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SECRETARY OF STATE

HB 219  
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**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 CLERK  
SECRETARY OF STATE

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

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[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 37<sup>th</sup>  
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.

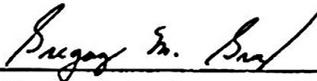
  
Chairman Senate Committee

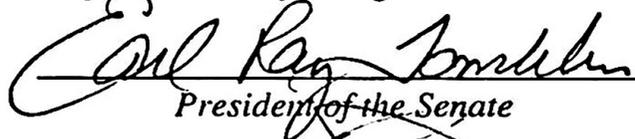
  
Chairman House Committee

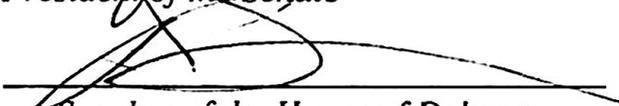
Originating in the House.

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 as appended this the 14<sup>th</sup>  
day of July, 2008.

  
Governor

PRESENTED TO THE  
GOVERNOR

JUL 8 - 2008

Time 1:55 pm