

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4473

BY DELEGATES SOBONYA, C. ROMINE, WESTFALL, OVERINGTON,

AMBLER, BUTLER, C. MILLER, ROWAN, WARD,

HOUSEHOLDER AND ROHRBACH

[Passed March 7, 2018; in effect ninety days from passage.]

1 AN ACT to amend and reenact §6B-2B-1, §6B-2B-2, §6B-2B-3, and §6B-2B-4 of the Code of
2 West Virginia, 1931, as amended, all relating to the use of a public official's name or
3 likeness on items or in materials produced using public funds; defining terms; providing
4 that a public official's name or likeness may be included in certain educational materials
5 and press releases produced using public funds; providing that a public official's name or
6 likeness may appear on an agency's website or social media for certain purposes; and
7 clarifying that items or materials that are paid for by a public official's campaign funds are
8 not subject to restrictions on items or materials produced using public funds.

Be it enacted by the Legislature of West Virginia:

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

§6B-2B-1. Definitions.

1 As used in this article:

2 (a) "Advertising" means publishing, distributing, disseminating, communicating, or
3 displaying information to the public through audio, visual, or other media tools with the purpose
4 of promoting the public official or a political party. "Advertising" may include, but is not limited to,
5 billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines,
6 social media, websites, and other forms of publication, dissemination, display, or communication.

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

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

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

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

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

23 (g) "Press release" means a written, audio, or video communication issued by an official
24 or agency to the public or to members and organizations of the news media to report specific but
25 brief information about an event, circumstance, or other happening.

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

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

32 (j) "Public payroll" means payment of public moneys as a wage or salary from the state,
33 or political subdivision of the state, or any other regional or local governmental agency, whether
34 accepted or not.

35 (k) "Social media" means forms of electronic communication through which users create
36 online communities to share information, ideas, personal messages, and other content. It includes
37 web and mobile-based technologies which are used to turn communication to interactive dialogue
38 among organizations, communities, and individuals. Examples include, but are not limited to,
39 Facebook, Myspace, Twitter, and YouTube.

40 (l) "Trinkets" means items of tangible personal property that are not vital or necessary to
41 the duties of the public official's or public employee's office, including, but not limited to, the
42 following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files,
43 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 the
4 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 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 if it complies with §6B-2B-3 of this code.

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

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

22 (c) *Vehicles.* – Public officials, their agents, or any person on public payroll may not use
23 or place the public official's name or likeness on any publicly owned vehicles.

24 (d) *Educational Materials.* –

25 A public official's name or likeness may be placed on any educational material, that is paid
26 for with public funds, so long as the primary purpose of the material is to provide information about
27 the processes, operations, structure, functions, or history of an agency, agencies, or branch of
28 government, or to provide lists of contact information or other identifying information about a public
29 official. Educational materials in which the name and likeness of an official may appear include,
30 but are not limited to: directories; reports; reference books; and legislative publications, such as
31 the West Virginia Blue Book and the Legislative Manual.

32 (e) *Press releases.* – Notwithstanding any other provision of law, the name and likeness
33 of a public official may be included in a press release, produced with public funds and which is
34 disseminated by any means, if that press release is intended for a legitimate news or informational
35 purpose and, considered as a whole, does not feature or present the public official in a form,
36 manner, or context which is intended to promote the official. A press release produced with public
37 funds may not request, solicit, or promote voting for any official or political party.

§6B-2B-3. Use of public official's name or likeness on agency website or social media.

1 (a) A public official's name and likeness may appear on a public agency's website and on
2 the agency's social media accounts or pages in any of the following circumstances:

3 (1) The public official's name and likeness appears on the agency's website or social
4 media accounts or pages for the purpose of providing biographical information regarding the
5 public official;

6 (2) The public official's name and likeness appears in educational materials posted or
7 otherwise shared on the agency's website or social media accounts or pages, so long as the
8 educational materials comply with the requirements of §6B-2B-2(d) of this code;

9 (3) The public official's name and likeness appears in a press release posted or otherwise
10 shared on the agency's website or social media accounts or pages, so long as the press release
11 complies with the requirements of §6B-2B-2(e) of this code; or

12 (4) The public official's name and likeness appears on the agency's website or social
13 media accounts or pages for any other purpose that is reasonable, incidental, appropriate, and
14 has a primary purpose to promote the agency's mission and services rather than to promote the
15 public official.

16 (b) The requirements of this section do not apply to a public official's personal or non-
17 public agency social media accounts.

18 (c) A public agency's website or social media may not provide links or reference to a public
19 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
3 duties as a public official: *Provided*, That other official documents used in the normal course of
4 the agency, including, but not limited to, facsimile cover sheets, press release headers, office
5 signage, and envelopes may include the public official's name: *Provided, however*, That when
6 official documents are reproduced for distribution or dissemination to the public as educational
7 material, the items are subject to the prohibitions in §6B-2B-2(d) of this code.

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 §6B-2B-2 of this code do not apply to items paid for from
18 the public official's campaign funds.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2018.

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Governor