

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **Senate Bill 587**

BY SENATOR SWOPE

[Introduced March 8, 2021; referred  
to the Committee on Government Organization; and  
then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §5A-3-62, relating to contract terms and conditions and the inability of  
 3 government officials to agree with certain contract terms.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-62. Prohibited Contract Clauses.**

1 (a) Any term or condition in any contract entered into by the state shall be void ab initio to  
 2 the extent that it requires the state to:

3 (1) Indemnify or hold harmless any entity

4 (2) Agree to binding arbitration or any other binding extra-judicial dispute resolution  
 5 process;

6 (3) Limit liability for direct damages for bodily injury, death, or damage to property (tangible  
 7 or intangible) caused by the negligence or willful misconduct of such person’s employees or  
 8 agents;

9 (4) Agree to shorten statutes of limitation established by this code;

10 (5) Allow automatic renewal of contracts without express written consent of the state;

11 (6) Agree to payment in advance (unless specifically authorized by statute or the policy of  
 12 the West Virginia State Auditor);

13 (7) Agree to jurisdiction anywhere other than a court authorized by the West Virginia  
 14 Legislature to hear the dispute;

15 (8) Be governed by any law other than the laws of the State of West Virginia or required  
 16 federal law;

17 (9) Pay court costs;

18 (10) Pay taxes;

19 (11) Waive defenses;

20 (12) Permit assignment of contracts without express written consent from the state;

- 21 (13) Treat information as confidential contrary to the state's disclosure responsibilities  
22 under any applicable bid disclosure laws and the Freedom of Information Act;
- 23 (14) Agree to unsigned third-party terms and conditions;
- 24 (15) Limit the state's ability to cancel a contract for convenience with 30 days' notice;
- 25 (16) Give up its ownership rights or interest in any information or data, including  
26 confidential information, provided to or collected by a vendor on behalf of the state;
- 27 (17) Maintain any type of insurance; or
- 28 (18) Permit modification of contract terms without prior approval from the state.
- 29 (b) No official, employee, agent, or representative of the state has the authority to  
30 contravene this section, and no verbal express or written signature on a contract can be deemed  
31 as such. Any contract that contains a term or condition declared void ab initio by this section shall  
32 otherwise be enforceable as if it did not contain such term or condition. All contracts entered into  
33 by the state, except for contracts with another government, shall be governed by West Virginia  
34 law notwithstanding any term or condition to the contrary.

NOTE: The purpose of this bill is to make contract consummation with the State of West Virginia more efficient, by clarifying that government officials are not permitted to enter into certain contract terms, and that even a signature on a contract containing those terms is ineffective.

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