

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4473

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OVERINGTON, AMBLER, BUTLER, C. MILLER, ROWAN,
WARD, HOUSEHOLDER AND ROHRBACH

[Introduced February 8, 2018; Referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §6B-2B-1, §6B-2B-2 and §6B-2B-4 of the Code of West Virginia,
 2 1931, as amended, all relating to use of state funds for advertising to promote a public
 3 official or government office; defining terms; and clarifying limitations on the production of
 4 educational materials and press releases produced with 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 ~~general~~ public through audio, visual, or other media tools with the
 4 purpose, in whole or in part, of promoting the activities, accomplishments, or efforts of a public
 5 official or a political party. ~~It includes~~ "Advertising" may include, but is not limited to, billboard,
 6 radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social
 7 media, websites, and other forms of publication, 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
 12 office. It 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. It does not include: (i) Regular responses to constituent requests or
22 questions during the normal course of business; or (ii) communications that are authorized or
23 required by law to be publicly disseminated, such as legal notices.

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

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

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

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

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

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

44 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 ~~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~~ if 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 public
24 funds to communicate with constituents in the normal course of their duties as public officials if

25 the 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 any person on public payroll may not use
28 or 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, in a form, manner or context that would
31 serve a purpose of advertising by the public official or producer of the materials: *Provided,* That
32 this prohibition does not apply to the submission of a report required to be issued by law. The
33 names of officials at any level within an agency or agencies may be included in directories,
34 reports, reference books, or other educational materials, including, but not limited to, the West
35 Virginia Blue Book, under the following conditions:

36 (1) The primary purpose of the material is to provide information about the processes,
37 operations, structure, functions, or history of an agency, agencies, or branch of government, or to
38 provide lists of contact information or other identifying information about multiple individuals; and

39 (2) No named official is singled out, given preferential treatment, or otherwise presented
40 in a form, manner, or context that has the purpose or effect of promoting the activities,
41 accomplishments, or efforts of that official or of a political party.

42 (e) *Press releases.* – The name of a public official may be included in a press release,
43 produced with public funds and disseminated by any means, if the press release is intended for
44 a legitimate news or informational purpose and, considered as a whole, does not feature or
45 present the public official in a form, manner, or context intended to promote the official. A press
46 release produced with public funds may not request, solicit, or promote voting for an official or
47 political party.

§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, if the That*
6 when official documents are reproduced for distribution or dissemination to the public as
7 educational material, the items are subject to the prohibitions in subsection (d), section two of this
8 article.

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

11 (c) The prohibitions contained in this article do not apply to any person who is employed
12 as a member of the faculty, staff, administration, or president of a public institution of higher
13 education and who is engaged in teaching, research, consulting, coaching, recruiting, or
14 publication activities: *Provided*, That the activity is approved as a part of an employment contract
15 with the governing board of the institution of higher education or has been approved by the
16 employee's department supervisor or the president of the institution by which the faculty or staff
17 member is employed.

18 (d) The prohibitions contained in section two of this article do not apply to ~~a public official's~~
19 ~~campaign-related expenditures or materials~~ items paid from the public official's campaign funds.

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

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

NOTE: The purpose of this bill is to clarify the definition of "advertising" relating to the promotion of a public official or government office and to distinguish between advertising and purely educational materials and to make allowances for press releases intended for legitimate news and informational purposes.

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