

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4596

(By Mr. Speaker, Mr. Chambers, & Del. R. Burk)
[By Request]

— ● —

Passed March 10, 1990

In Effect 90 Days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4596

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)

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AN ACT to amend and reenact section four, article one, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, seven and eight, article two of said chapter; to amend said chapter two by adding thereto a new article, designated article two-a; and to amend and reenact section four, article three of said chapter, all relating generally to ethical standards of governmental officials and employees and disclosure of financial interest of such persons; providing additional immunity from sanctions for persons acting in good faith reliance on ethics commission advisory opinions; the selection of investigative panel members; providing public disclosure of certain commission actions; providing that members of an investigative panel which finds probable cause cannot serve on the commission panel which renders final decision in case; the finding of truth or falsity of charges by the commission; requiring public disclosure of conciliation agreements; abeyance of commission action pending referral for criminal investigation; use of public office

for private gain; permitting solicitation for charitable purposes; interests of public officials, public employees in public contracts; exemption from prohibited activities for persons employed in higher education; requiring disclosure of identity and nature of additional sources of income; excluding spouse's income from reporting requirements; disclosure of debtors and creditors; exempting certain debts and loans from being reported; requiring additional disclosure of gifts; emergency rule revoked; all disclosures made in manner prescribed by legislative rules; changes in expenditures to be reported by lobbyists; and deletion of provisions for requiring lobbyists to report additional information by legislative rule.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

§6B-2-3. Advisory opinions.

1 A person subject to the provisions of this chapter may
2 make application in writing to the ethics commission for
3 an advisory opinion on whether an action or proposed
4 action violates the provisions of this chapter or the
5 provisions of section fifteen, article ten, chapter sixty-
6 one of this code and would thereby expose the person
7 to sanctions by the commission or criminal prosecution.
8 The commission shall respond within thirty days from
9 the receipt of the request by issuing an advisory opinion
10 on the matter raised in the request. All advisory
11 opinions shall be published and indexed in the code of
12 state rules by the secretary of state: *Provided*, That
13 before an advisory opinion is made public, any material
14 which may identify the person who is the subject of the
15 opinion shall, to the fullest extent possible, be deleted
16 and the identity of the person shall not be revealed. A
17 person subject to the provisions of this chapter may rely
18 upon the published guidelines or an advisory opinion of
19 the commission, and any person acting in good faith
20 reliance on any such guideline or opinion shall be
21 immune from the sanctions of this chapter and the
22 sanctions of section fifteen, article ten, chapter sixty-one
23 of this code, and shall have an absolute defense to any
24 criminal prosecution for actions taken in good faith
25 reliance upon any such opinion or guideline in regard
26 to the sanctions of this chapter and the sanctions of
27 section fifteen, article ten, chapter sixty-one of this code.

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

1 (a) Upon the filing by any person with the commission
2 of a complaint which is duly verified by oath or
3 affirmation, the executive director of the commission or
4 his or her designee shall, within three working days,
5 acknowledge the receipt of the complaint by first class
6 mail, unless the complainant or his or her representative
7 personally filed the complaint with the commission and

8 was given a receipt or other acknowledgement evidenc-
9 ing the filing. Within fourteen days after the receipt of
10 a complaint, an investigative panel shall be appointed
11 to investigate the substance of the allegations in the
12 complaint and to determine whether there is probable
13 cause to believe that a violation of this chapter has
14 occurred. The commission shall establish by legislative
15 rule promulgated in accordance with chapter twenty-
16 nine-a of this code a rotation system for the selection of
17 commission members to sit on investigative panels
18 whereby the caseload of commission investigations is
19 distributed among commission members as evenly and
20 randomly as possible.

21 (b) In the case of a filed complaint, the first inquiry
22 of the investigative panel shall be a question as to
23 whether or not the allegations of the complaint, if taken
24 as true, would constitute a violation of law upon which
25 the commission could properly act under the provisions
26 of this chapter. If the complaint is determined by a
27 majority vote of the investigative panel to be insufficient
28 in this regard, the investigative panel shall dismiss the
29 complaint.

30 (c) After the commission receives a complaint found
31 by the investigative panel to be sufficient, the executive
32 director shall give notice of a pending investigation by
33 the investigative panel to the complainant and respond-
34 ent. The notice of investigation shall be mailed to the
35 parties, and, in the case of the respondent, shall be
36 mailed as certified mail, return receipt requested,
37 marked "Addressee only, personal and confidential".
38 The notice shall describe the conduct of the respondent
39 which is the basis for an alleged violation of law, and
40 if a complaint has been filed, a copy of the complaint
41 shall be appended to the notice mailed to the respondent.
42 Each notice of investigation shall inform the respondent
43 that the purpose of the investigation is to determine
44 whether probable cause exists to believe that a violation
45 of law has occurred which may subject the respondent
46 to administrative sanctions by the commission, criminal
47 prosecution by the state, or civil liability. The notice
48 shall further inform the respondent that he or she has

49 a right to appear before the investigative panel, and that
50 he or she may respond in writing to the commission
51 within thirty days after the receipt of the notice, but
52 that no fact or allegation shall be taken as admitted by
53 a failure or refusal to timely respond.

54 (d) Within the forty-five day period following the
55 mailing of a notice of investigation, the investigative
56 panel shall proceed to consider (1) the allegations raised
57 in the complaint, (2) any timely received written
58 response of the respondent, and (3) any other competent
59 evidence gathered by or submitted to the commission
60 which has a proper bearing on the issue of probable
61 cause. A respondent shall be afforded the opportunity
62 to appear before the investigative panel and make an
63 oral response to the complaint. The commission shall, in
64 promulgating legislative rules pursuant to the provi-
65 sions of subsection (a), section two of this article,
66 prescribe the manner in which a respondent may
67 present his or her oral response to the investigative
68 panel. The commission may request a respondent to
69 disclose specific amounts received from a source, and
70 other detailed information not otherwise required to be
71 set forth in a statement or report filed under the
72 provisions of this chapter, if the information sought is
73 deemed to be probative as to the issues raised by a
74 complaint or an investigation initiated by the commis-
75 sion. Any information thus received shall be confidential
76 except as provided by subsection (f) of this section. If
77 the person so requested fails or refuses to furnish the
78 information to the commission, the commission may
79 exercise its subpoena power as provided for elsewhere
80 in this chapter, and any subpoena issued thereunder
81 shall have the same force and effect as a subpoena issued
82 by a circuit court of this state, and enforcement of any
83 such subpoena may be had upon application to a circuit
84 court of the county in which the investigative panel is
85 conducting an investigation, through the issuance of a
86 rule or an attachment against the respondent as in cases
87 of contempt.

88 (e)(1) All investigations, complaints, reports, records,
89 proceedings, and other information received by the

90 commission and related to complaints made to the
91 commission or investigations conducted by the commis-
92 sion pursuant to this section, including the identity of
93 the complainant or respondent, shall be confidential and
94 shall not be knowingly and improperly disclosed by any
95 member or former member of the commission or its
96 staff, except as follows:

97 (A) Upon a finding that probable cause exists to
98 believe that a respondent has violated the provisions of
99 this chapter, the complaint and all reports, records, non-
100 privileged and non-deliberative material introduced at
101 any probable cause hearing held pursuant to the
102 complaint are thereafter not confidential: *Provided,*
103 That confidentiality of such information shall remain in
104 full force and effect until the respondent has been served
105 by the commission with a copy of the investigative
106 panel's order finding probable cause and with the
107 statement of charges prepared pursuant to the provi-
108 sions of subsection (g) of this section.

109 (B) After a finding of probable cause as aforesaid, any
110 subsequent hearing held in the matter for the purpose
111 of receiving evidence or the arguments of the parties or
112 their representatives shall be open to the public and all
113 reports, records and non-deliberative materials intro-
114 duced into evidence at such subsequent hearing, as well
115 as the commission's orders, are not confidential.

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

119 (D) The complaint as well as the identity of the
120 complainant shall be disclosed to a person named as
121 respondent in any such complaint filed with the
122 commission immediately upon such respondent's
123 request.

124 (E) Where the commission is otherwise required by
125 the provisions of this chapter to disclose such informa-
126 tion or to proceed in such a manner that disclosure is
127 necessary and required to fulfill such requirements.

128 (2) If, in a specific case, the commission finds that

129 there is a reasonable likelihood that the dissemination
130 of information or opinion in connection with a pending
131 or imminent proceeding will interfere with a fair
132 hearing or otherwise prejudice the due administration
133 of justice, the commission shall order that all or a
134 portion of the information communicated to the commis-
135 sion to cause an investigation and all allegations of
136 ethical misconduct or criminal acts contained in a
137 complaint shall be confidential, and the person provid-
138 ing such information or filing a complaint shall be
139 bound to confidentiality until further order of the
140 commission.

141 (f) If a majority of the members of the investigative
142 panel fails to find probable cause, the proceedings shall
143 be dismissed by the commission in an order signed by
144 the majority members of the panel, and copies of the
145 order of dismissal shall be sent to the complainant and
146 served upon the respondent forthwith. If the investiga-
147 tive panel decides by a majority vote that there is
148 probable cause to believe that a violation under this
149 chapter has occurred, the majority members of the
150 investigative panel shall sign an order directing the
151 commission staff to prepare a statement of charges, to
152 assign the matter for hearing to the commission or a
153 hearing examiner as the commission may subsequently
154 direct, and to schedule a hearing to determine the truth
155 or falsity of the charges, such hearing to be held within
156 ninety days after the date of the order. For the purpose
157 of this section, service of process upon the respondent
158 is obtained at the time the respondent or the respond-
159 ent's agent physically receives the process, regardless of
160 whether the service of process is in person or by
161 certified mail.

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

170 (h) The commission members who have not served as
171 members of an investigative panel in a particular case
172 may sit as a hearing board to adjudicate the case or may
173 permit an assigned hearing examiner employed by the
174 commission to preside at the taking of evidence. The
175 commission shall, by legislative rule, establish the
176 general qualifications for hearing examiners. Such
177 legislative rule shall also contain provisions which seek
178 to ensure that the functions of a hearing examiner will
179 be conducted in an impartial manner, and shall describe
180 the circumstances and procedures for disqualification of
181 hearing examiners.

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

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

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

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

192 (4) Regulate the course of the hearing;

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

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

196 (7) Accept stipulated agreements;

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

199 (j) With respect to allegations of a violation under this
200 chapter, the complainant has the burden of proof. The
201 West Virginia rules of evidence as used to govern
202 proceedings in the courts of this state shall be given like
203 effect in hearings held before the commission or a
204 hearing examiner. The commission shall, by legislative
205 rule, regulate the conduct of hearings so as to provide
206 full procedural due process to a respondent. Hearings

207 before a hearing examiner shall be recorded electron-
208 ically. When requested by either of the parties, the
209 presiding officer shall make a transcript, verified by
210 oath or affirmation, of each hearing held and so
211 recorded. In the discretion of the commission, a record
212 of the proceedings may be made by a certified court
213 reporter. Unless otherwise ordered by the commission,
214 the cost of preparing a transcript shall be paid by the
215 party requesting the transcript. Upon a showing of
216 indigency, the commission may provide a transcript
217 without charge. Within fifteen days following the
218 hearing, either party may submit to the hearing
219 examiner that party's proposed findings of fact. The
220 hearing examiner shall thereafter prepare his or her
221 own proposed findings of fact and make copies of the
222 findings available to the parties. The hearing examiner
223 shall then submit the entire record to the commission
224 for final decision.

225 (k) The recording of the hearing or the transcript of
226 testimony, as the case may be, and the exhibits, together
227 with all papers and requests filed in the proceeding, and
228 the proposed findings of fact of the hearing examiner
229 and the parties, constitute the exclusive record for
230 decision by the commission members who have not
231 served as members of the investigative panel, unless by
232 leave of the commission a party is permitted to submit
233 additional documentary evidence or take and file
234 depositions or otherwise exercise discovery.

235 (l) The commission shall set a time and place for the
236 hearing of arguments by the complainant and respond-
237 ent, or their respective representatives, and shall notify
238 the parties thereof, and briefs may be filed by the
239 parties in accordance with procedural rules promul-
240 gated by the commission. The final decision of the
241 commission shall be made by the commission members
242 who have not served as members of the investigative
243 panel in writing within forty-five days of the receipt of
244 the entire record of a hearing held before a hearing
245 examiner or, in the case of an evidentiary hearing held
246 by the board in lieu of a hearing examiner, within
247 twenty-one days following the close of the evidence.

248 (m) A decision on the truth or falsity of the charges
249 against the respondent and a decision to impose
250 sanctions must be approved by at least six members of
251 the commission who have not served as members of the
252 investigative panel.

253 (n) Members of the commission shall recuse them-
254 selves from a particular case upon their own motion
255 with the approval of the commission or for good cause
256 shown upon motion of a party. The remaining members
257 of the commission shall, by majority vote, select a
258 temporary member of the commission to replace a
259 recused member: *Provided*, That the temporary member
260 selected to replace a recused member shall be a person
261 of the same status or category, provided by subsection
262 (b), section one of this article, as the recused member.

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

266 (p) No member of the commission staff may partic-
267 ipate in the commission deliberations or communicate
268 with commission members concerning the merits of a
269 complaint after being assigned to prosecute a complaint.

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

275 (1) Public reprimand;

276 (2) Cease and desist orders;

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

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

282 In addition to imposing such sanctions, the commis-
283 sion may recommend to the appropriate governmental
284 body that a respondent be terminated from employment
285 or removed from office.

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

289 (r) At any stage of the proceedings under this section,
290 the commission may enter into a conciliation agreement
291 with a respondent if such agreement is deemed by a
292 majority of the members of the commission to be in the
293 best interest of the state and the respondent. Any
294 conciliation agreement must be disclosed to the public:
295 *Provided*, That negotiations leading to a conciliation
296 agreement, as well as information obtained by the
297 commission during such negotiations, shall remain
298 confidential except as may be otherwise set forth in the
299 agreement.

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

307 (t) In the event the commission finds in favor of the
308 person complained against, the commission shall order
309 reimbursement of all actual costs incurred, including,
310 but not limited to, attorney fees to be paid to the person
311 complained against by the complainant, if the commis-
312 sion finds that the complaint was brought or made in
313 bad faith. In addition, the aggrieved party shall have a
314 cause of action and be entitled to compensatory dam-
315 ages, punitive damages, costs and attorney fees for a
316 complaint made or brought in bad faith.

317 (u) If at any stage in the proceedings under this
318 section, it appears to an investigative panel, a hearing
319 examiner or the commission that a criminal violation
320 may have been committed by a respondent, such
321 situation shall be brought before the full commission for
322 its consideration. If, by a vote of two-thirds of the full
323 commission, it is determined that probable cause exists
324 to believe a criminal violation has occurred, it may
325 recommend to the appropriate county prosecuting

326 attorney having jurisdiction over the case that a
327 criminal investigation be commenced. Deliberations of
328 the commission with regard to a recommendation for
329 criminal investigation by a prosecuting attorney shall be
330 private and confidential. Notwithstanding any other
331 provision of this article, once a referral for criminal
332 investigation is made under the provisions of this
333 subsection, the ethics proceedings shall be held in
334 abeyance until action on the referred matter is con-
335 cluded. If the commission determines that a criminal
336 violation has not occurred, the commission shall remand
337 the matter to the investigative panel, the hearing
338 examiner or the commission itself as a hearing board,
339 as the case may be, for further proceedings under this
340 article.

341 (v) The provisions of this section shall apply to
342 violations of this chapter occurring after the thirtieth
343 day of September, one thousand nine hundred eighty-
344 nine, and within one year before the filing of a
345 complaint under subsection (a) of this section or the
346 appointment of an investigative panel by the commission
347 under subsection (b) of this section.

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

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

8 (b) *Use of public office for private gain.*—(1) A public
9 official or public employee may not knowingly and
10 intentionally use his or her office or the prestige of his
11 or her office for his or her own private gain or that of
12 another person. The performance of usual and custom-
13 ary duties associated with the office or position or the
14 advancement of public policy goals or constituent
15 services, without compensation, does not constitute the
16 use of prestige of office for private gain.

17 (2) The Legislature, in enacting this subsection (b),
18 relating to the use of public office or public employment
19 for private gain, recognizes that there may be certain
20 public officials or public employees who bring to their
21 respective offices or employment their own unique
22 personal prestige which is based upon their intelligence,
23 education, experience, skills and abilities, or other
24 personal gifts or traits. In many cases, these persons
25 bring a personal prestige to their office or employment
26 which inures to the benefit of the state and its citizens.
27 Such persons may, in fact, be sought by the state to
28 serve in their office or employment because, through
29 their unusual gifts or traits, they bring stature and
30 recognition to their office or employment and to the
31 state itself. While the office or employment held or to
32 be held by such persons may have its own inherent
33 prestige, it would be unfair to such individuals and
34 against the best interests of the citizens of this state to
35 deny such persons the right to hold public office or be
36 publicly employed on the grounds that they would, in
37 addition to the emoluments of their office or employ-
38 ment, be in a position to benefit financially from the
39 personal prestige which otherwise inheres to them.
40 Accordingly, the commission is directed, by legislative
41 rule, to establish categories of such public officials and
42 public employees, identifying them generally by the
43 office or employment held, and offering persons who fit
44 within such categories the opportunity to apply for an
45 exemption from the application of the provisions of this
46 subsection. Such exemptions may be granted by the
47 commission, on a case-by-case basis, when it is shown
48 that: (A) The public office held or the public employ-
49 ment engaged in is not such that it would ordinarily be
50 available or offered to a substantial number of the
51 citizens of this state; (B) the office held or the employ-
52 ment engaged in is such that it normally or specifically
53 requires a person who possesses personal prestige; and
54 (C) the person's employment contract or letter of
55 appointment provides or anticipates that the person will
56 gain financially from activities which are not a part of
57 his or her office or employment.

58 (c) *Gifts*.—(1) A public official or public employee may

59 not solicit any gift unless the solicitation is for a
60 charitable purpose with no resulting direct pecuniary
61 benefit conferred upon the official or employee or his or
62 her immediate family: *Provided*, That no public official
63 or public employee may solicit for a charitable purpose
64 any gift from any person who is also an official or
65 employee of the state and whose position as such is
66 subordinate to the soliciting official or employee:
67 *Provided, however*, That nothing herein shall prohibit a
68 candidate for public office from soliciting a lawful
69 political contribution. No official or employee may
70 knowingly accept any gift, directly or indirectly, from
71 a lobbyist or from any person whom the official or
72 employee knows or has reason to know:

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

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

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

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

94 (A) Meals and beverages;

95 (B) Ceremonial gifts or awards which have insignif-
96 icant monetary value;

97 (C) Unsolicited gifts of nominal value or trivial items

98 of informational value;

99 (D) Reasonable expenses for food, travel, and lodging
100 of the official or employee for a meeting at which the
101 official or employee participates in a panel or speaking
102 engagement at the meeting;

103 (E) Gifts of tickets or free admission extended to a
104 public official or public employee to attend charitable,
105 cultural or political events, if the purpose of such gift
106 or admission is a courtesy or ceremony customarily
107 extended to the office;

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

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

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

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

120 (5) The governor or his designee, may, in the name of
121 the state of West Virginia, accept and receive gifts from
122 any public or private source. Any such gift so obtained
123 shall become the property of the state and shall, within
124 thirty days of the receipt thereof, be registered with the
125 commission and the department of culture and history.

126 (d) *Interests in public contracts.*—(1) In addition to the
127 provisions of section fifteen, article ten, chapter sixty-
128 one of this code, no elected or appointed public official
129 or public employee or member of his or her immediate
130 family or business with which he or she is associated
131 may be a party to or have an interest in the profits or
132 benefits of a contract which such official or employee
133 may have direct authority to enter into, or over which
134 he or she may have control: *Provided*, That nothing
135 herein shall be construed to prevent or make unlawful

136 the employment of any person with any governmental
137 body: *Provided, however,* That nothing herein shall be
138 construed to prohibit a member of the Legislature from
139 entering into a contract with any governmental body, or
140 prohibit a part-time appointed public official from
141 entering into a contract which such part-time appointed
142 public official may have direct authority to enter into
143 or over which he or she may have control when such
144 official has been recused from deciding or evaluating
145 and excused from voting on such contract and has fully
146 disclosed the extent of such interest in the contract.

147 (2) In the absence of bribery or a purpose to defraud,
148 an elected or appointed public official or public
149 employee or a member of his or her immediate family
150 or a business with which he or she is associated shall
151 not be considered as having an interest in a public
152 contract when such a person has a limited interest as
153 an owner, shareholder or creditor of the business which
154 is the contractor on the public contract involved. A
155 limited interest for the purposes of this subsection is:

156 (A) An interest:

157 (i) Not exceeding ten percent of the partnership or the
158 outstanding shares of a corporation; or

159 (ii) Not exceeding thirty thousand dollars interest in
160 the profits or benefits of the contract; or

161 (B) An interest as a creditor:

162 (i) Not exceeding ten percent of the total indebtedness
163 of a business; or

164 (ii) Not exceeding thirty thousand dollars interest in
165 the profits or benefits of the contract.

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

174 from subdivisions (1) and (2) of this subsection.

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

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

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

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

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

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

208 (D) A rate-making proceeding; and

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

210 (2) As used in this subsection, “represent” includes any
211 formal or informal appearance before, or any written or

212 oral communication with, any public agency on behalf
213 of any person: *Provided*, That nothing contained in this
214 subsection shall prohibit, during any period, a former
215 public official or employee from being retained by or
216 employed to represent, assist, or act in a representative
217 capacity on behalf of the public agency by which he or
218 she was employed or in which he or she served. Nothing
219 in this subsection shall be construed to prevent a former
220 public official or employee from representing another
221 state, county, municipal or other governmental entity
222 before the governmental entity in which he or she served
223 or was employed within six months after the termina-
224 tion of his or her employment or service in the entity.

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

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

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

251 (h) *Seeking employment with regulated person prohi-*

252 *bited.*—(1) No full-time public official or full-time public
253 employee who exercises policymaking, nonministerial or
254 regulatory authority may seek employment with, or
255 allow himself or herself to be employed by any person
256 who is or may be regulated by the governmental body
257 which he or she serves while he or she is employed or
258 serves in the governmental agency. The term “employ-
259 ment” within the meaning of this section includes
260 professional services and other services rendered by the
261 public official or public employee whether rendered as
262 an employee or as an independent contractor.

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

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

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

290 (j) *Limitations on participation in licensing and rate-*
291 *making proceedings.*—No public official or employee

292 may participate within the scope of his or her duties as
293 a public official or employee, except through ministerial
294 functions as defined in section three, article one of this
295 chapter, in any license or rate-making proceeding that
296 directly affects the license or rates of any person,
297 partnership, trust, business trust, corporation, or
298 association in which the public official or employee or
299 his or her immediate family owns or controls more than
300 ten percent. No public official or public employee may
301 participate within the scope of his or her duties as a
302 public official or public employee, except through
303 ministerial functions as defined in section three, article
304 one of this chapter, in any license or rate-making
305 proceeding that directly affects the license or rates of
306 any person to whom the public official or public
307 employee or his or her immediate family, or a partner-
308 ship, trust, business trust, corporation, or association of
309 which the public official or employee, or his or her
310 immediate family, owns or controls more than ten
311 percent, has sold goods or services totaling more than
312 one thousand dollars during the preceding year, unless
313 the public official or public employee has filed a written
314 statement acknowledging such sale with the public
315 agency and the statement is entered in any public record
316 of the agency's proceedings. This subsection shall not be
317 construed to require the disclosure of clients of attorneys
318 or of patients or clients of persons licensed pursuant to
319 articles three, eight, fourteen, fourteen-a, fifteen,
320 sixteen, twenty, twenty-one or thirty-one, chapter thirty
321 of this code.

322 (k) *Certain expenses prohibited.*—No public official or
323 public employee shall knowingly request or accept from
324 any governmental entity compensation or reimburse-
325 ment for any expenses actually paid by a lobbyist and
326 required by the provisions of this chapter to be reported,
327 or actually paid by any other person.

328 (l) Any person who is employed as a member of the
329 faculty or staff of a public institution of higher
330 education and who is engaged in teaching, research,
331 consulting or publication activities in his or her field of
332 expertise with public or private entities and thereby

333 derives private benefits from such activities shall be
334 exempt from the prohibitions contained in subsections
335 (b), (c) and (d) of this section when the activity is
336 approved as a part of an employment contract with the
337 governing board of such institution or has been ap-
338 proved by the employees' department supervisor or the
339 president of the institution by which the faculty or staff
340 member is employed.

341 (m) The commission by legislative rule promulgated
342 in accordance with chapter twenty-nine-a of this code
343 may define further exemptions from this section as
344 necessary or appropriate.

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

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

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

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

8 (3) The identification, by category, of every source of
9 income over five thousand dollars received during the
10 preceding calendar year, in his or her own name or by
11 any other person for his or her use or benefit, by the
12 person filing the statement, and a brief description of
13 the nature of the services for which the income was
14 received. This subdivision does not require a person
15 filing the statement who derives income from a business,
16 profession or occupation to disclose the individual
17 sources and items of income that constitute the gross
18 income of that business, profession or occupation, nor
19 does this subdivision require a person filing the
20 statement to report the source or amount of income
21 derived by his or her spouse.

22 (4) If the person profited or benefited in the year prior
23 to the date of filing from a contract for the sale of goods
24 or services to a state, county, municipal or other local
25 governmental agency either directly or through a
26 partnership, corporation or association in which such

27 person owned or controlled more than ten percent, the
28 person shall describe the nature of the goods or services
29 and identify the governmental agencies which pur-
30 chased the goods or services.

31 (5) Each interest group or category listed below doing
32 business in this state with which the person filing the
33 statement did business or furnished services and from
34 which the person received more than twenty percent of
35 the person's gross income during the preceding calendar
36 year. The groups or categories are electric utilities, gas
37 utilities, telephone utilities, water utilities, cable
38 television companies, interstate transportation compan-
39 ies, intrastate transportation companies, oil or gas retail
40 companies, banks, savings and loan associations, loan or
41 finance companies, manufacturing companies, surface
42 mining companies, deep mining companies, mining
43 equipment companies, chemical companies, insurance
44 companies, retail companies, beer, wine or liquor
45 companies or distributors, recreation related companies,
46 timbering companies, hospitals or other health care
47 providers, trade associations, professional associations,
48 associations of public employees or public officials,
49 counties, cities or towns, labor organizations, waste
50 disposal companies, wholesale companies, groups or
51 associations seeking to legalize gambling, advertising
52 companies, media companies, race tracks and promo-
53 tional companies.

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

68 person filing the statement to any financial institution,
69 credit card company, or business, in which the person
70 has an ownership interest: *Provided, however,* That the
71 previous proviso shall not exclude from disclosure loans
72 obtained pursuant to the linked deposit program
73 provided for in article one-a, chapter twelve of this code
74 or any other loan or debt incurred which requires
75 approval of the state or any of its political subdivisions.

76 (7) The names of all persons except immediate family
77 members, parents and grandparents residing or tran-
78 sacting business in the state (other than a demand or
79 savings account in a bank, savings and loan association,
80 credit union or building and loan association or other
81 similar depository) who owes on the date of execution
82 of this statement, more, in the aggregate, than twelve
83 thousand five hundred dollars to the person filing the
84 statement, either in his or her own name or to any other
85 person for his or her use or benefit. This subdivision
86 does not require the disclosure of debts owed to the
87 person filing the statement which debts result from the
88 ordinary conduct of such person's business, profession or
89 occupation or of loans made by the person filing the
90 statement to any business in which the person has an
91 ownership interest.

92 (8) The source of each gift having a value of over one
93 hundred dollars, received from a person having a direct
94 and immediate interest in a governmental activity over
95 which the person filing the statement has control, shall
96 be reported by the person filing the statement when
97 such gift is given to said person in his or her name or
98 for his or her use or benefit during the preceding
99 calendar year: *Provided,* That gifts received by will or
100 by virtue of the laws of descent and distribution, or
101 received from one's spouse, child, grandchild, parents or
102 grandparents, or received by way of distribution from
103 an inter vivos or testamentary trust established by the
104 spouse or child, grandchild, or by an ancestor of the
105 person filing the statement are not required to be
106 reported. As used in this subdivision any series or
107 plurality of gifts which exceeds in the aggregate the
108 sum of one hundred dollars from the same source or

109 donor, either directly or indirectly, and in the same
110 calendar year, shall be regarded as a single gift in
111 excess of that aggregate amount.

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

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

4 (1) Any qualified blind trust; or

5 (2) A trust—

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

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

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

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

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

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

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

33 interested party;

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2A. RULES.

§6B-2A-1. Legislative rules; revocation of existing com- mission emergency rules; manner of reporting.

1 (a) West Virginia ethics commission emergency rule
2 one hundred fifty-eight is hereby revoked.

3 (b) Any disclosure form, statement or report required
4 under any provision of this chapter shall be made in a

5 manner prescribed by legislative rule of the commission.

ARTICLE 3. LOBBYISTS.

§6B-3-4. Reporting by lobbyists.

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

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

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

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

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

27 (b) (1) Except as otherwise provided in this section,
28 each report filed by a lobbyist shall show the total
29 amount of all expenditures for lobbying made or
30 incurred by such lobbyist, or on behalf of such lobbyist
31 by the lobbyist's employer, during the period covered by
32 the report. The report shall also show subtotals segre-
33 gated according to financial category, including meals
34 and beverages; living accommodations; advertising;
35 travel; contributions; gifts to public officials or em-

36 ployees or to members of the immediate family of such
37 persons; and other expenses or services.

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

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

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

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

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

49 (E) Separate expenditures to or on behalf of a public
50 official or employee in an amount of less than five
51 dollars.

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

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

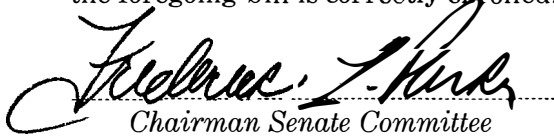
59 (e) If, during the period covered by the report, the
60 lobbyist made expenditures in the reporting categories
61 of meals and beverages, living accommodations, travel,
62 gifts or other expenditures, other than for those
63 expenditures governed by subsection (f) of this section,
64 which expenditures in any such reporting category total
65 more than twenty-five dollars to or on behalf of any
66 particular public official or employee, the lobbyist shall
67 report the name of the public official or employee to
68 whom or on whose behalf the expenditures were made,
69 the total amount of the expenditures, and the subject
70 matter of the lobbying activity, if any. Under this
71 subsection (e), no portion of the amount of an expendi-
72 ture for a dinner, party, or other function sponsored by
73 a lobbyist or a lobbyist's employer need be attributed to

74 or counted toward the reporting amount of twenty-five
75 dollars for a particular public official or employee who
76 attends such function if the sponsor has invited to the
77 function all the members of (1) the Legislature, (2)
78 either house of the Legislature, (3) a standing or select
79 committee of either house, or (4) a joint committee of the
80 two houses of the Legislature. However, the amount
81 spent for such function shall be added to other expen-
82 ditures for the purpose of determining the total amount
83 of expenditures reported under subsection (b) of this
84 section.

85 (f) If, during the period covered by the report, the
86 lobbyist made expenditures in the reporting categories
87 of meals and beverages, lodging, travel, gifts and
88 scheduled entertainment, which reporting expenditures
89 in any such reporting category total more than twenty-
90 five dollars for or on behalf of a particular public official
91 or public employee in return for the participation of the
92 public official or employee in a panel or speaking
93 engagement at the meeting, the lobbyist shall report the
94 name of the public official or employee to whom or on
95 whose behalf the expenditures were made and the total
96 amount of the expenditures.

Enr. Com. Sub. for H. B. 4596] 30

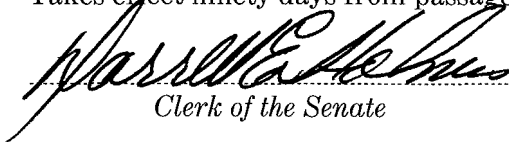
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

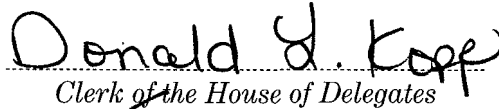

Chairman Senate Committee


Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

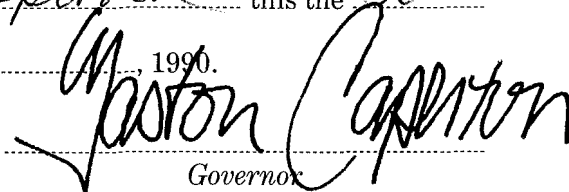

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 30th
day of March, 1990.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/40

Time 3:55pm

RECEIVED

1920 MAR 30 PM 5:06

OFFICE OF THE GOVERNOR
STATE OF NEW YORK