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
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.

(a) The Legislature finds that:
(1) West Virginia's population is 1,808,344, ranking 37th among the fifty states.

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

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

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

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

(6) Disclosure by persons and entities that make expenditures for communications that expressly advocate the election or defeat of clearly identified candidates, or perform
its functional equivalent, is a reasonable and minimally restrictive method of furthering First Amendment values by public exposure of the state election system.

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

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

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

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

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

(12) Identifying those funding mass mailing or telephone campaigns in the final days of a campaign may at least permit voters to evaluate the credibility of the message.
(13) In West Virginia, contributions up to the amounts specified in this article allow contributors to express their opinions, level of support and their affiliations.

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

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

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

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

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

(19) Disclosure of the identity of persons or entities funding political communications regarding candidates bolsters the right of listeners to be fully informed.
(b) Political campaign contributions, receipts and expenditures of money, advertising, influence and control of employees, and other economic, political and social control factors incident to primary, special and general elections shall be regulated and controlled by the provisions of this article and other applicable provisions of this chapter.

§3-8-1a. Definitions.

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. "Billboard" means a commercially available outdoor advertisement, sign or similar display regularly available for lease or rental to advertise a person, place or product.

3. "Broadcast, cable or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system or satellite system.

4. "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.

(5) "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.

(6) "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."

(7) "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: Provided, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.
(8) "Corporate political action committee" means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(9) "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 costs of disseminating printed materials, establishing a telephone bank, studio time, use of facilities and the charges for a broker to purchase airtime.

(10) "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.

(11) "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.

(12) (A) "Electioneering communication" means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard 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:

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

(II) 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: Provided, That for purposes of the general election of two thousand eight the amendments to this article shall be effective the first day of October, two thousand eight.

(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:

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

(II) 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) Activity by a candidate committee, party executive committee or caucus committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to section five 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 by a party executive committee or caucus committee or a political action committee 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 newsletter or other communication distributed only to bona fide members of that organization;

(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.

(13) “Expressly advocating” means any communication that:

(A) Uses phrases such as “vote for the Governor,” “re-elect your Senator,” “support the Democratic nominee for Supreme Court,” “cast your ballot for the Republican challenger for House of Delegates,” “Smith for House,” “Bob Smith in '04,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidates, “reject the incumbent,” or communications of campaign slogans or individual words, that in context can
have no other reasonable meaning than to urge the election
or defeat of one or more clearly identified candidates, such as
posters, bumper stickers, advertisements, etc. which say
“Smith’s the One,” “Jones ’06,” “Baker”; or

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

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

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

(14) "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.

(15) "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.

(16) “Independent expenditure” means an expenditure by
a person:

(A) Expressly advocating the election or defeat of a
clearly identified candidate; and
(B) That is not made in concert or cooperation with or at
the request or suggestion of such candidate, his or her agents,
the candidate's authorized political committee or a political
party committee or its agents.

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

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

(18) "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 purposes.
"Membership organization" does not include organizations
that grant membership upon receiving a contribution.

(19) "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.
(20) "Person" means an individual, partnership, committee, association and any other organization or group of individuals.

(21) "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. The following are types of political action committees:

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

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

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

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

(23) "Political party" means a political party as that term is defined by section eight, article one of this chapter 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.

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

(25) "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
termination 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 precandidacy financing provisions of this
chapter.

(26) "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.

(27) "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.

(28) "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.

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

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

(a) No person may act as the treasurer of any political
action committee or political party committee supporting,
aiding or opposing the nomination, election or defeat of any
candidate for an office encompassing an election district
larger than a county unless a written statement of
organization, on a form to be prescribed by the Secretary of
State, is filed with the Secretary of State at least twenty-eight
days before the election at which that person is to act as a
treasurer and is received by the Secretary of State before
midnight, eastern standard time, of that day or, if mailed, is
postmarked before that hour. The form shall include the
name of the political committee; the name of the treasurer;
the mailing address, telephone number and e-mail address, if
applicable, of the committee and of the treasurer if different
from the committee information; the chairman of the
committee; the affiliate organization, if any; type of
committee affiliation, as defined in subdivisions (21) and
(24), section one-a of this article, if any; and whether the
committee will participate in statewide, county or municipal
elections. The form shall be certified as accurate and true
and signed by the chairman and the treasurer of the
committee: Provided, That a change of treasurer or financial
agent may be made at any time by filing a written statement
with the Secretary of State.

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

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

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

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

(a) Every candidate, treasurer, person and association of persons, organization of any kind, including every corporation, directly, or by an independent expenditure, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer
of the association or organization, expressly advocating the
election or defeat of a clearly identified candidate for state,
district, county or municipal office, and the treasurer of every
political committee shall keep detailed accounts of every sum
of money or other thing of value received by him or her,
including all loans of money or things of value and of all
expenditures and disbursements made, liabilities incurred, by
the candidate, financial agent, person, association or
organization or committee, for political purposes, or by any
of the officers or members of the committee, or any person
acting under its authority or on its behalf.

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

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

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

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

(4) Of all financial transactions, whenever the total
exceeds five hundred dollars or whenever any loans are
outstanding, which have taken place before the forty-third
day preceding the general election day, to be filed within four
business days after the forty-third day.

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

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

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

§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 for the purpose of
expressly advocating the election or defeat of a clearly
identified candidate for state, district, county or municipal
office, to any candidate, financial agent, political committee
or other person. 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)(1) 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;

(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; and

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

(i) Does not reference an election, candidacy, political
party, opposing candidate or voting by the general public;
(ii) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office; and

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

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

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

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

(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 property, real or personal, facilities and equipment of a corporation solely to establish, administer and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (d) of this section: Provided, That any such corporation shall also permit any group of its
employees represented by a bona fide political action committee to use the real property of the corporation solely to establish, administer and solicit contributions to the fund of the political action committee, subject to the rules of the State Election Commission promulgated in accordance with said subsection. No corporation may use its property, real or personal, facilities, equipment, materials or services for the purpose of expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office.

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

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

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

(i) The amendments to this section enacted during the second extraordinary session of two thousand eight are intended to conform to the existing proscription to
ARTICLE 9. OFFENSES AND PENALTIES

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

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

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

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 14th day of July, 2008.

Governor