

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 604

(By Senators Kessler (Mr. President) and Fitzsimmons)

[Originating in the Committee on the Judiciary;
reported March 27, 2013.]

A BILL 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
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 Advertisement" means a commercially
9 available outdoor advertisement, sign or similar display
10 regularly available for lease or rental to advertise a person,
11 place or product.

12 (2) (3) "Broadcast, cable or satellite communication"
13 means a communication that is publicly distributed by a
14 television station, radio station, cable television system or
15 satellite system.

16 (3) (4) "Candidate" means an individual who:

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

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

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

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

27 ~~(4)~~ (5) “Candidate’s committee” means a political
28 committee established with the approval of or in cooperation
29 with a candidate or a prospective candidate to explore the
30 possibilities of seeking a particular office or to support or aid
31 his or her nomination or election to an office in an election
32 cycle. If a candidate directs or influences the activities of
33 more than one active committee in a current campaign, those
34 committees shall be considered one committee for the
35 purpose of contribution limits.

36 ~~(5)~~ (6) “Clearly identified” means that the name,
37 nickname, photograph, drawing or other depiction of the
38 candidate appears or the identity of the candidate is otherwise
39 apparent through an unambiguous reference, such as “the
40 Governor”, “your Senator” or “the incumbent” or through an

41 unambiguous reference to his or her status as a candidate,
42 such as “the Democratic candidate for Governor” or “the
43 Republican candidate for Supreme Court of Appeals”.

44 ~~(6)~~ (7) “Contribution” means a gift, subscription, loan,
45 assessment, payment for services, dues, advance, donation,
46 pledge, contract, agreement, forbearance or promise of
47 money or other tangible thing of value, whether conditional
48 or legally enforceable, or a transfer of money or other
49 tangible thing of value to a person, made for the purpose of
50 influencing the nomination, election or defeat of a candidate.

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

57 ~~(7)~~ (8) “Corporate political action committee” means a
58 political action committee that is a separate segregated fund
59 of a corporation that may only accept contributions from its

60 restricted group as outlined by the rules of the State Election
61 Commission.

62 ~~(8)~~ (9) “Direct costs of purchasing, producing or
63 disseminating electioneering communications” means:

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

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

72 ~~(9)~~ (10) “Disclosure date” means either of the following:

73 (A) The first date during any calendar year on which any
74 electioneering communication is disseminated after the
75 person paying for the communication has spent a total of
76 \$5,000 or more for the direct costs of purchasing, producing
77 or disseminating electioneering communications; 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 \$5,000 or more for the direct
81 costs of purchasing, producing or disseminating
82 electioneering communications.

83 ~~(10)~~ (11) “Election” means any primary, general or
84 special election conducted under the provisions of this code
85 or under the charter of any municipality at which the voters
86 nominate or elect candidates for public office. For purposes
87 of this 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 ~~(11)~~ (12) (A) “Electioneering communication” means any
92 paid communication made by broadcast, cable or satellite
93 signal, mass mailing, telephone bank, billboard advertisement
94 or 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 2008 the amendments
108 to this article are effective October 1, 2008.

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

110 (i) A news story, commentary or editorial disseminated
111 through the facilities of any broadcast, cable or satellite
112 television or radio station, newspaper, magazine or other
113 periodical publication not owned or controlled by a political
114 party, political committee or candidate: *Provided*, That a

115 news story disseminated through a medium owned or
116 controlled by a political party, political committee or
117 candidate is nevertheless exempt if the news is:

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

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

124 (ii) Activity by a candidate committee, party executive
125 committee or caucus committee, or a political action
126 committee that is required to be reported to the State Election
127 Commission or the Secretary of State as an expenditure
128 pursuant to section five of this article or the rules of the State
129 Election Commission or the Secretary of State promulgated
130 pursuant to such provision: *Provided*, That independent
131 expenditures by a party executive committee or caucus
132 committee or a political action committee required to be
133 reported pursuant to subsection (b), section two of this article

134 are not exempt from the reporting requirements of this
135 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 ~~(12)~~ (13) "Expressly advocating" means any
165 communication 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”;

175 (B) Communications of campaign slogans or individual
176 words, that can have no other reasonable meaning than to
177 urge the election or defeat of one or more clearly identified
178 candidates, such as posters, bumper stickers, advertisements,
179 etc., which say “Smith’s the One”, “Jones ‘06”, “Baker”, etc;
180 or

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

183 ~~(13)~~ (14) “Financial agent” means any individual acting
184 for and by himself or herself, or any two or more individuals
185 acting together or cooperating in a financial way to aid or
186 take part in the nomination or election of any candidate for
187 public office, or to aid or promote the success or defeat of
188 any political party at any election.

189 ~~(14)~~ (15) “Fund-raising event” means an event such as a
190 dinner, reception, testimonial, cocktail party, auction or

191 similar affair through which contributions are solicited or
192 received by such means as the purchase of a ticket, payment
193 of an attendance fee or by the purchase of goods or services.

194 ~~(15)~~ (16) “Independent expenditure” means an
195 expenditure by a person:

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

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

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

207 (17) “Mass mailing” means a mailing by United States
208 mail, facsimile or electronic mail of more than five hundred
209 pieces of mail matter of an identical or substantially similar

210 nature within any thirty-day period. For purposes of this
211 subdivision, “substantially similar” includes communications
212 that contain substantially the same template or language, but
213 vary in nonmaterial respects such as communications
214 customized by the recipient's name, occupation or geographic
215 location.

216 ~~(16)~~ (18) “Membership organization” means a group that
217 grants bona fide rights and privileges, such as the right to
218 vote, to elect officers or directors and the ability to hold
219 office, to its members and which uses a majority of its
220 membership dues for purposes other than political purposes.
221 “Membership organization” does not include organizations
222 that grant membership upon receiving a contribution.

223 ~~(17)~~ (19) “Name” means the full first name, middle name
224 or initial, if any, and full legal last name of an individual and
225 the full name of any association, corporation, committee or
226 other organization of individuals, making the identity of any
227 person who makes a contribution apparent by unambiguous
228 reference.

229 ~~(18)~~ (20) “Person” means an individual, corporation,
230 partnership, committee, association and any other
231 organization or group of individuals.

232 ~~(19)~~ (21) “Political action committee” means a committee
233 organized by one or more persons for the purpose of
234 supporting or opposing the nomination or election of one or
235 more candidates. The following are types of political action
236 committees:

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

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

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

243 ~~(20)~~ (22) “Political committee” means any candidate
244 committee, political action committee or political party
245 committee.

246 ~~(21)~~ (23) “Political party” means a political party as that
247 term is defined by section eight, article one of this chapter or

248 any committee established, financed, maintained or
249 controlled by the party, including any subsidiary, branch or
250 local unit thereof and including national or regional affiliates
251 of the party.

252 ~~(22)~~ (24) “Political party committee” means a committee
253 established by a political party or political party caucus for
254 the purposes of engaging in the influencing of the election,
255 nomination or defeat of a candidate in any election.

256 ~~(23)~~ (25) “Political purposes” means supporting or
257 opposing the nomination, election or defeat of one or more
258 candidates or the passage or defeat of a ballot issue,
259 supporting the retirement of the debt of a candidate or
260 political committee or the administration or activities of an
261 established political party or an organization which has
262 declared itself a political party and determining the
263 advisability of becoming a candidate under the precandidacy
264 financing provisions of this chapter.

265 ~~(24)~~ (26) “Targeted to the relevant electorate” means a
266 communication which refers to a clearly identified candidate

267 for statewide office or the Legislature and which can be
268 received by one hundred forty thousand or more individuals
269 in the state in the case of a candidacy for statewide office,
270 eight thousand two hundred twenty or more individuals in the
271 district in the case of a candidacy for the State Senate and
272 two thousand four hundred ten or more individuals in the
273 district in the case of a candidacy for the House of Delegates.

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

279 ~~(25)~~ (28) “Two-year election cycle” means the
280 twenty-four month period that begins the day after a general
281 election and ends on the day of the subsequent general
282 election.

283 ~~(26)~~ (29) “Unaffiliated political action committee” means
284 a political action committee that is not affiliated with a
285 corporation or a membership organization.