

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

### ENROLLED

## House Bill 4618

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MARCUM

[Passed March 12, 2016; in effect ninety days from  
passage.]

1 AN ACT 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 and §6B-2B-6, all relating to limitations on use of a public official's name  
4 or likeness; repealing current provisions; defining terms; prohibiting public officials, their  
5 agents and public employees from placing the public official's name or likeness on trinkets;  
6 prohibiting public officials, their agents and public employees from using public funds,  
7 public employees, or public resources to distribute, disseminate, publish, or display the  
8 public official's name or likeness for the purpose of advertising to the public; prohibiting  
9 public officials, their agents or public employees from placing the public official's name or  
10 likeness on publicly-owned vehicles; prohibiting a public official's name or likeness from

11 being placed on any educational material that is paid for with public funds; placing  
12 restrictions on a public official's name or likeness on a public agency's website and social  
13 media; providing exceptions; providing for alternative uses for prohibited material after the  
14 effective date; and providing an opportunity to obtain an exemption from the Ethics  
15 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1 That §6B-2-5c of the Code of West Virginia, 1931, as amended, be repealed; and that  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 and §6B-2B-6, 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.**

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

12 **§6B-2B-1. Definitions.**

13 As used in this article:

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

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

21 (c) "Educational materials" means publications, guides, calendars, handouts, pamphlets,  
22 reports or booklets intended to provide information about the public official or governmental office.  
23 It includes information or details about the office, services the office provides to the public, updates  
24 on laws and services and other informational items that are intended to educate the public.

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

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

28 (f) "Mass media communication" means communication through audio, visual, or other  
29 media tools, including U.S. mail, electronic mail, and social media, intended for general  
30 dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails and  
31 streaming clips on websites. It does not include: (i) Regular responses to constituent requests or  
32 questions during the normal course of business; or (ii) communications that are authorized or  
33 required by law to be publicly disseminated, such as legal notices.

34 (g) "Public employee" means any full-time or part-time employee of any state, or political  
35 subdivision of the state, and their respective boards, agencies, departments and commissions, or  
36 in any other regional or local governmental agency.

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

40 (i) "Public payroll" means payment of public monies as a wage or salary from the state, or  
41 political subdivision of the state, or any other regional or local governmental agency, whether  
42 accepted or not.

43 (j) "Social media" means forms of electronic communication through which users create  
44 online communities to share information, ideas, personal messages and other content. It includes  
45 web and mobile-based technologies which are used to turn communication to interactive dialogue  
46 among organizations, communities and individuals. Examples include, but are not limited to,  
47 Facebook, MySpace, Twitter and YouTube.

48 (k) "Trinkets" means items of tangible personal property that are not vital or necessary to  
49 the duties of the public official's or public employee's office, including, but not limited to, the  
50 following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files,  
51 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 may expend a minimal amount of public funds for  
4 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 subsection, the following  
10 conduct is not 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, if it: (i) Is intended for a legitimate news or informational purpose; (ii) is not  
19 intended as a means of promotion of the public official; and (iii) is not being used as educational  
20 material.

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

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

27 (c) *Vehicles*- Public officials, their agents, or any person on public payroll may not use or  
28 place 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 does 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 if it is reasonable,  
4 incidental, appropriate and has a primary purpose to promote the agency's mission and services  
5 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 public official.

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

11 (b) This section does 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. Exceptions to use of name or likeness.**

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

8 (b) When appropriate and reasonable, the West Virginia Division of Tourism may use a  
9 public official's name and likeness on material used 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, coaching, recruiting or

13 publication activities: *Provided*, That the activity is approved as a part of an employment contract  
14 with the governing board of the institution of higher education or has been approved by the  
15 employee's department supervisor or the president of the institution by which the faculty or staff  
16 member is employed.

17 (d) The prohibitions contained in section two of this article do not apply to a public official's  
18 campaign-related expenditures or materials.

19 (e) The prohibitions contained in section two of this article do not apply to items paid for  
20 with the public official's personal money.

21 (f) The prohibitions contained in section two of this article do not apply to items or materials  
22 required by law to contain the public official's name or likeness.

**§6B-2B-5. 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 section five-c, article two of this chapter that were purchased prior to  
3 the effective date, the public official, public employee or public agency may not continue to  
4 distribute, disseminate, communicate or display publicly these items or materials.

5 (b) Notwithstanding the prohibition in subsection (a) of this section,

6 (1) Materials may be used publicly if the public official's name or likeness are permanently  
7 removed or covered: *Provided*, That a public official's name or likeness may be covered with a  
8 sticker, be marked out or obliterated in any other manner;

9 (2) The public agency may use the items or materials for internal use if they are not publicly  
10 distributed, disseminated, communicated or displayed; and

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

**§6B-2B-6. Allowance for exemption.**

1 If any of the prohibitions contained in this article create an undue hardship or will cause  
2 significant financial impact upon the public agency to bring existing material, vehicles or items into

3 compliance with this article, the public agency may seek a written exemption from the West  
4 Virginia Ethics Commission. In any request, the Ethics Commission shall make public the name  
5 of public agency seeking the exemption, along with the affected public official, if any.