If, by a vote of two-thirds of the full
284 commission, it is determined that probable cause exists
285 to believe a criminal violation has occurred, it may
286 recommend to the appropriate county prosecuting
287 attorney having jurisdiction over the case that a
288 criminal investigation be commenced. Deliberations of
289 the commission with regard to a recommendation for
290 criminal investigation by a prosecuting attorney shall be
291 private and confidential. Notwithstanding any other
292 provision of this article, once a referral for criminal
293 investigation is made under the provisions of this
294 subsection, the ethics proceedings shall be held in
295 abeyance until such referral proceedings are concluded.
296 If the commission determines that a criminal violation
297 has not occurred, the commission shall remand the
298 matter to the investigating panel, the hearing examiner
299 or the commission itself as a hearing board, as the case
300 may be, for further proceedings under this article.

301 (w) The provisions of this section shall apply to
302 violations of this chapter occurring after the thirtieth
303 day of September, one thousand nine hundred eighty-
304 nine and within one year before the filing of a complaint

305 under section (a) of this section or the appointment of
 306 an investigative panel by the commission under section
 307 (b) of this section.

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

1 (a) *Persons subject to section*—The provisions of this
 2 section apply to all elected and appointed public officials
 3 and public employees, whether full or part time, in
 4 state, county, municipal governments and their respec-
 5 tive boards, agencies, departments, and commissions
 6 and in any other regional or local governmental agency,
 7 including county school boards.

8 (b) *Use of public office for private gain*—(1) A public
 9 official or public employee may not intentionally use his
 10 or her office or the prestige of his or her office for his
 11 or her own private gain or that of another person. The
 12 performance of usual and customary constituent servi-
 13 ces, without compensation, does not constitute the use of
 14 prestige of office for private gain.

15 (2) The Legislature, in enacting this subsection (b),
 16 relating to the use of public office or public employment
 17 for private gain, recognizes that there may be certain
 18 public officials or public employees who bring to their
 19 respective offices or employment their own unique
 20 personal prestige which is based upon their intelligence,
 21 education, experience, skills and abilities, or other
 22 personal gifts or traits. In many cases, these persons
 23 bring a personal prestige to their office or employment
 24 which inures to the benefit of the state and its citizens.
 25 Such persons may, in fact, be sought by the state to
 26 serve in their office or employment because, through
 27 their unusual gifts or traits, they bring stature and
 28 recognition to their office or employment and to the
 29 state itself. While the office or employment held or to
 30 be held by such persons may have its own inherent
 31 prestige, it would be unfair to such individuals and
 32 against the best interests of the citizens of this state to
 33 deny such persons the right to hold public office or be
 34 publicly employed on the grounds that they would, in
 35 addition to the emoluments of their office or employ-

36 ment, be in a position to benefit financially from the
37 personal prestige which otherwise inheres to them.
38 Accordingly, the commission is directed, by legislative
39 rule, to establish categories of such public officials and
40 public employees, identifying them generally by the
41 office or employment held, and offering persons who fit
42 within such categories the opportunity to apply for an
43 exemption from the application of the provisions of this
44 subsection. Such exemptions may be granted by the
45 commission, on a case by case basis, when it is shown
46 that: (1) The public office held or the public employ-
47 ment engaged in is not such that it would ordinarily be
48 available or offered to a substantial number of the
49 citizens of this state; (2) the office held or the employ-
50 ment engaged in is such that it normally or specifically
51 requires a person who possesses personal prestige; and
52 (3) the person's employment contract or letter of
53 appointment provides or anticipates that the person will
54 gain financially from activities which are not a part of
55 his or her office or employment.

56 (c) *Gifts*—(1) An official or employee of the state may
57 not solicit any gift. No official or employee may
58 knowingly accept any gift, directly or indirectly, from
59 any person whom the official or employee knows or has
60 reason to know:

61 (A) Is doing or seeking to do business of any kind with
62 his or her agency.

63 (B) Is engaged in activities which are regulated or
64 controlled by his or her agency.

65 (C) Has financial interests which may be substantially
66 and materially affected, in a manner distinguishable
67 from the public generally, by the performance or
68 nonperformance of his official duties.

69 (2) Notwithstanding the provisions of subdivision
70 (1) of this subsection, a person who is a public official
71 or public employee may accept a gift described in this
72 subdivision, and there shall be a presumption that the
73 receipt of such gift does not impair the impartiality and
74 independent judgment of the person. This presumption
75 may be rebutted only by direct objective evidence that

76 the gift did impair the impartiality and independent
77 judgment of the person or that the person knew or had
78 reason to know that the gift was offered with the intent
79 to impair his or her impartiality and independent
80 judgment. The provisions of subdivision (1) of this
81 subsection do not apply to:

82 (A) Meals and beverages;

83 (B) Ceremonial gifts or awards which have insignif-
84 ican monetary value;

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

87 (D) Reasonable expenses for food, travel, and lodging
88 of the official or employee for a meeting at which the
89 official or employee participates in a panel or speaking
90 engagement at the meeting;

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

96 (F) gifts that are purely private and personal in
97 nature; or

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

100 (3) The acceptance of an honorarium by an elected
101 public official is prohibited. The commission shall, by
102 legislative rule, establish guidelines for the acceptance
103 of reasonable honorariums by all other public officials
104 and public employees other than elected public officials.

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

108 (5) The Governor or his designee, may, in the name
109 of the state of West Virginia, accept and receive gifts
110 from any public or private source. Any such gift so
111 obtained shall become the property of the state and
112 shall, within thirty days of the receipt thereof, be

113 registered with the commission and the Department of
114 Culture and History.

115 (6) The commission by regulation may define further
116 exemptions from this section as necessary or
117 appropriate.

118 (d) *Interests in public contracts*—(1) In addition to the
119 provisions of section fifteen, article ten, chapter sixty-
120 one of this code, no elected or appointed public official
121 or public employee or member of his or her immediate
122 family or business with which he or she is associated
123 may be a party to or have an interest in the profits or
124 benefits of a contract with the governmental body over
125 which he or she has direct authority or with which he
126 or she is employed: *Provided*, That nothing herein shall
127 be construed to prevent or make unlawful the employ-
128 ment of any person with any governmental body:
129 *Provided, however*, That nothing herein shall be
130 construed to prohibit a member of the Legislature from
131 entering into a contract with any governmental body.

132 (2) In the absence of bribery or a purpose to defraud,
133 an elected or appointed public official or public
134 employee or a member of his or her immediate family
135 or a business with which he or she is associated shall
136 not be considered as having an interest in a public
137 contract when such a person has a limited interest as
138 an owner, shareholder or creditor of the business which
139 is the contractor on the public contract involved. A
140 limited interest for the purposes of this section is an
141 interest not exceeding ten percent of the partnership or
142 the outstanding shares of a corporation or thirty
143 thousand dollars, whichever is the lesser, or an interest
144 as a creditor not exceeding ten percent of the total
145 indebtedness of a business or thirty thousand dollars,
146 whichever is the lesser.

147 (3) Where the provisions of subdivisions (1) and (2) of
148 this subsection would result in the loss of a quorum in
149 a public body or agency, in excessive cost, undue
150 hardship, or other substantial interference with the
151 operation of a state, county, municipality, county school
152 board or other governmental agency, the affected

153 governmental body or agency may make written
 154 application to the ethics commission for an exemption
 155 from subdivisions (1) and (2) of this subsection.

156 (e) *Confidential information*—No present or former
 157 public official or employee may knowingly and improp-
 158 erly disclose any confidential information acquired by
 159 him or her in the course of his or her official duties nor
 160 use such information to further his or her personal
 161 interests or the interests of another person.

162 (f) *Prohibited representation*—No present or former
 163 elected or appointed public official or public employee
 164 shall during or after his or her public employment or
 165 service represent a client or act in a representative
 166 capacity with or without compensation on behalf of any
 167 person in a contested case, rate-making proceeding,
 168 license or permit application, regulation filing or other
 169 specific matter which arose during his or her period of
 170 public service or employment and in which he or she
 171 personally participated in a decision-making, advisory
 172 or staff support capacity.

173 (g) *Limitation on practice before a board, agency,*
 174 *commission or department*—(1) No elected or appointed
 175 public official and no full-time staff attorney or
 176 accountant shall, during his or her public service or
 177 public employment or for a period of six months after
 178 the termination of his or her public service or public
 179 employment with a governmental entity authorized to
 180 hear contested cases or promulgate regulations, appear
 181 in a representative capacity before the governmental
 182 entity in which he or she serves or served or is or was
 183 employed in the following matters:

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

186 (B) To support or oppose a proposed regulation;

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

189 (D) A rate-making proceeding; and

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

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191 (2) As used in this subsection, "represent" includes
192 any formal or informal appearance before, or any
193 written or oral communication with, any public agency
194 on behalf of any person: *Provided*, That nothing
195 contained in this subsection shall prohibit, during any
196 period, a former public official or employee from being
197 retained by or employed to represent, assist, or act in
198 a representative capacity on behalf of the public agency
199 by which he or she was employed or in which he or she
200 served. Nothing in this subsection shall be construed to
201 prevent a former public official or employee from
202 representing another state, county, municipal or other
203 governmental entity before the governmental entity in
204 which he or she served or was employed within six
205 months after the termination of his or her employment
206 or service in the entity.

207 (3) A present or former public official or employee
208 may appear at anytime in a representative capacity
209 before the Legislature, a county commission, city or
210 town council or county school board in relation to the
211 consideration of a statute, budget, ordinance, rule,
212 resolution or enactment.

213 (4) Members and former members of the Legislature
214 and professional employees and former professional
215 employees of the Legislature shall be permitted to
216 appear in a representative capacity on behalf of clients
217 before any governmental agency of the state, or of
218 county or municipal governments including county
219 school boards.

220 (5) An elected or appointed public official, full-time
221 staff attorney or accountant who would be adversely
222 affected by the provisions of this subsection (g) may
223 apply to the ethics commission for an exemption from
224 the six months prohibition against appearing in a
225 representative capacity, when the person's education
226 and experience is such that the prohibition would, for
227 all practical purposes, deprive the person of the ability
228 to earn a livelihood in this state outside of the govern-
229 mental agency. The ethics commission shall by legisla-
230 tive rule establish general guidelines or standards for
231 granting an exemption or reducing the time period, but

232 shall decide each application on a case-by-case basis.

233 (h) *Seeking employment with regulated person prohi-*
 234 *bited*—(1) No full-time public official or full-time public
 235 employee who exercises policymaking, nonministerial or
 236 regulatory authority may seek employment with, or
 237 allow himself or herself to be employed by, any person
 238 who is or may be regulated by the governmental body
 239 which he or she serves while he or she is employed or
 240 serves in the governmental agency. The term “employ-
 241 ment” within the meaning of this section includes
 242 professional services and other services rendered by the
 243 public official or public employee whether rendered as
 244 an employee or as an independent contractor.

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245 (2) No person regulated by a governmental agency
 246 shall offer employment to a full-time public official or
 247 full-time public employee of the regulating governmen-
 248 tal agency during the period of time the public official
 249 or employee works or serves in such agency.

250 (3) A full-time public official or full-time public
 251 employee who would be adversely affected by the
 252 provisions of this subsection may apply to the ethics
 253 commission for an exemption from the prohibition
 254 against seeking employment with a person who is or
 255 may be regulated, when the person's education and
 256 experience is such that the prohibition would, for all
 257 practical purposes, deprive the person of the ability to
 258 earn a livelihood in this state outside of the governmen-
 259 tal agency. The ethics commission shall by legislative
 260 rule establish general guidelines or standards for
 261 granting an exemption, but shall decide upon each
 262 application on a case-by-case basis.

263 (i) *Members of the Legislature required to vote—*
 264 Members of the Legislature who have asked to be
 265 excused from voting or who have made inquiry as to
 266 whether they should be excused from voting on a
 267 particular matter and who are required by the presid-
 268 ing officer of the House of Delegates or Senate of West
 269 Virginia to vote under the rules of the particular house
 270 shall not be guilty of any violation of ethics under the
 271 provisions of this section for a vote so cast.

272 (j) *Limitations on participation in licensing and rate-*
273 *making proceedings*—No public official or employee may
274 participate within the scope of his duties as a public
275 official or employee, except through ministerial func-
276 tions as defined in section three, article one of this
277 chapter, in any license or rate-making proceeding that
278 directly affects the license or rates of any person,
279 partnership, trust, business trust, corporation, or
280 association in which the public official or employee or
281 his immediate family owns or controls more than ten
282 percent. No public official or public employee may
283 participate within the scope of his duties as a public
284 official or public employee, except through ministerial
285 functions as defined in section three, article one of this
286 chapter, in any license or rate-making proceeding that
287 directly affects the license or rates of any person to
288 whom the public official or public employee or his
289 immediate family, or a partnership, trust, business
290 trust, corporation, or association of which he or his
291 immediate family owns or controls more than ten
292 percent, has sold goods or services totaling more than
293 one thousand dollars during the preceding year, unless
294 the public official or public employee has filed a written
295 statement acknowledging such sale with the public
296 agency and the statement is entered in any public record
297 of the agency's proceedings. This subsection shall not be
298 construed to require the disclosure of clients of attorneys
299 or of patients or clients of persons licensed pursuant to
300 articles three, eight, fourteen, fourteen-a, fifteen,
301 sixteen, twenty, twenty-one or thirty-one, chapter thirty
302 of this code.

§6B-2-6. Financial disclosure statement; filing requirements.

1 (a) The requirements for filing a financial disclosure
2 statement shall become initially effective on the first day
3 of February, one thousand nine hundred ninety, for all
4 persons holding public office or employment on that
5 date and who are otherwise required to file such
6 statement under the provisions of this section. The
7 initial financial disclosure statement shall cover the
8 period from the first day of July, one thousand nine

9 hundred eighty-nine, for the period ending the thirty-
10 first day of January, one thousand nine hundred ninety.
11 Thereafter, the financial disclosure statement shall be
12 filed on the first day of February of each calendar year
13 to cover the period of the preceding calendar year,
14 except insofar as may be otherwise provided herein. The
15 following persons must file the financial disclosure
16 statement required by this section with the ethics
17 commission:

18 (1) All elected officials in this state, including, but not
19 limited to, all persons elected state-wide, all county
20 elected officials, municipal elected officials in municipi-
21 palities which have, by ordinance, opted to be covered
22 by the disclosure provisions of this section, all members
23 of the several county or district boards of education and
24 all county or district school board superintendents;

25 (2) All members of state boards, commissions and
26 agencies appointed by the governor; and

27 (3) Secretaries of departments, commissioners, deputy
28 commissioners, assistant commissioners, directors,
29 deputy directors, assistant directors, department heads,
30 deputy department heads and assistant department
31 heads.

32 A person who is required to file a financial disclosure
33 statement under this section by virtue of becoming an
34 elected or appointed public official whose office is
35 described in subdivisions (1), (2) or (3) of this subsec-
36 tion, and who assumes the office less than ten days
37 before a filing date established herein or who assumes
38 the office after the filing date, shall file a financial
39 disclosure statement for the previous twelve months no
40 later than thirty days after the date on which the person
41 assumes the duties of the office, unless the person has
42 filed a financial disclosure statement with the commis-
43 sion during the twelve month period before he or she
44 assumed office.

45 (b) A candidate for public office shall file a financial
46 disclosure statement for the previous twelve months
47 with the state ethics commission no later than ten days
48 after he or she files a certificate of candidacy, but in all

49 circumstances, not later than ten days prior to the
50 election, unless he or she has filed a financial disclosure
51 statement with the state ethics commission during the
52 previous twelve months.

53 The ethics commission shall file a duplicate copy of
54 the financial disclosure statement required in this
55 section in the following offices within ten days of the
56 receipt of the candidate's statement of disclosure:

57 (1) Municipal candidates in municipalities which have
58 opted, by ordinance, to be covered by the disclosure
59 provisions of this section, in the office of the clerk of the
60 municipality in which the candidate is seeking office;

61 (2) Legislative candidates in single county districts
62 and candidates for a county office or county school board
63 in the office of the clerk of the county commission of the
64 county in which the candidate is seeking office;

65 (3) Legislative candidates from multicounty districts
66 and congressional candidates in the office of the clerk
67 of the county commission of the county of the candidate's
68 residence.

69 After a ninety day period following any election, the
70 clerks who receive the financial disclosure statements of
71 candidates, may destroy or dispose of those statements
72 filed by candidates who were unsuccessful in the
73 election.

74 (c) No candidate for public office may maintain his or
75 her place on a ballot and no public official may take the
76 oath of office or enter or continue upon his or her duties
77 or receive compensation from public funds, unless he or
78 she has filed a financial disclosure statement with the
79 state ethics commission as required by the provisions of
80 this section.

81 (d) The state ethics commission may, upon request of
82 any person required to file a financial disclosure
83 statement, and for good cause shown, extend the
84 deadline for filing such statement for a reasonable
85 period of time: *Provided*, That no extension of time shall
86 be granted to a candidate who has not filed a financial
87 disclosure statement for the preceding filing period.

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

90 (f) No person shall knowingly file a materially false
91 statement that is required to be filed under this section.

§6B-2-7. Financial disclosure statement; contents.

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

3 (1) The name, residential and business addresses of
4 the person filing the statement and all names under
5 which the person does business.

6 (2) The name and address of each employer of the
7 person.

8 (3) The identification, by category, of every source of
9 income over five thousand dollars received during the
10 preceding calendar year, in his or her own name or by
11 any other person for his or her use or benefit, by the
12 person filing the statement, and a brief description of
13 the nature of the services for which the income was
14 received. This subdivision does not require a person
15 filing the statement who derives income from a business,
16 profession or occupation to disclose the individual
17 sources and items of income that constitute the gross
18 income of that business, profession or occupation.

19 (4) If the person profited or benefited in the year prior
20 to the date of filing from a contract for the sale of goods
21 or services to a state, county, municipal or other local
22 governmental agency either directly or through a
23 partnership, corporation or association in which such
24 person owned or controlled more than ten percent, the
25 person shall describe the nature of the goods or services
26 and identify the governmental agencies which pur-
27 chased the goods or services.

28 (5) Each interest group or category listed below doing
29 business in this state with which the person filing the
30 statement did business or furnished services and from
31 which the person received more than twenty percent of
32 the person's gross income during the preceding calendar
33 year. The groups or categories are electric utilities, gas

34 utilities, telephone utilities, water utilities, cable
35 television companies, interstate transportation compan-
36 ies, intrastate transportation companies, oil or gas retail
37 companies, banks, savings and loan associations, loan or
38 finance companies, manufacturing companies, surface
39 mining companies, deep mining companies, mining
40 equipment companies, chemical companies, insurance
41 companies, retail companies, beer, wine or liquor
42 companies or distributors, recreation related companies,
43 timbering companies, hospitals or other health care
44 providers, trade associations, professional associations,
45 associations of public employees or public officials,
46 counties, cities or towns, labor organizations, waste
47 disposal companies, wholesale companies, groups or
48 associations seeking to legalize gambling, advertising
49 companies, media companies, race tracks and promo-
50 tional companies.

51 (6) The names of all persons, excluding that person's
52 immediate family, parents, or grandparents residing or
53 transacting business in the state to whom the person
54 filing the statement owes, on the date of execution of this
55 statement in the aggregate in his or her own name or
56 in the name of any other person more than twenty-five
57 thousand dollars: *Provided*, That nothing herein shall
58 require the disclosure of a mortgage on the person's
59 primary and secondary residences or of automobile
60 loans on automobiles maintained for the use of the
61 person's immediate family nor shall this section require
62 the disclosure of debts which result from the ordinary
63 conduct of such person's business, profession, or
64 occupation.

65 (7) The names of all persons except immediate family
66 members, parents and grandparents residing or tran-
67 sacting business in the state (other than a demand or
68 savings account in a bank, savings and loan association,
69 credit union or building and loan association or other
70 similar depository) who owes on the date of execution
71 of this statement, more, in the aggregate, than twenty-
72 five thousand dollars to the person filing the statement,
73 either in his or her own name or to any other person
74 for his or her use or benefit. This subdivision does not

75 require the disclosure of debts owed to the person filing
 76 the statement which debts result from the ordinary
 77 conduct of such person's business, profession or
 78 occupation.

79 (8) The source of each gift having a value of over five
 80 hundred dollars received from a person having an
 81 interest in a governmental activity by the person filing
 82 the statement when such gift is given to the person filing
 83 the statement in his or her name or by any other person
 84 for his or her use or benefit during the preceding
 85 calendar year, except gifts received by will or by virtue
 86 of the laws of descent and distribution, or received from
 87 one's spouse, child, grandchild, parents or grandparents,
 88 or received by way of distribution from an inter vivos
 89 or testamentary trust established by the spouse or child,
 90 grandchild, or by an ancestor of the person filing the
 91 statement. As used in this subdivision any series or
 92 plurality of gifts which exceeds in the aggregate the
 93 sum of five hundred dollars from the same source or
 94 donor, either directly or indirectly, and in the same
 95 calendar year, shall be regarded as a single gift in
 96 excess of that aggregate amount.

**§6B-2-8. Exceptions to financial disclosure requirements
 and conflicts of interest provisions.**

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

4 (1) any qualified blind trust; or

5 (2) a trust—

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

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

11 Failure to report the holdings of or the source of
 12 income of any trust referred to herein in good faith
 13 reliance upon this section shall not constitute a violation
 14 of sections six or seven of this article.

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

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

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

30 (A) is independent of and unassociated with any
31 interested party so that the trustee cannot be controlled
32 or influenced in the administration of the trust by any
33 interested party;

34 (B) is not or has not been an employee of any
35 interested party, or any organization affiliated with any
36 interested party and is not a partner of, or involved in
37 any joint venture or other investment with, any inter-
38 ested party, and

39 (C) is not a relative of any interested party.

40 (2) Any asset transferred to the trust by an interested
41 party is free of any restriction with respect to its
42 transfer or sale unless such restriction is expressly
43 approved by the ethics commission;

44 (3) The trust instrument which establishes the trust
45 provides that—

46 (A) except to the extent provided in paragraph (F) of
47 this subdivision the trustee in the exercise of his
48 authority and discretion to manage and control the
49 assets of the trust shall not consult or notify any
50 interested party;

51 (B) the trust shall not contain any asset the holding
52 of which by an interested party is prohibited by any law

53 or regulation;

54 (C) the trustee shall promptly notify the regulated
55 person and the ethics commission when the holdings of
56 any particular asset transferred to the trust by any
57 interested party are disposed of;

58 (D) the trust tax return shall be prepared by the
59 trustee or his designee, and such return and any
60 information relating thereto (other than the trust
61 income summarized in appropriate categories necessary
62 to complete an interested party's tax return), shall not
63 be disclosed to any interested party;

64 (E) an interested party shall not receive any report on
65 the holdings and sources of income of the trust, except
66 a report at the end of each calendar quarter with respect
67 to the total cash value of the interest of the interested
68 party in the trust or the net income or loss of the trust
69 or any reports necessary to enable the interested party
70 to complete an individual tax return required by law,
71 but such report shall not identify any asset or holding;

72 (F) except for communications which solely consist of
73 requests for distribution of cash or other unspecified
74 assets of the trust, there shall be no direct or indirect
75 communication between the trustee and an interested
76 party with respect to the trust unless such communica-
77 tion is in writing and unless it relates only (i) to the
78 general financial interest and needs of the interested
79 party (including, but not limited to, an interest in
80 maximizing income or long-term capital gain), (ii) to
81 the notification of the trustee of a law or regulation
82 subsequently applicable to the reporting individual
83 which prohibits the interested party from holding an
84 asset, which notification directs that the asset not be
85 held by the trust, or (iii) to directions to the trustee to
86 sell all of an asset initially placed in the trust by an
87 interested party which in the determination of the
88 reporting individual creates a conflict of interest or the
89 appearance thereof due to the subsequent assumption of
90 duties by the reporting individual (but nothing herein
91 shall require any such direction); and

92 (G) The interested parties shall make no effort to

93 obtain information with respect to the holdings of the
94 trust, including obtaining a copy of any trust tax return
95 filed or any information relating thereto except as
96 otherwise provided in this subsection.

97 (4) The proposed trust instrument and the proposed
98 trustee is approved by the ethics commission and
99 approval shall be given if the conditions of this section
100 are met.

§6B-2-9. Special prosecutor authorized.

1 (a) If the ethics commission finds as the result of an
2 investigation of a complaint that a pattern of ethics
3 violations or criminal violations under this chapter or
4 under article five-a, chapter sixty-one of this code, exists
5 in a state, county or covered municipal government,
6 county school board or one of their respective depart-
7 ments, agencies, boards or commissions, and also finds
8 that the prosecuting attorney of the county in which the
9 violation occurred is, for some reason, unable or
10 unwilling to take appropriate action, the chairman of
11 the ethics commission may, upon a two-thirds vote of the
12 members of the ethics commission, petition the approp-
13 riate circuit court for the appointment of a special
14 prosecutor for the purpose of conducting an investiga-
15 tion to determine whether a violation of the criminal law
16 of this state has occurred.

17 (b) A special prosecutor shall have the same authority
18 as a county prosecutor to investigate and prosecute
19 persons subject to this act for criminal violations
20 committed in connection with their public office or
21 employment which constitute felonies.

22 (c) The ethics committee shall be authorized to
23 employ and assign the necessary professional and
24 clerical staff to assist any such special prosecutor in the
25 performance of his or her duties and to pay and to set
26 the compensation to be paid to a special prosecutor in
27 an amount not to exceed seventy-five dollars per hour
28 up to a maximum of fifty thousand dollars per annum.

29 (d) The special prosecutor shall be empowered to
30 make a presentment to any regularly or specially

31 impaneled grand jury in the appointing circuit court.
 32 The special prosecutor shall be empowered to prosecute
 33 any person indicted by such grand jury.

§6B-2-10. Violations and penalties.

1 (a) If any person violates the provisions of subsections
 2 (e), (f), or (g), section five of this article, or violates the
 3 provisions of subdivision (1), subsection (f), section four
 4 of this article, such person, upon conviction thereof, shall
 5 be guilty of a misdemeanor and shall be punished by
 6 confinement in the county jail for a period not to exceed
 7 six months or shall be fined not more than one thousand
 8 dollars, or both such confinement and fine. If any person
 9 violating the provisions of subdivision (1), subsection (f),
 10 section four of this article shall be a member of the
 11 commission or an employee thereof, he or she shall, upon
 12 conviction, be subject to immediate removal or
 13 discharge.

14 (b) If any person violates the provisions of subsection
 15 (f), section six of this article by wilfully and knowingly
 16 filing a false financial statement, such person shall,
 17 upon conviction thereof, be deemed guilty of false
 18 swearing and shall be punished as provided in section
 19 three, article five, chapter sixty-one of this code.

20 (c) If any person knowingly fails or refuses to file a
 21 financial statement required by section six of this
 22 article, such person, upon conviction thereof, shall be
 23 guilty of a misdemeanor and shall be fined not less than
 24 one hundred dollars nor more than one thousand dollars.

25 (d) If any complainant violates the provisions of
 26 subdivision (2), subsection (f), section four, article two
 27 of this chapter by knowingly and willfully disclosing any
 28 information made confidential by an order of the
 29 commission, he or she shall be subject to administrative
 30 sanction by the commission as provided for in subsection
 31 (r), section four of this article.

§6B-2-11. Termination of commission.

1 The West Virginia ethics commission shall be termi-
 2 nated by the provisions of article ten, chapter four of
 3 this code on the first day of July, one thousand nine

4 hundred ninety-two, unless sooner terminated or unless
5 continued or reestablished pursuant to that article.

ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

1 As used in this article, unless the context in which
2 used clearly indicates otherwise:

3 (1) "Compensation" means money or any other thing
4 of value received or to be received by a lobbyist from
5 an employer for services rendered.

6 (2) "Employer" or "lobbyist's employer" means any
7 person who employs or retains a lobbyist.

8 (3) "Expenditure" means payment, distribution, loan,
9 advance deposit, reimbursement, or gift of money, real
10 or personal property or any other thing of value; or a
11 contract, promise, or agreement, whether or not legally
12 enforceable.

13 (4) "Government officer or employee" means a
14 member of the legislature, a legislative employee, the
15 governor and other members of the board of public
16 works, heads of executive departments, and any other
17 public officer or public employee under the legislative
18 or executive branch of state government who is empo-
19 wered or authorized to make policy and perform non-
20 ministerial functions. In the case of elected offices
21 included herein, the term "government officer or
22 employee" shall include candidates who have been
23 elected but who have not yet assumed office.

24 (5) "Legislation" means bills, resolutions, motions,
25 amendments, nominations, and other matters pending
26 or proposed in either house of the Legislature, and
27 includes any other matters that may be the subject of
28 action by either house or any committee of the Legis-
29 lature and all bills or resolutions that, having passed
30 both houses, are pending approval or veto by the
31 governor.

32 (6) "Lobbying" or "lobbying activity" means the act of
33 communicating with a government officer or employee
34 to promote, advocate or oppose or otherwise attempt to

35 influence:

36 (i) The passage or defeat or the executive approval or
37 veto of any legislation which may be considered by the
38 Legislature of this state; or

39 (ii) The adoption or rejection of any rule, regulation,
40 legislative rule, standard, rate, fee, or other delegated
41 legislative or quasi-legislative action to be taken or
42 withheld by any executive department.

43 (7)(A) "Lobbyist" means a person who, through
44 communication with a government officer or employee,
45 promotes, advocates or opposes or otherwise attempts to
46 influence:

47 (i) The passage or defeat or the executive approval or
48 veto of any legislation which may be considered by the
49 Legislature of this state; or

50 (ii) The adoption or rejection of any rule, regulation,
51 legislative rule, standard, rate, fee, or other delegated
52 legislative or quasi-legislative action to be taken or
53 withheld by any executive department.

54 (B) The term "lobbyist" shall not include the following
55 persons, who shall be exempt from the registration and
56 reporting requirements set forth in this article, unless
57 such persons engage in activities which would otherwise
58 subject them to the registration and reporting
59 requirements:

60 (i) Persons who limit their lobbying activities to
61 appearing before public sessions of committees of the
62 Legislature, or public hearings of state agencies, are
63 exempt.

64 (ii) Persons who engage in news or feature reporting
65 activities and editorial comment as working members of
66 the press, radio, or television, and persons who publish
67 or disseminate such news, features or editorial comment
68 through a newspaper, book, regularly published period-
69 ical, radio station, or television station, are exempt.

70 (iii) Persons who lobby without compensation or other
71 consideration for acting as lobbyists, when such persons
72 make no expenditure for or on behalf of any government

73 officer or employee in connection with such lobbying,
74 are exempt. The exemption contained in this subpara-
75 graph (iii) is intended to permit and encourage citizens
76 of this state to exercise their constitutional rights to
77 assemble in a peaceable manner, consult for the common
78 good, instruct their representatives, and apply for a
79 redress of grievances. Accordingly, such persons may
80 lobby without incurring any registration or reporting
81 obligation under this article. Any person exempt under
82 this subparagraph (iii) may at his or her option register
83 and report under this article.

84 (iv) Persons who lobby on behalf of a non-profit
85 organization with regard to legislation, without compen-
86 sation, and who restrict their lobbying activities to no
87 more than twenty days or parts thereof during any
88 regular session of the Legislature, are exempt. The
89 commission may promulgate a legislative rule to require
90 registration and reporting by persons who would
91 otherwise be exempt under this subparagraph, if it
92 determines that such rule is necessary to prevent
93 frustration of the purposes of this article. Any person
94 exempt under this subparagraph may at his or her
95 option register and report under this article.

96 (v) The governor, members of the governor's staff,
97 members of the board of public works, officers and
98 employees of the executive branch who communicate
99 with a member of the Legislature on the request of that
100 member, or who communicate with the Legislature,
101 through the proper official channels, requests for
102 legislative action or appropriations which are deemed
103 necessary for the efficient conduct of the public business
104 or which are made in the proper performance of their
105 official duties, are exempt.

106 (vi) Members of the Legislature are exempt.

107 (vii) Persons employed by the Legislature for the
108 purpose of aiding in the preparation or enactment of
109 legislation or the performance of legislative duties are
110 exempt.

111 (viii) Persons rendering professional services in
112 drafting proposed legislation or in advising or rendering

113 opinions to clients as to the construction and effect of
114 proposed or pending legislation, are exempt.

115 (8) "Person" means any individual, partnership, trust,
116 estate, business trust, association, or corporation; any
117 department, commission, board, publicly supported
118 college or university, division, institution, bureau, or any
119 other instrumentality of the state; or any county,
120 municipal corporation, school district, or any other
121 political subdivision of the state.

§6B-3-2. Registration of lobbyists.

1 (a) Before engaging in any lobbying activity, or
2 within thirty days after being employed as a lobbyist,
3 whichever occurs first, a lobbyist shall register with the
4 ethics commission by filing a lobbyist registration
5 statement, signed under oath or affirmation. The
6 registration statement shall contain such information
7 and be in such form as the ethics commission may
8 prescribe by legislative rule, including, but not limited
9 to, the following information:

10 (1) The registrant's name, business address, telephone
11 numbers and any temporary residential and business
12 addresses and telephone numbers used or to be used by
13 the registrant while lobbying during a legislative
14 session;

15 (2) The name, address and occupation or business of
16 the registrant's employer;

17 (3) A statement as to whether the registrant is
18 employed or retained by his or her employer solely as
19 a lobbyist or is a regular employee performing services
20 for the employer which include but are not limited to
21 lobbying;

22 (4) A statement as to whether the registrant is
23 employed or retained by his or her employer under any
24 agreement, arrangement or understanding according to
25 which the registrant's compensation, or any portion
26 thereof, is or will be contingent upon the success of his
27 or her lobbying activity;

28 (5) The general subject or subjects, if known, on

29 which the registrant will lobby or employ some other
30 person to lobby in a manner which requires registration
31 under this article;

32 (6) An appended written authorization from each of
33 the lobbyists's employers confirming the lobbyist's
34 employment and the subjects on which the employer is
35 to be represented.

36 (b) A registrant who lobbys with regard to matters
37 before the Legislature must file duplicate copies of the
38 lobbyist's registration statement required by subsections
39 (a) or (d) of this section with the Clerk of the Senate and
40 the Clerk of the House of Delegates contemporaneously
41 with the filing with the ethics commission before
42 engaging in any lobbying activity.

43 (c) Any lobbyist who receives or is to receive compen-
44 sation from more than one person for services as a
45 lobbyist shall file a separate notice of representation
46 with respect to each person compensating him or her for
47 services performed as a lobbyist. When a lobbyist whose
48 fee for lobbying with respect to the same subject is to
49 be paid or contributed by more than one person, then
50 such lobbyist may file a single statement, in which he
51 shall detail the name, business address and occupation
52 of each person so paying or contributing.

53 (d) Whenever a change, modification, or termination
54 of the lobbyist's employment occurs, the lobbyist shall,
55 within one week of such change, modification or
56 termination, furnish full information regarding the
57 same by filing with the commission an amended
58 registration statement.

59 (e) Each lobbyist who has registered shall file a new
60 registration statement, revised as appropriate, on the
61 second Monday in January of each odd-numbered year,
62 and failure to do so shall terminate his registration.
63 Until such registration is renewed, the person may not
64 engage in lobbying activities unless he or she is
65 otherwise exempt under paragraph (B), subdivision (7),
66 section one of this article.

§6B-3-3. Photograph and information-booklet-publication.

1 Each lobbyist shall, at the time he or she registers,
2 submit to the commission a recent photograph of the
3 lobbyist of a size and format as determined by rule of
4 the commission, together with the name of the lobbyist's
5 employer, a brief biographical description, and any
6 other information the lobbyist may wish to submit, not
7 to exceed fifty words in length. Such photograph and
8 information shall be published at least annually in a
9 booklet form by the commission for distribution to
10 government officers or employees, lobbyists, and to the
11 public. The method of distribution shall be in the
12 discretion of the commission, which shall not be
13 required to compile and maintain a distribution list of
14 all persons who may be entitled to receive such booklet.
15 Each lobbyist, upon registering, shall pay a fee of
16 twenty dollars to the commission to help defray the costs
17 of preparing such booklet.

§6B-3-4. Reporting by lobbyists.

1 (a) A lobbyist shall file with the commission reports
2 of his lobbying activities, signed under oath or affirma-
3 tion by the lobbyist. Lobbyists who are required under
4 this article to file copies of their registration statements
5 with the clerks of the respective houses of the Legisla-
6 ture shall also contemporaneously file copies of all
7 reports required under this section with the clerks. The
8 reports shall be made in the form and manner pres-
9 cribed by legislative rule of the commission. Such
10 reports shall be filed as follows:

11 (1) On or before the second monday in January of each
12 year, a lobbyist shall file an annual report of all
13 lobbying activities which he or she engaged in during
14 the preceding calendar year; and

15 (2) If a lobbyist engages in lobbying with respect to
16 legislation, then:

17 (A) Between the fortieth and forty-fifth days of any
18 regular session of the legislature in which any such
19 lobbying occurred, the lobbyist shall file a report
20 describing all of his or her lobbying activities which
21 occurred since the beginning of the calendar year; and

22 (B) Within twenty-one days after the adjournment
23 sine die of any regular or extraordinary session of the
24 Legislature in which any such lobbying occurred, the
25 lobbyist shall file a report describing all of his or her
26 lobbying activities which occurred since the beginning
27 of the calendar year or since the filing of the last report
28 required by this section, whichever is later.

29 (b) (1) Except as otherwise provided in this section,
30 each report filed by a lobbyist shall show the total
31 amount of all expenditures for lobbying made or
32 incurred by such lobbyist, or on behalf of such lobbyist
33 by the lobbyist's employer, during the period covered by
34 the report. The report shall also show subtotals segre-
35 gated according to financial category, including meals
36 and beverages; living accommodations; advertising;
37 travel; contributions; gifts to government officers or
38 employees or to members of the immediate family of
39 such persons; and other expenses or services.

40 (2) Lobbyists are not required to report the following:

41 (A) Unreimbursed personal living and travel ex-
42 penses not incurred directly for lobbying;

43 (B) Any expenses incurred for his or her own living
44 accommodations;

45 (C) Any expenses incurred for his or her own travel
46 to and from public meetings or hearings of the legisla-
47 tive and executive branches;

48 (D) Any expenses incurred for telephone, and any
49 office expenses, including rent and salaries and wages
50 paid for staff and secretarial assistance; and

51 (E) Separate expenditures to or on behalf of a
52 government officer or employee in an amount of less
53 than five dollars.

54 (c) If a lobbyist is employed by more than one
55 employer, the report shall show the proportionate
56 amount of such expenditures in each category incurred
57 on behalf of each of his employers.

58 (d) The report shall describe the subject matter of the
59 lobbying activities in which the lobbyist has been

60 engaged during the reporting period.

61 (e) If, during the period covered by the report, the
62 lobbyist made expenditures, other than for travel, food,
63 lodging and entertainment governed by subsection (f) of
64 this section, which expenditures total more than five
65 hundred dollars to or on behalf of any particular
66 government officer or employee, the lobbyist shall
67 report the name of the government officer or employee
68 to whom or on whose behalf the expenditures were
69 made, the total amount of the expenditures, and the
70 subject matter of the lobbying activity, if any. Under
71 this subsection (e), no portion of the amount of an
72 expenditure for a dinner, party, or other function
73 sponsored by a lobbyist or a lobbyist's employer need be
74 attributed to or counted toward the reporting amount
75 of five hundred dollars for a particular government
76 officer or employee who attends such function if the
77 sponsor has invited to the function all the members of
78 (1) the Legislature, (2) either house of the Legislature,
79 (3) a standing or select committee of either house, or
80 (4) a joint committee of the two houses of the Legisla-
81 ture. However, the amount spent for such function shall
82 be added to other expenditures for the purpose of
83 determining the total amount of expenditures reported
84 under subsection (b) of this section.

85 (f) If, during the period covered by the report, the
86 lobbyist made expenditures for travel, food, lodging, and
87 scheduled entertainment totaling more than five
88 hundred dollars for or on behalf of a particular
89 government officer or employee in return for the
90 participation of the government officer or employee in
91 a panel or speaking engagement at the meeting, the
92 lobbyist shall report the name of the government officer
93 or employee to whom or on whose behalf the expendi-
94 tures were made and the total amount of the
95 expenditures.

96 (g) Such other information relevant to lobbying
97 activities as the commission shall by legislative rule
98 prescribe. Information supporting such activities as are
99 required to be reported is subject to audit by the
commission.

§6B-3-5. Grass roots lobbying campaigns.

1 (1) Any person who has made expenditures, not
2 required to be reported under other sections of this
3 chapter, exceeding five hundred dollars in the aggregate within any three-month period or exceeding two
4 hundred dollars in the aggregate within any one-month
5 period in presenting a program addressed to the public,
6 a substantial portion of which is intended, designed or
7 calculated primarily to influence legislation, shall be
8 required to register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots
9 lobbying campaign.
10
11

12 (2) Within thirty days after becoming a sponsor of a
13 grass roots lobbying campaign, the sponsor shall
14 register by filing with the ethics commission a registration statement, in such detail as the commission shall
15 prescribe, showing:
16

17 (a) The sponsor's name, address and business or
18 occupation, and, if the sponsor is not an individual, the
19 names, addresses, and titles of the controlling persons
20 responsible for managing the sponsor's affairs;

21 (b) The names, addresses and business or occupation
22 of all persons organizing and managing the campaign,
23 or hired to assist the campaign, including any public
24 relations or advertising firms participating in the
25 campaign, and the terms of compensation for all such
26 persons;

27 (c) The names and addresses of each person contributing twenty-five dollars or more to the campaign and the
28 aggregate amount contributed;
29

30 (d) The purpose of the campaign, including the
31 specific legislation, rules, rates, standards or proposals
32 that are the subject matter of the campaign;

33 (e) The totals of all expenditures made or incurred to
34 date on behalf of the campaign, which totals shall be
35 segregated according to financial category, including,
36 but not limited to, the following: Advertising, segregated by media, and, in the case of large expenditures
37 (as provided by legislative rule of the commission), by
38

39 outlet; contributions; entertainment, including meals
40 and beverages; office expenses, including rent and the
41 salaries and wages paid for staff and secretarial
42 assistance, or the proportionate amount thereof paid or
43 incurred for lobbying campaign activities; consultants;
44 and printing and mailing expenses.

45 (3) Every sponsor who has registered under this
46 section shall file reports with the commission, which
47 reports shall be filed for the same time periods required
48 for the filing of lobbyists' reports under the provisions
49 of section four of this article.

50 (4) When the campaign has been terminated, the
51 sponsor shall file a notice of termination with the final
52 monthly report, which notice shall state the totals of all
53 contributions and expenditures made on behalf of the
54 campaign, in the same manner as provided for in the
55 registration statement.

§6B-3-6. Employment of unregistered persons.

1 It shall be a violation of this chapter for any person
2 to employ for pay or any consideration, or pay or agree
3 to pay any consideration to, a person to lobby who is not
4 registered under this chapter except upon condition that
5 such person register as a lobbyist as provided by this
6 chapter, and such person does in fact so register as soon
7 as practicable.

§6B-3-7. Duties of lobbyists.

1 A person required to register as a lobbyist under this
2 chapter shall also have the following obligations, the
3 violation of which shall constitute cause for revocation
4 of his registration, and may subject such person, and
5 such person's employer, if such employer aids, abets,
6 ratifies, or confirms any such act, to other civil
7 liabilities, as provided by this chapter.

8 (1) Such persons shall obtain and preserve all ac-
9 counts, bills, receipts, books, papers and documents
10 necessary to substantiate the financial reports required
11 to be made under this article for a period of at least five
12 years from the date of the filing of the statement
13 containing such items, which accounts, bills, receipts,

14 books, papers, and documents shall be made available
15 for inspection by the commission at any time: *Provided*,
16 That if a lobbyist is required under the terms of his
17 employment contract to turn any records over to his
18 employer, responsibility for the preservation of such
19 records under this subsection shall rest with such
20 employer.

21 (2) In addition, a person required to register as a
22 lobbyist shall not:

23 (A) Engage in any activity as a lobbyist before
24 registering as such;

25 (B) Knowingly deceive or attempt to deceive any
26 government officer or employee as to any fact pertaining
27 to a matter which is the subject of lobbying activity;

28 (C) Cause or influence the introduction of any legis-
29 lation for the purpose of thereafter being employed to
30 secure its defeat;

31 (D) Exercise any undue influence, extortion, or
32 unlawful retaliation upon any government officer or
33 employee by reason of such government officer or
34 employee's position with respect to, or his vote upon, any
35 matter which is the subject of lobbying activity;

36 (E) Exercise undue influence upon any legislator or
37 other privately employed government officer or em-
38 ployee through communications with such person's
39 employer;

40 (F) Give a gift to any government officer or employee
41 in excess of or in violation of any limitations on gifts set
42 forth in subsection (c), section four, article two of this
43 chapter, or give any gift, whether lawful or unlawful,
44 to a government officer or employee without such
45 government officer or employee's knowledge and
consent.

§6B-3-8. Limitation on persons lobbying in legislative chambers.

1 Former legislators and other persons having the
2 privilege of the floor are prohibited from lobbying upon
3 the floor of either house of the Legislature or the foyer

4 thereof while such house is in session.

§6B-3-9. Penalties.

1 (a) A person who is required under the provisions of
 2 this article to file a statement or report is guilty of false
 3 swearing when such person wilfully and knowingly,
 4 under oath or affirmation, files a false statement or
 5 report concerning a matter or thing material. Any
 6 person who violates the provisions of this subsection
 7 (a) shall be guilty of a misdemeanor, and upon convic-
 8 tion thereof shall be fined or fined and confined in
 9 accordance with the provisions of section three, article
 10 five, chapter sixty-one of this code.

11 (b) A person who is subject to the registration and
 12 reporting requirements of this article and who fails or
 13 refuses to register or who fails or refuses to file a
 14 required statement or report or who otherwise violates
 15 the provisions of this article may be the subject of a
 16 complaint filed with the ethics commission and may be
 17 proceeded against in the same manner and to the same
 18 ends as a public officer or public employee under the
 19 provisions of this chapter.

20 (c) A person who wilfully and knowingly files a false
 21 report under the provisions of this article is liable in a
 22 civil action to any government officer or employee who
 23 sustains damage as a result of the filing or publication
 24 of the report.

§6B-3-10. Provisions may be adopted by local governments.

1 An incorporated municipality may enact lobbyist
 2 regulation provisions substantially similar to the
 3 provisions of this article which may be modified to the
 4 extent necessary to make the provisions relevant to that
 5 jurisdiction and which may be further modified to the
 6 extent deemed necessary and appropriate by and for
 7 that jurisdiction.

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

Frederick L. Parker
Chairman Senate Committee

F. Lyh Bates
~~Chairman~~ House Committee
~~member~~

Originating in the House.

Takes effect July 1, 1989.

Todd C. Willis
Clerk of the Senate

Donald E. Kopp
Clerk of the House of Delegates

Don Stinson
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *9th*
day of *February*, 1989.

Vernon Cape
Governor

PRESENTED TO THE

GOVERNOR

Date 2/9/89

Time 9:03

RECEIVED

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OFFICE OF THE ATTORNEY
GENERAL
STATE OF ALABAMA