

1 **Senate Bill No. 217**

2 (By Senators Blair, Jenkins, Carmichael and Nohe)

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4 [Introduced January 8, 2014; referred to the Committee on
5 Government Organization; and then to the Committee on the
6 Judiciary.]
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11 A BILL to amend and reenact §6B-1-3 of the Code of West Virginia,
12 1931, as amended; and to amend and reenact §6B-2-5 of said
13 code, all relating to governmental ethics; prohibiting public
14 officials and employees from using public funds for self
15 promotion; prohibiting knowingly and intentionally placing the
16 names or likenesses of public officials and employees on
17 trinkets; prohibiting knowingly and intentionally placing the
18 names or likenesses of public officials and employees on
19 certain publically financed advertising during an election
20 period; and defining terms.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §6B-1-3 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted; and that §6B-2-5 of said code be amended

1 and reenacted, all to read as follows:

2 **ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT;**
3 **CONSTRUCTION AND APPLICATION OF CHAPTER;**
4 **SEVERABILITY.**

5 **§6B-1-3. Definitions.**

6 As used in this chapter, unless the context in which used
7 clearly requires otherwise:

8 (a) "Review Board" means the Probable Cause Review Board
9 created by section two-a, article two of this chapter.

10 (b) "Broad-based" means communications on specific issues
11 (other than regular responses to constituent requests or ongoing
12 litigation or legal matters) designed to reach more than fifty
13 people at one time.

14 ~~(b)~~ (c) "Business" means any entity through which business
15 for-profit is conducted including a corporation, partnership,
16 proprietorship, franchise, association, organization or
17 self-employed individual.

18 ~~(c)~~ (d) "Compensation" means money, thing of value or
19 financial benefit. The term "compensation" does not include
20 reimbursement for actual reasonable and necessary expenses incurred
21 in the performance of one's official duties.

22 (e) "Directed by law" means the public servant or entity is
23 directed to include certain information by statute, rule, court

1 order or federal regulation.

2 (f) "Election period" means the time period between the
3 deadline for filing for public office and the general election.

4 ~~(d)~~ (g) "Employee" means any person in the service of another
5 under any contract of hire, whether express or implied, oral or
6 written, where the employer or an agent of the employer or a public
7 official has the right or power to control and direct such person
8 in the material details of how work is to be performed and who is
9 not responsible for the making of policy nor for recommending
10 official action.

11 ~~(e)~~ (h) "Ethics Commission" or "commission" means the West
12 Virginia Ethics Commission.

13 ~~(f)~~ (I) "Immediate family", with respect to an individual,
14 means a spouse with whom the individual is living as husband and
15 wife and any dependent child or children, dependent grandchild or
16 grandchildren and dependent parent or parents.

17 ~~(g)~~ (j) "Ministerial functions" means actions or functions
18 performed by an individual under a given state of facts in a
19 prescribed manner in accordance with a mandate of legal authority,
20 without regard to, or without the exercise of, the individual's own
21 judgment as to the propriety of the action being taken.

22 ~~(h)~~ (k) "Person" means an individual, corporation, business
23 entity, labor union, association, firm, partnership, limited

1 partnership, committee, club or other organization or group of
2 persons, irrespective of the denomination given such organization
3 or group.

4 ~~(i)~~ (l) "Political contribution" means and has the same
5 definition as is given that term under the provisions of article
6 eight, chapter three of this code.

7 (m) "Public advertising" means radio, television, newspaper,
8 billboards, signs, or other media intended to convey a message or
9 information relating to the public agency, commission, department
10 or organization. However, dissemination of office press releases
11 and information via email, social media, or other public relations
12 tools for official purposes is not public advertising.

13 ~~(j)~~ (n) "Public employee" means any full-time or part-time
14 employee of any state, county or municipal governmental body or any
15 political subdivision thereof, including county school boards.

16 ~~(k)~~ (o) "Public official" means any person who is elected or
17 appointed to any state, county or municipal office or position and
18 who is responsible for the making of policy or takes official
19 action which is either ministerial or nonministerial, or both, with
20 respect to: (1) Contracting for, or procurement of, goods or
21 services; (2) administering or monitoring grants or subsidies; (3)
22 planning or zoning; (4) inspecting, licensing, regulating or
23 auditing any person; or (5) any other activity where the official

1 action has an economic impact of greater than a de minimis nature
2 on the interest or interests of any person.

3 ~~(i)~~ (p) "Relative" means spouse, mother, father, sister,
4 brother, son, daughter, grandmother, grandfather, grandchild,
5 mother-in-law, father-in-law, sister-in-law, brother-in-law,
6 son-in-law or daughter-in-law.

7 ~~(m)~~ (q) "Respondent" means a person who is the subject of an
8 investigation by the commission or against whom a complaint has
9 been filed with the commission.

10 ~~(n)~~ (r) "Thing of value", "other thing of value" or "anything
11 of value" means and includes: (1) Money, bank bills or notes,
12 United States treasury notes and other bills, bonds or notes issued
13 by lawful authority and intended to pass and circulate as money;
14 (2) goods and chattels; (3) promissory notes, bills of exchange,
15 orders, drafts, warrants, checks, bonds given for the payment of
16 money or the forbearance of money due or owing; (4) receipts given
17 for the payment of money or other property; (5) any right or chose
18 in action; (6) chattels real or personal or things which savor of
19 realty and are, at the time taken, a part of a freehold, whether
20 they are of the substance or produce thereof or affixed thereto,
21 although there may be no interval between the severing and the
22 taking away thereof; (7) any interest in realty, including, but not
23 limited to, fee simple estates, life estates, estates for a term or

1 period of time, joint tenancies, cotenancies, tenancies in common,
2 partial interests, present or future interests, contingent or
3 vested interests, beneficial interests, leasehold interests or any
4 other interest or interests in realty of whatsoever nature; (8) any
5 promise of employment, present or future; (9) donation or gift;
6 (10) rendering of services or the payment thereof; (11) any advance
7 or pledge; (12) a promise of present or future interest in any
8 business or contract or other agreement; or (13) every other thing
9 or item, whether tangible or intangible, having economic worth.
10 "Thing of value", "other thing of value" or "anything of value"
11 shall not include anything which is de minimis in nature nor a
12 lawful political contribution reported as required by law.

13 (s) "Trinket" means a small tangible item, ornament, or thing
14 of trivial value, including, but not limited to, pens, pencils,
15 magnets, pill box holders, key chains, nail files, matches, piggy
16 banks, gun locks and bags.

17 **ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;**
18 **DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC**
19 **OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC**
20 **AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW**
21 **JUDGES.**

22 **§6B-2-5. Ethical standards for elected and appointed officials and**

1 **public employees.**

2 (a) *Persons subject to section.* -- The provisions of this
3 section apply to all elected and appointed public officials and
4 public employees, whether full or part time, in state, county,
5 municipal governments and their respective boards, agencies,
6 departments and commissions and in any other regional or local
7 governmental agency, 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 intentionally use
10 his or her office or the prestige of his or her office for his or
11 her own private gain or that of another person. Incidental use of
12 equipment or resources available to a public official or public
13 employee by virtue of his or her position for personal or business
14 purposes resulting in de minimis private gain does not constitute
15 use of public office for private gain under this subsection. The
16 performance of usual and customary duties associated with the
17 office or position or the advancement of public policy goals or
18 constituent services, without compensation, does not constitute the
19 use of prestige of office for private gain.

20 (2) Notwithstanding the general prohibition against use of
21 office for private gain, public officials and public employees may
22 use bonus points acquired through participation in frequent
23 traveler programs while traveling on official government business:

1 *Provided*, That the official's or employee's participation in such
2 program, or acquisition of such points, does not result in
3 additional costs to the government.

4 (3) The Legislature, in enacting this subsection, recognizes
5 that there may be certain public officials or public employees who
6 bring to their respective offices or employment their own unique
7 personal prestige which is based upon their intelligence,
8 education, experience, skills and abilities, or other personal
9 gifts or traits. In many cases, these persons bring a personal
10 prestige to their office or employment which inures to the benefit
11 of the state and its citizens. Those persons may, in fact, be
12 sought by the state to serve in their office or employment because,
13 through their unusual gifts or traits, they bring stature and
14 recognition to their office or employment and to the state itself.
15 While the office or employment held or to be held by those persons
16 may have its own inherent prestige, it would be unfair to those
17 individuals and against the best interests of the citizens of this
18 state to deny those persons the right to hold public office or to
19 be publicly employed on the grounds that they would, in addition to
20 the emoluments of their office or employment, be in a position to
21 benefit financially from the personal prestige which otherwise
22 inheres to them. Accordingly, the commission is directed, by
23 legislative rule, to establish categories of public officials and

1 public employees, identifying them generally by the office or
2 employment held, and offering persons who fit within those
3 categories the opportunity to apply for an exemption from the
4 application of the provisions of this subsection. Exemptions may
5 be granted by the commission, on a case-by-case basis, when it is
6 shown that: (A) The public office held or the public employment
7 engaged in is not such that it would ordinarily be available or
8 offered to a substantial number of the citizens of this state; (B)
9 the office held or the employment engaged in is such that it
10 normally or specifically requires a person who possesses personal
11 prestige; and (C) the person's employment contract or letter of
12 appointment provides or anticipates that the person will gain
13 financially from activities which are not a part of his or her
14 office or employment.

15 (c) *Gifts.* -- (1) A public official or public employee may not
16 solicit any gift unless the solicitation is for a charitable
17 purpose with no resulting direct pecuniary benefit conferred upon
18 the official or employee or his or her immediate family: *Provided,*
19 That no public official or public employee may solicit for a
20 charitable purpose any gift from any person who is also an official
21 or employee of the state and whose position is subordinate to the
22 soliciting official or employee: *Provided, however,* That nothing
23 herein shall prohibit a candidate for public office from soliciting

1 a lawful political contribution. No official or employee may
2 knowingly accept any gift, directly or indirectly, from a lobbyist
3 or from any person whom the official or employee knows or has
4 reason to know:

5 (A) Is doing or seeking to do business of any kind with his or
6 her agency;

7 (B) Is engaged in activities which are regulated or controlled
8 by his or her agency; or

9 (C) Has financial interests which may be substantially and
10 materially affected, in a manner distinguishable from the public
11 generally, by the performance or nonperformance of his or her
12 official duties.

13 (2) Notwithstanding the provisions of subdivision (1) of this
14 subsection, a person who is a public official or public employee
15 may accept a gift described in this subdivision, and there shall be
16 a presumption that the receipt of such gift does not impair the
17 impartiality and independent judgment of the person. This
18 presumption may be rebutted only by direct objective evidence that
19 the gift did impair the impartiality and independent judgment of
20 the person or that the person knew or had reason to know that the
21 gift was offered with the intent to impair his or her impartiality
22 and independent judgment. The provisions of subdivision (1) of
23 this subsection do not apply to:

1 (A) Meals and beverages;

2 (B) Ceremonial gifts or awards which have insignificant
3 monetary value;

4 (C) Unsolicited gifts of nominal value or trivial items of
5 informational value;

6 (D) Reasonable expenses for food, travel and lodging of the
7 official or employee for a meeting at which the official or
8 employee participates in a panel or has a speaking engagement;

9 (E) Gifts of tickets or free admission extended to a public
10 official or public employee to attend charitable, cultural or
11 political events, if the purpose of such gift or admission is a
12 courtesy or ceremony customarily extended to the office;

13 (F) Gifts that are purely private and personal in nature; or

14 (G) Gifts from relatives by blood or marriage, or a member of
15 the same household.

16 (3) The commission shall, through legislative rule promulgated
17 pursuant to chapter twenty-nine-a of this code, establish
18 guidelines for the acceptance of a reasonable honorarium by public
19 officials and elected officials. The rule promulgated shall be
20 consistent with this section. Any elected public official may
21 accept an honorarium only when:

22 (A) That official is a part-time elected public official;

23 (B) The fee is not related to the official's public position

1 or duties;

2 (C) The fee is for services provided by the public official
3 that are related to the public official's regular, nonpublic trade,
4 profession, occupation, hobby or avocation; and

5 (D) The honorarium is not provided in exchange for any promise
6 or action on the part of the public official.

7 (4) Nothing in this section shall be construed so as to
8 prohibit the giving of a lawful political contribution as defined
9 by law.

10 (5) The Governor or his or her designee may, in the name of
11 the State of West Virginia, accept and receive gifts from any
12 public or private source. Any gift so obtained shall become the
13 property of the state and shall, within thirty days of the receipt
14 thereof, be registered with the commission and the Division of
15 Culture and History.

16 (6) Upon prior approval of the Joint Committee on Government
17 and Finance, any member of the Legislature may solicit donations
18 for a regional or national legislative organization conference or
19 other legislative organization function to be held in the state for
20 the purpose of deferring costs to the state for hosting of the
21 conference or function. Legislative organizations are bipartisan
22 regional or national organizations in which the Joint Committee on
23 Government and Finance authorizes payment of dues or other

1 membership fees for the Legislature's participation and which
2 assist this and other State Legislatures and their staff through
3 any of the following:

4 (A) Advancing the effectiveness, independence and integrity of
5 Legislatures in the states of the United States;

6 (B) Fostering interstate cooperation and facilitating
7 information exchange among State Legislatures;

8 (C) Representing the states and their Legislatures in the
9 American federal system of government;

10 (D) Improving the operations and management of State
11 Legislatures and the effectiveness of legislators and legislative
12 staff, and to encourage the practice of high standards of conduct
13 by legislators and legislative staff;

14 (E) Promoting cooperation between State Legislatures in the
15 United States and Legislatures in other countries.

16 The solicitations may only be made in writing. The legislative
17 organization may act as fiscal agent for the conference and receive
18 all donations. In the alternative, a bona fide banking institution
19 may act as the fiscal agent. The official letterhead of the
20 Legislature may not be used by the legislative member in
21 conjunction with the fund raising or solicitation effort. The
22 legislative organization for which solicitations are being made
23 shall file with the Joint Committee on Government and Finance and

1 with the Secretary of State for publication in the State Register
2 as provided in article two of chapter twenty-nine-a of the code,
3 copies of letters, brochures and other solicitation documents,
4 along with a complete list of the names and last known addresses of
5 all donors and the amount of donations received. Any solicitation
6 by a legislative member shall contain the following disclaimer:

7 "This solicitation is endorsed by [name of member]. This
8 endorsement does not imply support of the soliciting organization,
9 nor of the sponsors who may respond to the solicitation. A copy of
10 all solicitations are on file with the West Virginia Legislature's
11 Joint Committee on Government and Finance, and with the Secretary
12 of State and are available for public review."

13 (7) Upon written notice to the commission, any member of the
14 Board of Public Works may solicit donations for a regional or
15 national organization conference or other function related to the
16 office of the member to be held in the state for the purpose of
17 deferring costs to the state for hosting of the conference or
18 function. The solicitations may only be made in writing. The
19 organization may act as fiscal agent for the conference and receive
20 all donations. In the alternative, a bona fide banking institution
21 may act as the fiscal agent. The official letterhead of the office
22 of the Board of Public Works member may not be used in conjunction
23 with the fund raising or solicitation effort. The organization for

1 which solicitations are being made shall file with the Joint
2 Committee on Government and Finance, with the Secretary of State
3 for publication in the State Register as provided in article two of
4 chapter twenty-nine-a of the code and with the commission, copies
5 of letters, brochures and other solicitation documents, along with
6 a complete list of the names and last known addresses of all donors
7 and the amount of donations received. Any solicitation by a member
8 of the Board of Public Works shall contain the following
9 disclaimer: "This solicitation is endorsed by (name of member of
10 Board of Public Works.) This endorsement does not imply support of
11 the soliciting organization, nor of the sponsors who may respond to
12 the solicitation. Copies of all solicitations are on file with the
13 West Virginia Legislature's Joint Committee on Government and
14 Finance, with the West Virginia Secretary of State and with the
15 West Virginia Ethics Commission and are available for public
16 review." Any moneys in excess of those donations needed for the
17 conference or function shall be deposited in the Capitol Dome and
18 Capitol Improvement Fund established in section two, article four
19 of chapter five-a of this code.

20 (d) *Interests in public contracts.* --

21 (1) In addition to the provisions of section fifteen, article
22 ten, chapter sixty-one of this code, no elected or appointed public
23 official or public employee or member of his or her immediate

1 family or business with which he or she is associated may be a
2 party to or have an interest in the profits or benefits of a
3 contract which the official or employee may have direct authority
4 to enter into, or over which he or she may have control: *Provided,*
5 That nothing herein shall be construed to prevent or make unlawful
6 the employment of any person with any governmental body: *Provided,*
7 *however,* That nothing herein shall be construed to prohibit a
8 member of the Legislature from entering into a contract with any
9 governmental body, or prohibit a part-time appointed public
10 official from entering into a contract which the part-time
11 appointed public official may have direct authority to enter into
12 or over which he or she may have control when the official has not
13 participated in the review or evaluation thereof, has been recused
14 from deciding or evaluating and has been excused from voting on the
15 contract and has fully disclosed the extent of his or her interest
16 in the contract.

17 (2) In the absence of bribery or a purpose to defraud, an
18 elected or appointed public official or public employee or a member
19 of his or her immediate family or a business with which he or she
20 is associated shall not be considered as having a prohibited
21 financial interest in a public contract when such a person has a
22 limited interest as an owner, shareholder or creditor of the
23 business which is awarded a public contract. A limited interest

1 for the purposes of this subsection is:

2 (A) An interest which does not exceed \$1,000 in the profits or
3 benefits of the public contract or contracts in a calendar year;

4 (B) An interest as a creditor of a public employee or official
5 who exercises control over the contract, or a member of his or her
6 immediate family, if the amount is less than \$5,000.

7 (3) If a public official or employee has an interest in the
8 profits or benefits of a contract, then he or she may not make,
9 participate in making, or in any way attempt to use his office or
10 employment to influence a government decision affecting his or her
11 financial or limited financial interest. Public officials shall
12 also comply with the voting rules prescribed in subsection (j) of
13 this section.

14 (4) Where the provisions of subdivisions (1) and (2) of this
15 subsection would result in the loss of a quorum in a public body or
16 agency, in excessive cost, undue hardship, or other substantial
17 interference with the operation of a state, county, municipality,
18 county school board or other governmental agency, the affected
19 governmental body or agency may make written application to the
20 Ethics Commission for an exemption from subdivisions (1) and (2) of
21 this subsection.

22 (e) *Confidential information.* -- No present or former public
23 official or employee may knowingly and improperly disclose any

1 confidential information acquired by him or her in the course of
2 his or her official duties nor use such information to further his
3 or her personal interests or the interests of another person.

4 (f) *Prohibited representation.* -- No present or former elected
5 or appointed public official or public employee shall, during or
6 after his or her public employment or service, represent a client
7 or act in a representative capacity with or without compensation on
8 behalf of any person in a contested case, rate-making proceeding,
9 license or permit application, regulation filing or other
10 particular matter involving a specific party or parties which arose
11 during his or her period of public service or employment and in
12 which he or she personally and substantially participated in a
13 decision-making, advisory or staff support capacity, unless the
14 appropriate government agency, after consultation, consents to such
15 representation. A staff attorney, accountant or other professional
16 employee who has represented a government agency in a particular
17 matter shall not thereafter represent another client in the same or
18 substantially related matter in which that client's interests are
19 materially adverse to the interests of the government agency,
20 without the consent of the government agency: *Provided,* That this
21 prohibition on representation shall not apply when the client was
22 not directly involved in the particular matter in which the
23 professional employee represented the government agency, but was

1 involved only as a member of a class. The provisions of this
2 subsection shall not apply to legislators who were in office and
3 legislative staff who were employed at the time it originally
4 became effective on July 1, 1989, and those who have since become
5 legislators or legislative staff and those who shall serve
6 hereafter as legislators or legislative staff.

7 (g) *Limitation on practice before a board, agency, commission*
8 *or department.* -- Except as otherwise provided in section three,
9 four or five, article two, chapter eight-a of this code: (1) No
10 elected or appointed public official and no full-time staff
11 attorney or accountant shall, during his or her public service or
12 public employment or for a period of one year after the termination
13 of his or her public service or public employment with a
14 governmental entity authorized to hear contested cases or
15 promulgate or propose rules, appear in a representative capacity
16 before the governmental entity in which he or she serves or served
17 or is or was employed in the following matters:

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

20 (B) To support or oppose a proposed rule;

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

23 (D) A rate-making proceeding; and

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

2 (2) As used in this subsection, "represent" includes any
3 formal or informal appearance before, or any written or oral
4 communication with, any public agency on behalf of any person:
5 *Provided*, That nothing contained in this subsection shall prohibit,
6 during any period, a former public official or employee from being
7 retained by or employed to represent, assist or act in a
8 representative capacity on behalf of the public agency by which he
9 or she was employed or in which he or she served. Nothing in this
10 subsection shall be construed to prevent a former public official
11 or employee from representing another state, county, municipal or
12 other governmental entity before the governmental entity in which
13 he or she served or was employed within one year after the
14 termination of his or her employment or service in the entity.

15 (3) A present or former public official or employee may appear
16 at any time in a representative capacity before the Legislature, a
17 county commission, city or town council or county school board in
18 relation to the consideration of a statute, budget, ordinance,
19 rule, resolution or enactment.

20 (4) Members and former members of the Legislature and
21 professional employees and former professional employees of the
22 Legislature shall be permitted to appear in a representative
23 capacity on behalf of clients before any governmental agency of the

1 state or of county or municipal governments, including county
2 school boards.

3 (5) An elected or appointed public official, full-time staff
4 attorney or accountant who would be adversely affected by the
5 provisions of this subsection may apply to the Ethics Commission
6 for an exemption from the one year prohibition against appearing in
7 a representative capacity, when the person's education and
8 experience is such that the prohibition would, for all practical
9 purposes, deprive the person of the ability to earn a livelihood in
10 this state outside of the governmental agency. The Ethics
11 Commission shall by legislative rule establish general guidelines
12 or standards for granting an exemption or reducing the time period,
13 but shall decide each application on a case-by-case basis.

14 (h) *Employment by regulated persons and vendors.* -- (1) No
15 full-time official or full-time public employee may seek employment
16 with, be employed by, or seek to purchase, sell or lease real or
17 personal property to or from any person who:

18 (A) Had a matter on which he or she took, or a subordinate is
19 known to have taken, regulatory action within the preceding twelve
20 months; or

21 (B) Has a matter before the agency on which he or she is
22 working or a subordinate is known by him or her to be working.

23 (C) Is a vendor to the agency where the official serves or

1 public employee is employed and the official or public employee, or
2 a subordinate of the official or public employee, exercises
3 authority or control over a public contract with such vendor,
4 including, but not limited to:

- 5 (I) Drafting bid specifications or requests for proposals;
- 6 (ii) Recommending selection of the vendor;
- 7 (iii) Conducting inspections or investigations;
- 8 (iv) Approving the method or manner of payment to the vendor;
- 9 (v) Providing legal or technical guidance on the formation,
10 implementation or execution of the contract; or
- 11 (vi) Taking other nonministerial action which may affect the
12 financial interests of the vendor.

13 (2) Within the meaning of this section, the term "employment"
14 includes professional services and other services rendered by the
15 public official or public employee, whether rendered as employee or
16 as an independent contractor; "seek employment" includes responding
17 to unsolicited offers of employment as well as any direct or
18 indirect contact with a potential employer relating to the
19 availability or conditions of employment in furtherance of
20 obtaining employment; and "subordinate" includes only those agency
21 personnel over whom the public official or public employee has
22 supervisory responsibility.

23 (3) A full-time public official or full-time public employee

1 who would be adversely affected by the provisions of this
2 subsection may apply to the Ethics Commission for an exemption from
3 the prohibition contained in subdivision (1) of this subsection.

4 (A) The Ethics Commission shall by legislative rule establish
5 general guidelines or standards for granting an exemption, but
6 shall decide each application on a case-by-case basis;

7 (B) A person adversely affected by the restriction on the
8 purchase of personal property may make such purchase after seeking
9 and obtaining approval from the commission or in good faith
10 reliance upon an official guideline promulgated by the commission,
11 written advisory opinions issued by the commission, or a
12 legislative rule.

13 (C) The commission may establish exceptions to the personal
14 property purchase restrictions through the adoption of guidelines,
15 advisory opinions or legislative rule.

16 (4) A full-time public official or full-time public employee
17 may not take personal regulatory action on a matter affecting a
18 person by whom he or she is employed or with whom he or she is
19 seeking employment or has an agreement concerning future
20 employment.

21 (5) A full-time public official or full-time public employee
22 may not personally participate in a decision, approval,
23 disapproval, recommendation, rendering advice, investigation,

1 inspection or other substantial exercise of nonministerial
2 administrative discretion involving a vendor with whom he or she is
3 seeking employment or has an agreement concerning future
4 employment.

5 (6) A full-time public official or full-time public employee
6 may not receive private compensation for providing information or
7 services that he or she is required to provide in carrying out his
8 or her public job responsibilities.

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

17 (j) *Limitations on voting.* --

18 (1) Public officials, excluding members of the Legislature who
19 are governed by subsection (I) of this section, may not vote on a
20 matter:

21 (A) In which they, an immediate family member, or a business
22 with which they or an immediate family member is associated have a
23 financial interest. Business with which they are associated means

1 a business of which the person or an immediate family member is a
2 director, officer, owner, employee, compensated agent, or holder of
3 stock which constitutes five percent or more of the total
4 outstanding stocks of any class.

5 (B) If a public official is employed by a financial
6 institution and his or her primary responsibilities include
7 consumer and commercial lending, the public official may not vote
8 on a matter which directly affects the financial interests of a
9 customer of the financial institution if the public official is
10 directly involved in approving a loan request from the person or
11 business appearing before the governmental body or if the public
12 official has been directly involved in approving a loan for that
13 person or business within the past 12 months: *Provided*, That this
14 limitation only applies if the total amount of the loan or loans
15 exceeds \$15,000.

16 (C) A personnel matter involving the public official's spouse
17 or relative;

18 (D) The appropriations of public moneys or the awarding of a
19 contract to a nonprofit corporation if the public official or an
20 immediate family member is employed by the nonprofit.

21 ~~(H)~~ (2) A public official may vote:

22 (A) If the public official, his or her spouse, immediate
23 family members or relatives or business with which they are

1 associated are affected as a member of, and to no greater extent
2 than any other member of a profession, occupation, class of persons
3 or class of businesses. A class shall consist of not fewer than
4 five similarly situated persons or businesses; or

5 (B) If the matter affects a publicly traded company when:

6 (I) The public official, or dependent family members
7 individually or jointly own less than five percent of the issued
8 stock in the publicly traded company and the value of the stocks
9 individually or jointly owned is less than \$10,000; and

10 (ii) Prior to casting a vote the public official discloses his
11 or her interest in the publicly traded company.

12 (3) For a public official's recusal to be effective, it is
13 necessary to excuse him or herself from participating in the
14 discussion and decision-making process by physically removing him
15 or herself from the room during the period, fully disclosing his or
16 her interests, and recusing him or herself from voting on the
17 issue.

18 (k) *Limitations on participation in licensing and rate-making*
19 *proceedings.* -- No public official or employee may participate
20 within the scope of his or her duties as a public official or
21 employee, except through ministerial functions as defined in
22 section three, article one of this chapter, in any license or
23 rate-making proceeding that directly affects the license or rates

1 of any person, partnership, trust, business trust, corporation or
2 association in which the public official or employee or his or her
3 immediate family owns or controls more than ten percent. No public
4 official or public employee may participate within the scope of his
5 or her duties as a public official or public employee, except
6 through ministerial functions as defined in section three, article
7 one of this chapter, in any license or rate-making proceeding that
8 directly affects the license or rates of any person to whom the
9 public official or public employee or his or her immediate family,
10 or a partnership, trust, business trust, corporation or association
11 of which the public official or employee, or his or her immediate
12 family, owns or controls more than ten percent, has sold goods or
13 services totaling more than \$1,000 during the preceding year,
14 unless the public official or public employee has filed a written
15 statement acknowledging such sale with the public agency and the
16 statement is entered in any public record of the agency's
17 proceedings. This subsection shall not be construed to require the
18 disclosure of clients of attorneys or of patients or clients of
19 persons licensed pursuant to article three, eight, fourteen,
20 fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one,
21 chapter thirty of this code.

22 (1) *Certain compensation prohibited.* --

23 (1) A public employee may not receive additional compensation from

1 another publicly-funded state, county or municipal office or
2 employment for working the same hours, unless:

3 (A) The public employee's compensation from one public
4 employer is reduced by the amount of compensation received from the
5 other public employer;

6 (B) The public employee's compensation from one public
7 employer is reduced on a pro rata basis for any work time missed to
8 perform duties for the other public employer;

9 (C) The public employee uses earned paid vacation, personal or
10 compensatory time or takes unpaid leave from his or her public
11 employment to perform the duties of another public office or
12 employment; or

13 (D) A part-time public employee who does not have regularly
14 scheduled work hours or a public employee who is authorized by one
15 public employer to make up, outside of regularly scheduled work
16 hours, time missed to perform the duties of another public office
17 or employment maintains time records, verified by the public
18 employee and his or her immediate supervisor at least once every
19 pay period, showing the hours that the public employee did, in
20 fact, work for each public employer. The public employer shall
21 submit these time records to the Ethics Commission on a quarterly
22 basis.

23 (2) This section does not prohibit a retired public official

1 or public employee from receiving compensation from a
2 publicly-funded office or employment in addition to any retirement
3 benefits to which the retired public official or public employee is
4 entitled.

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

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

21 (o) Except as provided in this section, a person who is a
22 public official or public employee may not solicit private business
23 from a subordinate public official or public employee whom he or

1 she has the authority to direct, supervise or control. A person
2 who is a public official or public employee may solicit private
3 business from a subordinate public official or public employee whom
4 he or she has the authority to direct, supervise or control when:

5 (A) The solicitation is a general solicitation directed to the
6 public at large through the mailing or other means of distribution
7 of a letter, pamphlet, handbill, circular or other written or
8 printed media; or

9 (B) The solicitation is limited to the posting of a notice in
10 a communal work area; or

11 (C) The solicitation is for the sale of property of a kind
12 that the person is not regularly engaged in selling; or

13 (D) The solicitation is made at the location of a private
14 business owned or operated by the person to which the subordinate
15 public official or public employee has come on his or her own
16 initiative.

17 (p) Self Promotion. -- (1) A public official or employee may
18 not knowingly and intentionally place or allow the use of his or
19 her personal name or likeness to be placed on a trinket that is
20 purchased with public moneys and/or distributed by a public entity.
21 However, the prohibition against self-promotion does not apply to
22 incidental office items such as business cards, letterhead
23 stationary, envelopes, door signs or plates, or other office

1 insignia where the inclusion of the officeholder's name is
2 appropriate.

3 (2) During any election period in which he or she is a
4 candidate, a public official or employee may not knowingly and
5 intentionally place or allow the use of his or her personal name or
6 likeness on any broad-based public advertising paid for with public
7 moneys and/or distributed on behalf of a public entity.

8 ~~(p)~~ (q) The commission may, by legislative rule promulgated in
9 accordance with chapter twenty-nine-a of this code, define further
10 exemptions from this section as necessary or appropriate.

NOTE: The purpose of this bill is to prohibit public officials and employees from using public funds for self promotion. The bill prohibits knowingly and intentionally placing the names or likenesses of public officials and employees on trinkets. The bill prohibits knowingly and intentionally placing the names or likenesses of public officials and employees on certain publically-financed advertising during an election period. The bill makes these prohibitions violations of the West Virginia Governmental Ethics Act. The bill also defines terms.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.