

2010 APR -1 PM 4: 22

CLERK OF THE HOUSE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

—●—
ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4647**

(By Delegates Manchin, Frazier,
Moore, Miley, Brown, Caputo, Wooton,
Ferro and Wells)

—●—
Passed March 13, 2010

In Effect Ninety Days From Passage

HB 4647

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FOR

OFFICE OF THE SECRETARY OF STATE

H. B. 4647

(BY DELEGATES MANCHIN, FRAZIER,
MOORE, MILEY, BROWN, CAPUTO, WOOTON,
FERRO AND WELLS)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to repeal §3-9-14 of the Code of West Virginia 1931, as amended; and to amend and reenact §3-8-1, §3-8-1a, §3-8-2, §3-8-8 and §3-8-12 of said code, all relating to the regulation and control of elections; providing certain legislative findings; amending and deleting certain definitions; expanding reporting requirements for independent expenditures; providing for electronic filing of reports of independent expenditures; authorizing the Secretary of State to promulgate rules relating to reports of independent expenditures; retaining prohibition on corporate contribution; and repealing the ban on corporate independent expenditures.

Be it enacted by the Legislature of West Virginia:

That §3-9-14 of the Code of West Virginia, 1931, as amended, be repealed; that §3-8-1, §3-8-1a, §3-8-2, §3-8-8 and §3-8-12 of said code be amended and reenacted, all to read as follows: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 maintaining the integrity of the electoral process without
25 diminishing 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 in addition to broadcast media, is tailored to meet the
42 circumstances found in the State of West Virginia.

43 (9) Non-broadcast media such as newspapers, magazines
44 or other periodicals have proven to be effective means of
45 election communication in West Virginia. Broadcast,
46 satellite and non-broadcast media have all been used to
47 influence election outcomes.

48 (10) Certain non-broadcast communications, such as
49 newspaper inserts, can be more effective campaign methods
50 than broadcast media because such communications can be
51 targeted to registered voters or historical voters in the
52 particular district. In contrast, broadcasted messages reach
53 all of the general public, including person ineligible to vote
54 in the district.

55 (11) Non-broadcast media communications in the final
56 days of a campaign can be particularly damaging to the

57 public's confidence in the election process because they
58 reduce or make impossible an effective response.

59 (12) Identifying those funding non-broadcast media
60 campaigns in the final days of a campaign may at least permit
61 voters to evaluate the credibility of the message.

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

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

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

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

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

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

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

91 (b) Political campaign contributions, receipts and
92 expenditures of money, advertising, influence and control of
93 employees, and other economic, political and social control
94 factors incident to primary, special and general elections shall
95 be regulated and controlled by the provisions of this article
96 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) “Broadcast, cable or satellite communication” means
9 a communication that is publicly distributed by a television
10 station, radio station, cable television system or satellite
11 system.

12 (3) “Candidate” means an individual who:

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

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

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

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

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

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

40 (6) "Contribution" means a gift, subscription, loan,
41 assessment, payment for services, dues, advance, donation,
42 pledge, contract, agreement, forbearance or promise of
43 money or other tangible thing of value, whether conditional
44 or enforceable or a transfer of money or other
45 thing of value to a person, made for the purpose of
46 influencing the nomination, election or defeat of a candidate.

47 An offer or tender of a contribution is not a contribution if
48 expressly and unconditionally rejected or returned. A
49 contribution does not include volunteer personal services
50 provided without compensation: *Provided*, That a
51 nonmonetary contribution is to be considered at fair market
52 value for reporting requirements and contribution limitations.

53 (7) “Corporate political action committee” means a
54 political action committee that is a separate segregated fund
55 of a corporation that may only accept contributions from its
56 restricted group as outlined by the rules of the State Election
57 Commission.

58 (8) “Direct costs of purchasing, producing or
59 disseminating electioneering communications” means:

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

64 (B) The cost of air time on broadcast, cable or satellite
65 radio and television stations, the costs of disseminating
66 printed materials, studio time, use of facilities and the
67 charges for a broker to purchase air time.

68 (9) “Disclosure date” means either of the following:

69 (A) The first date during any calendar year on which any
70 electioneering communication is disseminated after the
71 person paying for the communication has spent a total of
72 \$5,000 or more for the direct costs of purchasing, producing
73 or disseminating electioneering communications; or

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

76 additional expenditures totaling \$5,000 or more for the direct
77 costs of purchasing, producing or disseminating electioneering
78 communications.

79 (10) "Election" means any primary, general or special
80 election conducted under the provisions of this code or under
81 the charter of any municipality at which the voters nominate
82 or elect candidates for public office. For purposes of this
83 article, each primary, general, special or local election
84 constitutes a separate election. This definition is not intended
85 to modify or abrogate the definition of the term "nomination"
86 as used in this article.

87 (11)(A) "Electioneering communication" means any paid
88 communication made by broadcast, cable or satellite signal,
89 or published in any newspaper, magazine or other periodical
90 that:

91 (i) Refers to a clearly identified candidate for Governor,
92 Secretary of State, Attorney General, Treasurer, Auditor,
93 Commissioner of Agriculture, Supreme Court of Appeals or
94 the Legislature;

95 (ii) Is publicly disseminated within:

96 (I) Thirty days before a primary election at which the
97 nomination for office sought by the candidate is to be
98 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 2008 the amendments
to this article are effective October 1, 2008.

B) "Electioneering communication" does not include:

105 (i) A news story, commentary or editorial disseminated
106 through the facilities of any broadcast, cable or satellite
107 television or radio station, newspaper, magazine or other
108 periodical publication not owned or controlled by a political
109 party, political committee or candidate: *Provided*, That a
110 news story disseminated through a medium owned or
111 controlled by a political party, political committee or
112 candidate is nevertheless exempt if the news is:

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

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

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

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

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

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

143 (vi) A statement or depiction by a membership
144 organization, in existence prior to the date on which the
145 individual named or depicted became a candidate, made in a
146 newsletter or other communication distributed only to bona
147 fide members of that organization;

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

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

159 (12) "Expressly advocating" means any communication
160 that:

161 (A) Use phrases such as "vote for the Governor," "re-
elect your _____," "support the Democratic nominee for
Supreme _____," "cast your ballot for the Republican
challenge _____ of Delegates," "Smith for House," "Bob

165 Smith in '04," "vote Pro-Life" or "vote Pro-Choice"
166 accompanied by a listing of clearly identified candidates
167 described as Pro-Life or Pro-Choice, "vote against Old
168 Hickory," "defeat" accompanied by a picture of one or more
169 candidates, "reject the incumbent";

170 (B) Communications of campaign slogans or individual
171 words, that can have no other reasonable meaning than to
172 urge the election or defeat of one or more clearly identified
173 candidates, such as posters, bumper stickers, advertisements,
174 etc. , which say "Smith's the One," "Jones '06," "Baker", etc;
175 or

176 (C) Is susceptible of no reasonable interpretation other
177 than as an appeal to vote for or against a specific candidate.

178 (13) "Financial agent" means any individual acting for
179 and by himself or herself, or any two or more individuals
180 acting together or cooperating in a financial way to aid or
181 take part in the nomination or election of any candidate for
182 public office, or to aid or promote the success or defeat of
183 any political party at any election.

184 (14) "Fund-raising event" means an event such as a
185 dinner, reception, testimonial, cocktail party, auction or
186 similar affair through which contributions are solicited or
187 received by such means as the purchase of a ticket, payment
188 of an attendance fee or by the purchase of goods or services.

189 (15) "Independent expenditure" means an expenditure by
190 a person:

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

193 (B) That is not made in concert or cooperation with or at
194 the request or suggestion of such candidate, his or her agents,

195 the candidate’s authorized political committee or a political
196 party committee or its agents.

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

202 (16) “Membership organization” means a group that
203 grants bona fide rights and privileges, such as the right to
204 vote, to elect officers or directors and the ability to hold
205 office, to its members and which uses a majority of its
206 membership dues for purposes other than political purposes.
207 “Membership organization” does not include organizations
208 that grant membership upon receiving a contribution.

209 (17) “Name” means the full first name, middle name or
210 initial, if any, and full legal last name of an individual and the
211 full name of any association, corporation, committee or other
212 organization of individuals, making the identity of any person
213 who makes a contribution apparent by unambiguous
214 reference.

215 (18) “Person” means an individual, corporation,
216 partnership, committee, association and any other
217 organization or group of individuals.

218 (19) “Political action committee” means a committee
219 organized by one or more persons for the purpose of
220 supporting or opposing the nomination or election of one or
221 candidates. The following are types of political action
222 committees:

- 223 (a) A political action committee, a term
- 224 defined by
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225 (B) A membership organization, as that term is defined
226 by subdivision(18) of this section;

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

229 (20) “Political committee” means any candidate
230 committee, political action committee or political party
231 committee.

232 (20) “Political party” means a political party as that term
233 is defined by section eight, article one of this chapter or any
234 committee established, financed, maintained or controlled by
235 the party, including any subsidiary, branch or local unit
236 thereof and including national or regional affiliates of the
237 party.

238 (22) “Political party committee” means a committee
239 established by a political party or political party caucus for
240 the purposes of engaging in the influencing of the election,
241 nomination or defeat of a candidate in any election.

242 (23) “Political purposes” means supporting or opposing
243 the nomination, election or defeat of one or more candidates
244 or the passage or defeat of a ballot issue, supporting the
245 retirement of the debt of a candidate or political committee or
246 the administration or activities of an established political
247 party or an organization which has declared itself a political
248 party and determining the advisability of becoming a
249 candidate under the precandidacy financing provisions of this
250 chapter.

251 (24) “Targeted to the relevant electorate” means a
252 communication which refers to a clearly identified candidate
253 for statewide office or the Legislature and which can be
254 received by one hundred forty thousand or more individuals
255 in the state in the case of a candidacy for statewide office,

256 eight thousand two hundred twenty or more individuals in the
257 district in the case of a candidacy for the State Senate and
258 two thousand four hundred ten or more individuals in the
259 district in the case of a candidacy for the House of Delegates.

260 (25) "Two-year election cycle" means the twenty-four
261 month period that begins the day after a general election and
262 ends on the day of the subsequent general election.

263 (26) "Unaffiliated political action committee" means a
264 political action committee that is not affiliated with a
265 corporation or a membership organization.

**§3-8-2. Accounts for receipts and expenditures in elections;
requirements for reporting independent
expenditures.**

1 (a) Except for: (1) Candidates for party committeeman and
2 committeewoman; and (2) federal committees required to file
3 under the provisions of 2 U.S.C. §434, all candidates for
4 nomination or election and all persons supporting, aiding or
5 opposing the nomination, election or defeat of any candidate
6 shall keep for a period of six months records of receipts and
7 expenditures which are made for political purposes. All of
8 the receipts and expenditures are subject to regulation by the
9 provisions of this article. Verified financial statements of the
10 records and expenditures shall be made and filed as public
11 records by all candidates and by their financial agents,
representatives or any person acting for and on behalf of any
candidate and by the treasurers of all political party
committees.

(b) (1) In addition to any other reporting required by the
provisions of this chapter any person who makes
independent expenditures in any aggregate amount or value in
excess of \$1,000 during a calendar year shall file a disclosure

19 statement, on a form prescribed by the Secretary of State, that
20 contains all of the following information:

21 (A) The name of (i) the person making the expenditure;
22 (ii) the name of any person sharing or exercising direction or
23 control over the activities of the person making the
24 expenditure; and (iii) the name of the custodian of the books
25 and accounts of the person making the expenditure;

26 (B) If the person making the expenditure is not an
27 individual, the principal place of business of the partnership,
28 corporation, committee, association, organization or group
29 which made the expenditure;

30 (C) The amount of each expenditure of more than \$1,000
31 made during the period covered by the statement and the
32 name of the person to whom the expenditure was made;

33 (D) The elections to which the independent expenditure
34 pertain, the names, if known, of the candidates referred to or
35 to be referred to therein, whether the expenditure is intended
36 to support or oppose the identified candidates and the amount
37 of the total expenditure reported pursuant to paragraph (C) of
38 this subdivision spent to support or oppose each of the
39 identified candidates;

40 (E) The name and address of any person who contributed
41 a total of more than \$250 between the first day of the
42 preceding calendar year, and the disclosure date, and whose
43 contributions were made for the purpose of furthering the
44 expenditure.

45 (F) With regard to the contributors required to be listed
46 pursuant to paragraph (E) of this subdivision, the statement
47 shall also include:

48 (i) The month, day and year that the contributions of any
49 single contributor exceeded \$250;

50 (ii) If the contributor is a political action committee, the
51 name and address the political action committee registered
52 with the Secretary of State, county clerk or municipal clerk;

53 (iii) If the contributor is an individual, the name and
54 address of the individual, his or her occupation, the name and
55 address of the individual's current employer, if any, or, if the
56 individual is self-employed, the name and address of the
57 individual's business, if any;

58 (iv) A description of the contribution, if other than
59 money; and

60 (v) The value in dollars and cents of the contribution.

61 (G)(1) A certification that such independent expenditure
62 was not made in cooperation, consultation, or concert, with,
63 or at the request or suggestion of, any candidate or any
64 authorized committee or agent of such candidate.

65 (2) Any person who makes a contribution for the purpose
66 of funding an independent expenditure under this subsection
67 shall, at the time the contribution is made, provide his or her
68 name, address, occupation, his or her current employer, if
69 any, or, if the individual is self-employed, the name of his or
70 her business, if any, to the recipient of the contribution.

(3) The Secretary of State shall expeditiously prepare
indices setting forth, on a candidate-by-candidate basis, all
independent expenditures, including those made by, or on behalf
of, or for or against each candidate, as reported under this
section for period beginning on the date of publishing such indices on a
or

77 (c) (1) A person, including a political committee, who
78 makes or contracts to make independent expenditures
79 aggregating \$1,000 or more for any statewide, legislative or
80 multi-county judicial candidate or \$500 or more for any
81 county office, single-county judicial candidate, committee
82 supporting or opposing a candidate on the ballot in more than
83 one county, or any municipal candidate on a municipal
84 election ballot, after the fifteenth day, but more than twelve
85 hours, before the date of an election, shall file a report on a
86 form prescribed by the Secretary of State, describing the
87 expenditures within twenty-four hours: *Provided*, That a
88 person making expenditures in the amount of \$1,000 or more
89 for any statewide or legislative candidate on or after the
90 fifteenth day but more than twelve hours before the day of
91 any election shall report such expenditures in accordance
92 with section two-b of this article and shall not file an
93 additional report as provided herein.

94 (2) Any person who files a report under subdivision (1)
95 of this subsection, shall file an additional report within
96 twenty-four hours after each time the person makes or
97 contracts to make independent expenditures aggregating an
98 additional \$500 with respect to the same election, for any
99 county office, single-county judicial candidate, committee
100 supporting or opposing a candidate on the ballot in more than
101 one county, or any municipal candidate on a municipal
102 election ballot, as that to which the initial report relates.

103 (d) (1) A person, including a political committee, who
104 makes or contracts to make independent expenditures
105 aggregating \$10,000 or more at any time up to and including
106 the fifteenth day before the date of an election shall file a
107 report on a form prescribed by the Secretary of State,
108 describing the expenditures within forty-eight hours.

109 (2) A person who files a report under subdivision (1) of
110 this subsection, the person shall file an additional report

111 within forty-eight hours after each time the person makes or
112 contracts to make independent expenditures aggregating an
113 additional \$10,000 with respect to the same election as that
114 to which the initial report relates.

115 (e) Any communication paid for by an independent
116 expenditure must include a clear and conspicuous public
117 notice that:

118 (1) Clearly states that the communication is not
119 authorized by the candidate or the candidate's committee;
120 and

121 (2) Clearly identifies the person making the expenditure:
122 *Provided*, That if the communication appears on or is
123 disseminated by broadcast, cable or satellite transmission, the
124 statement required by this subsection must be both spoken
125 clearly and appear in clearly readable writing at the end of the
126 communication.

127 (f) Any person who has spent a total of \$5,000 or more
128 for the direct costs of purchasing, producing or disseminating
129 electioneering communications during any calendar year
130 shall maintain all financial records and receipts related to
131 such expenditure for a period of six months following the
132 filing of a disclosure pursuant to subsection (a) of this section
133 and, upon request, shall make such records and receipts
134 available to the Secretary of State or county clerk for the
135 purpose of an audit as provided in section seven of this
136 article.

137 (g) Any person who willfully fails to comply with this
138 provision is guilty of a misdemeanor and, upon conviction
139 of, shall be fined not less than \$500, or confined in jail
140 not more than one year, or both fined and confined.

141 (h) (1) Any person who is required to file a statement
142 under this section may file the statement by facsimile device
143 or electronic mail, in accordance with such rules as the
144 Secretary of State may promulgate.

145 (2) The Secretary of State shall make any document filed
146 electronically pursuant to this subsection accessible to the
147 public on the internet not later than twenty-four hours after
148 the document is received by the secretary.

149 (3) In promulgating a rule under this subsection, the
150 secretary shall provide methods, other than requiring a
151 signature on the document being filed, for verifying the
152 documents covered by the rule. Any document verified
153 under any of the methods shall be treated for all purposes,
154 including penalties for perjury, in the same manner as a
155 document verified by signature.

156 (i) This section does not apply to candidates for federal
157 office.

158 (j) The Secretary of State may promulgate emergency and
159 legislative rules, in accordance with the provisions of chapter
160 twenty-nine-a of this code, to establish guidelines for the
161 administration of this section.

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

1 (a) An officer, agent or person acting on behalf of any
2 corporation, whether incorporated under the laws of this or
3 any other state or of a foreign country, may not pay, give,
4 lend or authorize to be paid, any money or other thing of
5 value belonging to the corporation to any candidate or
6 candidate's campaign for nomination or election to any

7 statewide office or any other elective office in the state or any
8 of its subdivisions.

9 (b) A person may not solicit or receive any payment,
10 contribution or other thing from any corporation or from any
11 officer, agent or other person acting on behalf of the
12 corporation to any candidate or candidate's campaign for
13 nomination or election to any statewide office or any other
14 elective office in the state or any of its subdivisions.

15 (c)(1) The provisions of this section do not prohibit a
16 corporation from soliciting, through any officer, agent or
17 person acting on behalf of the corporation, contributions to a
18 separate segregated fund to be used for political purposes.
19 Any separate segregated fund is considered a political action
20 committee for the purpose of this article and is subject to all
21 reporting requirements applicable to political action
22 committees;

23 (2) It is unlawful for:

24 (A) A corporation or separate segregated fund to make a
25 primary or other election contribution or expenditure by
26 using money or anything of value secured: (i) By physical
27 force, job discrimination or financial reprisal; (ii) by the
28 threat of force, job discrimination or financial reprisal; or (iii)
29 as a condition of employment;

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

35 (C) A corporation soliciting any other person for a
36 contribution to a corporation or separate segregated fund to
37 fail to inform the person solicited at the time of the

38 solicitation of his or her right to refuse to contribute without
39 any reprisal;

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

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

50 (F) A corporation to engage in job discrimination or to
51 discriminate in job promotion or transfer because of an
52 employee's failure to make a contribution to the corporation
53 or a separate segregated fund;

54 (G) A separate segregated fund to make any contribution,
55 directly or indirectly, in excess of \$1,000 in connection with
56 or on behalf of any campaign for nomination or election to
57 any elective office in the state or any of its subdivisions, or
58 in connection with or on behalf of any committee or other
59 organization or person engaged in furthering, advancing,
60 supporting or aiding the nomination or election of any
61 candidate for any such office;

62 (H) A corporation to pay, give or lend or to authorize
63 payment, giving or lending of any moneys or other things of
64 value belonging to the corporation to a separate segregated
65 fund for the purpose of making a contribution to a candidate
66 or a candidate's committee. This provision does not prohibit
67 a separate segregated fund from using the property, real or
68 personal, facilities and equipment of a corporation solely to
69 establish, administer and solicit contributions to the fund,

70 subject to the rules of the State Election Commission as
71 provided in subsection (d) of this section: *Provided*, That
72 any such corporation shall also permit any group of its
73 employees represented by a bona fide political action
74 committee to use the real property of the corporation solely
75 to establish, administer and solicit contributions to the fund
76 of the political action committee, subject to the rules of the
77 State Election Commission promulgated in accordance with
78 said subsection.

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

84 (d) Any person or corporation violating any provision of
85 this section is guilty of a misdemeanor and, upon conviction
86 thereof, shall be fined not more than \$10,000. A corporation
87 may not reimburse any person the amount of any fine
88 imposed pursuant to this section.

89 (e) To ensure uniform administration and application of
90 the provisions of this section and of those of the Federal
91 Election Campaign Act Amendments of 1976 relating to
92 corporate contributions, the State Election Commission shall
93 propose rules for legislative approval in accordance with the
94 provisions of article three, chapter twenty-nine-a of this code
95 to implement the provisions of this section consistent, insofar
96 as practicable, with the rules and regulations promulgated by
97 the Federal Election Commission to carry out similar or
98 identical provisions of 2 U.S.C. §441b.

99 (f) In addition to the powers and duties set forth in article
100 three-a of this code, the State Election Commission has the
101 following powers and duties:

102 (1) To investigate, upon complaint or on its own
103 initiative, any alleged violations or irregularities of this
104 article.

105 (2) To administer oaths and affirmations, issue subpoenas
106 for the attendance of witnesses, issue subpoenas duces tecum
107 to compel the production of books, papers, records and all
108 other evidence necessary to any investigation.

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

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

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

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

123 (i) Any person who discloses the fact of any complaint,
124 investigation or report or any part thereof, or any proceedings
125 thereon, is guilty of a misdemeanor and, upon conviction
126 thereof, shall be fined not less than \$1,000, nor more than
127 \$5,000, and shall be confined in jail not less than six months
128 nor more than one year.

129 (j) The amendments to this section enacted during the
130 second extraordinary session of 2008 are intended to conform

131 to the existing proscription to constitutionally permissible
132 limits and not to create a new offense or offenses.

133 (k) The effective date of the amendments to this section
134 enacted during the second extraordinary legislative session of
135 2008 is October 1, 2008.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) A person may not publish, issue or circulate, or cause
2 to be published, issued or circulated, any anonymous letter,
3 circular, placard, radio or television advertisement or other
4 publication supporting or aiding the election or defeat of a
5 clearly identified candidate.

6 (b) An owner, publisher, editor or employee of a
7 newspaper or other periodical may not insert, either in its
8 advertising or reading columns, any matter, paid for or to be
9 paid for, which tends to influence the voting at any election,
10 unless directly designating it as a paid advertisement and
11 stating the name of the person authorizing its publication and
12 the candidate in whose behalf it is published.

(c) A person may not, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any master or any other officer or employee of the federal government or officer or employee of the State, or a political subdivision of the state. An officer, agent, clerk or

22 employee of the federal government, or of this state, or any
23 political subdivision of the state, who may have charge or
24 control of any building, office or room, occupied for any
25 official purpose, may not knowingly permit any person to
26 enter any building, office or room, occupied for any official
27 purpose for the purpose of soliciting or receiving any
28 political assessments from, or delivering or giving written
29 solicitations for, or any notice of, any political assessments
30 to, any officer or employee of the state, or a political
31 subdivision of the state.

32 (d) Except as provided in section eight of this article, a
33 person entering into any contract with the state or its
34 subdivisions, or any department or agency of the state, either
35 for rendition of personal services or furnishing any material,
36 supplies or equipment or selling any land or building to the
37 state, or its subdivisions, or any department or agency of the
38 state, if payment for the performance of the contract or
39 payment for the material, supplies, equipment, land or
40 building is to be made, in whole or in part, from public funds
41 may not, during the period of negotiation for or performance
42 under the contract or furnishing of materials, supplies,
43 equipment, land or buildings, directly or indirectly, make any
44 contribution to any political party, committee or candidate for
45 public office or to any person for political purposes or use;
46 nor may any person or firm solicit any contributions for any
47 purpose during any period.

48 (e) A person may not, directly or indirectly, promise any
49 employment, position, work, compensation or other benefit
50 provided for, or made possible, in whole or in part, by act of
51 the Legislature, to any person as consideration, favor or
52 reward for any political activity for the support of or
53 opposition to any candidate, or any political party in any
54 election.

55 (f) Except as provided in section eight of this article, a
56 person may not, directly or indirectly, make any contribution
57 in excess of the value of \$1,000 in connection with any
58 campaign for nomination or election to or on behalf of any
59 statewide office, in connection with any other campaign for
60 nomination or election to or on behalf of any other elective
61 office in the state or any of its subdivisions, or in connection
62 with or on behalf of any person engaged in furthering,
63 advancing, supporting or aiding the nomination or election of
64 any candidate for any of the offices.

65 (g) A political organization (as defined in Section
66 527(e)(1) of the Internal Revenue Code of 1986) may not
67 solicit or accept contributions until it has notified the
68 Secretary of State of its existence and of the purposes for
69 which it was formed. During the two-year election cycle, a
70 political organization (as defined in Section 527 (e) (1) of the
71 Internal Revenue Code of 1986) may not accept contributions
72 totaling more than \$1,000 from any one person prior to the
73 primary election and contributions totaling more than \$1,000
74 from any one person after the primary and before the general
75 election.

76 (h) It is unlawful for any person to create, establish or
77 organize more than one political organization (as defined in
78 Section 527(e)(1) of the Internal Revenue Code of 1986) with
79 the intent to avoid or evade the contribution limitations
80 contained in subsection (g) of this section.

81 (i) Notwithstanding the provisions of subsection (f) of
82 this section to the contrary, a person may not, directly or
83 indirectly, make contributions to a state party executive
84 committee or state party legislative caucus committee which,
85 in aggregate, exceed the value of \$1,000 in any calendar
86 year.

87 (j) The limitations on contributions contained in this
88 section do not apply to transfers between and among a state
89 party executive committee or a state party's legislative
90 caucus political committee from national committees of the
91 same political party: *Provided*, That transfers permitted by
92 this subsection may not exceed \$50,000 in the aggregate in
93 any calendar year to any state party executive committee or
94 state party legislative caucus political committee: *Provided*,
95 *however*, That the moneys transferred may only be used for
96 voter registration and get-out-the-vote activities of the state
97 committees.

98 (k) A person may not solicit any contribution, other than
99 contributions to a campaign for or against a county or local
100 government ballot issue, from any nonelective salaried
101 employee of the state government or of any of its
102 subdivisions: *Provided*, That in no event may any person
103 acting in a supervisory role solicit a person who is a
104 subordinate employee for any contribution. A person may
105 not coerce or intimidate any nonelective salaried employee
106 into making a contribution. a person may not coerce or
107 intimidate any nonsalaried employee of the state government
108 or any of its subdivisions into engaging in any form of
109 political activity. The provisions of this subsection may not
110 be construed to prevent any employee from making a
111 contribution or from engaging in political activity voluntarily
112 without coercion, intimidation or solicitation.

113 (l) A person may not solicit a contribution from any other
114 person without informing the other person at the time of the
115 solicitation of the amount of any commission, remuneration
116 or other compensation that the solicitor or any other person
117 will receive or expect to receive as a direct result of the
118 contribution being successfully collected. Nothing in this
119 subsection may be construed to apply to solicitations of
120 contributions made by any person serving as an unpaid
121 volunteer.

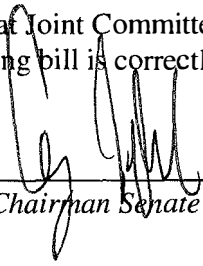
122 (m) A person may not place any letter, circular, flyer,
123 advertisement, election paraphernalia, solicitation material or
124 other printed or published item tending to influence voting at
125 any election in a roadside receptacle unless it is: (1)
126 Approved for placement into a roadside receptacle by the
127 business or entity owning the receptacle; and (2) contains a
128 written acknowledgment of the approval. This subdivision
129 does not apply to any printed material contained in a
130 newspaper or periodical published or distributed by the
131 owner of the receptacle. The term "roadside receptacle"
132 means any container placed by a newspaper or periodical
133 business or entity to facilitate home or personal delivery of a
134 designated newspaper or periodical to its customers.

135 (n) Any person violating any provision of this section is
136 guilty of a misdemeanor and, upon conviction thereof, shall
137 be fined not more than \$1,000, or confined in jail for not
138 more than one year, or, both fined and confined.

139 (o) The provisions of subsection (k) of this section,
140 permitting contributions to a campaign for or against a
141 county or local government ballot issue shall become
142 operable on and after January 1, 2005.

143 (p) The limitations on contributions established by
144 subsection (g) of this section do not apply to contributions
145 made for the purpose of supporting or opposing a ballot
146 issue, including a constitutional amendment.

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




Chairman Senate Committee



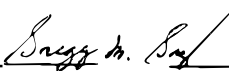
Chairman House Committee

Originating in the House.

In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



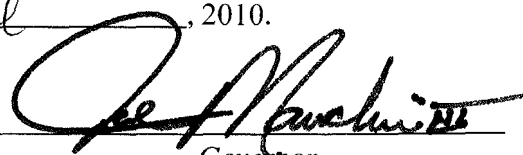
President of the Senate



Speaker of the House of Delegates

2010 APR -1 PM 4:22
OFFICE OF THE CLERK OF THE SENATE
315

The within is approved this the 1st
day of April, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 9 1 2010

Time 3:50 pm