WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1989

ENROLLED

COM. SUB. FOR

HOUSE BILL No. 104

(By Mr. Speaker, Mr. Chambers, and Mr. Bunk)

[By request of the Executive]

Passed .................................. Feb. 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; exemp-
tions; 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 regis-
tered lobbyists; establishing reporting requirements for
lobbyists; providing for registration and reporting by
glass 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
consultation with the state election commission, of which he is a member, to make, amend and rescind such rules, regulations and orders as may be necessary to carry out the policy of the Legislature, as contained in this chapter. In order to avoid conflicting provisions between regulations promulgated by the secretary of state and the state commission on ethics the rules and regulations promulgated under this section shall be legislative rules and shall be promulgated pursuant to the provisions of chapter twenty-nine-a of the code of West Virginia. All regulations adopted prior to the first day of January, one thousand nine hundred eighty-nine shall be submitted on or before the first day of August, one thousand nine hundred eighty-nine to the Legislature for review by the legislative rule-making review committee and approval by the Legislature.

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

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

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

(c) Uniform rules for challenging registrants; and

(d) Any other rules, regulations or directions necessary to standardize and make effective the administration of the provisions of this chapter.

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

It shall be his further duty to advise with election officials; to furnish to the election officials a sufficient number of indexed copies of the current election laws of West Virginia and the administrative orders and...
rules and regulations issued or promulgated thereunder;

to investigate the administration of election laws, frauds
and irregularities in any registration or election; to
report violations of election laws to the appropriate
prosecuting officials; and to prepare an annual report.

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

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

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

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

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

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-1. Short title.

This chapter shall be known as the “West Virginia
§6B-1-2. Legislative findings, purpose, declaration and intent.

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

(b) It is the purpose of this chapter to maintain confidence in the integrity and impartiality of the governmental process in the state of West Virginia and its political subdivisions and to aid public officials and public employees in the exercise of their official duties and employment; to define and establish minimum ethical standards for elected and appointed public officials and public employees; to eliminate actual conflicts of interest; to provide a means to define ethical standards; to provide a means of investigating and resolving ethical violations; and to provide administrative and criminal penalties for specific ethical violations herein found to be unlawful.

(c) The Legislature finds that the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public
employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

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

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

§6B-1-3. Definitions.

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

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

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

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

(d) "Immediate family", with respect to an individual,
means a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

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

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

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

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

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

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

(k) "Thing of value", "other thing of value", or "anything of value" means and includes (i) money, bank bills or notes, United States treasury notes, and other bills, bonds or notes issued by lawful authority and intended to pass and circulate as money; (ii) goods and
9  [Enr. Com. Sub. for H. B. 104

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
provisions of this chapter to the same extent as if the
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.

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

(b) At least two members of the commission shall
have served as a member of the West Virginia Legis-
lature; at least two members of the commission shall
have been employed in a full-time elected or appointed
office in state government; at least one member shall
have served as an elected official in a county or
municipal government or on a county school board; at
least one member shall have been employed full time as
a county or municipal officer or employee; and at least
two members shall have served part time as a member
or director of a state, county or municipal board,
commission or public service district and at least four members shall be selected from the public at large. No more than four members of the commission shall reside in the same congressional district.

(c) Of the initial appointments made to the commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section, three for a term ending four years after the effective date of this section, and three shall be for terms ending five years after the effective date of this section. Thereafter, terms of office shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation, or removal in the membership of this commission, it shall be filled by appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments. No member shall serve more than two consecutive full or partial terms, and no person may be reappointed to the commission until at least two years have elapsed after the completion of a second successive term.

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

(e) The commission shall meet within thirty days of the initial appointments to the commission at a time and place to be determined by the governor, who shall designate a member to preside at that meeting until a chairman is elected. At its first meeting, the commission shall elect a chairman and such other officers as are necessary. The commission shall within ninety days
after its first meeting adopt rules for its procedures.

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

(g) Members of the commission shall receive one hundred dollars for each day actually devoted to the business of the commission and, in addition thereto, shall be reimbursed for expenses actually and necessarily incurred in the performance of their official duties as such members.

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

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

(j) The chairman shall have the authority to designate subcommittees of three persons, no more than two of whom may be members of the same political party. Said subcommittees shall be investigative panels which shall have the powers and duties set forth hereinafter in this article.
(k) The principal office of the commission shall be in the seat of government but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be public unless such meetings or hearings are required to be private in conformity with the provisions of this chapter relating to confidentiality, except that the commission shall exclude the public from attendance at discussions of commission personnel, planned or ongoing litigation and planned or ongoing investigations.

(l) Meetings of the commission shall be upon the call of the chairman and shall be conducted by the personal attendance of the commission members and no meeting shall be conducted by telephonic or other electronic conferencing, nor shall any member be allowed to vote by proxy: Provided, That telephone conferencing and voting may be held for the purpose of approving or rejecting any proposed advisory opinions prepared by the commission, or for voting on issues involving the administrative functions of the commission. Meetings held by telephone conferencing shall require notice to members in the same manner as meetings to be personally attended, shall be electronically recorded, and the recordings shall be made a permanent part of the commission records. Members shall not be compensated for meetings other than those personally attended.

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

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

(b) The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the commission's duties or exercise of its powers, including its duties and powers of investigation.
(c) The commission shall, in addition to its other duties:

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

(2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and

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

(d) The commission may:

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

(2) Contract for any services which cannot satisfactorily be performed by its employees;

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

(4) Employ additional legal counsel; and

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

§6B-2-3. Advisory opinions.

A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter, and would thereby expose the person to sanctions by the commission or criminal prosecution. The commission shall respond within thirty days from the receipt of the request by issuing an advisory opinion on the matter raised in the request. All advisory opinions shall be published and indexed in the code of state rules by the
secretary of state: Provided, That before an advisory opinion is made public, any material which may identify the person who is the subject of the opinion, shall to the fullest extent possible, be deleted and the identity of the person shall not be revealed. A person subject to the provisions of this chapter may rely upon the published guidelines or an advisory opinion of the commission, and any person acting in good faith reliance on any such guideline or opinion shall be immune from the sanctions of this chapter, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion or guideline.

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

(a) Upon the filing by any person with the commission of a complaint which is duly verified by oath or affirmation, the executive director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first class mail, unless the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgement evidencing the filing. Within fourteen days after the receipt of a complaint, an investigative panel shall be appointed to investigate the substance of the allegations in the complaint and to determine whether there is probable cause to believe that a violation of this chapter has occurred. The method of selecting and rotating appointments of members to investigative panels shall be established by legislative rule of the commission.

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

(c) In the case of a filed complaint, the first inquiry
of the investigative panel shall be a question as to whether or not the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the investigative panel to be insufficient in this regard, the investigative panel shall dismiss the complaint. A dismissal under this subsection shall not preclude the commission from initiating an investigation on its own initiative under the provisions of subsection (b) of this section.

(d) After the commission receives a complaint found by the investigative panel to be sufficient, or makes a decision to investigate possible violations on its own initiative, the executive director shall give notice of a pending investigation by the investigative panel to the complainant and respondent. The notice of investigation shall be mailed to the parties, and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked “Addressee only, personal and confidential”. The notice shall describe the conduct of the respondent which is the basis for an alleged violation of law, and if a complaint has been filed, a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the investigative panel, and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(e) Within the forty-five day period following the mailing of a notice of investigation, the investigative panel shall proceed to consider (1) the allegations raised in the complaint or by the commission’s inquiry, (2) any
timely received written response of the respondent, and
(3) any other competent evidence gathered by or
submitted to the commission which has a proper bearing
on the issue of probable cause. A respondent shall be
afforded the opportunity to appear before the investig-
ative panel and make an oral response to the complaint.
The commission shall, in promulgating legislative rules
pursuant to the provisions of subsection (a), section two
of this article, prescribe the manner in which a
respondent may present his oral response to the
investigatory panel. The commission may request a
respondent to disclose specific amounts received from a
source, and other detailed information not otherwise
required to be set forth in a statement or report filed
under the provisions of this chapter, if the information
sought is deemed to be probative as to the issues raised
by a complaint or an investigation initiated by the
commission. Any information thus received shall be
confidential. If the person so requested fails or refuses
to furnish the information to the commission, the
commission may exercise its subpoena power as pro-
vided for elsewhere in this chapter, and any subpoena
issued thereunder shall have the same force and effect
as a subpoena issued by a circuit court of this state, and
enforcement of any such subpoena may be had upon
application to a circuit court of the county in which the
investigatory panel is conducting an investigation,
through the issuance of a rule or an attachment against
the respondent as in cases of contempt.

(f) (1) Members of the commission and its staff shall
not disclose any information relating to a complaint,
including the identity of the complainant or respondent,
except that the commission may release any information
at any time if the release has been agreed to in writing
by the respondent, and the identity of the complainant
shall be released to the respondent immediately upon
request. No present or former member of the commis-
sion or present or former employee of the commission
may knowingly and improperly disclose any confidential
information acquired by him or her in the course of his
or her official duties.
If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission may order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential, and the person providing such information or filing a complaint shall be bound to confidentiality until further order of the commission.

If a majority of the members of the investigative panel fails to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the majority members of the panel, and copies of the order of dismissal shall be sent to the complainant and the respondent forthwith. If the investigative panel decides by a majority vote that there is probable cause to believe that a violation under this chapter has occurred, the majority members of the investigatory panel shall sign an order directing the commission staff to prepare a statement of charges, to assign the matter for hearing to the commission or a hearing examiner as the commission may subsequently direct, and to schedule a hearing to determine the truth or falsity of the charges, such hearing to be held within ninety days after the date of the order.

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

The commission members who have not served as members of an investigatory panel in a particular case may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The
commission shall, by legislative rule, establish the
general qualifications for hearing examiners. Such
legislative rule shall also contain provisions which seek
to insure that the functions of a hearing examiner will
be conducted in an impartial manner, and shall describe
the circumstances and procedures for disqualification of
hearing examiners.

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

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

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

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

(4) Regulate the course of the hearing;

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

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

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

(k) With respect to allegations of a violation under
this chapter, the complainant has the burden of proof.
The West Virginia rules of evidence as used to govern
proceedings in the courts of this state, shall be given like
effect in hearings held before the commission or a
hearing examiner. The commission shall, by legislative
rule, regulate the conduct of hearings so as to provide
full procedural due process to a respondent. Hearings
before a hearing examiner shall be recorded electron-
ically. When requested by either of the parties, the
presiding officer shall make a transcript, verified by
oath or affirmation, of each hearing held and so
recorded. In the discretion of the commission, a record
of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency, the commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party's proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact, and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the commission for final decision.

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

(m) The commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof, and briefs may be filed by the parties in accordance with procedural rules promulgated by the commission. The final decision of the commission shall be made in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

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

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

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

(q) No member of the commission staff may participate in the commission deliberations or communicate with commission members concerning the merits of a complaint after being assigned to prosecute a complaint.

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

(1) Public reprimand;

(2) Cease and desist orders;

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

or

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

In addition to imposing such sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

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

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

(t) Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, West Virginia, or to the circuit court
of the county where the violation is alleged to have occurred, only by the respondent, and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.

(u) In the event the commission finds in favor of the person complained against, the commission shall order reimbursement of all actual costs incurred, including, but not limited to, attorney fees to be paid to the person complained against by the complainant, if the commission finds that the complaint was brought or made in bad faith. In addition, the aggrieved party shall have a cause of action and be entitled to compensatory damages, punitive damages, costs and attorney fees for a complaint made or brought in bad faith.

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

(w) The provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine and within one year before the filing of a complaint
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section—The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain—(1) A public official or public employee may not intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection (b), relating to the use of public office or public employment for private gain, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employ-
ment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Such exemptions may be granted by the commission, on a case by case basis, when it is shown that: (1) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (2) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (3) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

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

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

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

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

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

(A) Meals and beverages;
(B) Ceremonial gifts or awards which have insignificant monetary value;
(C) Unsolicited gifts of nominal value or trivial items of informational value;
(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;
(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;
(F) gifts that are purely private and personal in nature; or
(G) Gifts from relatives by blood or marriage, or a member of the same household.

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

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

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

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

(d) Interests in public contracts—(1) In addition to the
provisions of section fifteen, article ten, chapter sixty-
one of this code, no elected or appointed public official
or public employee or member of his or her immediate
family or business with which he or she is associated
may be a party to or have an interest in the profits or
benefits of a contract with the governmental body over
which he or she has direct authority or with which he
or she is employed: Provided, That nothing herein shall
be construed to prevent or make unlawful the employ-
ment of any person with any governmental body:

Provided, however, That nothing herein shall be
construed to prohibit a member of the Legislature from
entering into a contract with any governmental body.

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

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

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

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

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

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

(B) To support or oppose a proposed regulation;

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

(D) A rate-making proceeding; and

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

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

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

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection (g) may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but
shall decide each application on a case-by-case basis.

(h) Seeking employment with regulated person prohibited—(1) No full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or allow himself or herself to be employed by, any person who is or may be regulated by the governmental body which he or she serves while he or she is employed or serves in the governmental agency. The term “employment” within the meaning of this section includes professional services and other services rendered by the public official or public employee whether rendered as an employee or as an independent contractor.

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

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

(i) Members of the Legislature required to vote—Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.
(j) Limitations on participation in licensing and rate-making proceedings—No public official or employee may participate within the scope of his duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or his immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his immediate family, or a partnership, trust, business trust, corporation, or association of which he or his immediate family owns or controls more than ten percent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to articles three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

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

(a) The requirements for filing a financial disclosure statement shall become initially effective on the first day of February, one thousand nine hundred ninety, for all persons holding public office or employment on that date and who are otherwise required to file such statement under the provisions of this section. The initial financial disclosure statement shall cover the period from the first day of July, one thousand nine
hundred eighty-nine, for the period ending the thirty-
first day of January, one thousand nine hundred ninety.
Thereafter, the financial disclosure statement shall be
filed on the first day of February of each calendar year
to cover the period of the preceding calendar year,
except insofar as may be otherwise provided herein. The
following persons must file the financial disclosure
statement required by this section with the ethics
commission:
(1) All elected officials in this state, including, but not
limited to, all persons elected state-wide, all county
elected officials, municipal elected officials in municipi-

ties which have, by ordinance, opted to be covered
by the disclosure provisions of this section, all members
of the several county or district boards of education and
all county or district school board superintendents;
(2) All members of state boards, commissions and
agencies appointed by the governor; and
(3) Secretaries of departments, commissioners, deputy
commissioners, assistant commissioners, directors,
deputy directors, assistant directors, department heads,
department heads and assistant department
heads.
A person who is required to file a financial disclosure
statement under this section by virtue of becoming an
elected or appointed public official whose office is
described in subdivisions (1), (2) or (3) of this subsec-
tion, and who assumes the office less than ten days
before a filing date established herein or who assumes
the office after the filing date, shall file a financial
disclosure statement for the previous twelve months no
later than thirty days after the date on which the person
assumes the duties of the office, unless the person has
filed a financial disclosure statement with the commis-
sion during the twelve month period before he or she
assumed office.
(b) A candidate for public office shall file a financial
disclosure statement for the previous twelve months
with the state ethics commission no later than ten days
after he or she files a certificate of candidacy, but in all
circumstances, not later than ten days prior to the election, unless he or she has filed a financial disclosure statement with the state ethics commission during the previous twelve months.

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

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

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

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

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

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

(d) The state ethics commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for a reasonable period of time: Provided, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.
(e) No person shall fail to file a statement required by this section.

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

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

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

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

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

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

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

(5) Each interest group or category listed below doing business in this state with which the person filing the statement did business or furnished services and from which the person received more than twenty percent of the person’s gross income during the preceding calendar year. The groups or categories are electric utilities, gas
utilities, telephone utilities, water utilities, cable television companies, interstate transportation companies, intrastate transportation companies, oil or gas retail companies, banks, savings and loan associations, loan or finance companies, manufacturing companies, surface mining companies, deep mining companies, mining equipment companies, chemical companies, insurance companies, retail companies, beer, wine or liquor companies or distributors, recreation related companies, timbering companies, hospitals or other health care providers, trade associations, professional associations, associations of public employees or public officials, counties, cities or towns, labor organizations, waste disposal companies, wholesale companies, groups or associations seeking to legalize gambling, advertising companies, media companies, race tracks and promotional companies.

(6) The names of all persons, excluding that person's immediate family, parents, or grandparents residing or transacting business in the state to whom the person filing the statement owes, on the date of execution of this statement in the aggregate in his or her own name or in the name of any other person more than twenty-five thousand dollars: 

Provided, That nothing herein shall require the disclosure of a mortgage on the person's primary and secondary residences or of automobile loans on automobiles maintained for the use of the person's immediate family nor shall this section require the disclosure of debts which result from the ordinary conduct of such person's business, profession, or occupation.

(7) The names of all persons except immediate family members, parents and grandparents residing or transacting business in the state (other than a demand or savings account in a bank, savings and loan association, credit union or building and loan association or other similar depository) who owes on the date of execution of this statement, more, in the aggregate, than twenty-five thousand dollars to the person filing the statement, either in his or her own name or to any other person for his or her use or benefit. This subdivision does not
require the disclosure of debts owed to the person filing
the statement which debts result from the ordinary
conduct of such person's business, profession or
occupation.

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

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

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

(1) any qualified blind trust; or

(2) a trust—

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

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

Failure to report the holdings of or the source of
income of any trust referred to herein in good faith
reliance upon this section shall not constitute a violation
of sections six or seven of this article.
(b) The provisions of subsection (d), section five of this article shall not apply to holdings which are assets within the trusts referred to in subsection (a) of this section.

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

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

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

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

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

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

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

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

(B) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law
37  [Enr. Com. Sub. for H. B. 104]

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

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


(a) If the ethics commission finds as the result of an investigation of a complaint that a pattern of ethics violations or criminal violations under this chapter or under article five-a, chapter sixty-one of this code, exists in a state, county or covered municipal government, county school board or one of their respective departments, agencies, boards or commissions, and also finds that the prosecuting attorney of the county in which the violation occurred is, for some reason, unable or unwilling to take appropriate action, the chairman of the ethics commission may, upon a two-thirds vote of the members of the ethics commission, petition the appropriate circuit court for the appointment of a special prosecutor for the purpose of conducting an investigation to determine whether a violation of the criminal law of this state has occurred.

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

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

(d) The special prosecutor shall be empowered to make a presentment to any regularly or specially
impaneled grand jury in the appointing circuit court. The special prosecutor shall be empowered to prosecute any person indicted by such grand jury.

§6B-2-10. Violations and penalties.

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

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

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

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

§6B-2-11. Termination of commission.

The West Virginia ethics commission shall be terminated by the provisions of article ten, chapter four of this code on the first day of July, one thousand nine
ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

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

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

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

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

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

(5) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the Legislature, and includes any other matters that may be the subject of action by either house or any committee of the Legislature and all bills or resolutions that, having passed both houses, are pending approval or veto by the governor.

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

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

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

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

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

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

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

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

(ii) Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio, or television, and persons who publish or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station, or television station, are exempt.

(iii) Persons who lobby without compensation or other consideration for acting as lobbyists, when such persons make no expenditure for or on behalf of any government
officer or employee in connection with such lobbying, are exempt. The exemption contained in this subpara-
graph (iii) is intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this article. Any person exempt under this subparagraph (iii) may at his or her option register and report under this article.

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

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

(vi) Members of the Legislature are exempt.

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

(viii) Persons rendering professional services in drafting proposed legislation or in advising or rendering
opinions to clients as to the construction and effect of proposed or pending legislation, are exempt.

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

§6B-3-2. Registration of lobbyists.

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

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

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

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

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

(5) The general subject or subjects, if known, on
which the registrant will lobby or employ some other
person to lobby in a manner which requires registration
under this article;

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

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

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

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

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

§6B-3-3. Photograph and information-booklet-publication.
Each lobbyist shall, at the time he or she registers, submit to the commission a recent photograph of the lobbyist of a size and format as determined by rule of the commission, together with the name of the lobbyist’s employer, a brief biographical description, and any other information the lobbyist may wish to submit, not to exceed fifty words in length. Such photograph and information shall be published at least annually in a booklet form by the commission for distribution to government officers or employees, lobbyists, and to the public. The method of distribution shall be in the discretion of the commission, which shall not be required to compile and maintain a distribution list of all persons who may be entitled to receive such booklet. Each lobbyist, upon registering, shall pay a fee of twenty dollars to the commission to help defray the costs of preparing such booklet.

§6B-3-4. Reporting by lobbyists.

(a) A lobbyist shall file with the commission reports of his lobbying activities, signed under oath or affirmation by the lobbyist. Lobbyists who are required under this article to file copies of their registration statements with the clerks of the respective houses of the Legislature shall also contemporaneously file copies of all reports required under this section with the clerks. The reports shall be made in the form and manner prescribed by legislative rule of the commission. Such reports shall be filed as follows:

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

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

(A) Between the fortieth and forty-fifth days of any regular session of the legislature in which any such lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year; and
Within twenty-one days after the adjournment sine die of any regular or extraordinary session of the Legislature in which any such lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year or since the filing of the last report required by this section, whichever is later.

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

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

(A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

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

(C) Any expenses incurred for his or her own travel to and from public meetings or hearings of the legislative and executive branches;

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

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

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

(d) The report shall describe the subject matter of the lobbying activities in which the lobbyist has been
engaged during the reporting period.

(e) If, during the period covered by the report, the lobbyist made expenditures, other than for travel, food, lodging and entertainment governed by subsection (f) of this section, which expenditures total more than five hundred dollars to or on behalf of any particular government officer or employee, the lobbyist shall report the name of the government officer or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and the subject matter of the lobbying activity, if any. Under this subsection (e), no portion of the amount of an expenditure for a dinner, party, or other function sponsored by a lobbyist or a lobbyist's employer need be attributed to or counted toward the reporting amount of five hundred dollars for a particular government officer or employee who attends such function if the sponsor has invited to the function all the members of (1) the Legislature, (2) either house of the Legislature, (3) a standing or select committee of either house, or (4) a joint committee of the two houses of the Legislature. However, the amount spent for such function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subsection (b) of this section.

(f) If, during the period covered by the report, the lobbyist made expenditures for travel, food, lodging, and scheduled entertainment totaling more than five hundred dollars for or on behalf of a particular government officer or employee in return for the participation of the government officer or employee in a panel or speaking engagement at the meeting, the lobbyist shall report the name of the government officer or employee to whom or on whose behalf the expenditures were made and the total amount of the expenditures.

(g) Such other information relevant to lobbying activities as the commission shall by legislative rule prescribe. Information supporting such activities as are 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 required to be reported under other sections of this chapter, exceeding five hundred dollars in the aggregate within any three-month period or exceeding two hundred dollars in the aggregate within any one-month period in presenting a program addressed to the public, a substantial portion of which is intended, designed or calculated primarily to influence legislation, shall be required to register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

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

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

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

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

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

(e) The totals of all expenditures made or incurred to date on behalf of the campaign, which totals shall be segregated according to financial category, including, but not limited to, the following: Advertising, segregated by media, and, in the case of large expenditures (as provided by legislative rule of the commission), by...
outlet; contributions; entertainment, including meals and beverages; office expenses, including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

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

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

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

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

§6B-3-7. Duties of lobbyists.

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

(1) Such persons shall obtain and preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the financial reports required to be made under this article for a period of at least five years from the date of the filing of the statement containing such items, which accounts, bills, receipts,
books, papers, and documents shall be made available
for inspection by the commission at any time: Provided,
That if a lobbyist is required under the terms of his
employment contract to turn any records over to his
employer, responsibility for the preservation of such
records under this subsection shall rest with such
employer.

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

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

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

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

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

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

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

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

Former legislators and other persons having the
privilege of the floor are prohibited from lobbying upon
the floor of either house of the Legislature or the foyer
§6B-3-9. Penalties.

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

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

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

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

An incorporated municipality may enact lobbyist regulation provisions substantially similar to the provisions of this article which may be modified to the extent necessary to make the provisions relevant to that jurisdiction and which may be further modified to the extent deemed necessary and appropriate by and for that jurisdiction.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

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

[Signature]
Governor