WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1970

ENROLLED

Committee Substitute for HOUSE BILL No. 8

Originally in the Committee on
(By Mr. )

PASSED August 22, 1970

In Effect from Passage

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


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


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;
(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 documenta-
tion 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 con-
tract, judgment, opinion, report, recommendation, vote,
or other exercise of discretion;

(8) "Benefit" means a gain or advantage, or any-
thing 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 as to include (a) salary, fees and
other compensation and expenses paid by the govern-
ment or political party or political party committee in
be half of which the official action or legal duty is per-
formed, 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 acqui-
escence; and
(11) "Disapproval" means failure to approve, or any
other manifestation of disfavor or nonacquiescence.

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:
(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.


(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

1 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.

§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, 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 cus-
tody 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 administra-
tion 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 connec-
tion with bids, contracts, purchases, claims or other
pecuniary transactions of the government to solicit, ac-
cept 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, pur-
chase, 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, di-
rectly 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 sub-
divisions (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, pro-
fessional 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 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
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.


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,
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.

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.

§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 fifty thousand dollars. 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 five thousand dollars 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 five thousand dollars 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 fifty nor more than one thousand dollars 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.

§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
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.

1 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.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

**Milenax Tampor**
Chairman Senate Committee

**Clayton C. Daunisen**
Chairman House Committee

Originated in the House.

Takes effect from passage.

**Howard Myers**
Clerk of the Senate

**J. W. Blankenship**
Clerk of the House of Delegates

**Harry G. Jackson**
President of the Senate

**Joe F. Bordley**
Speaker House of Delegates

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

**Mike Shadley, Jr.**
Governor