

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3255

FISCAL
NOTE

BY DELEGATE STEELE

[Introduced March 16, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §5-30-1, §5-30-2, §5-30-3, §5-30-4, §5-30-5, and §5-30-6; all relating to
 3 establishing an Anti-Abuse of Power Act; providing for a legislative purpose; defining
 4 terms; prohibiting certain conduct of government employees, elected officials, and
 5 appointed officials; describing scope of act; restricting interpretations of provisions; and
 6 establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. ANTI-ABUSE OF POWER ACT.

§5-30-1. Legislative Purpose.

1 Be it declared that it is the intent of the Legislature, in recognition of the Governor's,
 2 Secretary of State's, Attorney General's, Board of Public Works', and each appointed official's
 3 sworn duty to uphold and defend the Constitution of this State, and these United States, and to
 4 faithfully discharge the duties of the office to which said persons are elected or appointed, that
 5 said officials refrain from utilizing the powers of their office to exact revenge, retribution, or gain;
 6 and

7 Whereas, in order to promote the efficient and orderly execution of government amongst
 8 the separate and equal branches thereof it is necessary to prohibit certain conduct that constitutes
 9 an abuse of the power and authority vested in such elected or appointed officials; and

10 Whereas, It is the intent of the Legislature to ensure that all officials in the service of the
 11 State or these United States are free from threat of retribution for the lawful fulfillment of their
 12 government and civil duties; and

13 It is the purpose and intent of this article to eliminate abuse of power in the executive
 14 branch of government, and ensure that every employee, officer, official, and elected official under
 15 this chapter refrains from abusing the powers of their office in order to gain an action or inaction
 16 on the part of any other elected official, appointed official, government employee.

§5-30-2. Definitions.

1 “Official” means any elected official, appointed official, commissioner, director, officer,
2 appointee, or person employed by any such elected official, appointed official, commissioner,
3 director, officer, or appointee.

4 “Official Act” means any act utilizing the powers bestowed upon any official by state or
5 federal law, the Constitution, or that is regularly or customarily carried out by that official in the
6 performance of that official’s duties as defined by the Constitution or the laws of this state.

7 “Arms-length negotiation” means the usual and customary interaction and bargaining
8 between certain members of government to achieve a resolution to matters pertinent to and in
9 the discharge of the duties of those member’s offices. Arms-length negotiation is free of threats
10 to perform or not perform official acts unrelated to the subject of the arms-length negotiation.

11 “Intermediary” means any person at the behest of an official that is utilized by said official
12 in communicating with other state, federal, county, or municipal officials, employees, or
13 appointees, regardless of that intermediary’s status as a government employee. It is not
14 necessary that the intermediary be compensated by the official to be found to be acting in the
15 behest of the official.

§5-30-3. Threat by official to perform or not perform an official act.

1 (a) It shall be unlawful for any official as defined by this article to threaten to perform or
2 threaten to not perform an official act, or utilize an intermediary to threaten to perform or threaten
3 not to perform any official action, in order to coerce, persuade, or otherwise elicit the performance
4 or nonperformance of any act, be it official or not official, by any other official as defined by this
5 article, a member of the West Virginia Legislature, a member of the judiciary of this state, any
6 municipal or county elected or appointed official, or their employees or appointees. Any official
7 found guilty of this section is guilty of a felony and, upon conviction thereof, shall be confined in a
8 state correctional facility for a determinate term of not less than five years, or fined not less than
9 \$100,000, or both fined and confined.

10 (b) This section shall not be construed to limit or interfere with any official’s ability to

11 discipline, remand, suspend, or terminate any person in that official's employ.

12 (c) This section shall not be construed to limit arms-length bargaining which is standard
13 and customary in the political process.

14 (d) Any trial under this section shall be conducted in the circuit court of the county in which
15 the office of the defendant official is located.

§5-30-4. Communication of threat by intermediary.

1 (a) It shall be unlawful for any person in the employ of any official defined by this article to
2 communicate or otherwise deliver any threat to perform or threat to not perform an official act in
3 order to coerce, persuade, or otherwise elicit the performance or nonperformance of any act, be
4 it official or not official, by any other official as defined by this article, a member of the West Virginia
5 Legislature, a member of the judiciary of this State, any municipal or county elected or appointed
6 official, or their employees or appointees. Any person found guilty of this section is guilty of a
7 felony and, upon conviction thereof, shall be confined in a state correctional facility for a
8 determinate term of not less than two years, or fined not less than \$50,000, or both fined and
9 confined.

10 (b) This section shall not be construed to limit or interfere with any official's ability to
11 discipline, remand, suspend, or terminate any person in that official's employ.

12 (c) This section shall not be construed to limit arms-length bargaining which is standard
13 and customary in the political process.

14 (d) Any trial under this section shall be conducted in the circuit court of the county in which
15 the office of the defendant's employing official is located.

16 (e) It shall be a defense to any indictment under this section that the intermediary was
17 threatened by the government official should the intermediary not deliver the threat to the victim
18 official.

§5-30-5. Interference in political party activities.

1 (a) It shall be unlawful for any official as defined by this article to threaten to perform or

2 threaten not to perform any official action, or utilize an intermediary to threaten to perform or
3 threaten not to perform any official action, in order to coerce, persuade, or otherwise elicit the
4 performance or nonperformance of an action in support, furtherance, or otherwise a part of any
5 political party by any person that is a voting member of a state party executive committee as such
6 is defined by this code. Any person found guilty of this section is guilty of a felony and, upon
7 conviction thereof, shall be confined in a state correctional facility for a determinate term of not
8 less than five years, or fined not less than \$100,000, or both fined and confined.

9 (b) This section shall not be construed to limit or interfere with any official's ability to
10 discipline, remand, suspend, or terminate any person in that official's employ.

11 (c) This section shall not be construed to limit arms-length bargaining which is standard
12 and customary in the political process.

13 (d) Any trial under this section shall be conducted in the circuit court of the county in which
14 the office of the defendant's employing official is located.

§5-30-6. Communication of threat by intermediary to interfere in political party activities.

1 (a) It shall be unlawful for any person in the employ of any official defined by this article to
2 communicate or otherwise deliver any threat to perform or threat to not perform an official act in
3 order to coerce, persuade, or otherwise elicit the performance or nonperformance of an action in
4 support, furtherance, or otherwise a part of any political party by any person that is a voting
5 member of a state party executive committee as such is defined by this code. Any person found
6 guilty of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state
7 correctional facility for a determinate term of not less than two years, or fined not less than
8 \$50,000, or both fined and confined.

9 (b) This section shall not be construed to limit or interfere with any official's ability to
10 discipline, remand, suspend, or terminate any person in that official's employ.

11 (c) Any trial under this section shall be conducted in the circuit court of the county in which
12 the office of the defendant's employing official is located.

13 (d) It shall be a defense to any indictment under this section that the intermediary was
14 threatened by the government official should the intermediary not deliver the threat to the victim
15 official.

NOTE: The purpose of this bill is to create the Anti-Abuse of Power Act.

Strike-throughs indicate language that would be stricken from a heading or the present law,
and underscoring indicates new language that would be added.