

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENGROSSED

House Bill 4618

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[Originating in the Committee on the Judiciary]

1 A BILL to repeal §6B-2-5c of the Code of West Virginia, 1931, as amended; and to amend said
 2 code by adding thereto a new article, designated §6B-2B-1, §6B-2B-2, §6B-2B-3, §6B-
 3 2B-4, §6B-2B-5, §6B-2B-6 and §6B-2B-7, all relating to limitations on use of a public
 4 official's name or likeness; prohibiting public officials, their agents or anyone on public
 5 payroll from placing the public official's name or likeness on trinkets; prohibiting public
 6 officials, their agents or anyone on public payroll from using public funds, public
 7 employees, or public resources to distribute, disseminate, publish, or display the public
 8 official's name or likeness for the purpose of advertising to the public;
 9 prohibiting public officials, their agents or anyone on public payroll from placing the public
 10 official's name or likeness on publicly-owned vehicles; prohibiting a public official's name
 11 or likeness from being placed on any educational material that is paid for with public funds;
 12 placing restrictions on a public official's name or likeness on a public agency's website
 13 and social media; prohibiting use of public resources to display or distribute trinkets,
 14 educational material or advertising with a public official's name or likeness; providing
 15 exceptions; providing for alternative uses for prohibited material after the effective date;
 16 and providing an opportunity to obtain an exemption from the Ethics Commission.

Be it enacted by the Legislature of West Virginia:

1 That §6B-2-5c of the Code of West Virginia, 1931, as amended, be repealed; and that
 2 said code be amended by adding thereto a new article, designated §6B-2B-1, §6B-2B-2, §6B-2B-
 3 3, §6B-2B-4, §6B-2B-5, §6B-2B-6 and §6B-2B-7, all to read as follows:

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

~~§6B-2-5c. Limitations on a public official from using his or her name or likeness.~~

1 ~~(a) Public officials, their agents, or anyone on public payroll may not:~~

2 ~~(1) Use the public official's name or likeness on any publicly-owned vehicles;~~

3 ~~(2) Place the public official's name or likeness on trinkets paid for by public funds;~~

4 ~~(3) Use public funds, including funds of the office held by the public official, public~~
5 ~~employees, or public resources to distribute, disseminate, publish or display the public official's~~
6 ~~name or likeness for the purpose of advertising including, but not limited to, billboards, public~~
7 ~~service announcements, communication sent by mass mailing, or any other publication or media~~
8 ~~communication intended for general dissemination to the public.~~

9 ~~(4) Use public funds or public employees, other than employees for security services, for~~
10 ~~entertainment activities within forty-five days of a primary, general, or special election in which~~
11 ~~the public official or agent is a candidate.~~

12 ~~(b) For purposes of this section:~~

13 ~~(1) "Agent" means any volunteer or employee, contractual or permanent, serving at the~~
14 ~~discretion of a public official; and~~

15 ~~(2) "Trinkets" means items of tangible personal property that are not vital or necessary to~~
16 ~~the duties of the public official's or public employee's office, including, but not limited to, the~~
17 ~~following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files,~~
18 ~~matches and bags.~~

19 ~~(c) This section does not prohibit public officials from using their names or likenesses on~~
20 ~~any official record or report, letterhead, document or certificate, or instructional material issued in~~
21 ~~the course of their duties as public officials, or on promotional materials used for tourism~~
22 ~~promotion.~~

23 ~~(d) This section shall not be interpreted as prohibiting public officials from using public~~
24 ~~funds to communicate with constituents in the normal course of their duties as public officials so~~
25 ~~long as such communications do not include any reference to voting in favor of the public official~~
26 ~~in an election.~~

27 ~~(e) The commission may propose rules and emergency rules for legislative approval in~~
 28 ~~accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate~~
 29 ~~this section by July 1, 2015.~~

**ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL FROM USING HIS OR HER
 NAME OR LIKENESS.**

1 **§6B-2B-1. Definitions.**

2 As used in this article:

3 (a) "Advertising" means publishing, distributing, disseminating, communicating or
 4 displaying information to the general public through audio, visual, or other media tools. This
 5 includes, but is not limited to, billboard, radio, television, mail, electronic mail, publications,
 6 banners, table skirts, magazines, social media, websites, and other forms of publication,
 7 dissemination, display or communication.

8 (b) "Agent" means any volunteer or employee, contractual or permanent, serving at the
 9 discretion of a public official or public employee.

10 (c) "Educational materials" means publications, guides, calendars, handouts, pamphlets,
 11 reports or booklets intended to provide information about the public official or governmental office.
 12 This includes information or details about the office, services the office provides to the public,
 13 updates on laws and services, and other informational items that are intended to educate the
 14 public.

15 (d) "Instructional material" means written instructions explaining or detailing steps for
 16 completion of a governmental agency document or form.

17 (e) "Likeness" means a photograph, drawing, or other depiction of an individual.

18 (f) "Mass media communication" means communication through audio, visual, or other
 19 media tools (including U.S. mail, electronic mail, and social media) intended for general
 20 dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails, and

21 streaming clips on websites. This term does not include (i) regular responses to constituent
22 requests or questions during the normal course of business or (ii) communications that are
23 authorized or required by law to be publicly disseminated (e.g. legal notices).

24 (g) "Public employee" means any full-time or part-time employee of any state, county or
25 municipal governmental body, and their respective boards, agencies, departments and
26 commissions, or in any other regional or local governmental agency.

27 (h) "Public official" means any person who is elected or appointed to any state, county or
28 municipal office or position, including boards, agencies, departments and commissions, or in any
29 other regional or local governmental agency.

30 (i) "Public payroll" means payment of public monies as a wage or salary from any state,
31 county or municipal governmental body, or any other regional or local governmental agency,
32 whether accepted or not.

33 (j) "Social media" means forms of electronic communication through which users create
34 online communities to share information, ideas, personal messages, and other content. This term
35 includes web and mobile-based technologies which are used to turn communication to interactive
36 dialogue among organizations, communities, and individuals. Examples are: Facebook,
37 MySpace, Twitter, YouTube, etc.

38 (k) "Trinkets" means items of tangible personal property that are not vital or necessary to
39 the duties of the public official's or public employee's office, including, but not limited to, the
40 following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files,
41 matches and bags.

§6B-2B-2. Limitations on a public official from using his or her name or likeness.

1 (a) *Trinkets*- Public officials, their agents, or anyone on public payroll may not place the
2 public official's name or likeness on trinkets paid for with public funds: *Provided*, That when
3 appropriate and reasonable, public officials are permitted to expend a minimal amount of public
4 funds for the purchase of pens, pencils or other markers to be used during ceremonial signings.

5 (b) Advertising- (1) Public officials, their agents, or anyone on public payroll may not use
6 public funds, including funds of the office held by the public official, public employees, or public
7 resources to distribute, disseminate, publish or display the public official's name or likeness for
8 the purpose of advertising to the general public.

9 (2) Notwithstanding the prohibitions in subdivision (1) of this section, the following
10 conduct shall not be prohibited:

11 (A) A public official's name and likeness may be used in a public announcement or mass
12 media communication when necessary, reasonable, and appropriate to relay specific public
13 safety, health or emergency information.

14 (B) A public official's name and likeness may appear on an agency's social media and
15 website provided it complies with section three of this article.

16 (C) Dissemination of office press releases or agency information via email, social media
17 or other public media tools for official purposes is not considered advertising or prohibited under
18 this subsection, so long as it (i) is intended for a legitimate news or informational purpose, (ii) is
19 not intended as a means of promotion of the public official, and (iii) is not being used as
20 educational material.

21 (3) Banners and table skirts are deemed advertising and may not include the public
22 official's name or likeness.

23 (4) Nothing shall be interpreted as prohibiting public officials from using public funds to
24 communicate with constituents in the normal course of their duties as public officials so long as
25 such communications do not include any reference to voting in favor of the public official in an
26 election.

27 (c) Vehicles- Public officials, their agents, or anyone on public payroll may not use or place
28 the public official's name or likeness on any publicly-owned vehicles.

29 (d) Educational Materials- A public official's name or likeness may not be placed on any
30 educational material that is paid for with public funds: *Provided*, That this prohibition shall not

31 apply to the submission of a report required to be issued by law.

§6B-2B-3. Limitations on promotion through Social Media.

1 (a) A public official's name and likeness may appear on a public agency's website and
2 social media subject to the following restrictions:

3 (1) The public official's name may appear throughout the website so long as it is
4 reasonable, incidental, appropriate, and has a primary purpose to promote the agency's mission
5 and services rather than to promote the public official.

6 (2) The public official's likeness may only appear on the agency's website home page and
7 on any pages or sections devoted to biographical information regarding the official.

8 (3) The public official's name and likeness may appear on the agency's social media so
9 long as it is reasonable, incidental, appropriate, and has a primary purpose to promote the
10 agency's mission and services rather than to promote the public official.

11 (b) This section shall not apply to personal or non-public agency social media accounts.

12 (c) A public agency's website or social media may not provide links or reference to a
13 public official's or public employee's personal or campaign social media or website.

§6B-2B-4. Use of public resources to display/distribute

1 (a) Unless otherwise permitted under §6B-2B-2, public officials and employees may not
2 use public resources to display or distribute trinkets, educational material or advertising with their
3 name or likeness. This prohibition includes:

4 (1) Trinkets, educational material or advertising paid for with non-public funds, personal
5 funds, third-party funds, campaign funds, and those that have been provided through an in-kind
6 gift to the public agency or official; and

7 (2) Use of offices, counters, vehicles, and other public spaces maintained or controlled by
8 the public official's or employee's agency.

§6B-2B-5. Exceptions to Use of Name or Likeness

1 (a) Public officials are not prohibited from using their names or likenesses on any official

2 record or report, letterhead, document or certificate, or instructional material issued in the course
3 of their duties as public officials: *Provided*, That other official documents used in the normal course
4 of duties for the agency may include the public official's name, including but not limited to,
5 facsimile cover sheets, press release headers, office signage, and envelopes: *Provided, however*,
6 If such official documents are reproduced for distribution or dissemination to the public as
7 educational material, the items are subject to the prohibitions in section 2(d).

8 (b) When appropriate and reasonable, the West Virginia Division of Tourism may use a
9 public official's name and likeness on material use for tourism promotion.

10 (c) The prohibitions contained in this article do not apply to any person who is employed
11 as a member of the faculty, staff, administration, or president of a public institution of higher
12 education and who is engaged in teaching, research, consulting or publication activities in his or
13 her field of expertise with public or private entities and thereby derives private benefits from such
14 activities when the activity is approved as a part of an employment contract with the governing
15 board of the institution or has been approved by the employee's department supervisor or the
16 president of the institution by which the faculty or staff member is employed.

17 (d) The prohibitions contained in W.Va. Code § 6B-2B-2 do not apply to a public official's
18 campaign-related expenditures or materials.

19 (e) The prohibitions contained in W.Va. Code § 6B-2B-2 do not apply to items paid for with
20 the public official's personal money.

21 (f) The prohibitions contained in W.Va. Code § 6B-2B-2 do not apply to items or materials
22 required by law to contain the public official's name or likeness.

§6B-2B-6. Existing Items as of the Effective Date

1 (a) If a public official, public employee, or public agency possesses items or materials in
2 contravention of this rule or W.Va. Code § 6B-2-5c that were purchased prior to the effective date,
3 the public official, public employee or public agency may not continue to distribute, disseminate,
4 communicate or display publicly these items or materials.

5 (b) Notwithstanding the prohibition in subsection (a),

6 (1) Materials may be used publicly if the public official's name or likeness are permanently
7 removed or covered (e.g. stickers across the names, names marked out, etc.);

8 (2) The public agency may utilize such items or material for internal use (e.g. pencils,
9 pens) so long as they are not publicly distributed, disseminated, communicated or displayed; and

10 (3) When appropriate and in compliance with law, a public agency may donate such items
11 to surplus, charity, or an organization serving the poor and needy.

§6B-2B-7. Allowance for exemption.

1 If any of the prohibitions contained in this article creates an undue hardship or will cause
2 significant financial impact upon the public agency to bring existing material, vehicles, or items
3 into compliance with this article, the public agency may seek a written exemption from the West
4 Virginia Ethics Commission for allowance of such prohibited conduct. In any such request, the
5 name of public agency seeking the exemption, along with the affected public official, if any, shall
6 be made public.

NOTE: The purpose of this bill is to rewrite and codify prohibitions relating to use of public likeness or name.

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