

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 518

(By Senators Palumbo, Foster, Jenkins,
Klempa, Browning and Williams)

[Originating in the Committee on the Judiciary;
reported February 15, 2012.]

A BILL to amend and reenact §6-5-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §6-6-1 and §6-6-9 of said code; to amend and reenact §61-5-4 and §61-5-5 of said code; and to amend and reenact §61-5A-9 of said code, all relating to matters affecting the right to hold office; prohibiting certain persons from being elected or appointed to positions under the laws of the State of West Virginia; requiring certain persons to vacate office upon conviction of certain crimes; defining terms; removing superfluous language; and making technical edits.

Be it enacted by the Legislature of West Virginia:

That §6-5-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §6-6-1 and §6-6-9 of said code be amended and reenacted; that §61-5-4 and §61-5-5 of said code be amended and reenacted; and that §61-5A-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 6. GENERAL PROVISIONS

RESPECTING OFFICERS.

**ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT
TO HOLD OFFICE.**

§6-5-5. Disqualification by conviction of treason, felony, or bribery or perjury.

1 (a) No person under conviction for treason, perjury,
2 bribery or any felony may be elected or appointed to any
3 public office under the laws of this state.

4 (b) As used in this section:

5 (1) “Felony” means a crime punishable by incarceration
6 for a period in excess of one year in the courts of this state,
7 another state or the United States; and

8 (2) “Under conviction” means a finding of guilt which
9 has not been reversed, vacated or expunged by a court of

10 competent jurisdiction or unconditionally pardoned by an
11 executive or entity with the authority to so act.

ARTICLE 6. REMOVAL OF OFFICERS.

§6-6-1. Definitions.

1 As used in this article:

2 (1) The term “neglect of duty” or the term “official
3 misconduct” ~~as used in this article~~, shall include the willful
4 waste of public funds by any officer or officers, or the
5 appointment by ~~him~~ the officer or ~~them~~ the officers of an
6 incompetent or disqualified person to any office or position
7 and the retention of such person in office, or in the position
8 to which ~~he~~ the person was appointed, after such incompe-
9 tency or disqualification is made to appear, when it is in the
10 power of such officer to remove such incompet-
11 ified person.

12 (2) The term “incompetence” ~~as used in this article~~, shall
13 include the wasting or misappropriation of public funds by
14 any officer, habitual drunkenness, habitual addiction to the
15 use of narcotic drugs, adultery, neglect of duty or gross
16 immorality on the part of any officer.

17 (3) The term “incompetent person” ~~as used in this~~
18 ~~section~~, shall include any appointee or employee of any

19 officer or officers, including county court, municipal bodies
20 or officers and boards of education, who willfully wastes or
21 misappropriates public funds, or who is guilty of habitual
22 drunkenness, habitual addiction to the use of narcotic drugs,
23 adultery, neglect of duty or gross immorality.

24 (4) The term “felony” means a crime punishable by
25 incarceration for a period in excess of one year in the courts
26 of this state, another state or the United States.

27 (5) The term “conviction becomes final” means a finding
28 of guilt after all opportunity for direct appeal has expired or
29 all direct appeals have concluded without the conviction
30 being reversed, vacated or expunged by a court of competent
31 jurisdiction.

§6-6-9. Forfeiture of office on conviction of offense.

1 Any person holding any elected or appointed public
2 office, who is convicted in any court of any felony offense or
3 any misdemeanor offense, where the misdemeanor offense
4 has a penalty requiring forfeiture of office or disqualifying
5 a person from holding any office or position of honor, trust
6 or profit in this state, the punishment or penalty for which,
7 under any provision of the Constitution of the State, or any
8 law now in effect, or which may hereafter become effective,

9 ~~entails a forfeiture of the office held by the person convicted,~~
10 shall be removed from office by the judgment of the court,
11 ~~entered upon such conviction~~ once the conviction becomes
12 final.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-4. Bribery or attempted bribery; penalty.

1 If any person shall bribe, by directly or indirectly giving
2 to or bestowing upon, or shall attempt to bribe by directly or
3 indirectly giving to or bestowing upon, any executive,
4 legislative, judicial, or ministerial officer of this state, or any
5 member of the Legislature, after his or her election or
6 appointment and either before or after he or she shall have
7 been qualified or shall have taken his or her seat, any gift,
8 gratuity, money, testimonial or other valuable thing, or shall
9 make promise thereof, in order to influence him or her in the
10 performance of any of his or her official, public duties, or
11 with intent to influence his or her act, vote, opinion, decision
12 or judgment on any matter, question, cause or proceeding, or
13 to induce or procure him or her to vote or withhold his or her
14 vote on any question or proceeding which is then or may
15 thereafter be pending, or may by law come or be brought

16 before him or her in his or her official capacity, he or she
17 shall be guilty of a felony, and, upon conviction, shall be
18 imprisoned in the penitentiary not less than one nor more
19 than ten years. ~~and shall, moreover, be forever disqualified~~
20 ~~from holding any office or position of honor, trust or profit~~
21 ~~in this state.~~

§61-5-5. Demanding or receiving bribes; penalty.

1 Any executive, legislative, judicial or ministerial officer,
2 or member of the Legislature, who shall demand, receive or
3 accept any gift, gratuity, money, testimonial or other valu-
4 able thing, or shall exact any promise to make such gift or to
5 pay to him or her, money, testimonial or other valuable
6 thing, or to do any act beneficial to such officer or member
7 of the Legislature, from any person, company or corporation,
8 under an agreement or understanding that his or her vote,
9 opinion, judgment or decision shall be given or withheld in
10 any particular manner upon a particular side of any ques-
11 tion, cause or proceeding, which is, or may be by law brought
12 before him or her in his or her official capacity, or that in
13 such capacity he or she shall make any particular nomina-
14 tion or appointment, or for any vote or influence he or she
15 may give or withhold as such officer or member of the

16 Legislature, or that such officer will fail to perform or
17 improperly perform any of his or her official, public duties,
18 shall be guilty of a felony and, upon conviction thereof, shall
19 be confined in the penitentiary not less than one nor more
20 than ten years. ~~and in addition thereto such officer or~~
21 ~~member of the Legislature shall forfeit the office then held~~
22 ~~by him and shall be forever disqualified from holding any~~
23 ~~office or position of honor, trust or profit in this state.~~

ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.

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

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

10 (b) Any person who violates any of the provisions of
11 section four of this article shall be guilty of a misdemeanor,

12 and, upon conviction thereof, shall be punished by confine-
13 ment in jail not less than three months nor more than one
14 year or by a fine of not exceeding \$5,000 or, in the discretion
15 of the court, by both such confinement and fine.

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

28 (d) Any person who violates any of the provisions of
29 section six or section seven of this article shall be guilty of a
30 misdemeanor, and, upon conviction thereof, shall be pun-
31 ished by confinement in jail not less than three months nor
32 more than one year or by a fine of not less than \$50 nor more

33 than \$1,000 or, in the discretion of the court, by both such
34 confinement and fine.

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