

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 604**

5 (SENATORS KESSLER (MR. PRESIDENT) AND FITZSIMMONS, *original sponsors*)

6 _____
7 [Passed April 12, 2013; in effect ninety days from passage.]
8 _____

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11 AN ACT to amend and reenact §3-8-1a of the Code of West Virginia,
12 1931, as amended, relating to the regulation and control of
13 elections, generally; defining terms; and expanding the
14 definition of "electioneering communication".

15 *Be it enacted by the Legislature of West Virginia:*

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

18 **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

19 **§3-8-1a. Definitions.**

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

22 (1) "Ballot issue" means a constitutional amendment, special
23 levy, bond issue, local option referendum, municipal charter or
24 revision, an increase or decrease of corporate limits or any other

1 question that is placed before the voters for a binding decision.

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

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

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

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

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

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

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

18 (5) "Candidate's committee" means a political committee
19 established with the approval of or in cooperation with a candidate
20 or a prospective candidate to explore the possibilities of seeking
21 a particular office or to support or aid his or her nomination or
22 election to an office in an election cycle. If a candidate directs
23 or influences the activities of more than one active committee in
24 a current campaign, those committees shall be considered one

1 committee for the purpose of contribution limits.

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

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

23 (8) "Corporate political action committee" means a political
24 action committee that is a separate segregated fund of a

1 corporation that may only accept contributions from its restricted
2 group as outlined by the rules of the State Election Commission.

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

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

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

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

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

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

24 (11) "Election" means any primary, general or special election

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

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

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

15 (ii) Is publicly disseminated within:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (viii) A communication, such as a voter's guide, which refers
23 to all of the candidates for one or more offices, which contains no
24 appearance of endorsement for or opposition to the nomination or

1 election of any candidate and which is intended as nonpartisan
2 public education focused on issues and voting history.

3 (13) "Expressly advocating" means any communication that:

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

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

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

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

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

6 (16) "Independent expenditure" means an expenditure by a
7 person:

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

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

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

18 (17) "Mass mailing" means a mailing by United States mail,
19 facsimile or electronic mail of more than five hundred pieces of
20 mail matter of an identical or substantially similar nature within
21 any thirty-day period. For purposes of this subdivision,
22 "substantially similar" includes communications that contain
23 substantially the same template or language, but vary in
24 nonmaterial respects such as communications customized by the

1 recipient's name, occupation or geographic location.

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

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

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

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

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

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

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

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

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

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

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

22 (26) "Targeted to the relevant electorate" means a
23 communication which refers to a clearly identified candidate for
24 statewide office or the Legislature and which can be received by

1 one hundred forty thousand or more individuals in the state in the
2 case of a candidacy for statewide office, eight thousand two
3 hundred twenty or more individuals in the district in the case of
4 a candidacy for the State Senate and two thousand four hundred ten
5 or more individuals in the district in the case of a candidacy for
6 the House of Delegates.

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

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

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