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CLAUDE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006



ENROLLED

SENATE BILL NO. 632

(By Senator Kessler, et al)



PASSED March 11, 2006

In Effect from Passage

FILED

2006 APR -5 P 6: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 632

(BY SENATORS KESSLER, DEMPSEY, HUNTER, CARUTH,
DEEM, LANHAM, MCKENZIE AND WEEKS)

[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
- 2 following definitions:

3 (1) "Ballot issue" means a constitutional amendment,
4 special levy, bond issue, local option referendum, municipi-
5 pal charter or revision, an increase or decrease of corpo-
6 rate limits or any other question that is placed before the
7 voters for a binding decision.

8 (2) "Broadcast, cable, or satellite communication" means
9 a communication that is publicly distributed by a televi-
10 sion station, radio station, cable television system or
11 satellite system.

12 (3) "Candidate" means an individual who:

13 (A) Has filed a certificate of announcement under section
14 seven, article five of this chapter or a municipal charter;

15 (B) Has filed a declaration of candidacy under section
16 twenty-three, article five of this chapter;

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

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

23 (4) "Candidate's committee" means a political committee
24 established with the approval of or in cooperation with a
25 candidate or a prospective candidate to explore the
26 possibilities of seeking a particular office or to support or
27 aid his or her nomination or election to an office in an
28 election cycle. If a candidate directs or influences the
29 activities of more than one active committee in a current
30 campaign, those committees shall be considered one
31 committee for the purpose of contribution limits.

32 (5) "Clearly identified" means that the name, nickname,
33 photograph, drawing or other depiction of the candidate
34 appears or the identity of the candidate is otherwise
35 apparent through an unambiguous reference, such as "the
36 Governor", "your Senator" or "the incumbent", or through

37 an unambiguous reference to his or her status as a candi-
38 date, such as "the Democratic candidate for Governor" or
39 "the Republican candidate for Supreme Court of Appeals".

40 (6) "Contribution" means a gift subscription, assessment,
41 payment for services, dues, advance, donation, pledge,
42 contract, agreement, forbearance or promise of money or
43 other tangible thing of value, whether conditional or
44 legally enforceable, or a transfer of money or other
45 tangible thing of value to a person, made for the purpose
46 of influencing the nomination, election or defeat of a
47 candidate. An offer or tender of a contribution is not a
48 contribution if expressly and unconditionally rejected or
49 returned. A contribution does not include volunteer
50 personal services provided without compensation.

51 (7) "Direct costs of purchasing, producing or disseminat-
52 ing electioneering communications" means:

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

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

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

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

69 (B) Any other date during that calendar year after any
70 previous disclosure date on which the person has made

71 additional expenditures totaling five thousand dollars or
72 more for the direct costs of purchasing, producing or
73 disseminating electioneering communications.

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

82 (10)(A) "Electioneering communication" means any paid
83 communication made by broadcast, cable or satellite
84 signal, mass mailing, telephone bank, leaflet, pamphlet,
85 flyer or outdoor advertising or published in any newspa-
86 per, magazine or other periodical that:

87 (i) Refers to a clearly identified candidate for Governor,
88 Secretary of State, Attorney General, Treasurer, Auditor,
89 Commissioner of Agriculture, Supreme Court of Appeals
90 or the Legislature;

91 (ii) Is publicly disseminated within:

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

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

97 (iii) Is targeted to the relevant electorate.

98 (B) "Electioneering communication" does not include:

99 (i) A news story, commentary or editorial disseminated
100 through the facilities of any broadcast, cable or satellite
101 television or radio station, newspaper, magazine or other
102 periodical publication not owned or controlled by a
103 political party, political committee or candidate: *Provided,*

104 That a news story disseminated through a medium owned
105 or controlled by a political party, political committee or
106 candidate is nevertheless exempt if the news is:

107 (a) A bona fide news account communicated in a publi-
108 cation of general circulation or through a licensed broad-
109 casting facility; and

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

113 (ii) A communication that is required to be reported to
114 the State Election Commission or the Secretary of State as
115 an expenditure pursuant to any provision of this article,
116 other than section two-b of this article, or the rules of the
117 State Election Commission or the Secretary of State
118 promulgated pursuant to such provision: *Provided*, That
119 independent expenditures required to be reported pursu-
120 ant to subsection (b), section two of this article are not
121 exempt from the reporting requirements of this section;

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

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

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

135 (vi) A statement or depiction by a membership organiza-
136 tion, in existence prior to the date on which the individual
137 named or depicted became a candidate, made in a newslet-

138 ter or other communication distributed only to bona fide
139 members of that organization;

140 (vii) A communication made solely for the purpose of
141 attracting public attention to a product or service offered
142 for sale by a candidate or by a business owned or operated
143 by a candidate which does not mention an election, the
144 office sought by the candidate or his or her status as a
145 candidate; or

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

152 (11) "Financial agent" means any individual acting for
153 and by himself or herself, or any two or more individuals
154 acting together or cooperating in a financial way to aid or
155 take part in the nomination or election of any candidate
156 for public office, or to aid or promote the success or defeat
157 of any political party at any election.

158 (12) "Fund-raising event" means an event such as a
159 dinner, reception, testimonial, cocktail party, auction or
160 similar affair through which contributions are solicited or
161 received by such means as the purchase of a ticket, pay-
162 ment of an attendance fee or by the purchase of goods or
163 services.

164 (13) "Independent expenditure" means an expenditure
165 made by a person other than a candidate or a candidate's
166 committee in support of or opposition to the nomination or
167 election of one or more clearly identified candidates and
168 without consultation or coordination with or at the request
169 or suggestion of the candidate whose nomination or
170 election the expenditure supports or opposes or the candi-
171 date's agent. Supporting or opposing the election of a
172 clearly identified candidate includes supporting or oppos-

173 ing the candidates of a political party. An expenditure
174 which does not meet the criteria for an independent
175 expenditure is considered a contribution.

176 (14) "Mass mailing" means a mailing by United States
177 mail, facsimile or electronic mail of more than five hun-
178 dred pieces of mail matter of an identical or substantially
179 similar nature within any thirty-day period.

180 (15) "Membership organization" means a group that
181 grants bona fide rights and privileges, such as the right to
182 vote, to elect officers or directors and the ability to hold
183 office, to its members and which uses a majority of its
184 membership dues for purposes other than political pur-
185 poses. "Membership organization" does not include
186 organizations that grant membership upon receiving a
187 contribution.

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

194 (17) "Person" means an individual, partnership, commit-
195 tee, association and any other organization or group of
196 individuals.

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

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

208 (20) "Political purposes" means supporting or opposing
209 the nomination, election or defeat of one or more candi-
210 dates or the passage or defeat of a ballot issue, supporting
211 the retirement of the debt of a candidate or political
212 committee or the administration or activities of an estab-
213 lished political party or an organization which has de-
214 clared itself a political party and determining the advis-
215 ability of becoming a candidate under the pre-candidacy
216 financing provisions of this chapter.

217 (21) "Targeted to the relevant electorate" means a
218 communication which refers to a clearly identified candi-
219 date for statewide office or the Legislature and which can
220 be received by ten thousand or more individuals in the
221 state in the case of a candidacy for statewide office and
222 five hundred or more individuals in the district in the case
223 of a candidacy for the Legislature.

224 (22) "Telephone bank" means telephone calls that are
225 targeted to the relevant electorate, other than telephone
226 calls made by volunteer workers, regardless of whether
227 paid professionals designed the telephone bank system,
228 developed calling instructions or trained volunteers.

229 (23) "Two-year election cycle" means the 24-month
230 period that begins the day after a general election and
231 ends on the day of the subsequent general election.

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

1 (a) Every person who has spent a total of five thousand
2 dollars or more for the direct costs of purchasing, produc-
3 ing or disseminating electioneering communications
4 during any calendar year shall, within twenty-four hours
5 of each disclosure date, file with the Secretary of State a
6 statement which contains:

7 (1) The name of the person making the expenditure, the
8 name of any person sharing or exercising direction or
9 control over the activities of the person making the

10 expenditure and the name of the custodian of the books
11 and accounts of the person making the expenditure;

12 (2) If the person making the expenditure is not an
13 individual, the principal place of business of the partner-
14 ship, committee, association, organization or group which
15 made the expenditure;

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

20 (4) The elections to which the electioneering communica-
21 tions pertain and the names, if known, of the candidates
22 referred to or to be referred to therein; and

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

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

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

33 (2) If the contributor is a political action committee, the
34 name and address the political action committee registered
35 with the State Election Commission;

36 (3) If the contributor is an individual, the name and
37 address of the individual, his or her occupation, the name
38 and address of the individual's current employer, if any,
39 or, if the individual is self-employed, the name and
40 address of the individual's business, if any;

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

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

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

50 (2) Any individual who makes contributions totaling two
51 hundred fifty dollars or more between the first day of the
52 preceding calendar year and the disclosure date for the
53 purpose of funding the direct costs of purchasing, produc-
54 ing or disseminating electioneering communications shall,
55 at the time the contribution is made, provide the name of
56 his or her occupation and of his or her current employer,
57 if any, or, if the individual is self-employed, the name of
58 his or her business, if any, to the recipient of the contribu-
59 tion.

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

63 (1) Clearly indicates that the electioneering communica-
64 tion is not authorized by the candidate or the candidate's
65 committee; and

66 (2) Clearly identifies the person making the expenditure
67 for the electioneering communication: *Provided*, That if
68 the electioneering communication appears on or is dissem-
69 inated by broadcast, cable or satellite transmission, the
70 statement required by this subsection must be both spoken
71 clearly and appear in clearly readable writing at the end
72 of the communication.

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

78 (f) For the purposes of this section, a person is consid-
79 ered to have made an expenditure when the person has
80 entered into a contract to make the expenditure at a future
81 time.

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

87 (h) If any person, including, but not limited to, a political
88 organization (as defined in Section 527(e)(1) of the Internal
89 Revenue Code of 1986) makes, or contracts to make, any
90 expenditure for electioneering communications which is
91 coordinated with and made with the cooperation, consent
92 or prior knowledge of a candidate, candidate's committee
93 or agent of a candidate, the expenditure shall be treated as
94 a contribution and expenditure by the candidate. If the
95 expenditure is coordinated with and made with the
96 cooperation or consent of a state or local political party or
97 committee, agent or official of that party, the expenditure
98 shall be treated as a contribution to and expenditure by
99 the candidate's party.

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

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

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

7 candidate, financial agent, political committee or other
8 person for the payment of any primary or other election
9 expenses whatever. No person may solicit or receive any
10 payment, contribution or other thing from any corporation
11 or from any officer, agent or other person acting on behalf
12 of the corporation.

13 (b)(1) The provisions of this section do not prohibit a
14 corporation from:

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

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

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

31 (2) It is unlawful for:

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

39 (B) Any person soliciting a stockholder or executive or
40 administrative personnel and members of their families for
41 a contribution to a separate segregated fund to fail to

42 inform the person solicited of the political purposes of the
43 separate segregated fund at the time of the solicitation;

44 (C) Any person soliciting any other person for a contri-
45 bution to a separate segregated fund to fail to inform the
46 person solicited at the time of the solicitation of his or her
47 right to refuse to contribute without any reprisal;

48 (D) A corporation or a separate segregated fund estab-
49 lished by a corporation: (i) To solicit contributions to the
50 fund from any person other than the corporation's stock-
51 holders and their families and its executive or administra-
52 tive personnel and their families; or (ii) to contribute any
53 corporate funds;

54 (E) A corporation or a separate segregated fund estab-
55 lished by a corporation to receive contributions to the fund
56 from any person other than the corporation's stockholders
57 and their immediate families and its executive or adminis-
58 trative personnel and their immediate families;

59 (F) A corporation to engage in job discrimination or to
60 discriminate in job promotion or transfer because of an
61 employee's failure to make a contribution to a separate
62 segregated fund;

63 (G) A separate segregated fund to make any contribu-
64 tion, directly or indirectly, in excess of one thousand
65 dollars in connection with or on behalf of any campaign
66 for nomination or election to any elective office in the
67 state or any of its subdivisions, or in connection with or on
68 behalf of any committee or other organization or person
69 engaged in furthering, advancing, supporting or aiding the
70 nomination or election of any candidate for any such
71 office;

72 (H) A corporation to pay, give or lend or to authorize
73 payment, giving or lending of any moneys or other things
74 of value belonging to the corporation to a separate segre-
75 gated fund for any purpose. This provision does not
76 prohibit a separate segregated fund from using the prop-

77 erty, 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 Commis-
112 sion to carry out similar or identical provisions of 2 U. S.
113 C. §441b.

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

117 (1) To investigate, upon complaint or on its own initia-
118 tive, any alleged violations or irregularities of this article.

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

123 (3) To involve the aid of any circuit court in the execu-
124 tion of its subpoena power.

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

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

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

138 (h) Any person who discloses the fact of any complaint,
139 investigation or report or any part thereof, or any proceed-
140 ings thereon, is guilty of a misdemeanor and, upon convic-
141 tion, shall be fined not less than one thousand dollars, nor
142 more than five thousand dollars, and shall be imprisoned
143 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.

Randy White
.....
Chairman Senate Committee

R. Berry
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Daniel E. Adams
.....
Clerk of the Senate

Bryan M. Bur
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert B. ...
.....
Speaker House of Delegates

The within *is approved* this the *5th*
Day of *April* , 2006.

Paul Hancock
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:35 am