

Senate Bill No. 24

(By Senators Blair, Gaunch
and Sypolt)

[Introduced January 14, 2015;
referred to the Committee on the Judiciary.]

A BILL to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6B-2-5 of said code, all relating to governmental ethics; prohibiting public officials and employees from using public funds for self promotion; prohibiting knowingly and intentionally placing the names or likenesses of public officials and employees on trinkets; prohibiting knowingly and intentionally placing the names or likenesses of public officials and employees on certain publically financed advertising during an election period; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §6B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §6B-2-5 of said code be amended and reenacted, all to read as follows:

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

§6B-1-3. Definitions.

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

2 (a) “Review Board” means the Probable Cause Review Board created by section two-a,

[S. B. No. 24]

1 article two of this chapter.

2 (b) “Broad-based” means communications on specific issues, other than regular responses
3 to constituent requests or ongoing litigation or legal matters, designed to reach more than fifty people
4 at one time.

5 ~~(b)~~ (c) “Business” means any entity through which business for-profit is conducted including
6 a corporation, partnership, proprietorship, franchise, association, organization or self-employed
7 individual.

8 ~~(e)~~ (d) “Compensation” means money, thing of value or financial benefit. The term
9 “compensation” does not include reimbursement for actual reasonable and necessary expenses
10 incurred in the performance of one’s official duties.

11 (e) “Directed by law” means the public servant or entity is directed to include certain
12 information by statute, rule, court order or federal regulation.

13 (f) “Election period” means the time period between the deadline for filing for public office
14 and the general election.

15 ~~(d)~~ (g) “Employee” means any person in the service of another under any contract of hire,
16 whether express or implied, oral or written, where the employer or an agent of the employer or a
17 public official has the right or power to control and direct such person in the material details of how
18 work is to be performed and who is not responsible for the making of policy nor for recommending
19 official action.

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

21 ~~(f)~~ (i) “Immediate family”, with respect to an individual, means a spouse with whom the
22 individual is living as husband and wife and any dependent child or children, dependent grandchild

[S. B. No. 24]

1 or grandchildren and dependent parent or parents.

2 ~~(g)~~ (i) “Ministerial functions” means actions or functions performed by an individual under
3 a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without
4 regard to, or without the exercise of, the individual's own judgment as to the propriety of the action
5 being taken.

6 ~~(h)~~ (k) “Person” means an individual, corporation, business entity, labor union, association,
7 firm, partnership, limited partnership, committee, club or other organization or group of persons,
8 irrespective of the denomination given such organization or group.

9 ~~(i)~~ (l) “Political contribution” means and has the same definition as is given that term under
10 the provisions of article eight, chapter three of this code.

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

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

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

[S. B. No. 24]

1 interests of any person.

2 (†) (p) “Relative” means spouse, mother, father, sister, brother, son, daughter, grandmother,
3 grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or
4 daughter-in-law.

5 (†) (q) “Respondent” means a person who is the subject of an investigation by the
6 commission or against whom a complaint has been filed with the commission.

7 (†) (r) “Thing of value”, “other thing of value” or “anything of value” means and includes:

8 (1) Money, bank bills or notes, United States treasury notes and other bills, bonds or notes issued
9 by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3)
10 promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment
11 of money or the forbearance of money due or owing; (4) receipts given for the payment of money
12 or other property; (5) any right or chose in action; (6) chattels real or personal or things which savor
13 of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce
14 thereof or affixed thereto, although there may be no interval between the severing and the taking
15 away thereof; (7) any interest in realty, including, but not limited to, fee simple estates, life estates,
16 estates for a term or period of time, joint tenancies, cotenancies, tenancies in common, partial
17 interests, present or future interests, contingent or vested interests, beneficial interests, leasehold
18 interests or any other interest or interests in realty of whatsoever nature; (8) any promise of
19 employment, present or future; (9) donation or gift; (10) rendering of services or the payment
20 thereof; (11) any advance or pledge; (12) a promise of present or future interest in any business or
21 contract or other agreement; or (13) every other thing or item, whether tangible or intangible, having
22 economic worth. “Thing of value”, “other thing of value” or “anything of value” shall not include

[S. B. No. 24]

1 anything which is de minimis in nature nor a lawful political contribution reported as required by
2 law.

3 (s) “Trinket” means a small tangible item, ornament or thing of trivial value, including, but
4 not limited to, pens, pencils, magnets, pill box holders, key chains, nail files, matches, piggy banks,
5 gun locks and bags.

6 **ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;**
7 **DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS**
8 **AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES;**
9 **CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

10 **§6B-2-5. Ethical standards for elected and appointed officials and public employees.**

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

15 (b) *Use of public office for private gain.* -- (1) A public official or public employee may not
16 knowingly and intentionally use his or her office or the prestige of his or her office for his or her own
17 private gain or that of another person. Incidental use of equipment or resources available to a public
18 official or public employee by virtue of his or her position for personal or business purposes resulting
19 in de minimis private gain does not constitute use of public office for private gain under this
20 subsection. The performance of usual and customary duties associated with the office or position
21 or the advancement of public policy goals or constituent services, without compensation, does not
22 constitute the use of prestige of office for private gain.

[S. B. No. 24]

1 (2) Notwithstanding the general prohibition against use of office for private gain, public
2 officials and public employees may use bonus points acquired through participation in frequent
3 traveler programs while traveling on official government business: *Provided*, That the official's or
4 employee's participation in such program, or acquisition of such points, does not result in additional
5 costs to the government.

6 (3) The Legislature, in enacting this subsection, recognizes that there may be certain public
7 officials or public employees who bring to their respective offices or employment their own unique
8 personal prestige which is based upon their intelligence, education, experience, skills and abilities,
9 or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office
10 or employment which inures to the benefit of the state and its citizens. Those persons may, in fact,
11 be sought by the state to serve in their office or employment because, through their unusual gifts or
12 traits, they bring stature and recognition to their office or employment and to the state itself. While
13 the office or employment held or to be held by those persons may have its own inherent prestige, it
14 would be unfair to those individuals and against the best interests of the citizens of this state to deny
15 those persons the right to hold public office or to be publicly employed on the grounds that they
16 would, in addition to the emoluments of their office or employment, be in a position to benefit
17 financially from the personal prestige which otherwise inheres to them. Accordingly, the
18 commission is directed, by legislative rule, to establish categories of public officials and public
19 employees, identifying them generally by the office or employment held, and offering persons who
20 fit within those categories the opportunity to apply for an exemption from the application of the
21 provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case
22 basis, when it is shown that: (A) The public office held or the public employment engaged in is not

[S. B. No. 24]

1 such that it would ordinarily be available or offered to a substantial number of the citizens of this
2 state; (B) the office held or the employment engaged in is such that it normally or specifically
3 requires a person who possesses personal prestige; and (C) the person's employment contract or
4 letter of appointment provides or anticipates that the person will gain financially from activities
5 which are not a part of his or her office or employment.

6 (c) *Gifts.* -- (1) A public official or public employee may not solicit any gift unless the
7 solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the
8 official or employee or his or her immediate family: *Provided,* That no public official or public
9 employee may solicit for a charitable purpose any gift from any person who is also an official or
10 employee of the state and whose position is subordinate to the soliciting official or employee:
11 *Provided, however,* That nothing herein shall prohibit a candidate for public office from soliciting
12 a lawful political contribution. No official or employee may knowingly accept any gift, directly or
13 indirectly, from a lobbyist or from any person whom the official or employee knows or has reason
14 to know:

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

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

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

20 (2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a
21 public official or public employee may accept a gift described in this subdivision, and there shall be
22 a presumption that the receipt of such gift does not impair the impartiality and independent judgment

[S. B. No. 24]

1 of the person. This presumption may be rebutted only by direct objective evidence that the gift did
2 impair the impartiality and independent judgment of the person or that the person knew or had reason
3 to know that the gift was offered with the intent to impair his or her impartiality and independent
4 judgment. The provisions of subdivision (1) of this subsection do not apply to:

5 (A) Meals and beverages;

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

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

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

10 (E) Gifts of tickets or free admission extended to a public official or public employee to
11 attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy
12 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 the same household.

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

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

20 (B) The fee is not related to the official's public position or duties;

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

[S. B. No. 24]

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

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

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

9 (6) Upon prior approval of the Joint Committee on Government and Finance, any member
10 of the Legislature may solicit donations for a regional or national legislative organization conference
11 or other legislative organization function to be held in the state for the purpose of deferring costs to
12 the state for hosting of the conference or function. Legislative organizations are bipartisan regional
13 or national organizations in which the Joint Committee on Government and Finance authorizes
14 payment of dues or other membership fees for the Legislature's participation and which assist this
15 and other state legislatures and their staff through any of the following:

16 (A) Advancing the effectiveness, independence and integrity of legislatures in the states of
17 the United States;

18 (B) Fostering interstate cooperation and facilitating information exchange among state
19 legislatures;

20 (C) Representing the states and their legislatures in the American federal system of
21 government;

22 (D) Improving the operations and management of state legislatures and the effectiveness of

[S. B. NO. 24]

1 legislators and legislative staff, and to encourage the practice of high standards of conduct by
2 legislators and legislative staff;

3 (E) Promoting cooperation between state legislatures in the United States and legislatures in
4 other countries.

5 The solicitations may only be made in writing. The legislative organization may act as fiscal
6 agent for the conference and receive all donations. In the alternative, a bona fide banking institution
7 may act as the fiscal agent. The official letterhead of the Legislature may not be used by the
8 legislative member in conjunction with the fund raising or solicitation effort. The legislative
9 organization for which solicitations are being made shall file with the Joint Committee on
10 Government and Finance and with the Secretary of State for publication in the State Register as
11 provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other
12 solicitation documents, along with a complete list of the names and last known addresses of all
13 donors and the amount of donations received. Any solicitation by a legislative member shall contain
14 the following disclaimer:

15 “This solicitation is endorsed by [name of member]. This endorsement does not imply
16 support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A
17 copy of all solicitations are on file with the West Virginia Legislature’s Joint Committee on
18 Government and Finance, and with the Secretary of State and are available for public review.”

19 (7) Upon written notice to the commission, any member of the board of public works may
20 solicit donations for a regional or national organization conference or other function related to the
21 office of the member to be held in the state for the purpose of deferring costs to the state for hosting
22 of the conference or function. The solicitations may only be made in writing. The organization may

[S. B. No. 24]

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

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

18 (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code,
19 no elected or appointed public official or public employee or member of his or her immediate family
20 or business with which he or she is associated may be a party to or have an interest in the profits or
21 benefits of a contract which the official or employee may have direct authority to enter into, or over
22 which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or

[S. B. NO. 24]

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

8 (2) In the absence of bribery or a purpose to defraud, an elected or appointed public official
9 or public employee or a member of his or her immediate family or a business with which he or she
10 is associated shall not be considered as having a prohibited financial interest in a public contract
11 when such a person has a limited interest as an owner, shareholder or creditor of the business which
12 is awarded a public contract. A limited interest for the purposes of this subsection is:

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

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

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

22 (4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the

[S. B. No. 24]

1 loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial
2 interference with the operation of a state, county, municipality, county school board or other
3 governmental agency, the affected governmental body or agency may make written application to
4 the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

5 (e) *Confidential information.* -- No present or former public official or employee may
6 knowingly and improperly disclose any confidential information acquired by him or her in the course
7 of his or her official duties nor use such information to further his or her personal interests or the
8 interests of another person.

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

[S. B. No. 24]

1 who were in office and legislative staff who were employed at the time it originally became effective
2 on July 1, 1989, and those who have since become legislators or legislative staff and those who shall
3 serve hereafter as legislators or legislative staff.

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

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

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

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

14 (D) A rate-making proceeding; and

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

16 (2) As used in this subsection, "represent" includes any formal or informal appearance before,
17 or any written or oral communication with, any public agency on behalf of any person: *Provided,*
18 That nothing contained in this subsection shall prohibit, during any period, a former public official
19 or employee from being retained by or employed to represent, assist or act in a representative
20 capacity on behalf of the public agency by which he or she was employed or in which he or she
21 served. Nothing in this subsection shall be construed to prevent a former public official or employee
22 from representing another state, county, municipal or other governmental entity before the

[S. B. No. 24]

1 governmental entity in which he or she served or was employed within one year after the termination
2 of his or her employment or service in the entity.

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

6 (4) Members and former members of the Legislature and professional employees and former
7 professional employees of the Legislature shall be permitted to appear in a representative capacity
8 on behalf of clients before any governmental agency of the state or of county or municipal
9 governments, including county school boards.

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

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

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

22 (B) Has a matter before the agency on which he or she is working or a subordinate is known

[S. B. No. 24]

1 by him or her to be working.

2 (C) Is a vendor to the agency where the official serves or public employee is employed and
3 the official or public employee, or a subordinate of the official or public employee, exercises
4 authority or control over a public contract with such vendor, 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, implementation or execution of
10 the contract; or

11 (vi) Taking other nonministerial action which may affect the financial interests of the vendor.

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

19 (3) A full-time public official or full-time public employee who would be adversely affected
20 by the provisions of this subsection may apply to the Ethics Commission for an exemption from the
21 prohibition contained in subdivision (1) of this subsection.

22 (A) The Ethics Commission shall by legislative rule establish general guidelines or standards

[S. B. No. 24]

1 for granting an exemption, but shall decide each application on a case-by-case basis;

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

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

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

11 (5) A full-time public official or full-time public employee may not personally participate in
12 a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or
13 other substantial exercise of nonministerial administrative discretion involving a vendor with whom
14 he or she is seeking employment or has an agreement concerning future employment.

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

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

[S. B. NO. 24]

1 (j) *Limitations on voting.* —

2 (1) Public officials, excluding members of the Legislature who are governed by subsection
3 (i) of this section, may not vote on a matter:

4 (A) In which they, an immediate family member, or a business with which they or an
5 immediate family member is associated have a financial interest. Business with which they are
6 associated means a business of which the person or an immediate family member is a director,
7 officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or
8 more of the total outstanding stocks of any class.

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

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

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

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

20 (A) If the public official, his or her spouse, immediate family members or relatives or
21 business with which they are associated are affected as a member of, and to no greater extent than
22 any other member of a profession, occupation, class of persons or class of businesses. A class shall

[S. B. No. 24]

1 consist of not fewer than five similarly situated persons or businesses; or

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

3 (i) The public official, or dependent family members individually or jointly own less than five
4 percent of the issued stock in the publicly traded company and the value of the stocks individually
5 or jointly owned is less than \$10,000; and

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

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

12 (k) *Limitations on participation in licensing and rate-making proceedings.* -- No public
13 official or employee may participate within the scope of his or her duties as a public official or
14 employee, except through ministerial functions as defined in section three, article one of this chapter,
15 in any license or rate-making proceeding that directly affects the license or rates of any person,
16 partnership, trust, business trust, corporation or association in which the public official or employee
17 or his or her immediate family owns or controls more than ten percent. No public official or public
18 employee may participate within the scope of his or her duties as a public official or public
19 employee, except through ministerial functions as defined in section three, article one of this chapter,
20 in any license or rate-making proceeding that directly affects the license or rates of any person to
21 whom the public official or public employee or his or her immediate family, or a partnership, trust,
22 business trust, corporation or association of which the public official or employee, or his or her

[S. B. No. 24]

1 immediate family, owns or controls more than ten percent, has sold goods or services totaling more
2 than \$1,000 during the preceding year, unless the public official or public employee has filed a
3 written statement acknowledging such sale with the public agency and the statement is entered in
4 any public record of the agency's proceedings. This subsection shall not be construed to require the
5 disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three,
6 eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this
7 code.

8 (l) *Certain compensation prohibited.* --

9 (1) A public employee may not receive additional compensation from another publicly
10 funded state, county or municipal office or employment for working the same hours, unless:

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

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

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

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

[S. B. No. 24]

1 employer. The public employer shall submit these time records to the Ethics Commission on a
2 quarterly basis.

3 (2) This section does not prohibit a retired public official or public employee from receiving
4 compensation from a publicly funded office or employment in addition to any retirement benefits
5 to which the retired public official or public employee is entitled.

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

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

17 (o) Except as provided in this section, a person who is a public official or public employee
18 may not solicit private business from a subordinate public official or public employee whom he or
19 she has the authority to direct, supervise or control. A person who is a public official or public
20 employee may solicit private business from a subordinate public official or public employee whom
21 he or she has the authority to direct, supervise or control when:

22 (A) The solicitation is a general solicitation directed to the public at large through the mailing

[S. B. No. 24]

1 or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed
2 media; or

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

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

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

9 (p) Self Promotion. -- (1) A public official or employee may not knowingly and intentionally
10 place or allow the use of his or her personal name or likeness to be placed on a trinket that is
11 purchased with public moneys and/or distributed by a public entity. However, the prohibition
12 against self-promotion does not apply to incidental office items such as business cards, letterhead
13 stationary, envelopes, door signs or plates, or other office insignia where the inclusion of the
14 officeholder's name is appropriate.

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

19 ~~(p)~~ (q) The commission may, by legislative rule promulgated in accordance with chapter
20 twenty-nine-a of this code, define further 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

[S. B. No. 24]

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.)