WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 604
(Senators Kessler (Mr. President) and Fitzsimmons,
ORIGINAL SPONSORS)

[PASSED APRIL 12, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]
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(SENATORS KESSLER (MR. PRESIDENT) AND FITZSIMMONS, original sponsors)

[Passed April 12, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §3-8-1a of the Code of West Virginia, 1931, as amended, relating to the regulation and control of elections, generally; defining terms; and expanding the definition of “electioneering communication”.

Be it enacted by the Legislature of West Virginia:

That §3-8-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

1 As used in this article, the following terms have the following definitions:

3 (1) “Ballot issue” means a constitutional amendment, special levy, bond issue, local option referendum, municipal
charter or revision, an increase or decrease of corporate limits or any other question that is placed before the voters for a binding decision.

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

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

(4) "Candidate" means an individual who:

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

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

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

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

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

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

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

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

(9) "Direct costs of purchasing, producing or disseminating electioneering communications" means:
(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs and postage; or

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

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

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

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling $5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications.

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

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

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

(ii) Is publicly disseminated within:

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

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

(iii) Is targeted to the relevant electorate: Provided, That for purposes of the general election of 2008 the amendments to this article are effective October 1, 2008.

(B) “Electioneering communication” does not include:

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

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and
(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

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

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

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

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

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

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

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

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

(A) Uses phrases such as “vote for the Governor”,
“re-elect your Senator”, “support the Democratic nominee for
Supreme Court”, “cast your ballot for the Republican
challenger for House of Delegates”, “Smith for House”, “Bob
Smith in '04”, “vote Pro-Life” or “vote Pro-Choice”
accompanied by a listing of clearly identified candidates
described as Pro-Life or Pro-Choice, “vote against Old
Hickory”, “defeat” accompanied by a picture of one or more
candidates, “reject the incumbent”;

(B) Communications of campaign slogans or individual
words, that can have no other reasonable meaning than to
urge the election or defeat of one or more clearly identified
candidates, such as posters, bumper stickers, advertisements,
etc., which say “Smith’s the One”, “Jones ‘06”, “Baker”, etc;
(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

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

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

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

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

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

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

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

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

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

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

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

(A) A corporate political action committee, as that term is defined by subdivision (8) of this section;
(B) A membership organization, as that term is defined by subdivision (18) of this section;

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

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

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

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

(25) "Political purposes" means supporting or opposing the nomination, election or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party and determining the advisability of becoming a candidate under the precandidacy financing provisions of this chapter.

(26) "Targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by one hundred forty thousand or more individuals
in the state in the case of a candidacy for statewide office, eight thousand two hundred twenty or more individuals in the district in the case of a candidacy for the State Senate and two thousand four hundred ten or more individuals in the district in the case of a candidacy for the House of Delegates.

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

(28) “Two-year election cycle” means the twenty-four month period that begins the day after a general election and ends on the day of the subsequent general election.

(29) “Unaffiliated political action committee” means a political action committee that is not affiliated with a corporation or a membership organization.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

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 bill approved this the 30th Day of April, 2013.

Governor