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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 2008



ENROLLED

House Bill No. 219

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]



Passed June 28, 2008

In Effect Ninety Days from Passage

E N R O L L E D

H. B. 219

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OFFICE OF THE
SECRETARY OF STATE

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed June 28, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §3-8-1, §3-8-1a, §3-8-4, §3-8-5 and §3-8-8 of the Code of West Virginia 1931, as amended; and to amend and reenact §3-9-14 of said code, all relating to the regulation and control of elections, generally; legislative findings related to the particular characteristics of West Virginia which warrant regulation of non-broadcast media; defining terms; clarifying that statutory prohibitions and criminal provisions relating to corporate election communications apply only to express advocacy; clarifying offenses and penalties; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

That §3-8-1, §3-8-1a, §3-8-4, §3-8-5 and §3-8-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-9-14 of said code be amended and reenacted, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1. Provisions to regulate and control elections.

1 (a) The Legislature finds that:

2 (1) West Virginia's population is 1,808,344, ranking 37th
3 among the fifty states.

4 (2) State Senate districts have a population of
5 approximately one hundred six thousand three hundred
6 seventy-three, and the average Delegate district has a
7 population of approximately thirty-one thousand, one
8 hundred seventy-eight. The size of these districts is
9 substantially smaller than the United States Senatorial and
10 Congressional Districts.

11 (3) When the relatively small size of the State's
12 legislative and other voting districts is combined with the
13 economics and typical uses of various forms of electioneering
14 communication, history shows that non-broadcast media is
15 and will continue to be a widely used means of making
16 campaign related communications to target relevant
17 audiences. Consequently, non-broadcast communications are
18 prevalent during elections.

19 (4) Disclosure provisions are appropriate legislative
20 weapons against the reality or appearance of improper
21 influence stemming from the dependence of candidates on
22 large campaign contributions, and the ceilings imposed
23 accordingly serve the basic governmental interest in
24 safeguarding the integrity of the electoral process without
25 directly impinging upon the rights of individual citizens and
26 candidates to engage in political debate and discussion.

27 (5) Disclosure of expenditures serve a substantial
28 governmental interest in informing the electorate and
29 preventing the corruption of the political process.

30 (6) Disclosure by persons and entities that make
31 expenditures for communications that expressly advocate the
32 election or defeat of clearly identified candidates, or perform

33 its functional equivalent, is a reasonable and minimally
34 restrictive method of furthering First Amendment values by
35 public exposure of the state election system.

36 (7) Failing to regulate non-broadcast media messages
37 would permit those desiring to influence elections to avoid
38 the principles and policies that are embodied in existing state
39 law.

40 (8) The regulation of the various types of non-broadcast
41 media embodied within the amendments enacted during the
42 second extraordinary session of two thousand eight, in
43 addition to broadcast media, is tailored to meet the
44 circumstances found in the State of West Virginia.

45 (9) Non-broadcast media such as mass mailing, telephone
46 banks and billboards have proven to be effective means of
47 election communication in West Virginia. Broadcast,
48 satellite and non-broadcast media have all been used to
49 influence election outcomes.

50 (10) Mass mailing and telephone communications can be
51 more effective campaign methods than broadcast media
52 because such communications can be targeted to registered
53 voters or historical voters in the particular district. In
54 contrast, broadcasted messages reach all of the general
55 public, including person ineligible to vote in the district.

56 (11) Mass mailings or telephone communications in the
57 final days of a campaign can be particularly damaging to the
58 public's confidence in the election process because they
59 reduce or make impossible an effective response.

60 (12) Identifying those funding mass mailing or telephone
61 campaigns in the final days of a campaign may at least permit
62 voters to evaluate the credibility of the message.

63 (13) In West Virginia, contributions up to the amounts
64 specified in this article allow contributors to express their
65 opinions, level of support and their affiliations.

66 (14) In West Virginia, campaign expenditures by entities
67 and persons who are not candidates have been increasing.
68 Public confidence is eroded when substantial amounts of
69 such money, the source of which is hidden or disguised, is
70 expended. This is particularly true during the final days of
71 a campaign.

72 (15) In West Virginia, contributions to political
73 organizations (defined in Section 527(e)(1) of the Internal
74 Revenue Code of 1986) substantially larger than the amounts
75 permitted to be received by a candidate's political committee
76 have been recorded and are considered by the legislature to
77 be large contributions.

78 (16) Independent expenditures intended to influence
79 candidates' campaigns in the State are increasingly utilizing
80 non-broadcast media to support or defeat candidates.

81 (17) Identification of persons or entities funding political
82 advertisements assists in enforcement of the contribution and
83 expenditure limitations established by this article and simply
84 informs voters of the actual identities of persons or entities
85 advocating the election or defeat of candidates.

86 (18) Identification of persons or entities funding political
87 advertisements allows voters to evaluate the credibility of the
88 message contained in the advertisement.

89 (19) Disclosure of the identity of persons or entities
90 funding political communications regarding candidates
91 bolsters the right of listeners to be fully informed.

92 (b) Political campaign contributions, receipts and
93 expenditures of money, advertising, influence and control of
94 employees, and other economic, political and social control
95 factors incident to primary, special and general elections shall
96 be regulated and controlled by the provisions of this article
97 and other applicable provisions of this chapter.

§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, municipal
5 charter or revision, an increase or decrease of corporate limits
6 or any other question that is placed before the voters for a
7 binding decision.

8 (2) "Billboard" means a commercially available outdoor
9 advertisement, sign or similar display regularly available for
10 lease or rental to advertise a person, place or product.

11 (3) "Broadcast, cable or satellite communication" means a
12 communication that is publicly distributed by a television
13 station, radio station, cable television system or satellite
14 system.

15 (4) "Candidate" means an individual who:

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

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

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

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

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

34 (6) "Clearly identified" means that the name, nickname,
35 photograph, drawing or other depiction of the candidate
36 appears or the identity of the candidate is otherwise apparent
37 through an unambiguous reference, such as "the Governor,"
38 "your Senator" or "the incumbent" or through an
39 unambiguous reference to his or her status as a candidate,
40 such as "the Democratic candidate for Governor" or "the
41 Republican candidate for Supreme Court of Appeals."

42 (7) "Contribution" means a gift subscription, assessment,
43 payment for services, dues, advance, donation, pledge,
44 contract, agreement, forbearance or promise of money or
45 other tangible thing of value, whether conditional or legally
46 enforceable, or a transfer of money or other tangible thing of
47 value to a person, made for the purpose of influencing the
48 nomination, election or defeat of a candidate. An offer or
49 tender of a contribution is not a contribution if expressly and
50 unconditionally rejected or returned. A contribution does not
51 include volunteer personal services provided without
52 compensation: *Provided*, That a nonmonetary contribution is
53 to be considered at fair market value for reporting
54 requirements and contribution limitations.

55 (8) "Corporate political action committee" means a
56 political action committee that is a separate segregated fund
57 of a corporation that may only accept contributions from its
58 restricted group as outlined by the rules of the State Election
59 Commission.

60 (9) "Direct costs of purchasing, producing or
61 disseminating electioneering communications" means:

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

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

71 (10) "Disclosure date" means either of the following:

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

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

83 (11) "Election" means any primary, general or special
84 election conducted under the provisions of this code or under

85 the charter of any municipality at which the voters nominate
86 or elect candidates for public office. For purposes of this
87 article, each primary, general, special or local election
88 constitutes a separate election. This definition is not intended
89 to modify or abrogate the definition of the term "nomination"
90 as used in this article.

91 (12)(A) "Electioneering communication" means any paid
92 communication made by broadcast, cable or satellite signal,
93 mass mailing, telephone bank, billboard advertising, or
94 published in any newspaper, magazine or other periodical
95 that:

96 (i) Refers to a clearly identified candidate for Governor,
97 Secretary of State, Attorney General, Treasurer, Auditor,
98 Commissioner of Agriculture, Supreme Court of Appeals or
99 the Legislature;

100 (ii) Is publicly disseminated within:

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

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

106 (iii) Is targeted to the relevant electorate: *Provided*, That
107 for purposes of the general election of two thousand eight the
108 amendments to this article shall be effective the first day of
109 October, two thousand eight.

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

111 (i) A news story, commentary or editorial disseminated
112 through the facilities of any broadcast, cable or satellite
113 television or radio station, newspaper, magazine or other

114 periodical publication not owned or controlled by a political
115 party, political committee or candidate: *Provided*, That a
116 news story disseminated through a medium owned or
117 controlled by a political party, political committee or
118 candidate is nevertheless exempt if the news is:

119 (I) A bona fide news account communicated in a
120 publication of general circulation or through a licensed
121 broadcasting facility; and

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

125 (ii) Activity by a candidate committee, party executive
126 committee or caucus committee, or a political action committee
127 that is required to be reported to the State Election Commission
128 or the Secretary of State as an expenditure pursuant to section
129 five of this article or the rules of the State Election Commission
130 or the Secretary of State promulgated pursuant to such
131 provision: *Provided*, That independent expenditures by a party
132 executive committee or caucus committee or a political action
133 committee required to be reported pursuant to subsection (b),
134 section two of this article are not exempt from the reporting
135 requirements of this section;

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

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

143 (v) A communication made while the Legislature is in
144 session which, incidental to promoting or opposing a specific

145 piece of legislation pending before the Legislature, urges the
146 audience to communicate with a member or members of the
147 Legislature concerning that piece of legislation;

148 (vi) A statement or depiction by a membership
149 organization, in existence prior to the date on which the
150 individual named or depicted became a candidate, made in a
151 newsletter or other communication distributed only to bona
152 fide members of that organization;

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

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

164 (13) "Expressly advocating" means any communication
165 that:

166 (A) Uses phrases such as "vote for the Governor,"
167 "re-elect your Senator," "support the Democratic nominee for
168 Supreme Court," "cast your ballot for the Republican
169 challenger for House of Delegates," "Smith for House," "Bob
170 Smith in '04," "vote Pro-Life" or "vote Pro-Choice"
171 accompanied by a listing of clearly identified candidates
172 described as Pro-Life or Pro-Choice, "vote against Old
173 Hickory," "defeat" accompanied by a picture of one or more
174 candidates, "reject the incumbent," or communications of
175 campaign slogans or individual words, that in context can

176 have no other reasonable meaning than to urge the election
177 or defeat of one or more clearly identified candidates, such as
178 posters, bumper stickers, advertisements, etc. which say
179 “Smith’s the One,” “Jones ‘06,” “Baker”; or

180 (B) When considered in its entirety, the communication
181 can only be interpreted by a reasonable person as advocating
182 the election or defeat of one or more clearly identified
183 candidates because:

184 (i) The electoral portion of the communication is
185 unmistakable, unambiguous, and suggestive of only one
186 meaning; and

187 (ii) Reasonable minds could not differ as to whether it
188 encourages actions to elect or defeat one or more clearly
189 identified candidates.

190 (14) "Financial agent" means any individual acting for
191 and by himself or herself, or any two or more individuals
192 acting together or cooperating in a financial way to aid or
193 take part in the nomination or election of any candidate for
194 public office, or to aid or promote the success or defeat of
195 any political party at any election.

196 (15) "Fund-raising event" means an event such as a
197 dinner, reception, testimonial, cocktail party, auction or
198 similar affair through which contributions are solicited or
199 received by such means as the purchase of a ticket, payment
200 of an attendance fee or by the purchase of goods or services.

201 (16) "Independent expenditure" means an expenditure by
202 a person:

203 (A) Expressly advocating the election or defeat of a
204 clearly identified candidate; and

205 (B) That is not made in concert or cooperation with or at
206 the request or suggestion of such candidate, his or her agents,
207 the candidate's authorized political committee or a political
208 party committee or its agents.

209 Supporting or opposing the election of a clearly identified
210 candidate includes supporting or opposing the candidates of
211 a political party. An expenditure which does not meet the
212 criteria for an independent expenditure is considered a
213 contribution.

214 (17) "Mass mailing" means a mailing by United States
215 mail, facsimile or electronic mail of more than five hundred
216 pieces of mail matter of an identical or substantially similar
217 nature within any thirty-day period. For purposes of this
218 subdivision, substantially similar includes communications
219 that contain substantially the same template or language, but
220 vary in non-material respects such as communications
221 customized by the recipient's name, occupation, or
222 geographic location.

223 (18) "Membership organization" means a group that
224 grants bona fide rights and privileges, such as the right to
225 vote, to elect officers or directors and the ability to hold
226 office, to its members and which uses a majority of its
227 membership dues for purposes other than political purposes.
228 "Membership organization" does not include organizations
229 that grant membership upon receiving a contribution.

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

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

239 (21) "Political action committee" means a committee
240 organized by one or more persons for the purpose of
241 supporting or opposing the nomination or election of one or
242 more candidates. The following are types of political action
243 committees:

244 (A) A corporate political action committee, as that term
245 is defined by subdivision (8) of this section;

246 (B) A membership organization, as that term is defined
247 by subdivision(18) of this section;

248 (C) An unaffiliated political action committee, as that
249 term is defined by subdivision(29) of this section.

250 (22) "Political committee" means any candidate
251 committee, political action committee or political party
252 committee.

253 (23) "Political party" means a political party as that term is
254 defined by section eight, article one of this chapter or any
255 committee established, financed, maintained or controlled by the
256 party, including any subsidiary, branch or local unit thereof and
257 including national or regional affiliates of the party.

258 (24) "Political party committee" means a committee
259 established by a political party or political party caucus for
260 the purposes of engaging in the influencing of the election,
261 nomination or defeat of a candidate in any election.

262 (25) "Political purposes" means supporting or opposing
263 the nomination, election or defeat of one or more candidates

264 or the passage or defeat of a ballot issue, supporting the
265 retirement of the debt of a candidate or political committee or
266 the administration or activities of an established political
267 party or an organization which has declared itself a political
268 party and determining the advisability of becoming a
269 candidate under the precandidacy financing provisions of this
270 chapter.

271 (26) "Targeted to the relevant electorate" means a
272 communication which refers to a clearly identified candidate
273 for statewide office or the Legislature and which can be
274 received by ten thousand or more individuals in the state in
275 the case of a candidacy for statewide office and five hundred
276 or more individuals in the district in the case of a candidacy
277 for the Legislature.

278 (27) "Telephone bank" means telephone calls that are
279 targeted to the relevant electorate, other than telephone calls
280 made by volunteer workers, regardless of whether paid
281 professionals designed the telephone bank system, developed
282 calling instructions or trained volunteers.

283 (28) "Two-year election cycle" means the 24-month
284 period that begins the day after a general election and ends on
285 the day of the subsequent general election.

286 (29) "Unaffiliated political action committee" means a
287 political action committee that is not affiliated with a
288 corporation or a membership organization.

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

1 (a) No person may act as the treasurer of any political
2 action committee or political party committee supporting,
3 aiding or opposing the nomination, election or defeat of any
4 candidate for an office encompassing an election district

5 larger than a county unless a written statement of
6 organization, on a form to be prescribed by the Secretary of
7 State, is filed with the Secretary of State at least twenty-eight
8 days before the election at which that person is to act as a
9 treasurer and is received by the Secretary of State before
10 midnight, eastern standard time, of that day or, if mailed, is
11 postmarked before that hour. The form shall include the
12 name of the political committee; the name of the treasurer;
13 the mailing address, telephone number and e-mail address, if
14 applicable, of the committee and of the treasurer if different
15 from the committee information; the chairman of the
16 committee; the affiliate organization, if any; type of
17 committee affiliation, as defined in subdivisions (21) and
18 (24), section one-a of this article, if any; and whether the
19 committee will participate in statewide, county or municipal
20 elections. The form shall be certified as accurate and true
21 and signed by the chairman and the treasurer of the
22 committee: *Provided*, That a change of treasurer or financial
23 agent may be made at any time by filing a written statement
24 with the Secretary of State.

25 (b) No person may act as the treasurer for any candidate
26 for nomination or election to any statewide office, or to any
27 office encompassing an election district larger than a county
28 or to any legislative office unless a written statement
29 designating that person as the treasurer or financial agent is
30 filed with the Secretary of State at least twenty-eight days
31 before the election at which that person is to act as a treasurer
32 and is received by the Secretary of State before midnight,
33 eastern standard time, of that day or if mailed, is postmarked
34 before that hour: *Provided*, That a change of treasurer or
35 financial agent may be made at any time by filing a written
36 statement with the Secretary of State.

37 (c) No person may act as treasurer of any committee or
38 as financial agent for any candidate to be nominated or
39 elected by the voters of a county or a district therein, except

40 legislative candidates, or as the financial agent for a
41 candidate for the nomination or election to any other office,
42 unless a written statement designating him or her as the
43 treasurer or financial agent is filed with the clerk of the
44 county commission at least twenty-eight days before the
45 election at which he or she is to act and is received before
46 midnight, eastern standard time, of that day or if mailed, is
47 postmarked before that hour: *Provided*, That a change of
48 treasurer may be made at any time by filing a written
49 statement with the clerk of the county commission.

50 (d) Notwithstanding the provisions of subsections (a), (b)
51 and (c) of this section, a filing designating a treasurer for a
52 state or county political executive committee may be made
53 anytime before the committee either accepts or spends funds.
54 Once a designation is made by a state or county political
55 executive committee, no additional designations are required
56 under this section until a successor treasurer is designated.
57 A state or county political executive committee may
58 terminate a designation made pursuant to this section by
59 making a written request to terminate the designation and by
60 stating in the request that the committee has no funds
61 remaining in the committee's account. This written request
62 shall be filed with either the Secretary of State or the clerk of
63 the county commission as provided by subsections (a), (b)
64 and (c) of this section.

**§3-8-5. Detailed accounts and verified financial statements
required.**

1 (a) Every candidate, treasurer, person and association of
2 persons, organization of any kind, including every
3 corporation, directly, or by an independent expenditure,
4 supporting a political committee established pursuant to
5 paragraph (C), subdivision (1), subsection (b), section eight
6 of this article or engaging in other activities permitted by this
7 section and also including the treasurer or equivalent officer

8 of the association or organization, expressly advocating the
9 election or defeat of a clearly identified candidate for state,
10 district, county or municipal office, and the treasurer of every
11 political committee shall keep detailed accounts of every sum
12 of money or other thing of value received by him or her,
13 including all loans of money or things of value and of all
14 expenditures and disbursements made, liabilities incurred, by
15 the candidate, financial agent, person, association or
16 organization or committee, for political purposes, or by any
17 of the officers or members of the committee, or any person
18 acting under its authority or on its behalf.

19 (b) Every person or association of persons required to
20 keep detailed accounts under this section shall file with the
21 officers hereinafter prescribed a detailed itemized sworn
22 statement:

23 (1) Of all financial transactions, whenever the total
24 exceeds five hundred dollars, which have taken place before
25 the last Saturday in March, to be filed within six days
26 thereafter and annually whenever the total of all financial
27 transactions relating to an election exceeds five hundred
28 dollars;

29 (2) Of all financial transactions which have taken place
30 before the fifteenth day preceding each primary or other
31 election and subsequent to the previous statement, if any, to
32 be filed within four business days after the fifteenth day;

33 (3) Of all financial transactions which have taken place
34 before the thirteenth day after each primary or other election
35 and subsequent to the previous statement, if any, to be filed
36 within four business days after the thirteenth day; and

37 (4) Of all financial transactions, whenever the total
38 exceeds five hundred dollars or whenever any loans are
39 outstanding, which have taken place before the forty-third

40 day preceding the general election day, to be filed within four
41 business days after the forty-third day.

42 (c) Every person who announces as a write-in candidate
43 for any elective office and his or her financial agent or
44 election organization of any kind shall comply with all of the
45 requirements of this section after public announcement of the
46 person's candidacy has been made.

47 (d) For purposes of this section, the term "financial
48 transactions" includes all contributions or loans received and
49 all repayments of loans or expenditures made to promote the
50 candidacy of any person by any candidate or any
51 organization advocating or opposing the nomination, election
52 or defeat of any candidate to be voted on.

53 (e) Candidates for the office of conservation district
54 supervisor elected pursuant to the provisions of article
55 twenty-one-a, chapter nineteen of this code are required to
56 file only the reports required by subdivisions (2) and (3),
57 subsection (b) of this section immediately prior to and after
58 the primary election: *Provided*, That during the election in
59 the year two thousand eight, the statements required by this
60 subsection shall be filed immediately prior to and after the
61 general election.

**§3-8-8. Corporation contributions forbidden; exceptions;
penalties; 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 any
3 corporation, whether incorporated under the laws of this or
4 any other state or of a foreign country, may pay, give, lend or
5 authorize to be paid, given or lent any money or other thing
6 of value belonging to the corporation for the purpose of
7 expressly advocating the election or defeat of a clearly

8 identified candidate for state, district, county or municipal
9 office, to any candidate, financial agent, political committee
10 or other person. No person may solicit or receive any
11 payment, contribution or other thing from any corporation or
12 from any officer, agent or other person acting on behalf of the
13 corporation.

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

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

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

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

31 (D) Corporations may make disbursements for political
32 purposes, as such are defined by the provisions of
33 subdivision (25), subsection (a), section one-a of this article,
34 that do not expressly advocate for the election or defeat of a
35 clearly identified candidate. A disbursement for political
36 purposes is permissible if it:

37 (i) Does not reference an election, candidacy, political
38 party, opposing candidate or voting by the general public;

39 (ii) Does not take a position on any candidate's or
40 officeholder's character, qualifications, or fitness for office;
41 and

42 (iii) Focuses on a legislative, executive, or judicial matter
43 or issue which either:

44 (I) Urges a candidate to take a particular position or
45 action with respect to the matter or issue; or

46 (II) Urges the public to adopt a particular position and to
47 contact the candidate with respect to the matter or issue; or

48 (iv) Proposes a commercial transaction, such as purchase
49 of a book, video, or other product or service, or attendance
50 (for a fee) at a film exhibition or other event.

51 (2) It is unlawful for:

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

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

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

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

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

78 (F) A corporation to engage in job discrimination or to
79 discriminate in job promotion or transfer because of an
80 employee's failure to make a contribution to a separate
81 segregated fund;

82 (G) A separate segregated fund to make any contribution,
83 directly or indirectly, in excess of one thousand dollars in
84 connection with or on behalf of any campaign for nomination
85 or election to any elective office in the state or any of its
86 subdivisions, or in connection with or on behalf of any
87 committee or other organization or person engaged in
88 furthering, advancing, supporting or aiding the nomination or
89 election of any candidate for any such office;

90 (H) A corporation to pay, give or lend or to authorize
91 payment, giving or lending of any moneys or other things of
92 value belonging to the corporation to a separate segregated
93 fund for any purpose. This provision does not prohibit a
94 separate segregated fund from using the property, real or
95 personal, facilities and equipment of a corporation solely to
96 establish, administer and solicit contributions to the fund,
97 subject to the rules of the State Election Commission as
98 provided in subsection (d) of this section: *Provided*, That
99 any such corporation shall also permit any group of its

100 employees represented by a bona fide political action
101 committee to use the real property of the corporation solely
102 to establish, administer and solicit contributions to the fund
103 of the political action committee, subject to the rules of the
104 State Election Commission promulgated in accordance with
105 said subsection. No corporation may use its property, real or
106 personal, facilities, equipment, materials or services for the
107 purpose of expressly advocating the election or defeat of a
108 clearly identified candidate for state, district, county or
109 municipal office.

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

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

120 (d) To ensure uniform administration and application of
121 the provisions of this section and of those of the Federal
122 Election Campaign Act Amendments of 1976 relating to
123 corporate contributions, the State Election Commission shall
124 propose rules for legislative approval in accordance with the
125 provisions of article three, chapter twenty-nine-a of this code
126 to implement the provisions of this section consistent, insofar
127 as practicable, with the rules and regulations promulgated by
128 the Federal Election Commission to carry out similar or
129 identical provisions of 2 U.S.C. §441b.

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

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

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

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

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

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

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

154 (h) Any person who discloses the fact of any complaint,
155 investigation or report or any part thereof, or any proceedings
156 thereon, is guilty of a misdemeanor and, upon conviction,
157 shall be fined not less than one thousand dollars, nor more
158 than five thousand dollars, and shall be imprisoned in jail not
159 less than six months nor more than one year.

160 (i) The amendments to this section enacted during the
161 second extraordinary session of two thousand eight are
162 intended to conform to the existing proscription to

163 constitutionally permissible limits and not to create a new
164 offense or offenses.

165 (j) The effective date of the amendments to this section
166 enacted during the second extraordinary legislative session of
167 two thousand eight shall be the first day of October, two
168 thousand eight.

ARTICLE 9. OFFENSES AND PENALTIES

§3-9-14. Unlawful acts by corporations; penalties.

1 (a) Except as provided in section eight, article eight of
2 this chapter, any corporation which shall, by its officers,
3 agents or otherwise, offer, give or use, or cause to be offered,
4 given or used, or place or cause to be placed, in the
5 possession, under the control or at the disposal of another, to
6 be offered, given or used, directly or indirectly, money or
7 other thing of value, for the purpose of expressly advocating
8 the election or defeat of a clearly identified candidate for a
9 state, district, county or municipal office, it shall be guilty of
10 a misdemeanor, and, upon conviction thereof, shall be fined
11 not less than five thousand nor more than twenty thousand
12 dollars for every such offense, at the discretion of the jury.

13 (b) As used in this section, the terms “clearly identified,”
14 and “expressly advocating” shall have the meaning ascribed
15 thereto by the provisions of section one-a, article eight of this
16 chapter.

17 (c) The amendments to this section enacted during the
18 second extraordinary session of two thousand eight are
19 intended to conform the existing proscription to
20 constitutionally permissible limits and not to create a new
21 offense or offenses.

22 (d) The effective date of the amendments to this section
23 enacted during the second extraordinary legislative session of
24 two thousand eight shall be the first day of October, two
25 thousand eight.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Carroll E. Holmes
Clerk of the Senate

Bryson M. Paul
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *as appended* this the *14th*
day of *July*, 2008.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

JUL 8 - 2008

Time 1:55 pm