WEST VIRGINIA CODE CHAPTER 61 ARTICLE 5A

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§61-5A-1. Short title.

This article shall be known and may be cited as the “Bribery and Corrupt Practices Act.”

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§61-5A-2. Definitions.

The following words and phrases when used in this article shall have the meanings respectively ascribed to them in this section unless the context clearly requires a different meaning:

(1) "Government" includes the state, the state or any county board of education, or any county or municipality of the state;

(2) "Public servant" means any officer (whether executive, judicial, legislative or ministerial, and whether elected or appointed) or employee of the state, or of the state or any county board of education, or of any county or municipality of the state, including without in any way limiting the generality of the foregoing, commissioners of a court, justices of the peace, law-enforcement officers, and any person participating as juror; or any candidate for election to any state, county or local public office; but the term does not include witnesses;

(3) "Party official" means (i) a person who holds an office or position in a political party or political party committee, whether by election, appointment or otherwise, by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility (including, but not limited to, a treasurer of a political party committee), or (ii) a committee or any member thereof advancing the interests of any political party or candidate for election to any state, county or local public office (including, but not limited to, a financial agent as that term is now defined in chapter three of this code) or working for or against the approval of a public question by the voters at any election;

(4) "Administrative proceeding" means any adversary proceeding before any public servant, involving the exercise of administrative authority, and said term shall not be construed as including any legislative proceeding;

(5) "Judicial proceeding" means (i) any proceeding before any court or commissioner thereof or justice of the peace, or (ii) any quasi-judicial proceeding before a board, commission or public servant, the outcome of which is required to be based on a record or documentation prescribed by law;

(6) "Legislative proceeding" means any proceeding before the Legislature or either house or any committee thereof;

(7) "Official action" means a decision, award of contract, judgment, opinion, report, recommendation, vote, or other exercise of discretion;

(8) "Benefit" means a gain or advantage, or anything regarded, or which might reasonably be regarded, by the beneficiary as a gain or advantage, including a gain or advantage to any other person; and "pecuniary benefit" means a benefit in the form of money, tangible or intangible property, commercial interests or anything else the primary significance of which is economic gain; but the terms "benefit" and "pecuniary benefit" shall not be construed so

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as to include (a) salary, fees and other compensation and expenses paid by the government or political party or political party committee in behalf of which the official action or legal duty is performed, or (b) concurrence in official action in the course of legitimate compromise among public servants, or (c) wages, salary or fees or other compensation paid to a public servant when the reason for such payment is not to affect his official impartiality;

(9) "Harm" means loss to a person, physical injury of a person or injury to the property of a person, including loss to, physical injury of or injury to the property of any other person in whose welfare he is interested;

(10) "Approval" means recommendation, failure to disapprove, or any other manifestation of favor or acquiescence; and

(11) "Disapproval" means failure to approve, or any other manifestation of disfavor or nonacquiescence.

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§61-5A-3. Bribery in official and political matters.

A person is guilty of bribery under the provisions of this section if he offers, confers or agrees to confer to or upon another, or solicits, accepts or agrees to accept from another, directly or indirectly:

(1) Any pecuniary benefit as consideration for the recipient's official action as a public servant or party official; or

(2) Any benefit as consideration for the recipient's official action as a public servant in an administrative or judicial proceeding; or

(3) Any benefit as consideration for a violation of a legal duty as a public servant or party official.

A person is also guilty of bribery under the provisions of this section if he agrees to render or not to render official action as a public servant or party official as consideration for a pecuniary benefit being offered or conferred to or upon, or as consideration for a promise that a pecuniary benefit shall be offered or conferred to or upon, another person or a party official or a political party.

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§61-5A-4. Unlawful rewarding for past behavior.

(a) It shall be unlawful for any person to solicit, accept or agree to accept, directly or indirectly, a pecuniary benefit for:

(1) Having engaged in official action as a public servant; or

(2) Having violated a legal duty as a public servant.

(b) It shall also be unlawful for any person to offer, confer or agree to confer, directly or indirectly, a pecuniary benefit, the receipt of which is prohibited by subsection (a) of this section.

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§61-5A-5. Threats in official and political matters.

It shall be unlawful for any person to threaten harm to another with intent to influence the official action of a public servant in a pending or prospective administrative or judicial proceeding before such public servant, or with intent to influence a public servant or party official to violate his legal duty as a public servant or party official.

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§61-5A-6. Gifts or gratuities to public servants prohibited; exceptions.

(a) It shall be unlawful:

(1) For any public servant in any department, agency, division, board, bureau or commission of government exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from a person known by such public servant to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known by such public servant to be pending or contemplated; or

(2) For any public servant (except an officer or employee of the department of finance and administration who shall be subject to the prohibitions contained in section thirty-five, article three, chapter five-a of this code) having any official action to perform in connection with bids, contracts, purchases, claims or other pecuniary transactions of the government to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from any person known by such public servant to be interested in any such bid, contract, purchase, claim or transaction; or

(3) For any public servant having administrative or judicial authority and for any public servant employed by or in an agency or court or other body having such authority, or participating in the enforcement of its decisions, to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from a person known by such public servant to be interested in any matter before such public servant or an agency, court or body with which he is associated; or

(4) For any public servant in the legislative branch of government to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from any person known by such public servant to be interested in a bill, transaction or proceeding before the Legislature or either house thereof or any agency or committee thereof; or

(5) For any person to offer, give, or agree to give any gift or gratuity prohibited by the provisions of subdivisions (1), (2), (3) or (4) of this subsection (a).

(b) The prohibitions contained in subsection (a) of this section shall not apply to (1) gifts or gratuities conferred on account of kinship or other personal, professional or business relationship independent of the official status of the recipient; or (2) trivial gifts or gratuities involving no substantial risk of affecting official impartiality; or (3) social, professional or business entertainment involving no substantial risk of affecting official impartiality. The prohibitions contained in subdivisions (1), (2), (3) and (4) of subsection (a) of this section shall not apply to campaign contributions made for use in meeting campaign expenses by any public servant by or for whom a certificate of candidacy has been filed for election to the same or another public office for which such campaign is to be conducted, if such campaign contributions are made after the filing of such certificate of candidacy, if no part of such

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campaign contributions inures to the private financial gain of any public servant, and, when the provisions of article eight, chapter three of this code are applicable to the public office being sought, if such campaign contributions are within the limits specified in said article eight, are reported as campaign contributions pursuant to the provisions of said article eight, and are not otherwise prohibited by said chapter three. The prohibitions contained in subdivision (5) of subsection (a) of this section shall not apply to campaign contributions made for use in meeting campaign expenses by any public servant by or for whom a certificate of candidacy has been filed for election to the same or another public office for which such campaign is to be conducted, if such campaign contributions are made after the filing of such certificate of candidacy, if the person offering, giving or agreeing to give such campaign contributions does not intend that any part of such campaign contributions inure to the private financial gain of any public servant, and, when the provisions of article eight, chapter three of this code are applicable to the public office being sought, if such campaign contributions are within the limits specified in said article eight, are not otherwise prohibited by said chapter three and if the person offering, giving or agreeing to give such campaign contributions does not intend that such contributions not be reported as campaign contributions pursuant to said article eight.

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§61-5A-7. Trading in public office.

It shall be unlawful for any person to solicit, accept or agree to accept, or agree that any political party or political party committee or other person shall accept, or offer, confer or agree to confer, any pecuniary benefit as consideration for approval or disapproval by a public servant or party official of a person for appointment, employment, advancement or retention as a public servant or for nomination as a candidate for public office.

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§61-5A-8. Certain matters not to constitute defense.

It shall be no defense to any prosecution under the provisions of section three or section five of this article that a person whom the actor sought to influence or otherwise affect or deal with was not qualified to act in the desired way, whether because he was a candidate for office, or had not yet assumed office or his position of employment, or lacked authority or jurisdiction, or the matter was not yet before him or for any other reason was not qualified to act in the desired way.

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§61-5A-9. Penalties; disqualification to hold office; statute of limitations for misdemeanor offenses.

(a) Any person who violates any of the provisions of section three of this article shall be guilty of a felony, and, upon conviction thereof, shall be punished, if an individual, by imprisonment in the penitentiary not less than one nor more than ten years, and, if a corporation, by a fine of not exceeding $50,000. Any person convicted of violating any of the provisions of section three of this article shall also be forever disqualified from holding any office or position of honor, trust or profit of government in this state.

(b) Any person who violates any of the provisions of section four of this article shall be guilty of a misdemeanor, and, upon, conviction thereof, shall be punished by confinement in jail not less than three months nor more than one year or by a fine of not exceeding $5,000 or, in the discretion of the court, by both such confinement and fine.

(c) Any person who violates any of the provisions of section five of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by confinement in jail not less than three months nor more than one year or by a fine of not exceeding $5,000 or, in the discretion of the court, by both such confinement and fine, unless such person threatened to commit a crime or made a threat with the purpose to influence an administrative or judicial proceeding, in which event, he shall, upon conviction thereof, be guilty of a felony and, shall be punished as specified in subsection (a) of this section for a violation of any of the provisions of section three of this article.

(d) Any person who violates any of the provisions of section six or section seven of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by confinement in jail not less than three months nor more than one year or by a fine of not less than $50 nor more than $1,000 or, in the discretion of the court, by both such confinement and fine.

(e) Notwithstanding the provisions of section nine, article eleven of this chapter or any other provision of law to the contrary, a prosecution for a misdemeanor under the provisions of this article shall be commenced within six years after the offense was committed.

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§61-5A-10. Construction; certain other code provisions not affected; article not to affect offenses committed under other statutory provisions.

Under no circumstances whatever shall this article be construed as superseding or in any way affecting the provisions of (1) chapter three of this code dealing with bribery and other corrupt practices and criminal offenses in connection with elections, election officials, voters or voting in elections; (2) sections seventeen and eighteen, article two, chapter fifteen of this code; (3) section nine, article two-a, chapter eighteen of this code; and (4) sections fifteen and twenty-two, article ten of this chapter sixty-one; and the specific types of bribery, corrupt practices and criminal offenses covered by the statutory provisions referred to in this section shall continue to be governed by such statutory provisions and not by this article.

The provisions of this article shall govern and control as to any offenses committed in violation thereof on and after the effective date of this article, and the provisions of sections four, five, six and seven, article five of this chapter, shall govern and control as to any offenses committed in violation of said sections four, five, six and seven prior to the effective date of this article five-a, with like effect as to such prior offenses as if this article five-a had not been enacted.

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§61-5A-11. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

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