

SB 339

FILED

2009 MAY 13 PM 4: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 339

(SENATOR FOSTER, *original sponsor*)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to exemptions for certain spousal relationships from county hiring and employment prohibition under limited circumstances; creating an exemption for certain spouses who were employed by the county prior to their engagement or marriage to a county official to county hiring prohibition; creating an exemption for certain licensed professional medical personnel to county hiring prohibition; limitations; and removing antiquated language.

Be it enacted by the Legislature of West Virginia:

That §61-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.

1 (a) It is unlawful for any member of a county commis-
2 sion, district school officer, secretary of a board of educa-
3 tion, supervisor or superintendent, principal or teacher of
4 public schools or any member of any other county or
5 district board or any county or district officer to be or
6 become pecuniarily interested, directly or indirectly, in the
7 proceeds of any contract or service or in the furnishing of
8 any supplies in the contract for or the awarding or letting
9 of a contract if, as a member, officer, secretary, supervisor,
10 superintendent, principal or teacher, he or she may have
11 any voice, influence or control: *Provided*, That nothing in
12 this section prevents or makes unlawful the employment
13 of the spouse of a member, officer, secretary, supervisor,
14 superintendent, principal or teacher as a principal or
15 teacher or auxiliary or service employee in the public
16 schools of any county or prevents or makes unlawful the
17 employment by any joint county and circuit clerk of his or
18 her spouse.

19 (b) Any person who violates the provisions of subsection
20 (a) of this section is guilty of a misdemeanor and, upon
21 conviction thereof, shall be fined not less than \$50 nor
22 more than \$500 or confined in jail not more than one year,
23 or both fined and confined.

24 (c) Any person convicted of violating the provisions of
25 subsection (a) of this section shall also be removed from
26 his or her office and the certificate or certificates of any
27 teacher, principal, supervisor or superintendent so con-
28 victed shall, upon conviction thereof, be immediately
29 revoked: *Provided*, That no person may be removed from
30 office and no certificate may be revoked for a violation of
31 the provisions of this section unless the person has first
32 been convicted of the violation.

33 (d) Any person, firm or corporation that offers or gives
34 any compensation or thing of value or who forebears to
35 perform an act to any of the persons named in subsection
36 (a) of this section or to or for any other person with the
37 intent to secure the influence, support or vote of the
38 person for any contract, service, award or other matter as
39 to which any county or school district becomes or may
40 become the paymaster is guilty of a misdemeanor and,
41 upon conviction thereof, shall be fined not less than \$500
42 nor more than \$2,500 and, in the court's discretion, the
43 person or any member of the firm or, if it is a corporation,
44 any agent or officer of the corporation offering or giving
45 any compensation or other thing of value may, in addition
46 to a fine, be confined in jail for a period not to exceed one
47 year.

48 (e) The provisions of subsection (a) of this section do not
49 apply to any person who is a salaried employee of a vendor
50 or supplier under a contract subject to the provisions of
51 said subsection if the employee, his or her spouse or child:

52 (1) Is not a party to the contract;

53 (2) Is not an owner, a shareholder, a director or an
54 officer of a private entity under the contract;

55 (3) Receives no commission, bonus or other direct
56 remuneration or thing of value by virtue of the contract;

57 (4) Does not participate in the deliberations or award-
58 ing of the contract; and

59 (5) Does not approve or otherwise authorize the pay-
60 ment for any services performed or supplies furnished
61 under the contract.

62 (f) The provisions of subsection (a) of this section do not
63 apply to any person who has a pecuniary interest in a bank
64 within the county serving or under consideration to serve
65 as a depository of funds for the county or board of educa-

66 tion, as the case may be, if the person does not participate
67 in the deliberations or any ultimate determination of the
68 depository of the funds.

69 (g) The provisions of subsection (a) of this section do not
70 apply to any person who has a pecuniary interest in a
71 public utility which is subject to regulation by the Public
72 Service Commission of this state.

73 (h) Where the provisions of subsection (a) of this section
74 would result in the loss of a quorum in a public body or
75 agency, in excessive cost, undue hardship or other sub-
76 stantial interference with the operation of a governmental
77 body or agency, the affected governmental body or agency
78 may make written application to the West Virginia Ethics
79 Commission pursuant to subsection (d), section five, article
80 two, chapter six-b of this code for an exemption from
81 subsection (a) of this section.

82 (i) The provisions of this section do not apply to publi-
83 cations in newspapers required by law to be made.

84 (j) No school employee or school official subject to the
85 provisions of subsection (a) of this section has an interest
86 in the sale, proceeds or profits in any book or other thing
87 used or to be used in the free school system of this state, as
88 proscribed in section nine, article XII of the Constitution
89 of West Virginia, if they qualify for the exceptions set
90 forth in subsection (e), (f), (g) or (h) of this section.

91 (k) The provisions of subsection (a) of this section do
92 not prevent or make unlawful the employment of the
93 spouse of any member of a county commission as a
94 licensed health care provider at government-owned
95 hospitals or other government agencies who provide health
96 care services: *Provided*, That the member of a county
97 commission whose spouse is employed or to be employed
98 may not:

99 (1) Serve on the board for the government-owned
100 hospital or other government agency who provides health
101 care services where his or her spouse is employed or to be
102 employed;

103 (2) Vote on the appointment of members to the board
104 for the government-owned hospital or other government
105 agency who provides health care services where his or her
106 spouse is employed or to be employed; or,

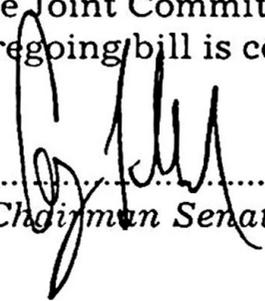
107 (3) Seek to influence the hiring or promotion of his or
108 her spouse by the government-owned hospital or other
109 government agency who provides health care services.

110 (1) The provisions of subsection (a) of this section do not
111 make unlawful the employment of a spouse of any elected
112 county official by that county official: *Provided*, That the
113 elected county official may not:

114 (1) Directly supervise the spouse employee; or

115 (2) Set the salary of the spouse employee: *Provided*,
116 That the provisions of this subsection shall only apply to
117 spouse employees who were neither married to nor en-
118 gaged to the elected county official at the time of their
119 initial hiring.

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


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Chairman Senate Committee


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Chairman House Committee

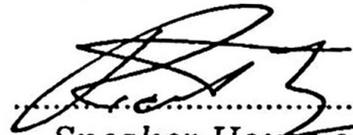
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 13th
may
Day of, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:20am