

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2412

FISCAL
NOTE

BY MR. SPEAKER (MR. HANSHAW) AND DELEGATES

BATES, MILEY, NELSON, SHOTT AND WILSON

[Introduced January 15, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to repeal §5A-3-28, §5A-3-30, and §5A-3-31 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new article, designated §61-5B-1,
 3 §61-5B-2, §61-5B-3, and §61-5B-4, relating to prohibited conduct concerning government
 4 procurement of commodities and services; moving certain provisions relating to
 5 government procurement from chapter 5A to chapter 61; defining terms; including the
 6 provision of cash, credit, and waivers of debt or liability as commodities; prohibiting
 7 procurement authorities from having personal interest in government procurement;
 8 applying provisions to all branches and units of state government; prohibiting fraud and
 9 attempts to defraud government entities in procurement; prohibiting knowing acceptance
 10 and delivery of inferior goods and services; defining unfair and corrupt acts regarding
 11 change orders; and establishing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

**§5A-3-28. Financial interest of secretary, etc.; receiving reward from interested party;
penalty; application of bribery statute.**

1 [Repealed.]

**§5A-3-30. Statement of purpose; obtaining money and property under false pretenses or
by fraud from the state; penalties; definition.**

1 [Repealed.]

§5A-3-31. Corrupt actions, combinations, collusions or conspiracies prohibited; penalties.

1 [Repealed.]

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5B. PROHIBITED ACTS IN GOVERNMENT PROCUREMENT.

§61-5B-1 Definitions.

1 As used in this article, the terms listed in this section have the meaning assigned to them
2 below.

3 “Business entity” means any individual, legal person, firm, partnership, association, or
4 similar organization with the capacity to contract under West Virginia law;

5 “Commodities” means supplies, material, equipment, and any other articles or things used
6 by, or furnished to, a government entity, including the use, extension, loan, or grant of money,
7 credit, or waivers of debt or liability;

8 “Government entity” means any department, agency, commission, institution, board, or
9 similar entity within any branch of government of the State of West Virginia;

10 “Procurement authority” means any individual who has authority for the procurement of
11 commodities or services, or the execution of a contract for any purpose, on behalf of a government
12 entity; and

13 “Services” means the furnishing of labor, time, expertise, or effort, not involving the
14 delivery of a specific end commodity or product other than one that may be incidental to the
15 required performance.

**§61-5B-2. Prohibition on financial or personal interest in procurement; receiving reward
from interested party; penalty; application of bribery statute.**

1 (a) A procurement authority is prohibited from having any beneficial personal interest,
2 monetary or nonmonetary, directly or indirectly, in obtaining any commodities or services on
3 behalf of a government entity and is prohibited from having any beneficial personal interest,
4 monetary or nonmonetary, in any business entity providing or offering to provide goods or services
5 to the procurement authority’s government entity.

6 (b) A procurement authority is prohibited from accepting or receiving directly or indirectly
7 from any business entity, known by that procurement authority to be interested in any bid, contract
8 or purchase, any money or other thing of value whatsoever, or any promise, obligation or contract
9 for future reward or compensation for beneficial personal interest, by rebate, gift or other means;

10 and every business entity is prohibited from offering the same.

11 (c) Any procurement authority or business entity who violates this section shall be guilty
12 of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than three months
13 nor more than one year, or fined not less than \$50 nor more than \$1,000, or both, in the discretion
14 of the court: *Provided*, That any procurement authority or business entity who violates any of the
15 provisions of this section under circumstances constituting the crime of bribery under the
16 provisions of §61-5A-3 of this code, shall, upon conviction of bribery, be punished as provided in
17 §61-5A-9 of this code.

§61-5B-3. Obtaining money and property under false pretenses or by fraud from the state;
penalties; definition; application of change orders.

1 (a) It is unlawful for any business entity to obtain any services, money, goods, or other
2 property from a government entity by false pretense, token, or representation, or by knowing
3 delivery of inferior commodities or services to a government entity, with intent to defraud the
4 government entity.

5 (b) It is unlawful for any procurement authority to accept delivery of inferior commodities
6 or services on behalf of a government entity with intent to defraud that government entity.

7 (c) A person who violates this section is guilty of a felony and, upon conviction thereof,
8 shall be confined in a state correctional facility for not less than one year nor more than five years,
9 and shall be fined not more than \$10,000.

10 (d) It shall not be a defense to a charge under this section that: (1) The commodities or
11 services were accepted and used, or are being used, by the relevant government entity; or (2)
12 the commodities or services are functional or suitable for the purpose for which the commodities
13 or services were purchased by the government entity notwithstanding the standard or
14 specification issued by the government entity.

15 (e) For the purpose of this section, "inferior commodities or services" includes, but shall
16 not be limited to: (1) Any commodity or service that does not meet the specification or standard

17 issued by the government entity; (2) any commodity or service that does not meet a specification
 18 or standard required by state or federal law; or (3) any commodity or service which is of a lesser
 19 quality, quantity, or measure of any kind set forth within the specification or standard issued by
 20 the procuring government entity.

21 (f) Nothing in this section prohibits the negotiation, issuance, or approval of a change order
 22 to modify the initial specification or standard issued, provided that the intent of the modification is
 23 to serve the best interests of the government entity and not to defraud the government entity,
 24 circumvent competitive bidding requirements, or provide a beneficial personal interest to a
 25 procurement authority.

§61-5B-4 Corrupt actions, combinations, collusions or conspiracies prohibited; penalties;

1 (a) It shall be unlawful for any person to corruptly act alone, or in concert, combination,
 2 collusion, or conspiracy with one or more other persons, through any means with respect to the
 3 procurement of commodities or services, or an offer to provide goods or services, for a
 4 government entity if the purpose or effect of such action is to: (1) Lessen competition among
 5 prospective vendors without a valid business reason; (2) cause the government entity to pay a
 6 higher price for such commodities or services than would be or would have been paid in the
 7 absence of such action; or (3) unfairly or fraudulently cause a prospective vendor or vendors to
 8 be preferred over one or more other prospective vendor or vendors.

9 (b) A person who violates any provision of this section is guilty of a felony and, upon
 10 conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more
 11 than five years, and be fined not exceeding \$10,000.

NOTE: The purpose of this bill is to consolidate criminal offenses relating to government procurement into one article within the Chapter 61, the crimes chapter, of the West Virginia Code, to establish definitions common to all offenses, and to clarify who is subject to these prohibitions. This bill has been recommended for introduction and passage by the Commission on Special Investigations.

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