WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

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ENROLLED
Con. Sub. for
HOUSE BILL No. 4596

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

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Passed .................................................. March 10, 1990

In Effect ................................................. 90 Days from Passage
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 any other applicable provisions of this code and except for the immunity provided by section three, article two, of this chapter shall not be deemed to be in derogation of or as a substitution for any other provisions of this code, including, but not limited to, article five-a, chapter sixty-one of this code and except for the immunity provided by section three, article two, of this chapter the remedies and penalties provided in this chapter shall be in addition to any other remedies or penalties which 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.

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 or the provisions of section fifteen, article ten, chapter sixty-one of this code 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 the sanctions of section fifteen, article ten, chapter sixty-one of this code, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion or guideline in regard to the sanctions of this chapter and the sanctions of section fifteen, article ten, chapter sixty-one of this code.

§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 commission shall establish by legislative rule promulgated in accordance with chapter twenty-nine-a of this code a rotation system for the selection of commission members to sit on investigative panels whereby the caseload of commission investigations is distributed among commission members as evenly and randomly as possible.

(b) 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.

(c) After the commission receives a complaint found by the investigative panel to be sufficient, 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.

(d) 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, (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 investigative panel and make an
oral response to the complaint. The commission shall, in
promulgating legislative rules pursuant to the provi-
sions of subsection (a), section two of this article,
 prescribe the manner in which a respondent may
present his or her oral response to the investigative
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 commis-
sion. Any information thus received shall be confidential
except as provided by subsection (f) of this section. If
the person so requested fails or refuses to furnish the
information to the commission, the commission may
exercise its subpoena power as provided 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 investigative panel is
conducting an investigation, through the issuance of a
rule or an attachment against the respondent as in cases
of contempt.

(e)(1) All investigations, complaints, reports, records,
proceedings, and other information received by the
commission and related to complaints made to the commission or investigations conducted by the commission pursuant to this section, including the identity of the complainant or respondent, shall be confidential and shall not be knowingly and improperly disclosed by any member or former member of the commission or its staff, except as follows:

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

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

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

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

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

(2) 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 shall 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.

(f) 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 served upon 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 investigative 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. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent's agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(g) 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.
(h) The commission members who have not served as members of an investigative 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 ensure 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.

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

1. Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, 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 simplification 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 commission consistent with the provisions of this chapter.

(j) 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 electronically. 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.

(k) 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 members who have not served as members of the investigative panel, unless by leave of the commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

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

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

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

(p) 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.

(q) 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.

(r) 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. Any conciliation agreement must be disclosed to the public: Provided, That negotiations leading to a conciliation agreement, as well as information obtained by the commission during such negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(s) 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.

(t) 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.

(u) 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 action on the referred matter is con-
cluded. If the commission determines that a criminal
violation has not occurred, the commission shall remand
the matter to the investigative panel, the hearing
examiner or the commission itself as a hearing board,
as the case may be, for further proceedings under this
article.

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

§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 respec-
tive 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 knowingly and
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 custom-
ary duties associated with the office or position or the
advancement of public policy goals or constituent
services, without compensation, does not constitute the
use of prestige of office for private gain.
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 employment, 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: (A) 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; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) 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) A public official or public employee may
not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or 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; or

(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.

(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 which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful
the employment 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, or prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

(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 subsection is:

(A) An interest:

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

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

(B) An interest as a creditor:

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

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

(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 improp-
erly 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
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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 prohi-
(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 or her 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 or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her 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 or her immediate family, or a partnership, trust, business trust, corporation, or association of which the public official or employee, or his or her 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.

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

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

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

§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, nor does this subdivision require a person filing the statement to report the source or amount of income derived by his or her spouse.

(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 pur-
 chased 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 compan-
ies, 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 promo-
tional 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 twelve
thousand five hundred 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, or of a student loan,
nor shall this section require the disclosure of debts
which result from the ordinary conduct of such person's
business, profession, or occupation or of debts of the
person filing the statement to any financial institution, credit card company, or business, in which the person has an ownership interest: Provided, however, That the previous proviso shall not exclude from disclosure loans obtained pursuant to the linked deposit program provided for in article one-a, chapter twelve of this code or any other loan or debt incurred which requires approval of the state or any of its political subdivisions.

(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 twelve thousand five hundred 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 or of loans made by the person filing the statement to any business in which the person has an ownership interest.

(8) The source of each gift having a value of over one hundred dollars, received from a person having a direct and immediate interest in a governmental activity over which the person filing the statement has control, shall be reported by the person filing the statement when such gift is given to said person in his or her name or for his or her use or benefit during the preceding calendar year: Provided, That 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 are not required to be reported. As used in this subdivision any series or plurality of gifts which exceeds in the aggregate the sum of one hundred dollars from the same source or
§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 or regulation;

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

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

(E) An interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return.
(F) Except for communications which solely consist of requests for distribution of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (i) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (ii) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (iii) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(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 section.

(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.

ARTICLE 2A. RULES.

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

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

(b) Any disclosure form, statement or report required under any provision of this chapter shall be made in a
manner prescribed by legislative rule of the commission.

ARTICLE 3. LOBBYISTS.

§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. 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

(B) 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 public officials or em-
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 public official 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 in the reporting categories of meals and beverages, living accommodations, travel, gifts or other expenditures, other than for those expenditures governed by subsection (f) of this section, which expenditures in any such reporting category total more than twenty-five dollars to or on behalf of any particular public official or employee, the lobbyist shall report the name of the public official 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 twenty-five dollars for a particular public official 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 in the reporting categories of meals and beverages, lodging, travel, gifts and scheduled entertainment, which reporting expenditures in any such reporting category total more than twenty-five dollars for or on behalf of a particular public official or public employee in return for the participation of the public official or employee in a panel or speaking engagement at the meeting, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made and the total amount of the expenditures.
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 ________, 1990.

Governor