ENROLLED

SENATE BILL NO. 632

(By Senator Kessler, et al.)

PASSED March 11, 2006

In Effect from Passage
AN ACT to amend and reenact §3-8-1a, §3-8-2b and §3-8-8 of the Code of West Virginia, 1931, as amended, all relating generally to electioneering communications; definitions; excluding candidates for federal office from requirement to disclose electioneering communications; and clarifying effect of electioneering communications provisions on provision regarding corporate contributions.

Be it enacted by the Legislature of West Virginia:

That §3-8-1a, §3-8-2b and §3-8-8 of the Code of West Virginia, 1931, as amended, 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:
(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.

(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.

(3) "Candidate" means an individual who:

(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 a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for 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 Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals 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 through 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 expenditure pursuant to any provision of this article, other than section two-b of this article, or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: Provided, That independent expenditures required to be reported pursuant to subsection (b), section two of this article are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

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

(vi) A statement or depiction by a membership organization, in existence prior to the date on which the individual named or depicted became a candidate, made in a newslet-
(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate or his or her status as a candidate; or

(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which 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 individual acting for and by himself or herself, or any two or more individuals 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 oppos-
ing the candidates of a 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 hun-
dred 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 members and which uses a majority of its
membership dues for purposes other than political pur-
poses. "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, commit-
tee, 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 a candidacy for statewide office and five hundred or more individuals in the district in the case of a candidacy for the Legislature.

(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 24-month period that begins the day after a general election and ends on the day of the subsequent general election.

§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 partner-
ship, 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 transmission, 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.

(i) This section does not apply to candidates for federal office. This section is not intended to restrict or to expand any limitations on, obligations of or prohibitions against any candidate, committee, agent, contributor or contribution contained in any other provision of this chapter.

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

(a) Notwithstanding any provision of section two-b of this article, no officer, agent or person acting on behalf of any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may pay, give, lend or authorize to be paid, given or lent any money or other thing of value belonging to the 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 any payment, contribution or other thing from any corporation or from any officer, agent or other person acting on behalf of the corporation.

(b) The provisions of this section do not prohibit a corporation from:

(A) Directly communicating with its stockholders and executive or administrative personnel and their families on any subject: Provided, That the communication is not by newspapers of general circulation, radio, television or billboard advertising likely to reach the general public.

(B) Conducting nonpartisan registration and get-out-the-vote campaigns aimed at its stockholders and executive or administrative personnel and their families; and

(C) Soliciting, through any officer, agent or person acting on behalf of the corporation, contributions to a separate segregated fund to be used for political purposes. Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees.

(2) It is unlawful for:

(A) A separate segregated fund to make a primary or other election contribution or expenditure by using money or anything of value secured: (i) By physical force, job discrimination or financial reprisal; (ii) by the threat of force, job discrimination or financial reprisal; (iii) as a condition of employment; or (iv) in any commercial transaction;

(B) Any person soliciting a stockholder or executive or administrative personnel and members of their families for a contribution to a separate segregated fund to fail to
inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

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

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

(E) A corporation or a separate segregated fund established by a corporation to receive contributions to the fund from any person other than the corporation's stockholders and their immediate families and its executive or administrative personnel and their immediate families;

(F) 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) A separate segregated fund to make any contribution, directly or indirectly, in excess of one thousand dollars in connection with or on behalf of any campaign for nomination or election to 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) A corporation to pay, give or lend or to authorize payment, giving or lending of any moneys or other things of value belonging to the corporation to a separate segregated fund for any purpose. This provision does not prohibit a separate segregated fund from using the prop-
77 property, real or personal, facilities and equipment of a corpo-
78 ration solely to establish, administer and solicit contribu-
79 tions to the fund, subject to the rules of the State Election
80 Commission as provided in subsection (d) of this section:
81 Provided, That any such corporation shall also permit any
82 group of its employees represented by a bona fide political
83 action committee to use the real property of the corpora-
84 tion solely to establish, administer and solicit contribu-
85 tions to the fund of the political action committee, subject
86 to the rules of the State Election Commission promulgated
87 in accordance with said subsection. No corporation may
88 use its property, real or personal, facilities, equipment,
89 materials or services for the purpose of influencing any
90 voter or voters: (i) To vote for a particular candidate or in
91 any particular manner; or (ii) to influence the result of any
92 election.

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

98 (c) Any person or corporation violating any provision of
99 this section is guilty of a misdemeanor and, on conviction,
100 shall be fined not more than ten thousand dollars. No
101 corporation may reimburse any person the amount of any
102 fine imposed pursuant to this section.

103 (d) To ensure uniform administration and application of
104 the provisions of this section and of those of the Federal
105 Election Campaign Act Amendments of 1976 relating to
106 corporate contributions, the State Election Commission
107 shall propose rules for legislative approval in accordance
108 with the provisions of article three, chapter twenty-nine-a
109 of this code to implement the provisions of this section
110 consistent, insofar as practicable, with the rules and
111 regulations promulgated by the Federal Election Commiss-
112 ion to carry out similar or identical provisions of 2 U. S.
113 C. §441b.
(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 violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(f) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

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

(h) Any person who discloses the fact of any complaint, investigation or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction, shall be fined not less than one thousand dollars, nor more than five thousand dollars, and shall be imprisoned in jail not less than six months nor more than one year.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the Day of April, 2006.

Governor
PRESENTED TO THE GOVERNOR

MAR 31 2006

Time 10:35 a.m.