

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2464**

5
6 (By Delegates Miley, Boggs, Fragale, Poling, Morgan, Hunt,

7 Fleischauer, Moore, Ellem, Hamilton and Lane)

8 [Passed March 12, 2011; in effect July 1, 2011.]
9

10 AN ACT to amend and reenact §6B-2-6 and §6B-2-7 of the Code of West
11 Virginia, 1931, as amended, and to amend and reenact §6B-3-2
12 of said code, all relating to the Ethics Act generally;
13 requiring public servants and spouses to disclose additional
14 information on financial disclosure statements including, with
15 limited exceptions, certain spousal information; defining a
16 spouse; directing the ethics commission to publish and make
17 available to the public notice of delinquent filing of
18 financial statements; providing that the ethics commission
19 publish financial statement in certain circumstances and
20 clarifying existing requirements; and prohibiting certain
21 public employees and public servants from registering as a
22 lobbyist during and for a year following state government
23 employment.

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

1 That §6B-2-6 and §6B-2-7 of the Code of West Virginia, 1931,
2 as amended, be amended and reenacted, and that 6B-3-2 be amended
3 and reenacted, all to read as follows:

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

9 **§6B-2-6. Financial disclosure statement; filing requirements.**

10 (a) The Financial disclosure statement shall be filed on the
11 first day of February of each calendar year to cover the period of
12 the preceding calendar year, except insofar as may be otherwise
13 provided herein. The following persons must file the financial
14 disclosure statement required by this section with the ethics
15 commission:

16 (1) All elected officials in this state, including, but not
17 limited to, all persons elected statewide, all county elected
18 officials, municipal elected officials in municipalities which
19 have, by ordinance, opted to be covered by the disclosure
20 provisions of this section, all members of the several county or
21 district boards of education and all county or district school
22 board superintendents;

23 (2) All members of state boards, commissions and agencies
24 appointed by the governor; and

1 (3) Secretaries of departments, commissioners, deputy
2 commissioners, assistant commissioners, directors, deputy
3 directors, assistant directors, department heads, deputy department
4 heads and assistant department heads.

5 A person who is required to file a financial disclosure
6 statement under this section by virtue of becoming an elected or
7 appointed public official whose office is described in subdivision
8 (1), (2) or (3) of this subsection, and who assumes the office less
9 than ten days before a filing date established herein or who
10 assumes the office after the filing date, shall file a financial
11 disclosure statement for the previous twelve months no later than
12 thirty days after the date on which the person assumes the duties
13 of the office, unless the person has filed a financial disclosure
14 statement with the commission during the twelve-month period before
15 he or she assumed office.

16 (b) A candidate for public office shall file a financial
17 disclosure statement for the previous calendar year with the state
18 ethics commission no later than ten days after he or she files a
19 certificate of candidacy, but in all circumstances, not later than
20 ten days prior to the election, unless he or she has filed a
21 financial disclosure statement with the state ethics commission
22 during the previous calendar year.

23 The ethics commission shall file a duplicate copy of the
24 financial disclosure statement required in this section in the

1 following offices within ten days of the receipt of the candidate's
2 statement of disclosure:

3 (1) Municipal candidates in municipalities which have opted,
4 by ordinance, to be covered by the disclosure provisions of this
5 section, in the office of the clerk of the municipality in which
6 the candidate is seeking office;

7 (2) Legislative candidates in single county districts and
8 candidates for a county office or county school board in the office
9 of the clerk of the county commission of the county in which the
10 candidate is seeking office;

11 (3) Legislative candidates from multi-county districts and
12 congressional candidates in the office of the clerk of the county
13 commission of the county of the candidate's residence.

14 After a ninety-day period following any election, the clerks
15 who receive the financial disclosure statements of candidates may
16 destroy or dispose of those statements filed by candidates who were
17 unsuccessful in the election.

18 (c) No candidate for public office may maintain his or her
19 place on a ballot and no public official may take the oath of
20 office or enter or continue upon his or her duties or receive
21 compensation from public funds unless he or she has filed a
22 financial disclosure statement with the state ethics commission as
23 required by the provisions of this section.

24 (d) The ethics commission may, upon request of any person

1 required to file a financial disclosure statement, and for good
2 cause shown, extend the deadline for filing such statement for a
3 reasonable period of time: *Provided*, That no extension of time
4 shall be granted to a candidate who has not filed a financial
5 disclosure statement for the preceding filing period.

6 (e) No person shall fail to file a statement required by this
7 section.

8 (f) No person shall knowingly file a materially false
9 statement that is required to be filed under this section.

10 (g) The ethics commission shall publish either on the internet
11 or by printed document made available to the public, a list of all
12 persons who have violated any ethics commission's financial
13 disclosure statement filing deadline.

14 (h) The ethics commission shall, in addition to making all
15 financial disclosure statements available for inspection upon
16 request:

17 (1) Publish on the internet all financial disclosure
18 statements filed by members of the legislature and candidates for
19 legislative office, elected members of the executive department and
20 candidates for the offices that constitute the executive
21 department, and members of the Supreme Court of Appeals and
22 candidates for the Supreme Court of Appeals, commencing with those
23 reports filed on or after January 1, 2012; and

24 (2) Publish on the internet all financial disclosure

1 statements filed by any other person required to file such
2 financial disclosure statements, as the commission determines
3 resources are available to permit the ethics commission to make
4 such publication on the internet. The Commission shall redact
5 financial disclosure statements published on the internet to
6 exclude from publication personal information such as signatures,
7 home addresses and mobile and home telephone numbers.

8 **§6B-2-7. Financial disclosure statement; contents.**

9 (a) The financial disclosure statement required under this
10 article shall contain the following information:

11 (1) The name, residential and business addresses of the person
12 filing the statement and of his or her spouse and all names under
13 which the person or the person's spouse, or both, do business. For
14 purposes of this section, the word "spouse" means any individual
15 who is legally married to and cohabits with the person filing the
16 statement.

17 (2) For each position of employment held by the person filing
18 the statements and the person's spouse:

- 19 (A) The name of the employer;
- 20 (B) The address of the employer;
- 21 (C) The job title; and
- 22 (D) A general description of job duties.

23 (3) The name and address of each business in which the person
24 filing the statement or that person's spouse has or had in the last

1 year an interest of at least \$10,000 at fair market value.

2 (A) For the purposes of this subsection, business interests
3 include, but are not limited to, an interest in:

4 (i) Non-publicly owned businesses;

5 (ii) Publicly or privately traded stocks, bonds or securities,
6 including those held in self-directed retirement accounts; and

7 (iii) Commercial real estate.

8 (B) For the purposes of this subsection, business interests do
9 not include mutual funds, specific holdings in mutual funds or
10 retirement accounts.

11 (4) The name, address, and brief description of a nonprofit
12 organization in which the individual or spouse is a director or
13 officer.

14 (5) The identification, by category, of every source of income
15 over \$1,000, including distributions from retirement accounts
16 received during the preceding calendar year, in his or her own name
17 or by any other person for his or her use or benefit, by the person
18 filing the statement, or that person's spouse, and a brief
19 description of the nature of the income producing activities for
20 which the income was received. This subdivision does not require
21 a person filing the statement who derives income from a business,
22 profession or occupation, or who's spouse derives income from a
23 business, profession or occupation, to disclose the individual
24 sources and items of income that constitute the gross income of

1 that business, profession or occupation.

2 (6) If the person filing the statement, or that person's
3 spouse, profited or benefitted in the year before the date of
4 filing from a contract for the sale of goods or services to a
5 state, county, municipal or other local governmental agency either
6 directly or through a partnership, corporation or association in
7 which the person, or that person's spouse, owned or controlled more
8 than ten percent, the person shall describe the nature of the goods
9 or services and identify the governmental agencies which purchased
10 the goods or services.

11 (7) Each interest group or category listed below doing
12 business in this state with which the person filing the statement,
13 did business or furnished services and from which the person filing
14 the statement, or that person's spouse, received more than twenty
15 percent of his or her gross income during the preceding calendar
16 year. The groups or categories are electric utilities, gas
17 utilities, telephone utilities, water utilities, cable television
18 companies, interstate transportation companies, intrastate
19 transportation companies, oil or gas retail, wholesale,
20 exploration, production or drilling companies, banks, savings and
21 loan associations, loan or finance companies, manufacturing
22 companies, surface mining companies, deep mining companies, mining
23 equipment companies, chemical companies, insurance companies,
24 retail companies, beer, wine or liquor companies or distributors,

1 recreation related companies, timbering companies, hospitals or
2 other health care providers, trade associations, professional
3 associations, associations of public employees or public officials,
4 counties, cities or towns, labor organizations, waste disposal
5 companies, wholesale companies, groups or associations promoting
6 gaming or lotteries, advertising companies, media companies, race
7 tracks, promotional companies, lobbying, economic development
8 entities, state government, construction, information technology
9 and legal service providers.

10 (8) The names of all persons, excluding that person's
11 immediate family, parents or grandparents residing or transacting
12 business in the state to whom the person filing the statement,
13 owes, on the date of execution of this statement in the aggregate
14 in his or her own name or in the name of any other person more than
15 \$5,000: *Provided*, That nothing herein requires the disclosure of
16 a mortgage on the person's primary and secondary residences or of
17 automobile loans on automobiles maintained for the use of the
18 person's immediate family, or of a student loan, nor does this
19 section require the disclosure of debts which result from the
20 ordinary conduct of the person's business, profession or occupation
21 or of debts of the person filing the statement to any financial
22 institution, credit card company or business, in which the person
23 has an ownership interest: *Provided, however*, That the previous
24 proviso does not exclude from disclosure loans obtained pursuant to

1 the linked deposit program provided in article one-a, chapter
2 twelve of this code or any other loan or debt incurred which
3 requires approval of the state or any of its political
4 subdivisions.

5 (9) The names of all persons except immediate family members,
6 parents and grandparents residing or transacting business in the
7 state (other than a demand or savings account in a bank, savings
8 and loan association, credit union or building and loan association
9 or other similar depository) who owes on the date of execution of
10 this statement more than, in the aggregate, \$5,000 to the person
11 filing the statement, either in his or her own name or to any other
12 person for his or her use or benefit. This subdivision does not
13 require the disclosure of debts owed to the person filing the
14 statement which debts result from the ordinary conduct of the
15 person's business, profession or occupation or of loans made by the
16 person filing the statement to any business in which the person has
17 an ownership interest.

18 (10) The source of each gift, including those described in
19 subdivision (2), subsection (c), section five of this article,
20 having a value of over \$100, received from a person having a direct
21 and immediate interest in a governmental activity over which the
22 person filing the statement has control, shall be reported by the
23 person filing the statement when the gift is given to that person
24 in his or her name or for his or her use or benefit during the

1 preceding calendar year: *Provided*, That any person filing a
2 statement required to be filed pursuant to this section is not
3 required to report those gifts described in subdivision (2),
4 subsection (c), section five of this article that are otherwise
5 required to be reported by a registered lobbyist under section
6 four, article three of this chapter: *Provided, however*, That gifts
7 received by will or by virtue of the laws of descent and
8 distribution, or received from one's spouse, child, grandchild,
9 parents or grandparents, or received by way of distribution from an
10 inter vivos or testamentary trust established by the spouse or
11 child, grandchild or by an ancestor of the person filing the
12 statement are not required to be reported. As used in this
13 subdivision, any series or plurality of gifts which exceeds in the
14 aggregate the sum of \$100 from the same source or donor, either
15 directly or indirectly, and in the same calendar year are regarded
16 as a single gift in excess of that aggregate amount.

17 (11) The name of each for-profit business of which the person
18 filing the statement, or that person's spouse, serves as a member
19 of the board of directors or an officer, as well as a general
20 description of the type of business.

21 (12) The name and business address of any child or step-child
22 who is eighteen years or older and employed by state, county or
23 municipal government.

24 (13) The signature of the person filing the statement.

1 (b) Notwithstanding the provisions of subsection (a) of this
2 section, any person serving on a board, commission or agency for
3 which no compensation, other than expense reimbursement, is
4 statutorily authorized, is not required to disclose the financial
5 information relating to his or her spouse as required by
6 subdivisions three or five of subsection (a) of this section if:

7 (1) his or her spouse, or a business with which he or she is
8 associated, are not regulated by, do not have a contract with, or
9 do not receive any grants or appropriations from, the board, the
10 commission or agency on which the person filing the statement
11 serves. A business with which a filer's spouse is associated means
12 a business in which the person or an immediate family member is a
13 director, officer, owner, employee, compensated agent, or holder of
14 stock which constitutes five percent or more of the total
15 outstanding stocks of any class; and,

16 (2) the filer executes a signed statement on a form provided
17 by the commission verifying these facts.

18 **ARTICLE 3. LOBBYISTS.**

19 **§6B-3-2. Registration of lobbyists.**

20 (a) Before engaging in any lobbying activity, or within thirty
21 days after being employed as a lobbyist, whichever occurs first, a
22 lobbyist shall register with the Ethics Commission by filing a
23 lobbyist registration statement. The registration statement shall
24 contain information and be in a form prescribed by the Ethics

1 Commission by legislative rule, including, but not limited to, the
2 following information:

3 (1) The registrant's name, business address, telephone numbers
4 and any temporary residential and business addresses and telephone
5 numbers used or to be used by the registrant while lobbying during
6 a legislative session;

7 (2) The name, address and occupation or business of the
8 registrant's employer;

9 (3) A statement as to whether the registrant is employed or
10 retained by his or her employer solely as a lobbyist or is a
11 regular employee performing services for the employer which
12 include, but are not limited to, lobbying;

13 (4) A statement as to whether the registrant is employed or
14 retained by his or her employer under any agreement, arrangement or
15 understanding according to which the registrant's compensation, or
16 any portion of the registrant's compensation, is or will be
17 contingent upon the success of his or her lobbying activity;

18 (5) The general subject or subjects, if known, on which the
19 registrant will lobby or employ some other person to lobby in a
20 manner which requires registration under this article; and

21 (6) An appended written authorization from each of the
22 lobbyist's employers confirming the lobbyist's employment and the
23 subjects on which the employer is to be represented.

24 (b) Any lobbyist who receives or is to receive compensation

1 from more than one person for services as a lobbyist shall file a
2 separate notice of representation with respect to each person
3 compensating him or her for services performed as a lobbyist. When
4 a lobbyist whose fee for lobbying with respect to the same subject
5 is to be paid or contributed by more than one person, then the
6 lobbyist may file a single statement, in which he or she shall
7 detail the name, business address and occupation of each person
8 paying or contributing to the fee.

9 (c) Whenever a change, modification or termination of the
10 lobbyist's employment occurs, the lobbyist shall, within one week
11 of the change, modification or termination, furnish full
12 information regarding the change, modification or termination by
13 filing with the Commission an amended registration statement.

14 (d) Each lobbyist who has registered shall file a new
15 registration statement, revised as appropriate, on the Monday
16 preceding the second Wednesday in January of each odd-numbered year
17 and failure to do so terminates his or her authorization to lobby.
18 Until the registration is renewed, the person may not engage in
19 lobbying activities unless he or she is otherwise exempt under
20 paragraph (B), subdivision (7), section one of this article.

21 (1) Members of the Legislature;

22 (2) Members of the Executive Department as referenced in
23 article VII, section one of the Constitution of West Virginia;

24 (3) Will and pleasure professional employees of the

1 legislature under the direct supervision of a member of the
2 legislature;

3 (4) Will and pleasure professional employees of members of the
4 Executive Department under the direct supervision of the Executive
5 Department officer and who regularly, personally and substantially
6 participates in a decision-making or advisory capacity regarding
7 agency or department policy;

8 (5) Members of the Supreme Court of Appeals;

9 (6) Any department secretary of an executive branch department
10 created by the provisions of section two, article one, chapter
11 five-f of this code; and,

12 (7) Heads of any state departments or agencies.