WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

HOUSE BILL No. 4361

(By Delegates Brown and Brubett)

Passed March 7, 1992

In Effect From Passage
AN ACT to amend and reenact section five, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting elected or appointed public official or public employee from representing clients in certain matters in which he or she participated while in government.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

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

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

8 (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.

(2) The Legislature, in enacting this subsection (b),
relating to the use of public office or public employment
for private gain, recognizes that there may be certain
public officials or public employees who bring to their
respective offices or employment their own unique
personal prestige which is based upon their intelligence,
education, experience, skills and abilities, or other
personal gifts or traits. In many cases, these persons
bring a personal prestige to their office or employment
which inures to the benefit of the state and its citizens.
Such persons may, in fact, be sought by the state to
serve in their office or employment because, through
their unusual gifts or traits, they bring stature and
recognition to their office or employment and to the
state itself. While the office or employment held or to
be held by such persons may have its own inherent
prestige, it would be unfair to such individuals and
against the best interests of the citizens of this state to
deny such persons the right to hold public office or be
publicly employed on the grounds that they would, in
addition to the emoluments of their office or employ-
ment, be in a position to benefit financially from the
personal prestige which otherwise inheres to them.
Accordingly, the commission is directed, by legislative
rule, to establish categories of such public officials and
public employees, identifying them generally by the
office or employment held, and offering persons who fit
within such categories the opportunity to apply for an
exemption from the application of the provisions of this
subsection. Such exemptions may be granted by the
commission, on a case-by-case basis, when it is shown
that: (A) The public office held or the public employ-
ment 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 division 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 improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) Prohibited representation. — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant, or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client’s interests are materially adverse to the interests of the government agency, without the consent of the government agency: Provided, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which such professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were
in office and legislative staff who were employed at the
time it originally became effective on the first day of
July, one thousand nine hundred eighty-nine and those
who have since become legislators or legislative staff
and those who shall serve hereafter as legislators or
legislative staff.

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

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

(B) To support or oppose a proposed regulation;

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

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, “represent” includes any
formal or informal appearance before, or any written or
oral communication with, any public agency on behalf
of any person: Provided, That nothing contained in this
subsection shall prohibit, during any period, a former
public official or employee from being retained by or
employed to represent, assist, or act in a representative
capacity on behalf of the public agency by which he or
she was employed or in which he or she served. Nothing
in this subsection shall be construed to prevent a former
public official or employee from representing another
state, county, municipal or other governmental entity
before the governmental entity in which he or she served
or was employed within six months after the termina-
tion of his or her employment or service in the entity.
(3) A present or former public official or employee may appear at any time 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 may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

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

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

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

(i) Members of the Legislature required to vote. — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) Limitations on participation in licensing and rate-making proceedings. — No public official or employee may participate within the scope of his 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 partner-
ship, 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 reimbur-
sement 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 ap-
proved 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.
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 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 31st day of March 1992.

Governor