

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1970



ENROLLED

Committee Substitute for
HOUSE BILL No. 8

Originating in the Committee on
(By Mr. the Judiciary)



PASSED August 22 1970

In Effect from Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 8-28-70

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 8

(Originating in the Committee on the Judiciary)

[Passed August 22, 1970; in effect from passage.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-a, relating to bribery and other corrupt practices; adopting a bribery and corrupt practices act; defining certain words and phrases used in said act; specifying and defining the crime of bribery in official and political matters; prohibiting pecuniary benefit for past behavior of any public servant; prohibiting threats in official and political matters; prohibiting gifts or gratuities to public

servants under certain circumstances; interrelating section thirty-five, article three, chapter five-a of said code; providing certain exceptions with respect to the prohibition against such gifts or gratuities; prohibiting trading in public office; specifying matters not to constitute defense; providing criminal penalties; disqualifying one for office or for a position of honor, trust or profit upon conviction; providing a six-year statute of limitations for misdemeanor offenses under said article five-a; providing a rule of construction to make it clear that certain other code provisions shall not be affected by said article five-a; specifying that the enactment of said article five-a shall not affect offenses committed under sections four, five, six and seven, article five, chapter sixty-one of said code; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-a, to read as follows:

ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.

§61-5A-1. Short title.

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

§61-5A-2. Definitions.

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

5 (1) “Government” includes the state, the state or
6 any county board of education, or any county or mu-
7 nicipality of the state;

8 (2) “Public servant” means any officer (whether
9 executive, judicial, legislative or ministerial, and whether
10 elected or appointed) or employee of the state, or of the
11 state or any county board of education, or of any county
12 or municipality of the state, including without in any
13 way limiting the generality of the foregoing, commis-
14 sioners of a court, justices of the peace, law-enforcement
15 officers, and any person participating as juror; or any
16 candidate for election to any state, county or local public
17 office; but the term does not include witnesses;

18 (3) "Party official" means (i) a person who holds
19 an office or position in a political party or political party
20 committee, whether by election, appointment or other-
21 wise, by virtue of which he directs or conducts, or par-
22 ticipates in directing or conducting party affairs at any
23 level of responsibility (including, but not limited to, a
24 treasurer of a political party committee), or (ii) a com-
25 mittee or any member thereof advancing the interests
26 of any political party or candidate for election to any
27 state, county or local public office (including, but not
28 limited to, a financial agent as that term is now defined
29 in chapter three of this code) or working for or against
30 the approval of a public question by the voters at any
31 election;

32 (4) "Administrative proceeding" means any adver-
33 sary proceeding before any public servant, involving
34 the exercise of administrative authority, and said term
35 shall not be construed as including any legislative pro-
36 ceeding;

37 (5) "Judicial proceeding" means (i) any proceeding
38 before any court or commissioner thereof or justice of

39 the peace, or (ii) any quasi-judicial proceeding before
40 a board, commission or public servant, the outcome of
41 which is required to be based on a record or documenta-
42 tion prescribed by law;

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

46 (7) "Official action" means a decision, award of con-
47 tract, judgment, opinion, report, recommendation, vote,
48 or other exercise of discretion;

49 (8) "Benefit" means a gain or advantage, or any-
50 thing regarded, or which might reasonably be regarded,
51 by the beneficiary as a gain or advantage, including a
52 gain or advantage to any other person; and "pecuniary
53 benefit" means a benefit in the form of money, tangible
54 or intangible property, commercial interests or anything
55 else the primary significance of which is economic gain;
56 but the terms "benefit" and "pecuniary benefit" shall
57 not be construed so as to include (a) salary, fees and
58 other compensation and expenses paid by the govern-
59 ment or political party or political party committee in

60 behalf of which the official action or legal duty is per-
61 formed, or (b) concurrence in official action in the course
62 of legitimate compromise among public servants, or (c)
63 wages, salary or fees or other compensation paid to a
64 public servant when the reason for such payment is not
65 to affect his official impartiality;

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

70 (10) "Approval" means recommendation, failure to
71 disapprove, or any other manifestation of favor or acqui-
72 escence; and

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

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

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

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

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

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

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

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

1 (a) It shall be unlawful for any person to solicit,
2 accept or agree to accept, directly or indirectly, a pecu-
3 niary benefit for:

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

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

7 (b) It shall also be unlawful for any person to offer,
8 confer or agree to confer, directly or indirectly, a pecu-
9 niary benefit, the receipt of which is prohibited by sub-
10 section (a) of this section.

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

1 It shall be unlawful for any person to threaten harm
2 to another with intent to influence the official action
3 of a public servant in a pending or prospective adminis-
4 trative or judicial proceeding before such public servant,
5 or with intent to influence a public servant or party
6 official to violate his legal duty as a public servant or
7 party official.

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

1 (a) It shall be unlawful:

2 (1) For any public servant in any department, agency,
3 division, board, bureau or commission of government
4 exercising regulatory functions, or conducting inspec-
5 tions or investigations, or carrying on civil or criminal
6 litigation on behalf of the government, or having cus-

7 tody of prisoners, to solicit, accept or agree to accept,
8 directly or indirectly, any gift or gratuity from a person
9 known by such public servant to be subject to such
10 regulation, inspection, investigation or custody, or against
11 whom such litigation is known by such public servant
12 to be pending or contemplated; or

13 (2) For any public servant (except an officer or
14 ~~employer~~ ^{employee} of the department of finance and administra-
15 tion who shall be subject to the prohibitions contained
16 in section thirty-five, article three, chapter five-a of this
17 code) having any official action to perform in connec-
18 tion with bids, contracts, purchases, claims or other
19 pecuniary transactions of the government to solicit, ac-
20 cept or agree to accept, directly or indirectly, any gift
21 or gratuity from any person known by such public
22 servant to be interested in any such bid, contract, pur-
23 chase, claim or transaction; or

24 (3) For any public servant having administrative or
25 judicial authority and for any public servant employed
26 by or in an agency or court or other body having such
27 authority, or participating in the enforcement of its

Carlene Kershner
By me
9/1/70

28 decisions, to solicit, accept or agree to accept, directly
29 or indirectly, any gift or gratuity from a person known
30 by such public servant to be interested in any matter
31 before such public servant or an agency, court or body
32 with which he is associated; or

33 (4) For any public servant in the legislative branch
34 of government to solicit, accept or agree to accept, di-
35 rectly or indirectly, any gift or gratuity from any person
36 known by such public servant to be interested in a bill,
37 transaction or proceeding before the Legislature or either
38 house thereof or any agency or committee thereof;
39 or

40 (5) For any person to offer, give, or agree to give
41 any gift or gratuity prohibited by the provisions of sub-
42 divisions (1), (2), (3) or (4) of this subsection (a).

43 (b) The prohibitions contained in subsection (a) of
44 this section shall not apply to (1) gifts or gratuities
45 conferred on account of kinship or other personal, pro-
46 fessional or business relationship independent of the
47 official status of the recipient; or (2) trivial gifts or
48 gratuities involving no substantial risk of affecting official

49 impartiality; or (3) social, professional or business enter-
50 tainment involving no substantial risk of affecting official
51 impartiality. The prohibitions contained in subdivisions
52 (1), (2), (3) and (4) of subsection (a) of this section
53 shall not apply to campaign contributions made for use
54 in meeting campaign expenses by any public servant
55 by or for whom a certificate of candidacy has been filed
56 for election to the same or another public office for
57 which such campaign is to be conducted, if such cam-
58 paign contributions are made after the filing of such
59 certificate of candidacy, if no part of such campaign
60 contributions inures to the private financial gain of any
61 public servant, and, when the provisions of article eight,
62 chapter three of this code are applicable to the public
63 office being sought, if such campaign contributions are
64 within the limits specified in said article eight, are
65 reported as campaign contributions pursuant to the pro-
66 visions of said article eight, and are not otherwise pro-
67 hibited by said chapter three. The prohibitions contained
68 in subdivision (5) of subsection (a) of this section
69 shall not apply to campaign contributions made for use

70 in meeting campaign expenses by any public servant
71 by or for whom a certificate of candidacy has been filed
72 for election to the same or another public office for
73 which such campaign is to be conducted, if such cam-
74 paign contributions are made after the filing of such
75 certificate of candidacy, if the person offering, giving
76 or agreeing to give such campaign contributions does not
77 intend that any part of such campaign contributions
78 inure to the private financial gain of any public servant,
79 and, when the provisions of article eight, chapter three
80 of this code are applicable to the public office being
81 sought, if such campaign contributions are within the
82 limits specified in said article eight, are not otherwise
83 prohibited by said chapter three and if the person offering,
84 giving or agreeing to give such campaign contributions
85 does not intend that such contributions not be reported
86 as campaign contributions pursuant to said article eight.

§61-5A-7. Trading in public office.

1 It shall be unlawful for any person to solicit, accept
2 or agree to accept, or agree that any political party or
3 political party committee or other person shall accept,

4 or offer, confer or agree to confer, any pecuniary benefit
5 as consideration for approval or disapproval by a public
6 servant or party official of a person for appointment,
7 employment, advancement or retention as a public
8 servant or for nomination as a candidate for public
9 office.

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

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

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

1 (a) Any person who violates any of the provisions
2 of section three of this article shall be guilty of a felony,
3 and, upon conviction thereof, shall be punished, if an
4 individual, by imprisonment in the penitentiary not less

5 than one nor more than ten years, and, if a corporation,
6 by a fine of not exceeding fifty thousand dollars. Any
7 person convicted of violating any of the provisions of
8 section three of this article shall also be forever dis-
9 qualified from holding any office or position of honor,
10 trust or profit of government in this state.

11 (b) Any person who violates any of the provisions
12 of section four of this article shall be guilty of a mis-
13 demeanor, and, upon conviction thereof, shall be punished
14 by confinement in jail not less than three months nor
15 more than one year or by a fine of not exceeding five
16 thousand dollars or, in the discretion of the court, by
17 both such confinement and fine.

18 (c) Any person who violates any of the provisions
19 of section five of this article shall be guilty of a mis-
20 demeanor, and, upon conviction thereof, shall be pun-
21 ished by confinement in jail not less than three months
22 nor more than one year or by a fine of not exceeding
23 five thousand dollars or, in the discretion of the court,
24 by both such confinement and fine, unless such person
25 threatened to commit a crime or made a threat with

26 the purpose to influence an administrative or judicial
27 proceeding, in which event, he shall, upon conviction
28 thereof, be guilty of a felony and shall be punished as
29 specified in subsection (a) of this section for a violation
30 of any of the provisions of section three of this article.

31 (d) Any person who violates any of the provisions
32 of section six or section seven of this article shall be
33 guilty of a misdemeanor, and, upon conviction thereof,
34 shall be punished by confinement in jail not less than
35 three months nor more than one year or by a fine of
36 not less than fifty nor more than one thousand dollars
37 or, in the discretion of the court, by both such confine-
38 ment and fine.

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

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

1 Under no circumstances whatever shall this article be
2 construed as superseding or in any way affecting the

3 provisions of (1) chapter three of this code dealing with
4 bribery and other corrupt practices and criminal offenses
5 in connection with elections, election officials, voters or
6 voting in elections; (2) sections seventeen and eighteen,
7 article two, chapter fifteen of this code; (3) section nine,
8 article two-a, chapter eighteen of this code; and (4) sec-
9 tions fifteen and twenty-two, article ten of this chapter
10 sixty-one; and the specific types of bribery, corrupt
11 practices and criminal offenses covered by the statutory
12 provisions referred to in this section shall continue to be
13 governed by such statutory provisions and not by this
14 article.

15 The provisions of this article shall govern and control
16 as to any offenses committed in violation thereof on and
17 after the effective date of this article, and the provisions
18 of sections four, five, six and seven, article five of this
19 chapter, shall govern and control as to any offenses com-
20 mitted in violation of said sections four, five, six and
21 seven prior to the effective date of this article five-a,
22 with like effect as to such prior offenses as if this article
23 five-a had not been enacted.

§61-5A-11. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of the article, and to this end the provisions of this
5 article are declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Willeain Tompso
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Myers
Clerk of the Senate

Cliff Blankenship
Clerk of the House of Delegates

Frank B. Jackson
President of the Senate

Irvin F. Boreishy
Speaker House of Delegates

The within approved this the 27th
day of August, 1970.

Arch A. Shaver, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 8/26/70
Time 4:00 p.m.

RECEIVED

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA