

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 580

BY SENATORS IHLENFELD, LINDSAY, AND JEFFRIES

[Introduced March 5, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §6B-2-5 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §6B-3-4 of said code, all relating to West Virginia Governmental Ethics
 3 Act; providing that a public official may not accept payment or reimbursement for travel or
 4 lodging in excess of that paid by the Travel Management Office of the Department of
 5 Administration; providing that there is a rebuttal presumption that a gift of meals or
 6 beverages does impair the impartiality and judgment of a person; and clarifying lobbyist
 7 reporting requirement to include the date of the expenditure, the name of the restaurant,
 8 or other place of the expenditure, including the city where it is located.

Be it enacted by the Legislature of West Virginia:

**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-2-5. Ethical standards for elected and appointed officials and public employees.

1 (a) Persons subject to section. — The provisions of this section apply to all public officials
 2 and public employees, whether full or part-time and whether compensated or not, in state, county,
 3 municipal governments and their respective boards, agencies, departments, and commissions
 4 and in any other regional or local governmental agency, including county school boards.

5 (b) Use of public office for private gain. —

6 (1) A public official or public employee may not knowingly and intentionally use his or her
 7 office or the prestige of his or her office for his or her own private gain or that of another person.
 8 Incidental use of equipment or resources available to a public official or public employee by virtue
 9 of his or her position for personal or business purposes resulting in de minimis private gain does
 10 not constitute use of public office for private gain under this subsection. The performance of usual
 11 and customary duties associated with the office or position or the advancement of public policy

12 goals or constituent services, without compensation, does not constitute the use of prestige of
13 office for private gain.

14 (2) Notwithstanding the general prohibition against use of office for private gain, public
15 officials and public employees may use bonus points acquired through participation in frequent
16 traveler programs while traveling on official government business: *Provided*, That the official's or
17 employee's participation in such program, or acquisition of such points, does not result in
18 additional costs to the government.

19 (3) The Legislature, in enacting this subsection, recognizes that there may be certain
20 public officials or public employees who bring to their respective offices or employment their own
21 unique personal prestige which is based upon their intelligence, education, experience, skills and
22 abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige
23 to their office or employment which inures to the benefit of the state and its citizens. Those
24 persons may, in fact, be sought by the state to serve in their office or employment because,
25 through their unusual gifts or traits, they bring stature and recognition to their office or employment
26 and to the state itself. While the office or employment held or to be held by those persons may
27 have its own inherent prestige, it would be unfair to those individuals and against the best interests
28 of the citizens of this state to deny those persons the right to hold public office or to be publicly
29 employed on the grounds that they would, in addition to the emoluments of their office or
30 employment, be in a position to benefit financially from the personal prestige which otherwise
31 inheres to them. Accordingly, the commission is directed, by legislative rule, to establish
32 categories of public officials and public employees, identifying them generally by the office or
33 employment held, and offering persons who fit within those categories the opportunity to apply for
34 an exemption from the application of the provisions of this subsection. Exemptions may be
35 granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office
36 held or the public employment engaged in is not such that it would ordinarily be available or
37 offered to a substantial number of the citizens of this state; (B) the office held or the employment

38 engaged in is such that it normally or specifically requires a person who possesses personal
39 prestige; and (C) the person's employment contract or letter of appointment provides or
40 anticipates that the person will gain financially from activities which are not a part of his or her
41 office or employment.

42 (4) A public official or public employee may not show favoritism or grant patronage in the
43 employment or working conditions of his or her relative or a person with whom he or she resides:
44 *Provided*, That as used in this subdivision, "employment or working conditions" shall only apply
45 to government employment: *Provided, however*, That government employment includes only
46 those governmental entities specified in subsection (a) of this section.

47 (c) Gifts. —

48 (1) The Legislature, in enacting this subsection, recognizes that public officials and public
49 employees serve the citizens of this state in the pursuit of improving the lives of West Virginians.
50 In furtherance of that purpose, it is counterproductive for public officials to utilize their position or
51 office in order to take advantage of opportunities which are not afforded to our fellow citizens. In
52 fact, such routine gifts, such as free meals and beverages, operate to bring public officials and
53 public service, in general, into disrepute.

54 (2) Except from relatives by blood or marriage or a member of the same household, a
55 public official or public employee may not accept nor solicit meals or beverages, directly or
56 indirectly, from a lobbyist or from any person whom the official or employee knows or has reason
57 to know:

58 (A) Is doing or seeking to do business of any kind with his or her agency;

59 (B) Is engaged in activities which are regulated or controlled by his or her agency; or

60 (C) Has financial interests which may be substantially and materially affected, in a manner
61 distinguishable from the public generally, by the performance or nonperformance of his or her
62 official duties.

63 ~~(4)~~(3) A public official or public employee may not accept nor solicit any gift unless the gift

64 or the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred
65 upon the official or employee or his or her immediate family: *Provided*, That no public official or
66 public employee may solicit for a charitable purpose any gift from any person who is also an
67 official or employee of the state and whose position is subordinate to the soliciting official or
68 employee: *Provided, however*, That nothing herein shall prohibit a candidate for public office from
69 soliciting a lawful political contribution. No official or employee may knowingly accept any gift,
70 directly or indirectly, from a lobbyist or from any person whom the official or employee knows or
71 has reason to know:

72 (A) Is doing or seeking to do business of any kind with his or her agency;

73 (B) Is engaged in activities which are regulated or controlled by his or her agency; or

74 (C) Has financial interests which may be substantially and materially affected, in a manner
75 distinguishable from the public generally, by the performance or nonperformance of his or her
76 official duties.

77 ~~(2)~~(4) Notwithstanding the provisions of subdivision (1) of this subsection, a person who
78 is a public official or public employee may accept a gift described in this subdivision, and there
79 shall be a presumption that the receipt of such gift does not impair the impartiality and independent
80 judgment of the person. This presumption may be rebutted only by direct objective evidence that
81 the gift did impair the impartiality and independent judgment of the person or that the person knew
82 or had reason to know that the gift was offered with the intent to impair his or her impartiality and
83 independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

84 (A) Meals and beverages;

85 (B) Ceremonial gifts or awards which have insignificant monetary value;

86 (C) Unsolicited gifts of nominal value or trivial items of informational value;

87 (D) Reasonable and necessary expenses for food, travel, and lodging of the official or
88 employee actually incurred for a meeting at which the official or employee participates in a panel
89 or has a speaking engagement: *Provided, That a public official may not accept payment or*

90 reimbursement for travel or lodging in excess of that paid by the travel management office of the
91 Department of Administration. A public official or public employee may not accept payment or
92 reimbursement for other expenses such as golf fees, falconry, carriage rides, rafting, spa
93 treatment, or health club fees regardless of whether such expenses are normally part of the
94 standard hotel room charge and incidental to the use of the hotel room. Furthermore, a public
95 official or public employee may not accept payment from an interested third party for food, lodging
96 or travel expenses for a guest: *Provided, however,* That a public official or public employee may
97 take a guest to a privately sponsored seminar if no additional costs are incurred by the third party
98 payer for the guest's travel, lodging or attendance at the seminar;

99 (E) Gifts of tickets or free admission extended to a public official or public employee to
100 attend charitable, cultural, or political events, if the purpose of such gift or admission is a courtesy
101 or ceremony customarily extended to the office;

102 (F) Gifts that are purely private and personal in nature; or

103 (G) Gifts from relatives by blood or marriage, or a member of the same household.

104 ~~(3)~~(5) The commission shall, through legislative rule promulgated pursuant to chapter 29A
105 of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials
106 and elected officials. The rule promulgated shall be consistent with this section. Any elected public
107 official may accept an honorarium only when:

108 (A) That official is a part-time elected public official;

109 (B) The fee is not related to the official's public position or duties;

110 (C) The fee is for services provided by the public official that are related to the public
111 official's regular, nonpublic trade, profession, occupation, hobby, or avocation; and

112 (D) The honorarium is not provided in exchange for any promise or action on the part of
113 the public official.

114 ~~(4)~~(6) Nothing in this section shall be construed so as to prohibit the giving of a lawful
115 political contribution as defined by law.

116 ~~(5)~~(7) The Governor or his designee may, in the name of the State of West Virginia, accept
117 and receive gifts from any public or private source. Any gift so obtained shall become the property
118 of the state and shall, within 30 days of the receipt thereof, be registered with the commission and
119 the Division of Culture and History.

120 ~~(6)~~(8) Upon prior approval of the Joint Committee on Government and Finance, any
121 member of the Legislature may solicit donations for a regional or national legislative organization
122 conference or other legislative organization function to be held in the state for the purpose of
123 deferring costs to the state for hosting of the conference or function. Legislative organizations are
124 bipartisan regional or national organizations in which the Joint Committee on Government and
125 Finance authorizes payment of dues or other membership fees for the Legislature's participation
126 and which assist this and other State Legislatures and their staff through any of the following:

127 (A) Advancing the effectiveness, independence, and integrity of Legislatures in the states
128 of the United States;

129 (B) Fostering interstate cooperation and facilitating information exchange among State
130 Legislatures;

131 (C) Representing the states and their Legislatures in the American federal system of
132 government;

133 (D) Improving the operations and management of State Legislatures and the effectiveness
134 of legislators and legislative staff, and to encourage the practice of high standards of conduct by
135 legislators and legislative staff;

136 (E) Promoting cooperation between State Legislatures in the United States and
137 Legislatures in other countries.

138 The solicitations may only be made in writing. The legislative organization may act as
139 fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking
140 institution may act as the fiscal agent. The official letterhead of the Legislature may not be used
141 by the legislative member in conjunction with the fund raising or solicitation effort. The legislative

142 organization for which solicitations are being made shall file with the Joint Committee on
143 Government and Finance and with the Secretary of State for publication in the State Register as
144 provided in §29A-2-1 *et seq.* of this code, copies of letters, brochures, and other solicitation
145 documents, along with a complete list of the names and last known addresses of all donors and
146 the amount of donations received. Any solicitation by a legislative member shall contain the
147 following disclaimer:

148 "This solicitation is endorsed by [name of member]. This endorsement does not imply
149 support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A
150 copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on
151 Government and Finance, and with the Secretary of State and are available for public review."

152 ~~(7)~~(9) Upon written notice to the commission, any member of the board of Public Works
153 may solicit donations for a regional or national organization conference or other function related
154 to the office of the member to be held in the state for the purpose of deferring costs to the state
155 for hosting of the conference or function. The solicitations may only be made in writing. The
156 organization may act as fiscal agent for the conference and receive all donations. In the
157 alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of
158 the office of the Board of Public Works member may not be used in conjunction with the fund
159 raising or solicitation effort. The organization for which solicitations are being made shall file with
160 the Joint Committee on Government and Finance, with the Secretary of State for publication in
161 the State Register as provided in §29A-2-1 *et seq.* of this code and with the commission, copies
162 of letters, brochures, and other solicitation documents, along with a complete list of the names
163 and last known addresses of all donors and the amount of donations received. Any solicitation by
164 a member of the board of Public Works shall contain the following disclaimer: "This solicitation is
165 endorsed by (name of member of Board of Public Works.) This endorsement does not imply
166 support of the soliciting organization, nor of the sponsors who may respond to the solicitation.
167 Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on

168 Government and Finance, with the West Virginia Secretary of State and with the West Virginia
169 Ethics Commission and are available for public review.” Any moneys in excess of those donations
170 needed for the conference or function shall be deposited in the Capitol Dome and Capitol
171 Improvement Fund established in §5A-4-2 *et seq.* of this code.

172 (d) Interests in public contracts. —

173 (1) In addition to the provisions of §61-10-15 of this code, no elected or appointed public
174 official or public employee or member of his or her immediate family or business with which he or
175 she is associated may be a party to or have an interest in the profits or benefits of a contract which
176 the official or employee may have direct authority to enter into, or over which he or she may have
177 control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the
178 employment of any person with any governmental body: *Provided, however*, That nothing herein
179 shall be construed to prohibit a member of the Legislature from entering into a contract with any
180 governmental body, or prohibit a part-time appointed public official from entering into a contract
181 which the part-time appointed public official may have direct authority to enter into or over which
182 he or she may have control when the official has not participated in the review or evaluation
183 thereof, has been recused from deciding or evaluating and has been excused from voting on the
184 contract and has fully disclosed the extent of his or her interest in the contract.

185 (2) In the absence of bribery or a purpose to defraud, an elected or appointed public official
186 or public employee or a member of his or her immediate family or a business with which he or
187 she is associated shall not be considered as having a prohibited financial interest in a public
188 contract when such a person has a limited interest as an owner, shareholder, or creditor of the
189 business which is awarded a public contract. A limited interest for the purposes of this subsection
190 is:

191 (A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract
192 or contracts in a calendar year;

193 (B) An interest as a creditor of a public employee or official who exercises control over the

194 contract, or a member of his or her immediate family, if the amount is less than \$5,000.

195 (3) If a public official or employee has an interest in the profits or benefits of a contract,
196 then he or she may not make, participate in making, or in any way attempt to use his office or
197 employment to influence a government decision affecting his or her financial or limited financial
198 interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this
199 section.

200 (4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the
201 loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other
202 substantial interference with the operation of a state, county, municipality, county school board,
203 or other governmental agency, the affected governmental body or agency may make written
204 application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this
205 subsection.

206 (e) Confidential information. — No present or former public official or employee may
207 knowingly and improperly disclose any confidential information acquired by him or her in the
208 course of his or her official duties nor use such information to further his or her personal interests
209 or the interests of another person.

210 (f) Prohibited representation. — No present or former elected or appointed public official
211 or public employee shall, during or after his or her public employment or service, represent a client
212 or act in a representative capacity with or without compensation on behalf of any person in a
213 contested case, rate-making proceeding, license or permit application, regulation filing or other
214 particular matter involving a specific party or parties which arose during his or her period of public
215 service or employment and in which he or she personally and substantially participated in a
216 decision-making, advisory or staff support capacity, unless the appropriate government agency,
217 after consultation, consents to such representation. A staff attorney, accountant or other
218 professional employee who has represented a government agency in a particular matter shall not
219 thereafter represent another client in the same or substantially related matter in which that client's

220 interests are materially adverse to the interests of the government agency, without the consent of
221 the government agency: *Provided*, That this prohibition on representation shall not apply when
222 the client was not directly involved in the particular matter in which the professional employee
223 represented the government agency, but was involved only as a member of a class. The
224 provisions of this subsection shall not apply to legislators who were in office and legislative staff
225 who were employed at the time it originally became effective on July 1, 1989, and those who have
226 since become legislators or legislative staff and those who shall serve hereafter as legislators or
227 legislative staff.

228 (g) Limitation on practice before a board, agency, commission, or department. — Except
229 as otherwise provided in §8A-2-3, §8A-2-4, or §8A-2-5 of this code: (1) No elected or appointed
230 public official and no full-time staff attorney or accountant shall, during his or her public service or
231 public employment or for a period of one year after the termination of his or her public service or
232 public employment with a governmental entity authorized to hear contested cases or promulgate
233 or propose rules, appear in a representative capacity before the governmental entity in which he
234 or she serves or served or is or was employed in the following matters:

- 235 (A) A contested case involving an administrative sanction, action or refusal to act;
236 (B) To support or oppose a proposed rule;
237 (C) To support or contest the issuance or denial of a license or permit;
238 (D) A rate-making proceeding; and
239 (E) To influence the expenditure of public funds.

240 (2) As used in this subsection, “represent” includes any formal or informal appearance
241 before, or any written or oral communication with, any public agency on behalf of any person:
242 *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former
243 public official or employee from being retained by or employed to represent, assist, or act in a
244 representative capacity on behalf of the public agency by which he or she was employed or in
245 which he or she served. Nothing in this subsection shall be construed to prevent a former public

246 official or employee from representing another state, county, municipal, or other governmental
247 entity before the governmental entity in which he or she served or was employed within one year
248 after the termination of his or her employment or service in the entity.

249 (3) A present or former public official or employee may appear at any time in a
250 representative capacity before the Legislature, a county commission, city or town council, or
251 county school board in relation to the consideration of a statute, budget, ordinance, rule,
252 resolution, or enactment.

253 (4) Members and former members of the Legislature and professional employees and
254 former professional employees of the Legislature shall be permitted to appear in a representative
255 capacity on behalf of clients before any governmental agency of the state or of county or municipal
256 governments, including county school boards.

257 (5) An elected or appointed public official, full-time staff attorney or accountant who would
258 be adversely affected by the provisions of this subsection may apply to the Ethics Commission
259 for an exemption from the one year prohibition against appearing in a representative capacity,
260 when the person's education and experience is such that the prohibition would, for all practical
261 purposes, deprive the person of the ability to earn a livelihood in this state outside of the
262 governmental agency. The Ethics Commission shall, by legislative rule, establish general
263 guidelines or standards for granting an exemption or reducing the time period, but shall decide
264 each application on a case-by-case basis.

265 (h) Employment by regulated persons and vendors. —

266 (1) No full-time official or full-time public employee may seek employment with, be
267 employed by, or seek to purchase, sell, or lease real or personal property to or from any person
268 who:

269 (A) Had a matter on which he or she took, or a subordinate is known to have taken,
270 regulatory action within the preceding 12 months; or

271 (B) Has a matter before the agency on which he or she is working, or a subordinate is

272 known by him or her to be working.

273 (C) Is a vendor to the agency where the official serves or public employee is employed
274 and the official or public employee, or a subordinate of the official or public employee, exercises
275 authority or control over a public contract with such vendor, including, but not limited to:

276 (i) Drafting bid specifications or requests for proposals;

277 (ii) Recommending selection of the vendor;

278 (iii) Conducting inspections or investigations;

279 (iv) Approving the method or manner of payment to the vendor;

280 (v) Providing legal or technical guidance on the formation, implementation, or execution
281 of the contract; or

282 (vi) Taking other nonministerial action which may affect the financial interests of the
283 vendor.

284 (2) Within the meaning of this section, the term "employment" includes professional
285 services and other services rendered by the public official or public employee, whether rendered
286 as employee or as an independent contractor; "seek employment" includes responding to
287 unsolicited offers of employment as well as any direct or indirect contact with a potential employer
288 relating to the availability or conditions of employment in furtherance of obtaining employment;
289 and "subordinate" includes only those agency personnel over whom the public official or public
290 employee has supervisory responsibility.

291 (3) A full-time public official or full-time public employee who would be adversely affected
292 by the provisions of this subsection may apply to the Ethics Commission for an exemption from
293 the prohibition contained in subdivision (1) of this subsection.

294 (A) The Ethics Commission shall, by legislative rule, establish general guidelines or
295 standards for granting an exemption, but shall decide each application on a case-by-case basis;

296 (B) A person adversely affected by the restriction on the purchase of personal property
297 may make such purchase after seeking and obtaining approval from the commission or in good

298 faith reliance upon an official guideline promulgated by the commission, written advisory opinions
299 issued by the commission, or a legislative rule.

300 (C) The commission may establish exceptions to the personal property purchase
301 restrictions through the adoption of guidelines, advisory opinions, or legislative rule.

302 (4) A full-time public official or full-time public employee may not take personal regulatory
303 action on a matter affecting a person by whom he or she is employed or with whom he or she is
304 seeking employment or has an agreement concerning future employment.

305 (5) A full-time public official or full-time public employee may not personally participate in
306 a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection,
307 or other substantial exercise of nonministerial administrative discretion involving a vendor with
308 whom he or she is seeking employment or has an agreement concerning future employment.

309 (6) A full-time public official or full-time public employee may not receive private
310 compensation for providing information or services that he or she is required to provide in carrying
311 out his or her public job responsibilities.

312 (i) Members of the Legislature required to vote. — Members of the Legislature who have
313 asked to be excused from voting or who have made inquiry as to whether they should be excused
314 from voting on a particular matter and who are required by the presiding officer of the House of
315 Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be
316 guilty of any violation of ethics under the provisions of this section for a vote so cast.

317 (j) Limitations on voting. —

318 (1) Public officials, excluding members of the Legislature who are governed by subsection
319 (i) of this section, may not vote on a matter:

320 (A) In which they, an immediate family member, or a business with which they or an
321 immediate family member is associated have a financial interest. Business with which they are
322 associated means a business of which the person or an immediate family member is a director,
323 officer, owner, employee, compensated agent, or holder of stock which constitutes five percent

324 or more of the total outstanding stocks of any class.

325 (B) If a public official is employed by a financial institution and his or her primary
326 responsibilities include consumer and commercial lending, the public official may not vote on a
327 matter which directly affects the financial interests of a customer of the financial institution if the
328 public official is directly involved in approving a loan request from the person or business
329 appearing before the governmental body or if the public official has been directly involved in
330 approving a loan for that person or business within the past 12 months: *Provided*, That this
331 limitation only applies if the total amount of the loan or loans exceeds \$15,000.

332 (C) The employment or working conditions of the public official's relative or person with
333 whom the public official resides.

334 (D) The appropriations of public moneys or the awarding of a contract to a nonprofit
335 corporation if the public official or an immediate family member is employed by, or a compensated
336 officer or board member of, the nonprofit: *Provided*, That if the public official or immediate family
337 member is an uncompensated officer or board member of the nonprofit, then the public official
338 shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or
339 award of contract to the nonprofit: *Provided, however*, That for purposes of this paragraph, public
340 disclosure shall mean disclosure of the public official's, or his or her immediate family member's,
341 relationship to the nonprofit (i) On the agenda item relating to the appropriation or award contract,
342 if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the
343 minutes of the meeting.

344 (2) A public official may vote:

345 (A) If the public official, his or her spouse, immediate family members or relatives or
346 business with which they are associated are affected as a member of, and to no greater extent
347 than any other member of a profession, occupation, class of persons or class of businesses. A
348 class shall consist of not fewer than five similarly situated persons or businesses; or

349 (B) If the matter affects a publicly traded company when:

350 (i) The public official, or dependent family members individually or jointly own less than
351 five percent of the issued stock in the publicly traded company and the value of the stocks
352 individually or jointly owned is less than \$10,000; and

353 (ii) Prior to casting a vote the public official discloses his or her interest in the publicly
354 traded company.

355 (3) For a public official's recusal to be effective, it is necessary to excuse him or herself
356 from participating in the discussion and decision-making process by physically removing him or
357 herself from the room during the period, fully disclosing his or her interests, and recusing him or
358 herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

359 (k) Limitations on participation in licensing and rate-making proceedings. — No public
360 official or employee may participate within the scope of his or her duties as a public official or
361 employee, except through ministerial functions as defined in §6B-1-3 of this code, in any license
362 or rate-making proceeding that directly affects the license or rates of any person, partnership,
363 trust, business trust, corporation, or association in which the public official or employee or his or
364 her immediate family owns or controls more than 10 percent. No public official or public employee
365 may participate within the scope of his or her duties as a public official or public employee, except
366 through ministerial functions as defined §6B-1-3 of this code, in any license or rate-making
367 proceeding that directly affects the license or rates of any person to whom the public official or
368 public employee or his or her immediate family, or a partnership, trust, business trust, corporation
369 or association of which the public official or employee, or his or her immediate family, owns or
370 controls more than 10 percent, has sold goods or services totaling more than \$1,000 during the
371 preceding year, unless the public official or public employee has filed a written statement
372 acknowledging such sale with the public agency and the statement is entered in any public record
373 of the agency's proceedings. This subsection shall not be construed to require the disclosure of
374 clients of attorneys or of patients or clients of persons licensed pursuant to §30-3-1 *et seq.*, §30-
375 8-1 *et seq.*, §30-14-1 *et seq.*, §30-14A-1 *et seq.*, §30-15-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et*

376 *seq.*, §30-21-1 *et seq.*, or §30-31-1 *et seq.* of this code.

377 (l) Certain compensation prohibited. —

378 (1) A public employee may not receive additional compensation from another publicly-
379 funded state, county, or municipal office or employment for working the same hours, unless:

380 (A) The public employee's compensation from one public employer is reduced by the
381 amount of compensation received from the other public employer;

382 (B) The public employee's compensation from one public employer is reduced on a pro
383 rata basis for any work time missed to perform duties for the other public employer;

384 (C) The public employee uses earned paid vacation, personal or compensatory time or
385 takes unpaid leave from his or her public employment to perform the duties of another public office
386 or employment; or

387 (D) A part-time public employee who does not have regularly scheduled work hours or a
388 public employee who is authorized by one public employer to make up, outside of regularly
389 scheduled work hours, time missed to perform the duties of another public office or employment
390 maintains time records, verified by the public employee and his or her immediate supervisor at
391 least once every pay period, showing the hours that the public employee did, in fact, work for
392 each public employer. The public employer shall submit these time records to the Ethics
393 Commission on a quarterly basis.

394 (2) This section does not prohibit a retired public official or public employee from receiving
395 compensation from a publicly-funded office or employment in addition to any retirement benefits
396 to which the retired public official or public employee is entitled.

397 (m) Certain expenses prohibited. — No public official or public employee shall knowingly
398 request or accept from any governmental entity compensation or reimbursement for any
399 expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported,
400 or actually paid by any other person.

401 (n) Any person who is employed as a member of the faculty or staff of a public institution

402 of higher education and who is engaged in teaching, research, consulting, or publication activities
403 in his or her field of expertise with public or private entities and thereby derives private benefits
404 from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d)
405 of this section when the activity is approved as a part of an employment contract with the
406 governing board of the institution or has been approved by the employee's department supervisor
407 or the president of the institution by which the faculty or staff member is employed.

408 (o) Except as provided in this section, a person who is a public official or public employee
409 may not solicit private business from a subordinate public official or public employee whom he or
410 she has the authority to direct, supervise or control. A person who is a public official or public
411 employee may solicit private business from a subordinate public official or public employee whom
412 he or she has the authority to direct, supervise or control when:

413 (A) The solicitation is a general solicitation directed to the public at large through the
414 mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or
415 printed media; or

416 (B) The solicitation is limited to the posting of a notice in a communal work area; or

417 (C) The solicitation is for the sale of property of a kind that the person is not regularly
418 engaged in selling; or

419 (D) The solicitation is made at the location of a private business owned or operated by the
420 person to which the subordinate public official or public employee has come on his or her own
421 initiative.

422 (p) The commission may, by legislative rule promulgated in accordance with chapter 29A
423 of this code, define further exemptions from this section as necessary or appropriate.

ARTICLE 3. LOBBYISTS.

§6B-3-4. Reporting by lobbyists.

1 (a) A registered lobbyist shall file with the commission reports of his or her lobbying
2 activities, signed by the lobbyist. The reports shall be filed three times a year as follows:

3 (1) On or before May 15, a lobbyist shall report all lobbying activities in which he or she
4 engaged from January 1 through April 30.

5 (2) On or before September 15, a lobbyist shall report all lobbying activities in which he or
6 she engaged from May 1 through August 31;

7 (3) On or before January 15, a lobbyist shall report all lobbying activities in which he or
8 she engaged from September 1 through December 31.

9 (b) If the date on which a lobbyist expenditure report is due falls on a Saturday, Sunday
10 or legal holiday, the report will be considered timely filed if it is postmarked not later than the next
11 business day. If a registered lobbyist files a late report, the lobbyist shall pay the commission a
12 fee of \$10 for each late day, not to exceed a total of \$250. If a registered lobbyist fails to file a
13 report or to pay the required fee for filing an untimely report, the commission may, after written
14 notice sent by certified mail, return receipt requested, suspend the lobbyist's privileges as a
15 registered lobbyist until the lobbyist has satisfactorily complied with all reporting requirements and
16 paid the required fee.

17 (c)(1) Except as otherwise provided in this section, each report filed by a lobbyist shall
18 show the total amount of all expenditures for lobbying activities made or incurred by on behalf of
19 the lobbyist during the period covered by the report. The report shall also show subtotals
20 segregated according to financial category, including meals and beverages; living
21 accommodations; advertising; travel; contributions; gifts to public officials or employees or to
22 members of the immediate family of a public official or employee; and other expenses or services.

23 (2) Lobbyists are not required to report the following:

24 (A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

25 (B) Any expenses incurred for the lobbyist's own living accommodations;

26 (C) Any expenses incurred for the lobbyist's own travel to and from public meetings or
27 hearings of the legislative and executive branches; or

28 (D) Any expenses incurred for telephone and any office expenses, including rent and

29 salaries and wages paid for staff and secretarial assistance.

30 (d) If a lobbyist is employed by more than one employer, the report shall show the
31 proportionate amount of the expenditures in each category incurred on behalf of each of his or
32 her employers.

33 (e) The report shall describe the subject matter of the lobbying activities in which the
34 lobbyist has been engaged during the reporting period.

35 (f) If, during the period covered by the report, the lobbyist made expenditures or
36 expenditures were made or incurred on behalf of the lobbyist in the reporting categories of meals
37 and beverages, living accommodations, travel, gifts or other expenditures, other than for those
38 expenditures governed by subsection (g) of this section, the lobbyist shall report the name of the
39 public official or employee to whom or on whose behalf the expenditures were made, the total
40 amount of the expenditures, the restaurant or vendor, and the subject matter of the lobbying
41 activity, if any: *Provided*, That a registered lobbyist who entertains more than one public official
42 or public employee at a time with meals and beverages complies with the provisions of this section
43 if he or she reports the names of the public officials or public employees entertained, the
44 restaurant or vendor, and the total amount expended for meals and beverages for ~~all~~ each of the
45 public officials or public employees entertained: *Provided, however*, That where several lobbyists
46 join in entertaining one or more public officials or public employees at a time with meals and
47 beverages, each lobbyist complies with the provisions of this section by reporting the names of
48 the public officials or public employees entertained and his or her proportionate share of the total
49 amount expended for meals and beverages for ~~all~~ each of the public officials or public employees
50 entertained. Under this subsection, no portion of the amount of an expenditure for a dinner, party
51 or other function sponsored by a lobbyist's employer need be attributed to a particular public
52 official or employee who attends the function if the sponsor has invited to the function all the
53 members of: (1) The Legislature; (2) either house of the Legislature; (3) a standing or select
54 committee of either house; or (4) a joint committee of the two houses of the Legislature. However,

55 the amount spent for the function shall be added to other expenditures for the purpose of
56 determining the total amount of expenditures reported under subdivision (1), subsection (c) of this
57 section: *Provided further*, That if the expenditure is for a function to which the entire membership
58 of the Legislature has been invited, the lobbyist need only report that fact, the total amount of the
59 expenditure, the date of the expenditure, the name of the restaurant or other place of the
60 expenditure including the city where it is located, and the subject matter of the lobbying activity.

61 (g) If, during the period covered by the report, the lobbyist made expenditures in the
62 reporting categories of meals and beverages, lodging, travel, gifts and scheduled entertainment
63 for or on behalf of a particular public official or public employee in return for the participation of
64 the public official or employee in a panel or speaking engagement at a meeting, the lobbyist shall
65 report the name of the public official or employee to whom or on whose behalf the expenditures
66 were made, the date of the expenditure, the name of the restaurant or other place of the
67 expenditure including the city where it is located, and the total amount of the expenditures.

NOTE: The purpose of this bill is to update the West Virginia Governmental Ethics Act by prohibiting public officials and public employees from accepting gifts of meals or beverages, clarifying provisions related to gifts to public officials and public employees, and clarifying reporting requirements for lobbyists.

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