



LOUISIANA STATUTES ANNOTATED
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*** This document is current through Act 37 of the 2012 Regular Session. ***
 *** Annotations are current through May 25, 2012. ***

LOUISIANA REVISED STATUTES
TITLE 13. COURTS AND JUDICIAL PROCEDURE
CHAPTER 17. WITNESSES AND EVIDENCE
PART 1. WITNESSES

La. R.S. 13:3667.3 (2012)

Legislative Alert: LEXSEE 2012 La. HB 1125 -- See section 3.

§ 13:3667.3. Statewide elected officials, members of the legislature, legislative personnel, appointed heads of state departments, compelled appearance as witness in court or at administrative proceeding, hearing required

A. (1) A party litigant in a civil case or in a criminal misdemeanor case seeking to compel the attendance of a statewide elected official, or the head of any department of the state of Louisiana appointed to the position by the governor, as a witness in a suit that arises out of, or in connection with, the person's exercise of his duties as an official of the state, shall file a written motion with the proper court requesting a hearing on the matter. The motion shall set forth the facts sought to be proved by the person's testimony, the relevance of those facts to the case, and the basis for the mover's belief that such person has knowledge of those facts. This Subsection shall not apply to any person who is subpoenaed as a prospective factual witness to an incident resulting in criminal prosecution.

(2) If the judge determines that the motion is well-founded and that denial of the motion may prejudice the case of the mover, the judge shall order a hearing, and shall notify the mover and the witness of the hearing time and date by certified mail, return receipt requested, and the hearing shall be conducted in open court. At that time, the witness may present evidence or argument in opposition. After the hearing, if the court determines that the mover has established that the witness is necessary to the case, it shall issue a subpoena as sought. The court's ruling shall be an appealable order.

B. For purposes of this Section "legislative employee" means the clerk of the House of Representatives, the secretary of the Senate, or an employee of the House of Representatives, the Senate, or the Legislative Bureau.

C. (1) (a) Any party litigant seeking to compel the attendance of a member of the Louisiana Legislature, in his capacity as a state lawmaker, or a legislative employee in his official capacity, as a witness or deponent in any civil or criminal case shall file a written motion with the court requesting a hearing on the matter. The motion shall set forth in detail the facts sought to be proved by the member's or employee's testimony, the relevance of those facts to the case, the basis for the mover's belief that the member or employee has personal knowledge of those facts, and a statement as to why such testimony is not otherwise available or otherwise privileged under the privileges and immunities provision of *Article III, Section 8 of the Louisiana Constitution*. If after examination of the record, the judge determines that the motion is well-founded, that denial of the motion may prejudice the case of the mover, and that the mover has made a sound argument supported in law and jurisprudence that the

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 change to
 section B.

legislative privilege is inapplicable to the facts sought to be proved, the judge shall order a hearing in accordance with Paragraph (2) of this Subsection.

(b) (i) Any judge on his own motion seeking to compel the attendance of a member of the Louisiana Legislature, in his capacity as a state lawmaker, or a legislative employee in his official capacity, as a witness or deponent in any civil or criminal case shall enter into the record his intent to compel such attendance. Thereafter, the court shall provide, in writing, the facts sought to be proved by the member's or employee's testimony, the relevance of those facts to the case, the basis for the judge's belief that the member or employee has personal knowledge of those facts, and a statement as to why such testimony is not otherwise privileged under the privileges and immunities provision of *Article III, Section 8 of the Louisiana Constitution*.

(ii) In a district court having a single judge, the judge shall appoint a district judge of an adjoining district or a lawyer domiciled in the judicial district who has the qualifications of a district judge to conduct the hearing required in Paragraph (2) of this Subsection. In a district court having two judges, the other judge of the court shall conduct the hearing. Such order of the court appointing a judge ad hoc shall be entered on its minutes, and a certified copy of the order together with a written copy of the information required in Item (i) of this Subparagraph shall be sent to the judge ad hoc. In a district court having more than two judges, the hearing shall be conducted by another judge of the district court through the random process of assignment in accordance with the provisions of *Code of Civil Procedure Article 253.1*.

(2) Prior to the issuance of a subpoena commanding the appearance or testimony of a member or legislative employee, a hearing shall be conducted in accordance with the following provisions:

(a) Notice of the hearing must be provided to all parties, the member or legislative employee, and the attorney general. In the case of a member or employee of the House of Representatives, notice must also be made to the clerk of the House of Representatives, and in the case of a member or employee of the Senate, notice must also be made upon the secretary of the Senate at their respective offices in the State Capitol building.

(b) Notice may be served by sheriff or by certified mail, return receipt requested, and shall be served a minimum of fifteen days prior to the date of the hearing.

(c) The content of the notice shall include the facts sought to be proved by the member's or legislative employee's testimony, the relevance of those facts to the case, the basis for the belief that the member or employee has personal knowledge of those facts, and a supported statement as to why such testimony is not otherwise privileged under the privileges and immunities provision of *Article III, Section 8 of the Louisiana Constitution*.

(d) At the hearing, the member, legislative employee, or attorney general may each question the requesting party regarding the content of the notice and may present evidence or argument in opposition to the issuance of a subpoena or other order compelling discovery.

(e) The provisions of *R.S. 13:3667.1* shall apply to the scheduling of the hearing and all other court proceedings.

(3) After the hearing, if the court determines that the member's or legislative employee's testimony is necessary to the case and that the testimony is not privileged, it shall issue the subpoena or order.

(4) A member or legislative employee may, by affidavit, waive the hearing requirement of this Subsection with respect to his appearance as a witness or deponent. In the case of an employee, if the testimony being sought is privileged or otherwise confidential under law belonging to or inuring to the benefit of the legislature or a member thereof, the waiver shall include the concurrence of the presiding officer of either house of the legislature or the member, as applicable, evidenced by his signature on the affidavit.

(5) Any subpoena to compel the attendance of a member of the Louisiana Legislature, in his capacity as a state lawmaker, or a legislative employee in his official capacity, as a witness or deponent in any civil or criminal case which is not issued in strict conformity with the provisions of this Subsection is void ab initio.

D. (1) (a) Any party to an administrative proceeding seeking to compel the attendance of a member of the legislature, in his capacity as a state lawmaker, or a legislative employee in his official capacity, as a witness or deponent in the proceeding shall file a written motion with the agency, subordinate presiding officer, or administrative law judge, as applicable, requesting a hearing on the matter. The motion shall set forth in detail the facts sought to be proved by the member's or employee's testimony, the relevance of those facts to the proceeding,

the basis for the mover's belief that the member or employee has personal knowledge of those facts, and a statement as to why such testimony is not otherwise available or otherwise privileged under the privileges and immunities provision of *Article III, Section 8 of the Louisiana Constitution*. If after examination of the record, the agency, subordinate presiding officer, or administrative law judge, as applicable, determines that the motion is well-founded, that denial of the motion may prejudice the case of the mover, and that the mover has made a sound argument supported in law and jurisprudence that the legislative privilege is inapplicable to the facts sought to be proved, the agency, subordinate presiding officer, or administrative law judge, as applicable, shall order a hearing in accordance with Paragraph (2) of this Subsection.

(b) (i) Any agency on its own motion or any subordinate presiding officer or administrative law judge on his own motion seeking to compel the attendance of a member of the Louisiana Legislature, in his capacity as a state lawmaker, or a legislative employee in his official capacity, as a witness or deponent in any administrative proceeding shall enter into the record its or his intent to compel such attendance. Thereafter, the agency, officer, or judge shall provide, in writing, the facts sought to be proved by the member's or employee's testimony, the relevance of those facts to the proceeding, the basis for the agency's, officer's, or judge's belief that the member or employee has personal knowledge of those facts, and a statement as to why such testimony is not otherwise privileged under the privileges and immunities provision of *Article III, Section 8 of the Louisiana Constitution*.

(ii) The agency, subordinate presiding officer, or administrative law judge shall appoint or otherwise arrange for another subordinate presiding officer or administrative law judge to conduct the hearing required in Paragraph (2) of this Subsection.

(2) Prior to the issuance of a subpoena commanding the appearance or testimony of a member of the legislature or legislative employee pursuant to Paragraph (1) of this Subsection, a hearing shall be conducted in accordance with the following provisions:

(a) Notice of the hearing must be provided to all parties, the member, and the attorney general. In the case of a member or employee of the House of Representatives, notice must also be made to the clerk of the House of Representatives and in the case of a member or employee of the Senate, notice must also be made upon the secretary of the Senate at their respective offices in the State Capitol building.

(b) Notice may be served by sheriff or by certified mail, return receipt requested, and shall be served a minimum of fifteen days prior to the date of the hearing.

(c) The content of the notice shall include the facts sought to be proved by the member's or legislative employee's testimony, the relevance of those facts to the proceeding, the basis for the belief that the member or employee has personal knowledge of those facts, and a supported statement as to why such testimony is not otherwise privileged under the privileges and immunities provision of *Article III, Section 8 of the Louisiana Constitution*.

(d) At the hearing, the member, legislative employee, or attorney general may each question the requesting party regarding the content of the notice and may present evidence or argument in opposition to the issuance of a subpoena or other order compelling discovery.

(e) The provisions of *R.S. 13:3667.1* shall apply to the scheduling of the hearing and all other administrative proceedings.

(3) After the hearing, if the agency, subordinate presiding officer, or administrative law judge, as applicable, determines that the member's or legislative employee's testimony is necessary to the proceeding and that the testimony is not privileged, the agency, officer, or judge shall issue the subpoena or order.

(4) A member or legislative employee may, by affidavit, waive the hearing requirement of this Subsection with respect to his appearance as a witness or deponent. In the case of an employee, if the testimony being sought is privileged or otherwise confidential under law belonging to or inuring to the benefit of the legislature or a member thereof, the waiver shall include the concurrence of the presiding officer of either house of the legislature or the member, as applicable, evidenced by his signature on the affidavit.

(5) Any subpoena to compel the attendance of a member of the legislature, in his capacity as a state lawmaker, or a legislative employee in his official capacity, as a witness or deponent in any administrative proceeding which is not issued in strict conformity with the provisions of this Subsection is void ab initio.

E. The legislature, member, legislative employee, or attorney general may apply directly to the Supreme Court of Louisiana for supervisory writs upon:

(1) (a) A judge's decision to hold a hearing or to issue a subpoena commanding the attendance of the member or employee, or other order compelling discovery.

(b) An agency's, subordinate presiding officer's, or administrative law judge's decision to hold a hearing or to issue a subpoena commanding the attendance of the member or employee, or other order compelling discovery.

(2) (a) The failure of a judge to appoint a judge ad hoc to conduct the hearing when such appointment is required in Paragraph (C)(1) of this Section.

(b) The failure of an agency, subordinate presiding officer, or administrative law judge to appoint or otherwise arrange for an administrative law judge to conduct the hearing when such appointment or alternative arrangement is required in Paragraph (D)(1) of this Section.

HISTORY: Acts 1984, No. 709, § 1; Acts 2004, No. 873, § 1, eff. Aug. 15, 2004; Acts 2006, No. 690, § 2, eff. June 29, 2006; Acts 2008, No. 374, § 3, eff. June 21, 2008.



LOUISIANA ADVANCE LEGISLATIVE SERVICE
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LOUISIANA 2012 REGULAR LEGISLATIVE SESSION

ACT 519

HOUSE BILL NO. 1125

2012 La. ALS 519; 2012 La. ACT 519; 2012 La. HB 1125

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT To amend and reenact Code of Civil Procedure Article 1469(5), Code of Criminal Procedure Article 740, R.S. 13:3667.3(B), and R.S. 49:956.1, relative to the attendance and testimony of legislators in certain court and administrative hearings; to extend the requirement of a preliminary motion and hearing to former legislators where their attendance or testimony is being solicited on matters relating to their former service as lawmakers; to provide for definitions; and to provide for related matters.

NOTICE: [A> Text within these symbols is added <A]
[D> Text within these symbols is deleted <D]

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

Be it enacted by the Legislature of Louisiana:

[*1] Section 1. Code of Civil Procedure Article 1469(5) is hereby amended and reenacted to read as follows:

Art. 1469. Motion for order compelling discovery

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

* * *

(5) An application for an order compelling discovery to a member [A> or former member <A] of the legislature in his capacity as a state lawmaker, or a legislative employee in his official capacity, when the legislature or either body thereof is not a party to the proceeding may be made to the court in which the action is pending, but no order compelling discovery shall issue except in strict conformity with the provisions of R.S. 13:3667.3(C). For purposes of this Article "legislative employee" means the clerk of the House of Representatives, the secretary of the Senate, or an employee of the House of Representatives, the Senate, or the Legislative Bureau.

[*2] Section 2. Code of Criminal Procedure Article 740 is hereby amended and reenacted to read as follows:

Art. 740. Restrictions on subpoenas; members of the legislature and personnel

No subpoena or order compelling discovery shall issue to compel the attendance of a member of the Louisiana Legislature, or legislative employee, except in strict conformity with the [D] provisions <D> [A] provision <A> of R.S. 13:3667.1 and [D] 3667.3 <D> [A] no subpoena or order compelling discovery shall issue to compel the attendance of a member or former member of the Louisiana Legislature, or legislative employee, except in strict conformity with the provision of R.S. 13:3667.3 <A> . For purposes of this Article [A] , <A> "legislative employee" means the clerk of the House of Representatives, the secretary of the Senate, and employees of the House of Representatives, the Senate, and the Legislative Bureau.

[*3] Section 3. R.S. 13:3667.3(B) is hereby amended and reenacted to read as follows:

Section 3667.3. Statewide elected officials, members of the legislature, legislative personnel, appointed heads of state departments, compelled appearance as witness in court or at administrative proceeding, hearing required

* * *

[A] (1) <A> " [D] legislative <D> [A] Legislative <A> employee" means the clerk of the House of Representatives, the secretary of the Senate, or an employee of the House of Representatives, the Senate, or the Legislative Bureau.

[A] (2) "Member" means a sitting or former member of the Louisiana Legislature. <A>

* * *

[*4] Section 4. R.S. 49:956.1 is hereby amended and reenacted to read as follows:

Section 956.1. Administrative proceedings; member of the legislature or personnel as witness

An application for an order compelling discovery to a member [A] or former member <A> of the legislature in his capacity as a state lawmaker, or a legislative employee in his official capacity, when the legislature or either body thereof is not a party to the proceeding may be made to the agency in which the action is pending, but no order compelling discovery shall issue except in strict conformity with the provisions of R.S. 13:3667.3(D). For the purposes of this Section "legislative employee" shall mean the clerk of the House of Representatives, the secretary of the Senate, or an employee of the House of Representatives, the Senate, or the Legislative Bureau.

HISTORY:

Approved by the Governor June 5, 2012

SPONSOR: Broadwater

2012 change to § 13:3667.3. B.



COLORADO REVISED STATUTES

*** THIS DOCUMENT REFLECTS CHANGES CURRENT THROUGH ALL LAWS PASSED AT THE FIRST REGULAR SESSION OF THE 68TH GENERAL ASSEMBLY OF THE STATE OF COLORADO ***

**CONSTITUTION OF THE STATE OF COLORADO
ARTICLE V LEGISLATIVE DEPARTMENT**

Colo. Const. Art. V, Section 16 (2011)

Section 16. Privileges of members

The members of the general assembly shall, in all cases except treason or felony, be privileged from arrest during their attendance at the sessions of their respective houses, or any committees thereof, and in going to and returning from the same; and for any speech or debate in either house, or any committees thereof, they shall not be questioned in any other place.

HISTORY: Source: Entire article added, effective August 1, 1876, sec. L. 1877, p. 39.L.74: Entire section amended, p. 449, effective January 1, 1975.

COLORADO REVISED STATUTES

**TITLE 2. LEGISLATIVE
GENERAL ASSEMBLY
ARTICLE 2.GENERAL ASSEMBLY
PART 3. ORGANIZATION - OPERATION**

C.R.S. 2-2-304 (2011)

2-2-304. Members not to be questioned

No members of the general assembly will be questioned in any other place for any speech or word spoken in debate in either house or for conducting or performing any other legislative activity that relates to the drafting of bills and other legislative measures, including amendments to such bills or measures, and to the rendering of assistance or information to constituents on their personal and private matters that are not publicly known. In addition, no staff members of the general assembly will be questioned in any other place for conducting or performing any duties or functions directly related to such legislative activity when it is conducted or performed at the direction of members of the general assembly.

HISTORY: Source: G.L. § 1293.G.S. § 1578.R.S. 08: § 2898.C.L. § 5.CSA: C. 74, § 5.CRS 53: § 63-2-4. C.R.S. 1963: § 63-2-4.L. 2009: Entire section amended, (HB 09-1348), ch. 358, p. 1863, § 1, effective June 1.

**TITLE 2. LEGISLATIVE
STATUTES - CONSTRUCTION AND REVISION
ARTICLE 4.CONSTRUCTION OF STATUTES
PART 2. CONSTRUCTION OF STATUTES**

C.R.S. 2-4-211 (2011)

2-4-211. Common law of England

The common law of England so far as the same is applicable and of a general nature, and all acts and statutes of the British parliament, made in aid of or to supply the defects of the common law prior to the fourth year of James the First, excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth, and the ninth chapter of thirty-seventh Henry the Eighth, and which are of a general nature, and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority.

HISTORY: Source: L. 73: R&RE, p. 1425, § 1. C.R.S. 1963: § 135-1-211.



NEVADA REVISED STATUTES ANNOTATED
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*** This document is current through the 76th (2011) Regular Session ***
 and the 26th Special Session
 Annotations current through opinions posted as of June 1, 2012

TITLE 3. Remedies; Special Actions And Proceedings.
CHAPTER 41. Actions and Proceedings in Particular Cases Concerning Persons.
Governmental Privileges, Immunities and Limitations on Liability

Nev. Rev. Stat. Ann. § 41.071 (2012)

41.071. Legislative privilege and immunity for State Legislators.

1. The Legislature hereby finds and declares that:

(a) The Framers of the Nevada Constitution created a system of checks and balances so that the constitutional powers separately vested in the Legislative, Executive and Judicial Departments of State Government may be exercised without intrusion from the other Departments.

(b) As part of the system of checks and balances, the constitutional doctrines of separation of powers and legislative privilege and immunity facilitate the autonomy of the Legislative Department by curtailing intrusions by the Executive or Judicial Department into the sphere of legitimate legislative activities.

(c) The constitutional doctrines of separation of powers and legislative privilege and immunity protect State Legislators from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

(d) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be hindered or obstructed by executive or judicial oversight that realistically threatens to control their conduct as Legislators.

(e) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must be free to represent the interests of their constituents with assurance that they will not later be called to task for that representation by the other branches of government.

(f) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be questioned or sanctioned by the other branches of government for their actions in carrying out their core or essential legislative functions.

(g) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, the only governmental entity that may question or sanction a State Legislator for any actions taken within the sphere of legitimate legislative activity is the Legislator's own House pursuant to *Section 6 of Article 4 of the Nevada Constitution*.

(h) Therefore, the purpose and effect of this section is to implement the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in

administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

2. For any speech or debate in either House, a State Legislator shall not be questioned in any other place.

3. In interpreting and applying the provisions of this section, the interpretation and application given to the constitutional doctrines of separation of powers and legislative privilege and immunity under the Speech or Debate Clause of Section 6 of Article I of the Constitution of the United States must be considered to be persuasive authority.

4. The rights, privileges and immunities recognized by this section are in addition to any other rights, privileges and immunities recognized by law.

5. As used in this section, "State Legislator" or "Legislator" means a member of the Senate or Assembly of the State of Nevada.

HISTORY: 2009, ch. 257, § 1, p. 1042.

**TITLE 23. Public Officers And Employees.
CHAPTER 281A Ethics In Government
General Provisions**

Nev. Rev. Stat. Ann. § 281A.020 (2012)

281A.020. Legislative findings and declarations.

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2. The Legislature finds and declares that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(c) In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which 'State Legislators serve as "citizen Legislators" who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted.

(d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or *NRS 41.071*.

HISTORY: 1977, p. 1103; 1999, ch. 535, § 8.5, p. 2730; 2009, ch. 257, § 6, p. 1046.



Michie's West Virginia Code Annotated
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*** Text Current Through The 2012 Regular And First Extraordinary Sessions ***
*** Annotations Current Through December 20, 2011 ***

Chapter 4. The Legislature.
Article 1A. Legislative Immunity.

W. Va. Code § 4-1A-1 (2012)

§ 4-1A-1. Purpose; legislative findings and declarations.

(a) The purpose of this article is to describe the scope and limitations of legislative immunity provided by:

- (1) English common law;
- (2) The Speech or Debate Clause of the United States Constitution, Article I, Section 6;
- (3) Decisions regarding legislative immunity as developed in federal common law by the federal judiciary in interpreting the Speech or Debate Clause of the United States Constitution, Article I, Section 6;
- (5) The Speech or Debate Clause of the West Virginia Constitution, Article VI, Section 17;
- (6) The Separation of Powers Doctrine and the system of checks and balances embodied in the United States Constitution; and
- (7) The Division of Powers set forth in the West Virginia Constitution, Article V, Section 1.

(b) The Legislature finds and declares as follows:

- (1) That the privilege of Speech or Debate has been recognized as an important protection of the independence and integrity of the Legislature.
- (2) That the ancestry of this privilege traces back to a clause in the English Bill of Rights of 1689 and the history traces even further back, almost to the beginning of the development of the English Parliament as an independent force.
- (3) That in the American governmental structure, privileges arising under the Speech or Debate Clause reinforce the Separation of Powers Doctrine and the system of checks and balances that was so deliberately established by the founding fathers and was carried over into the West Virginia Constitution.
- (4) That the protections provided by the Speech or Debate Clause and the Separation of Powers Doctrine were not written into the national and state Constitutions simply for the personal or private benefit of members of Congress, the state Legislatures and local governing bodies, but were intended to protect the integrity of the legislative process by insuring the independence of individual legislators.

HISTORY: 2005, c. 157.

§ 4-1A-2. Applicability of definitions.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

HISTORY: 2005, c. 157.

§ 4-1A-3. Legislative act defined.

"Legislative act" means an act that is generally to be performed by the Legislature in relation to the investigative, deliberative and decision-making business before it. A "legislative act":

- (1) Is an integral part of the processes by which members participate in proceedings that come before the Senate or House of Delegates or a committee thereof; and
- (2) Relates to the consideration and passage or rejection of proposed legislation; or
- (3) Relates to other matters that constitutional law places within the jurisdiction of either the Senate, the House of Delegates or the legislative branch of state government as a whole.

HISTORY: 2005, c. 157.

§ 4-1A-4. Legislative sphere defined.

The "legislative sphere" includes all activities that are an integral part of the deliberative and communicative processes by which members of the Legislature participate in committee and house proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either house.

HISTORY: 2005, c. 157.

§ 4-1A-5. Political act defined.

"Political act" means an act, nonetheless legitimate, that is political in nature rather than being a legislative act as defined in section three [§ 4-1A-3] of this article.

HISTORY: 2005, c. 157.

§ 4-1A-6. Scope of legislative immunity generally.

(a) Legislative immunity, affording protection under the Separation of Powers Doctrine and the Speech or Debate privilege, extends to all of a legislator's legislative acts, as defined in section three [§ 4-1A-3] of this article.

(b) The Speech or Debate privilege, when it applies, is absolute and has two aspects:

(1) A member of the Legislature has immunity extending both to civil suits and criminal prosecutions for all actions within the legislative sphere, even though the conduct, if performed in other than a legislative context, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes; and

(2) A member of the Legislature is provided a testimonial privilege that operates to protect those to whom it applies from being compelled to give testimony as to privileged matters and from being compelled to produce privileged documents.

HISTORY: 2005, c. 157.

§ 4-1A-7. Legislative immunity in specific instances.

The scope of legislative immunity includes, but is not limited to, the following legislative acts:

- (1) Introducing and voting for legislation;
- (2) Failing or refusing to vote or enact legislation;
- (3) Voting to seat or unseat a member;
- (4) Voting on the confirmation of an executive appointment;
- (5) Making speeches;
- (6) Enforcing the rules of the Senate or House of Delegates or the joint rules of the Legislature;
- (7) Serving as a member of a committee or subcommittee;
- (8) Conducting hearings and developing legislation;
- (9) Investigating the conduct of executive agencies;
- (10) Publishing and distributing reports;
- (11) Composing and sending letters;
- (12) Drafting memoranda and documents;
- (13) Lobbying other legislators to support or oppose legislation;
- (14) Abolishing personnel positions; and
- (15) Hiring and firing employees.

HISTORY: 2005, c. 157.

§ 4-1A-8. Actions taken without lawful authority are not immune.

Legislative immunity does not extend to activities by legislators that are without lawful authority under constitutional law, statutory law or rules of the Legislature, including, but not limited to, the following:

- (1) Using an unconstitutional procedure to enact legislation;
- (2) Conducting an illegal investigation or an unlawful search or seizure;
- (3) Performing another otherwise valid legislative act without proper legislative authority;
- (4) Filing a false or incomplete report, disclosure or claim regarding an otherwise valid legislative act; or
- (5) Using legislative office for private gain in violation of the provisions of chapter six-b [§§ 6B-1-1 et seq.] of this code that define and enforce governmental ethics.

HISTORY: 2005, c. 157.

§ 4-1A-9. Political acts are not privileged.

Legislative immunity does not extend to political acts, including, but not limited to, the following:

- (1) Communications to the press through letters, electronic mail, newsletters or news releases: Provided, That the release of pending legislation, committee reports, journals, acts and other official legislative reports and documents is a legitimate legislative activity;
- (2) Privately releasing a republication of a speech made within the legislative sphere;
- (3) Holding a press conference;

(4) Making speeches or giving interviews outside of the legislative sphere; or

(5) Assisting a constituent or supporter through constituent services, including, but not limited to, making appointments with government agencies, attempting to influence discretionary acts of a government officer or providing assistance in securing government contracts.

HISTORY: 2005, c. 157.

§ 4-1A-10. Administrative acts are not immune.

(a) Legislative immunity does not extend to activities by legislators that are administrative in nature rather than legislative. If the underlying facts on which a decision is based are legislative facts involving establishment of a general policy or state of affairs, then the decision is legislative. If the facts used in the decisionmaking are more specific, such as those that relate to particular individuals or situations, then the decision is administrative.

(b) With regard to legislative personnel matters, whether a personnel decision regarding a legislative employee is shielded by legislative immunity depends upon the nature of the duties of the employee about whom the personnel decision is made. Personnel decisions regarding a legislative employee are afforded immunity if the employee's duties are directly related to the functioning of the legislative process and the duties:

(1) Involve work that significantly informs or influences the shaping of laws, such as when the employee has an opportunity for meaningful input into the legislative process; or

(2) Are peculiar to a legislator's work as a legislator or intimately cognate to the legislative process.

HISTORY: 2005, c. 157.

§ 4-1A-11. Certain offers of proof about legislative activities not prohibited.

(a) Proof of a person's status as a member of the Legislature is not prohibited.

(b) A member of the Legislature who chooses to offer evidence of legislative acts as a defense to a criminal prosecution has not been "questioned", even though the member thereby subjects himself or herself to cross-examination.

HISTORY: 2005, c. 157.

§ 4-1A-12. Legislative acts of legislative staff, aides or assistants.

Legislative immunity extends to legislative staff, aides or assistants working on behalf of a legislator. Inquiry is prohibited into things done as a legislator's staff member, aide or assistant which would have been legislative acts if performed by the legislator personally.

HISTORY: 2005, c. 157.

§ 4-1A-13. Legislative immunity from ultimate relief.

Legislative immunity may be invoked to shield a legislator from judicially ordered relief, including, but not limited to, the following:

(1) Criminal prosecution for his or her legislative acts;

(2) Liability for damages for his or her legislative acts;

(3) Declaratory judgments with respect to his or her legislative acts;

- (4) Injunctive relief with respect to his or her legislative acts; and
- (5) Extraordinary writs with respect to his or her legislative acts.

HISTORY: 2005, c. 157.

§ 4-1A-14. Testimonial immunity.

(a) Testimonial immunity is an aspect of legislative immunity that protects a legislator from questioning elsewhere than in the legislative forum.

(b) When a legislator has been improperly questioned before a grand jury concerning legislative acts, the counts in a criminal indictment that are based on the testimony must be dismissed.

(c) When a legislator is found to be immune from a civil complaint, the relief to be granted is to have the complaint dismissed or to have a writ of prohibition issued to stop further proceedings.

(d) In the case of a subpoena that seeks to improperly question a legislator's conduct as to legislative acts, to depose a legislator or to seek disclosure as to any matters pertaining to the memoranda, documents or actions by a legislator which are or were in connection with the legislative process, the subpoenas may be quashed or the court may grant a motion for a protective order.

HISTORY: 2005, c. 157.

§ 4-1A-15. Right to interlocutory appeal.

Denial of a claim of legislative immunity is immediately appealable under the collateral order doctrine because the Speech or Debate Clause is designed to protect legislators not only from the consequences of litigation's results but also from the burden of defending themselves.

HISTORY: 2005, c. 157.

§ 4-1A-16. Common law regarding legislative immunity not affected by the enactment of this article.

The Legislature of the State of West Virginia, in codifying certain elements and doctrines of the common law regarding legislative immunity through the enactment of this article, does not intend to narrow the common law definition of legislative immunity that is afforded the Legislature under the speech or debate privilege and the separation or division of powers, and does not, with the enactment of this article, otherwise revoke or abrogate any portion of the common law. This article shall not be construed so as to narrow, restrict, revoke or abrogate the common law.

HISTORY: 2005, c. 157.