WEST VIRGINIA LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 402

(By By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed September 13, 2005

In Effect from Passage
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COMMITTEE SUBSTITUTE

FOR

H. B. 402

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)

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[Passed September 13, 2005; in effect from passage.]

AN ACT to repeal §3-8-5c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §3-8-1a, §3-8-2b and §3-8-14; and to amend and reenact §3-8-2, §3-8-4, §3-8-5a, §3-8-7, §3-8-8 and §3-8-12 of said code, all relating to regulating elections; defining terms; requiring candidates and persons making electioneering communications to keep and make available for inspection records of campaign-related contributions and spending; requiring persons who engage in electioneering communications to file financial statements with Secretary of State; contents of statement and filing requirements; penalties for filing delinquent or incomplete financial statements; granting the Secretary of State legislative and emergency rule-making authority; clarifying that electioneering communications made in coordination with a candidate or political party are considered contributions to such candidate or political party; increasing penalty for violations of prohibitions on
corporate contributions to candidates or for electioneering communications; requiring political organizations to register with the Secretary of State prior to soliciting or accepting contributions; prohibiting political organizations from accepting contributions in excess of one thousand dollars before the primary and general elections; making it unlawful to create more than one political organization with the intent to avoid or evade contribution limitations; and establishing an internal operating date.

Be it enacted by the Legislature of West Virginia:

That §3-8-5c of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto three new sections, designated §3-8-1a, §3-8-2b and §3-8-14; and that §3-8-2, §3-8-4, §3-8-5a, §3-8-7, §3-8-8 and §3-8-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

1 As used in this article, the following terms have the following definitions:

3 (1) “Ballot issue” means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits or any other question that is placed before the voters for a binding decision.

8 (2) “Broadcast, cable, or satellite communication” means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.

12 (3) “Candidate” means an individual who:

13 (A) Has filed a certificate of announcement under section seven, article five, of this chapter or a municipal charter;
(B) Has filed a declaration of candidacy under section twenty-three, article five of this chapter;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county or municipal office or party office to be filled at any primary, general or special election.

(4) “Candidate’s committee” means a political committee established with the approval of or in cooperation with one pre-candidate or candidate to explore the possibilities of seeking a particular office and/or to support or aid his or her nomination or election to an office in one election cycle. If a candidate directs or influences the activities of more than one committee, those committees shall be considered one committee of the purpose of contribution limits.

(5) “Clearly identified” means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference such as “the Governor”, “your Senator” or “the incumbent”, or through an unambiguous reference to his or her status as a candidate such as “the Democratic candidate for Governor” or “the Republican candidate for Supreme Court of Appeals”.

(6) “Contribution” means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation.
(7) "Direct costs of purchasing, producing or disseminating electioneering communications" means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs and postage; or

(B) The cost of airtime on broadcast, cable or satellite radio and television stations, the cost of disseminating printed materials, establishing a telephone bank, studio time, use of facilities and the charges for a broker to purchase airtime.

(8) "Disclosure date" means either of the following:

(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications.

(9) "Election" means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

(10) (A) "Electioneering communication" means any paid communication made by broadcast, cable or satellite signal,
mass mailing, telephone bank, leaflet, pamphlet, flyer or outdoor advertising or published in any newspaper, magazine or other periodical that:

(i) Refers to a clearly identified candidate for a statewide office or the Legislature;

(ii) Is publicly disseminated within:

(a) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(b) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate.

(B) “Electioneering communication” does not include:

(i) A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: Provided, That a news story disseminated through a medium owned or controlled by a political party, political committee, or candidate is nevertheless exempt if the news is:

(a) A bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility; and

(b) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

(ii) A communication that is required to be reported to the State Election Commission or the Secretary of State as an
108 expenditure pursuant to any provision of this article, other than
109 section two-b of this article, or the rules of the State Election
110 Commission or the Secretary of State promulgated pursuant to
111 such provision: Provided, That, independent expenditures
112 required to be reported pursuant to subsection (b), section two
113 of this article are not exempt from the reporting requirements
114 of this section;

115 (iii) A candidate debate or forum conducted pursuant to
116 rules adopted by the State Election Commission or the Secre-
117 tary of State or a communication promoting that debate or
118 forum made by or on behalf of its sponsor;

119 (iv) A communication paid for by any organization operat-
120 ing under Section 501(c)(3) of the Internal Revenue Code of
121 1986;

122 (v) A communication made while the Legislature is in
123 session which, incidental to promoting or opposing a specific
124 piece of legislation pending before the Legislature, urges the
125 audience to communicate with a member or members of the
126 Legislature concerning that piece of legislation;

127 (vi) A statement or depiction by a membership organiza-
128 tion, in existence prior to the date on which the individual
129 named or depicted became a candidate, made in a newsletter or
130 other communication distributed only to bona fide members of
131 that organization;

132 (vii) A communication made solely for the purpose of
133 attracting public attention to a product or service offered for
134 sale by a candidate or by a business owned or operated by a
135 candidate which does not mention an election, the office sought
136 by the candidate or his or her status as a candidate; or

137 (viii) A communication, such as a voter’s guide, which
138 refers to all of the candidates for one or more offices, which
139 contains no appearance of endorsement for or opposition to the
nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

(11) “Financial agent” means any person acting for and by himself or herself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(12) “Fund-raising event” means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(13) “Independent expenditure” means an expenditure made by a person other than a candidate or a candidate’s committee in support of or opposition to the nomination or election of one or more clearly identified candidates and without consultation or coordination with or at the request or suggestion of the candidate whose nomination or election the expenditure supports or opposes or the candidate’s agent. Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a clearly identified political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(14) “Mass mailing” means a mailing by United States mail, facsimile or electronic mail of more than five hundred pieces of mail matter of an identical or substantially similar nature within any thirty-day period.

(15) “Membership organization” means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors and the ability to hold office, to its mem-
bers and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.

(16) "Name" means the full first name, middle name or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(17) "Person" means an individual, partnership, committee, association, and any other organization or group of individuals.

(18) "Political action committee" means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates or the passage or defeat of one or more ballot issues.

(19) "Political party" means a political party as defined by section eight, article one, chapter three of this code or any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

(20) "Political purposes" means supporting or opposing the nomination, election or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party and determining the advisability of becoming a candidate under the pre-candidacy financing provisions of this chapter.

(21) "Targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by ten thousand or more individuals in the state in the case of
(22) “Telephone bank” means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions or trained volunteers.

(23) “Two-year election cycle” means the twenty-four month period that begins the day after a general election and ends on the day of the subsequent general election.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except for: (1) Candidates for party committeeman and committeewoman; and (2) federal committees required to file under the provisions 2 U.S.C. §434, all candidates for nomination or election and all persons supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for a period of six months records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b) In addition to any other reporting required by the provisions of this chapter, any person making an independent expenditure in the amount of one thousand dollars or more for any statewide, legislative or multicounty judicial candidate or in the amount of five hundred dollars or more for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county,
or any municipal candidate on a municipal election ballot, after
the eleventh day but more than twelve hours before the day of
any election shall report the expenditure, on a form prescribed
by the Secretary of State, within twenty-four hours after the
expenditure is made or debt is incurred for a communication, to
the Secretary of State by hand-delivery, facsimile or other
means to assure receipt by the Secretary of State within the
twenty-four-hour period.

(c) Any independent expenditure must include a clear and
conspicuous public notice which identifies the name of the
person who paid for the expenditure and states that the commu-
nication is not authorized by the candidate or his or her commit-
tee.

(d) Any person who has spent a total of five thousand
dollars or more for the direct costs of purchasing, producing or
disseminating electioneering communications during any
calendar year shall maintain all financial records and receipts
related to such expenditure for a period of six months following
the filing of a disclosure pursuant to subsection (a) of this
section and, upon request, shall make such records and receipts
available to the Secretary of State or county clerk for the
purpose of an audit as provided in section seven of this article.
Any person who willfully fails to comply with this section is
guilty of a misdemeanor and, upon conviction thereof, shall be
fined not less than five hundred dollars, or confined in jail for
not more than one year, or both fined and confined.

§3-8-2b. Disclosure of electioneering communications.

(a) Every person who has spent a total of five thousand
dollars or more for the direct costs of purchasing, producing or
disseminating electioneering communications during any
calendar year shall, within twenty-four hours of each disclosure
date, file with the Secretary of State a statement which contains:
(1) The name of the person making the expenditure, the name of any person sharing or exercising direction or control over the activities of the person making the expenditure and the name of the custodian of the books and accounts of the person making the expenditure;

(2) If the person making the expenditure is not an individual, the principal place of business of the partnership, committee, association, organization or group which made the expenditure;

(3) The amount of each expenditure of more than one thousand dollars made for electioneering communications during the period covered by the statement and the name of the person to whom the expenditure was made;

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates referred to or to be referred to therein; and

(5) The names and addresses of any contributors who contributed a total of more than one thousand dollars between the first day of the preceding calendar year and the disclosure date and whose contributions were used to pay for electioneering communications.

(b) With regard to the contributors required to be listed pursuant to subdivision (5), subsection (a) of this section, the statement shall also include:

(1) The month, day and year that the contributions of any single contributor exceeded two hundred fifty dollars;

(2) If the contributor is a political action committee, the name and address the political action committee registered with the State Election Commission;
(3) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual’s current employer, if any, or, if the individual is self-employed, the name and address of the individual’s business, if any;

(4) A description of the contribution, if other than money;

(5) The value in dollars and cents of the contribution.

(c) (1) Any person who makes a contribution for the purpose of funding the direct costs of purchasing, producing or disseminating an electioneering communication under this section shall, at the time the contribution is made, provide his or her name and address to the recipient of the contribution;

(2) Any individual who makes contributions totaling two hundred fifty dollars or more between the first day of the preceding calendar year and the disclosure date for the purpose of funding the direct costs of purchasing, producing or disseminating electioneering communications shall, at the time the contribution is made, provide the name of his or her occupation and of his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(d) In each electioneering communication, a statement shall appear or be presented in a clear and conspicuous manner that:

(1) Clearly indicates that the electioneering communication is not authorized by the candidate or the candidate’s committee; and

(2) Clearly identifies the person making the expenditure for the electioneering communication.

Provided, That if the electioneering communication appears on or is disseminated by broadcast, cable or satellite transmis-
sion, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(e) Within five business days after receiving a disclosure of electioneering communications statement pursuant to this section, the Secretary of State shall make information in the statement available to the public through the Internet.

(f) For the purposes of this section, a person is considered to have made an expenditure when the person has entered into a contract to make the expenditure at a future time.

(g) The Secretary of State is hereby directed to propose legislative rules and emergency rules implementing this section for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(h) If any person, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure for electioneering communications which is coordinated with and made with the cooperation, consent or prior knowledge of a candidate, candidate’s committee or agent of a candidate, the expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure is coordinated with and made with the cooperation or consent of a state or local political party or committee, agent or official of that party, the expenditure shall be treated as a contribution to and expenditure by the candidate’s party.

§3-8-4. Treasurers and financial agents; written designation requirements.

(a) No person may act as the treasurer of any political committee, or as financial agent for any candidate for nomination or election to any statewide office, to any office encompassing an election district larger than a county or to any
legislative office or for any person supporting, aiding or opposing the nomination, election or defeat of any candidate for an office encompassing an election district larger than a county, unless a written statement designating that person as the treasurer or financial agent is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a financial agent or treasurer and is received by the Secretary of State before midnight, Eastern Standard Time, of that day or if mailed, is postmarked before that hour: Provided, That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(b) No person may act as treasurer of any committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, except legislative candidates, or as the financial agent for a candidate for the nomination or election to any other office, unless a written statement designating him or her as the treasurer or financial agent is filed with the clerk of the county commission at least twenty-eight days before the election at which he or she is to act and is received before midnight, Eastern Standard Time, of that day or if mailed, is postmarked before that hour: Provided, That a change of treasurer may be made at any time by filing a written statement with the clerk of the county commission.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a filing designating a treasurer for a state or county political executive committee may be made anytime before the committee either accepts or spends funds. Once a designation is made by a state or county political executive committee, no additional designations are required under this section until a successor treasurer is designated. A state or county political executive committee may terminate a designation made pursuant to this section by making a written request to terminate the designation and by stating in the request that the committee has no funds remaining in the committee’s
account. This written request shall be filed with either the Secretary of State or the clerk of the county commission as provided by subsections (a) and (b) of this section.

§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article, other than a disclosure of electioneering communications pursuant to section two-b of this article, shall contain only the following information:

(1) The name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person and the name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The name of any person making a contribution and the amount of the contribution. If the total contributions of any one person amount to two hundred fifty dollars or more, the residence and mailing address of the contributor and, if the contributor is an individual, his or her major business affiliation and occupation shall also be reported. A contribution totaling more than fifty dollars of currency of the United States or currency of any foreign country by any one contributor is prohibited and a violation of section five-cl of this article. The statement on which contributions are required to be reported by this subdivision may not distinguish between contributions made by individuals and contributions made by partnerships, firms, associations committees, organizations or groups.

(4) The total amount of contributions received during the period covered by the financial statement.
27 (5) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan or of the spouse cosigning a loan, as appropriate, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.

33 (6) The name, residence and mailing address of any individual or the name and mailing address of each partnership, firm, association, committee, organization or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

40 (7) The total outstanding balance of all loans at the end of the period.

42 (8) The name, residence and mailing address of any individual, or the name and mailing address of each partnership, firm, association, committee, organization or group to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

48 (9) The total expenditure for the nomination, election or defeat of a candidate or any person supporting, aiding or opposing the nomination, election or defeat of any candidate in whose behalf an expenditure was made or a contribution was given for the primary or other election.

53 (10) The total amount of expenditures made during the period covered by the financial statement.

55 (b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a beginning balance in the next financial statement.
(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:

1. The type of event, date held and address and name, if any, of the place where the event was held.

2. All of the information required by subdivision (3), subsection (a) of this section.

3. The total of all moneys received at the fund-raising event.

4. The expenditures incident to the fund-raising event.

5. The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person may make any contribution except from his, her or its own funds, unless such person discloses in writing to the person required to report under this section the name, residence, mailing address, major business affiliation and occupation of the person which furnished the funds to the contributor. All such disclosures shall be included in the statement required by this section.
(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(i) No person may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any ballot issue unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any person receives an anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the General Revenue Fund of the State. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

(k) Any membership organization which raises funds for political purposes by payroll deduction, assessing them as part of its membership dues or as a separate assessment, may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments
(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(1) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party executive committee or a political action committee representing a political party in filing financial reports for fund-raising events if the total profit does not exceed five thousand dollars per year. A political party executive committee or a political action committee representing a political party may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than fifty dollars from an individual or organization shall be reported as a contribution. A political party executive committee or a political action committee representing a political party using this alternative method of
reporting shall report: (i) The name of the committee; (ii) the
type of fund-raising activity undertaken; (iii) the location where
the activity occurred; (iv) the date of the fund raiser; (v) the
name of any individual who contributed more than fifty dollars
worth of items to be sold; (vi) the name and amount received
from any person or organization purchasing more than fifty
dollars worth of food, beverages, services, novelty items, raffle
tickets or memorabilia; (vii) the gross receipts of the fund
raiser; and (viii) the date, amount, purpose and name and
address of each person or organization from whom items with
a fair market value of more than fifty dollars were purchased
for resale.

§3-8-7. Failure to file statement; delinquent or incomplete filing;
criminal and civil penalties.

(a) Any person, candidate, financial agent or treasurer of a
political party committee who fails to file a sworn, itemized
statement required by this article within the time limitations
specified in this article or who willfully files a grossly incom-
plete or grossly inaccurate statement shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
less than five hundred dollars or imprisoned in jail for not more
than one year, or both, in the discretion of the court. Forty days
after any primary or other election, the Secretary of State, or
county clerk, or municipal recorder, as the case may be, shall
give notice of any failure to file a sworn statement or the filing
of any grossly incomplete or grossly inaccurate statement by
any person, candidate, financial agent or treasurer of a political
party committee and forward copies of any grossly incomplete
or grossly inaccurate statement to the prosecuting attorney of
the county where the person, candidate, financial agent, or
treasurer resides, is located or has its principal place of busi-
ness.

(b) (1) Any person, candidate, financial agent or treasurer
of a political party committee who fails to file a sworn, item-
ized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement may be assessed a civil penalty by the Secretary of State of twenty-five dollars a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Forty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of such delinquent, incomplete or inaccurate statements to the Secretary of State.

(2) A civil penalty assessed pursuant to the provisions of this section shall be payable to the State of West Virginia and is collectable in any manner authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to the provisions of this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with the provisions of chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by the provisions of this article, shall have his or her name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his or her financial agent, if any, the financial statement relating to nominations required by
this article. It is unlawful to issue a commission or certificate of
election, or to administer the oath of office, to any person
elected to any public office who has failed to file a sworn
statement as required by the provisions of this article and no
person may enter upon the duties of his or her office until he or
she has filed such statement, nor may he or she receive any
salary or emolument for any period prior to the filing of such
statement.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) No officer of any corporation, or agent or person on
behalf of such corporation, whether incorporated under the laws
of this or any other state, or foreign country, may pay, give or
lend, or authorize to be paid, given or lent, any money or other
ing thing of value belonging to such corporation, to any candidate,
financial agent, political committee or other person, for the
payment of any primary or other election expenses whatever.
No person may solicit or receive such payment, contribution or
other thing from any corporation, officer or agent thereof, or
other person acting on behalf of such corporation.

(b)(1) The provisions of this section shall not be deemed to
prohibit:

(A) Direct communications, other than by newspapers of
general circulation, radio, television or billboard advertising
likely to reach the general public, by a corporation to its
stockholders and executive or administrative personnel and
their families on any subject;

(B) Nonpartisan registration and get-out-the-vote cam-
paigns by a corporation aimed at its stockholders and execu-
tives or administrative personnel and their families; and
(C) The solicitation of contributions to a separate segregated fund to be utilized for political purposes by any corporate officer, agent or any person on behalf of a corporation. Any separate segregated fund shall be deemed to be a political action committee for the purpose of this article and subject to all reporting requirements thereof.

(2) It shall be unlawful:

(A) For a separate segregated fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisal or the threat of force, job discrimination or financial reprisal, or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) For any person soliciting a stockholder, executive or administrative personnel and members of their family for a contribution to such fund to fail to inform such person of the political purposes of the separate segregated fund at the time of such solicitation;

(C) For any person soliciting any other person for a contribution to a separate segregated fund to fail to inform the other person at the time of the solicitation of his or her right to refuse to contribute without any reprisal;

(D) For a corporation or a separate segregated fund established by a corporation to solicit contributions to the fund from any person other than its stockholders and their families and its executive or administrative personnel and their families or to contribute any corporate funds;

(E) For a corporation or a separate segregated fund established by a corporation to receive contributions to the fund from any person other than its stockholders and their immediate families and its executive or administrative personnel and their immediate families;
(F) For a corporation to engage in job discrimination or to discriminate in job promotion or transfer because of an employee's failure to make a contribution to a separate segregated fund;

(G) For a separate segregated fund to make any contribution, directly or indirectly, in excess of one thousand dollars in connection with any campaign for nomination or election to or on behalf of any elective office in the State or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any such office;

(H) For a corporation to pay, give or lend, or authorize to be paid, given or lent, any moneys or other things of value belonging to the corporation to a separate segregated fund for any purpose. This provision shall not be deemed to prohibit a separate segregated fund from using the property, real or personal, facilities and equipment of a corporation solely to establish, administer and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (d) of this section: Provided, That any such corporation shall also permit any group of employees thereof represented by a bona fide political action committee to use the real property of the corporation solely to establish, administer and solicit contributions to the fund of the political action committee, subject to the rules of the State Election Commission as provided in subsection (d) of this section. No property, real or personal, facilities, equipment, materials or services of a corporation may be used for the purpose of influencing any voter or voters to vote for a particular candidate or in any particular manner or to influence the result of any election.

(3) For the purposes of this section, the term "executive or administrative personnel" means individuals employed by a
corporation who are paid on a salary rather than hourly basis
and who have policy-making, managerial, professional or
supervisory responsibilities.

(c) Any person or corporation violating any provision of
this section shall be guilty of a misdemeanor and, on convic-
tion, shall be fined not more than ten thousand dollars. No
corporation may reimburse any person the amount of any fine
imposed pursuant to this section.

(d) To ensure uniform administration and application of the
provisions of this section and of those of the Federal Election
Campaign Act Amendments of 1976 relating to corporate
contributions, the State Election Commission shall propose
rules for legislative approval in accordance with the provisions
of article three, chapter twenty-nine-a of this code to implement
the provisions of this section consistent, insofar as practicable,
with the rules and regulations promulgated by the Federal
Election Commission to carry out similar or identical provi-

(e) In addition to the powers and duties set forth in article
one-a of this chapter, the State Election Commission has the
following powers and duties:

(1) To investigate, upon complaint or on its own initiative,
any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas
for the attendance of witnesses, issue subpoenas duces tecum to
compel the production of books, papers, records and all other
evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution
of its subpoena power.

(4) To report any alleged violations of this article to the
appropriate prosecuting attorney having jurisdiction, which
prosecuting attorney shall present to the grand jury such alleged
119 violations, together with all evidence relating thereto, no later
120 than the next term of court after receiving the report.

121 (f) The Attorney General shall, when requested, provide
122 legal and investigative assistance to the State Election Commis-
123 sion.

124 (g) Any investigation either upon complaint or initiative,
125 shall be conducted in an executive session of the State Election
126 Commission and shall remain undisclosed except upon an
127 indictment by a grand jury.

128 (h) Any person who discloses the fact of any complaint,
129 investigation or report or any part thereof, or any proceedings
130 thereon, is guilty of a misdemeanor and, upon conviction shall
131 be fined not less than one thousand dollars, nor more than five
132 thousand dollars, and shall be imprisoned in jail not less than
133 six months nor more than one year.

§3-8-12. Additional acts forbidden; circulation of written matter;
newspaper advertising; solicitation of contributions; intimidation and coercion of employees;
promise of employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) No person may publish, issue or circulate, or cause to be
2 published, issued or circulated, any anonymous letter, circular,
3 placard, radio or television advertisement or other publication
4 supporting or aiding the election or defeat of a clearly identified
5 candidate.

6 (b) No owner, publisher, editor or employee of a newspaper
7 or other periodical may insert, either in its advertising or
8 reading columns, any matter, paid for or to be paid for, which
9 tends to influence the voting at any election, unless directly
10 designating it as a paid advertisement and stating the name of
11 the person authorizing its publication and the candidate in
12 whose behalf it is published.
(c) No person may, in any room or building occupied for the discharge of official duties by any officer or employee of the State or a political subdivision of the State, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the State, or a political subdivision of the State. No officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the State, who may have charge or control of any building, office or room, occupied for any official purpose, may knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the State, or a political subdivision of the State.

(d) Except as provided in section eight of this article, no person entering into any contract with the State or its subdivisions, or any department or agency of the State, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the State, or its subdivisions, or any department or agency of the State, if payment for the performance of the contract or payment for the material, supplies, equipment, land or building is to be made, in whole or in part, from public funds may, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly, make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use; nor may any person or firm solicit any contributions for any purpose during any period.
(e) No person may, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part, by Act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

(f) No person may, directly or indirectly, make any contribution in excess of the value of one thousand dollars in connection with any campaign for nomination or election to or on behalf of any statewide office, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

(g) No political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may solicit or accept contributions until it has notified the Secretary of State of its existence and of the purposes for which it was formed. During the two-year election cycle, a political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not accept contributions totaling more than one thousand dollars from any one person prior to the primary election and contributions totaling more than one thousand dollars from any one person after the primary and before the general election.

(h) It shall be unlawful for any person to create, establish or organize more than one political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent to avoid or evade the contribution limitations contained in subsection (g) of this section.

(i) Notwithstanding the provisions of subsection (f) of this section to the contrary, no person may, directly or indirectly,
make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, exceed the value of one thousand dollars in any calendar year.

(j) The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party’s legislative caucus political committee from national committees of the same political party: Provided, That transfers permitted by this subsection may not exceed fifty thousand dollars in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: Provided, however, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(k) No person may solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: Provided, That in no event shall any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. No person may coerce or intimidate any nonelective salaried employee into making a contribution. No person may coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation or solicitation.

(l) No person may solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected. Nothing in this subsection may be

construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

(m) No person may place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term “roadside receptacle” means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

(n) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in a regional or county jail for not more than one year, or, in the discretion of the court, be subject to both fine and confinement.

(o) The provisions of subsection (k) of this section, permitting contributions to a campaign for or against a county or local government ballot issue shall become operable on and after the first day of January, two thousand five.

(p) The limitations on contributions established by subsection (g) of this section do not apply to contributions made for the purpose of supporting or opposing a ballot issue, including a constitutional amendment.

§3-8-14. Effective date of certain criminal offenses.

The criminal offenses created in sections two, seven and twelve of this article by the provisions of Enrolled Committee Substitute for House Bill No. 402 during the fourth extraordi-
nary session, two thousand five, shall be effective ninety days from passage.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chaired by:

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Approved this the 30th day of September, 2005.

Governor
PRESENTED TO THE GOVERNOR

Date 9/16/05
Time 4:25