

H. B. 2489

(By Delegates Howell, Storch, Canterbury, Azinger, Border, Smith, R., Nelson, J., Folk, Hamrick, Kump and McCuskey)

[Introduced February 15, 2013; referred to the Committee on the Judiciary then Finance.]

FISCAL NOTE

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §6B-4-1, §6B-4-2, and §6B-4-3; all relating to official misconduct by a public officer or employee in a public capacity or under color of the officer's or employee's office or employment; penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §6B-4-1, §6B-4-2 and §6B-4-3, all to read as follows:

ARTICLE 4. OFFICIAL MISCONDUCT BY PUBLIC OFFICER OR EMPLOYEE.

§6B-4-1. Official misconduct defined; penalties.

(a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:

(1) Knowingly using or authorizing the use of any aircraft, as

1 defined in §8-29B-2 of this code; vehicle, as defined in §17-1-4 of
2 this code, or watercraft, as defined in §11-14C-2 of this code,
3 under the officer's or employee's control or direction, or in the
4 officer's or employee's custody, exclusively for the private benefit
5 or gain of the officer or employee or another: Provided, That the
6 provisions of subsection(a) (1) shall not apply to any use of persons
7 or property which at the time of the use, is authorized by law or
8 by formal written policy of the governmental entity;

9 (2) Knowingly failing to serve civil process when required by
10 law;

11 (3) Using confidential information acquired in the course of
12 and related to the officer's or employee's office or employment for
13 the private benefit or gain of the officer or employee or another
14 or to intentionally cause harm to another;

15 (4) Except as authorized by law, with the intent to reduce or
16 eliminate competition among bidders or prospective bidders on any
17 contract or proposed contract:

18 (A) Disclosing confidential information regarding proposals or
19 communications from bidders or prospective bidders on any contract
20 or proposed contract;

21 (B) Accepting any bid or proposal on a contract or proposed
22 contract after the deadline for acceptance of such bid or proposal;
23 or

24 (C) Altering any bid or proposal submitted by a bidder on a

1 contract or proposed contract;

2 (5) Except as authorized by law, knowingly destroying,
3 tampering with or concealing evidence of a crime; or

4 (6) Knowingly submitting to a governmental entity a claim for
5 expenses which is false or duplicates expenses for which a claim is
6 submitted to the governmental entity, another governmental or
7 private entity; or

8 (7) As part of a determination of whether to grant another
9 person access to a publicly accessible venue or form of
10 transportation, intentionally and without probable cause:

11 (A) Touches the genitals, buttocks, anus or female breasts of
12 the person, including touching through clothing;

13 (B) Removes a child younger than eighteen years of age from the
14 physical custody or control of the child's parent or legal guardian,
15 or a person standing in the stead of the child's parent or legal
16 guardian;

17 (C) Commits a violation of subsection (a) or (b) of §61-2-9 of
18 this code; or

19 (D) Harasses, delays, coerces, threatens, intimidates, or
20 denies or conditions the person's accessibility because of the
21 person's refusal to consent to subdivisions (a) (7) (A), (a) (7) (B) or
22 (a) (7) (C).

23 (b) (1) A persons who commits an offense of official misconduct
24 as provided in subdivisions (a) (1) through (a) (4) is guilty of a

1 misdemeanor and, upon conviction thereof, shall be fined no more
2 than \$5,000 or confined in jail no more than one year, or both
3 fined and confined.

4 (2) A person who commits official misconduct as described in
5 subdivision (a) (5), if in connection with a crime that is a felony,
6 is guilty of a felony and, upon conviction thereof, shall be fined
7 between \$2,000 and \$25,000 or imprisoned in a state correctional
8 facility from one year to twenty years, or both fined and
9 imprisoned. If the person commits the offense in connection with a
10 crime that is a misdemeanor, the person is guilty of a misdemeanor
11 and, upon conviction thereof, shall be fined no more than \$5,000 or
12 confined in jail no more than one year, or both fined and confined.

13 (3) A person who commits official misconduct as described in
14 subdivision (a) (6) of this section, if the claim is for less than
15 \$1,000, is guilty of a misdemeanor and, upon conviction thereof,
16 shall be fined no more than \$5,000 or confined in jail no more than
17 one year, or both fined and confined. If the misconduct is related
18 to a claim of more than \$1,000, the person is guilty of a felony
19 and, upon conviction thereof, shall be fined from \$2,000 to \$25,000
20 or imprisoned in a state correctional facility for from one to
21 twenty years, or both fined and imprisoned.

22 (4) A person who commits official misconduct as described in
23 subdivision (a) (7) of this section is guilty of a misdemeanor and,
24 upon conviction thereof, shall be fined no more than \$5,000 or

1 confined in jail no more than one year, or both fined and confined.

2 (c) As used in relation to subdivision (a) (7), "public officer
3 or employee" includes, but is not limited to:

4 (1) An officer, employee or agent of:

5 (A) A federal branch, department or agency; or

6 (B) Any person acting under a contract with a federal branch,
7 department or agency to provide a security or law-enforcement
8 service; or

9 (2) Any person acting under color of federal law.

10 (d) As used in this section, "confidential" means any
11 information that is not subject to mandatory disclosure pursuant
12 to the state's Freedom of Information Act, article 1, chapter 29-b
13 of this code.

14 **§6B-4-2. Forfeiture of office or employment upon conviction.**

15 Upon conviction of official misconduct a public officer or
16 employee shall forfeit the officer's or employee's office or
17 employment.

18 **§6B-4-3. Attorney General may defend validity of the article.**

19 The Attorney General, with the consent of the proper county or
20 district attorney, shall take any actions necessary on behalf of the
21 State of West Virginia to defend the validity of provisions of this
22 article, if any provision is challenged on grounds of
23 unconstitutionality, preemption or sovereign immunity. The Attorney
24 General may make any legal arguments the Attorney General considers

1 appropriate, including, but not limited to, a valid exercise of the
2 state's police powers, liberty interests secured by the Constitution
3 of the United States, powers reserved to the states by the tenth
4 amendment of the Constitution of the United States or any rights and
5 protections secured by the Constitution of the State of West
6 Virginia.

NOTE: The purpose of this bill is to provide for forfeiture of office or employment by a public official who is guilty of official misconduct.

The article is new; therefore, it has been completely underscored.