

RECEIVED

1992 MAR 31 PM 4:45

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

HOUSE BILL No. *4361*

(By Delegates *Brown and Grubb*)



Passed *March 7* 1992

In Effect *From* Passage

ENROLLED
H. B. 4361

(By DELEGATES BROWN AND GRUBB)

[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
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 and
6 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
59 may 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 division of culture and history.

126 (d) *Interests in public contracts.* — (1) In addition to
127 the provisions of section fifteen, article ten, chapter

128 sixty-one of this code, no elected or appointed public
129 official or public employee or member of his or her
130 immediate family or business with which he or she is
131 associated may be a party to or have an interest in the
132 profits or benefits of a contract which such official or
133 employee may have direct authority to enter into, or
134 over which he or she may have control: *Provided*, That
135 nothing herein shall be construed to prevent or make
136 unlawful the employment of any person with any
137 governmental body: *Provided, however*, That nothing
138 herein shall be construed to prohibit a member of the
139 Legislature from entering into a contract with any
140 governmental body, or prohibit a part-time appointed
141 public official from entering into a contract which such
142 part-time appointed public official may have direct
143 authority to enter into or over which he or she may have
144 control when such official has been recused from
145 deciding or evaluating and excused from voting on such
146 contract and has fully disclosed the extent of such
147 interest in the contract.

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

157 (A) An interest:

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

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

162 (B) An interest as a creditor:

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

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

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

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

182 (f) *Prohibited representation.* — No present or former
183 elected or appointed public official or public employee
184 shall, during or after his or her public employment or
185 service, represent a client or act in a representative
186 capacity with or without compensation on behalf of any
187 person in a contested case, rate-making proceeding,
188 license or permit application, regulation filing or other
189 particular matter involving a specific party or parties
190 which arose during his or her period of public service
191 or employment and in which he or she personally and
192 substantially participated in a decision-making, advi-
193 sory or staff support capacity, unless the appropriate
194 government agency, after consultation, consents to such
195 representation. A staff attorney, accountant, or other
196 professional employee who has represented a govern-
197 ment agency in a particular matter shall not thereafter
198 represent another client in the same or substantially
199 related matter in which that client's interests are
200 materially adverse to the interests of the government
201 agency, without the consent of the government agency:
202 *Provided,* That this prohibition on representation shall
203 not apply when the client was not directly involved in
204 the particular matter in which such professional
205 employee represented the government agency, but was
206 involved only as a member of a class. The provisions of
207 this subsection shall not apply to legislators who were

208 in office and legislative staff who were employed at the
209 time it originally became effective on the first day of
210 July, one thousand nine hundred eighty-nine and those
211 who have since become legislators or legislative staff
212 and those who shall serve hereafter as legislators or
213 legislative staff.

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

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

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

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

230 (D) A rate-making proceeding; and

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

232 (2) As used in this subsection, “represent” includes any
233 formal or informal appearance before, or any written or
234 oral communication with, any public agency on behalf
235 of any person: *Provided*, That nothing contained in this
236 subsection shall prohibit, during any period, a former
237 public official or employee from being retained by or
238 employed to represent, assist, or act in a representative
239 capacity on behalf of the public agency by which he or
240 she was employed or in which he or she served. Nothing
241 in this subsection shall be construed to prevent a former
242 public official or employee from representing another
243 state, county, municipal or other governmental entity
244 before the governmental entity in which he or she served
245 or was employed within six months after the termina-
246 tion of his or her employment or service in the entity.

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

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

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

273 (h) *Seeking employment with regulated person prohib-*
274 *ited.* — (1) No full-time public official or full-time public
275 employee who exercises policymaking, nonministerial or
276 regulatory authority may seek employment with, or
277 allow himself or herself to be employed by, any person
278 who is or may be regulated by the governmental body
279 which he or she serves while he or she is employed or
280 serves in the governmental agency. The term "employ-
281 ment" within the meaning of this section includes
282 professional services and other services rendered by the
283 public official or public employee whether rendered as
284 an employee or as an independent contractor.

285 (2) No person regulated by a governmental agency
286 shall offer employment to a full-time public official or

287 full-time public employee of the regulating government-
288 tal agency during the period of time the public official
289 or employee works or serves in such agency.

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

303 (i) *Members of the Legislature required to vote.* —
304 Members of the Legislature who have asked to be
305 excused from voting or who have made inquiry as to
306 whether they should be excused from voting on a
307 particular matter and who are required by the presid-
308 ing officer of the House of Delegates or Senate of West
309 Virginia to vote under the rules of the particular house
310 shall not be guilty of any violation of ethics under the
311 provisions of this section for a vote so cast.

312 (j) *Limitations on participation in licensing and rate-*
313 *making proceedings.* — No public official or employee
314 may participate within the scope of his or her duties as
315 a public official or employee, except through ministerial
316 functions as defined in section three, article one of this
317 chapter, in any license or rate-making proceeding that
318 directly affects the license or rates of any person,
319 partnership, trust, business trust, corporation or
320 association in which the public official or employee or
321 his or her immediate family owns or controls more than
322 ten percent. No public official or public employee may
323 participate within the scope of his or her duties as a
324 public official or public employee, except through
325 ministerial functions as defined in section three, article
326 one of this chapter, in any license or rate-making
327 proceeding that directly affects the license or rates of

328 any person to whom the public official or public
329 employee or his or her immediate family, or a partner-
330 ship, trust, business trust, corporation or association of
331 which the public official or employee, or his or her
332 immediate family, owns or controls more than ten
333 percent, has sold goods or services totaling more than
334 one thousand dollars during the preceding year, unless
335 the public official or public employee has filed a written
336 statement acknowledging such sale with the public
337 agency and the statement is entered in any public record
338 of the agency's proceedings. This subsection shall not be
339 construed to require the disclosure of clients of attorneys
340 or of patients or clients of persons licensed pursuant to
341 articles three, eight, fourteen, fourteen-a, fifteen,
342 sixteen, twenty, twenty-one or thirty-one, chapter thirty
343 of this code.

344 (k) *Certain expenses prohibited.* — No public official
345 or public employee shall knowingly request or accept
346 from any governmental entity compensation or reimbur-
347 sement for any expenses actually paid by a lobbyist and
348 required by the provisions of this chapter to be reported,
349 or actually paid by any other person.

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

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

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

James Heck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

David Williams

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Keith Burdette

President of the Senate

Robert Cole

Speaker of the House of Delegates

The within *is approved* this the *31st*
day of *March* 1992.

Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/92

Time 11:40am