

H. B. 4406

(By Delegate Manchin, Skinner, Sponaugle, Fleischauer,
Poore, Ferro, Longstreth, Lynch, Wells, Moore and Caputo)
[Introduced February 4, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §31D-1-150 of the Code of West
Virginia, 1931, as amended; to amend said code by adding
thereto two new sections, designated §31D-7-740 and
§31D-7-741; to amend said code by adding thereto a new
section, designated §31D-8-834; to amend said code by adding
thereto a new section, designated §31D-15-1540; and to amend
said code by adding thereto a new section, designated
§31D-16-1621, all relating to the accountability of a
corporation's political activities; defining additional terms;
requiring annual authorization and approval by a majority of
shareholders for corporations spending a yearly aggregate of
\$10,000 or more for political activities in this state;
providing for director liability for spending without proper
authorization; requiring disclosure of corporate political
activities to shareholders and the public; and applying these

1 new requirements to foreign corporations.

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

3 That §31D-1-150 of the Code of West Virginia, 1931, as
4 amended, be amended and reenacted; that said code be amended
5 by adding thereto two new sections, designated §31D-7-740 and
6 §31D-7-741; that said code be amended by adding thereto a new
7 section designated §31D-8-834; that said code be amended by
8 adding thereto a new section, designated §31D-15-1540; and
9 that said code be amended by adding thereto a new section,
10 designated §31D-16-1621, all to read as follows:

11 PREAMBLE

12 This Act may be cited as the "West Virginia Corporate Political
13 Accountability Act of 2014".

14 WHEREAS, Although corporations cannot vote, corporations make
15 significant political contributions and expenditures that directly or
16 indirectly influence the election of candidates and support or oppose
17 political causes at the local and state level. Decisions to use corporate
18 treasury funds for political contributions and expenditures are currently
19 made by corporate boards and executives, often without the knowledge or
20 consent of shareholders; and

21 WHEREAS, Corporations acting through their boards and executives
22 have a fiduciary duty to conduct business in the best interests of the
23 shareholders. Corporate boards and executives that use corporate funds to
24 support and oppose political candidates, political parties and political
25 causes in opposition to the interests of many or all of their shareholders
26 may not be acting in the best interests of the corporation; and

1 WHEREAS, Historically, shareholders of corporations have not had a
2 way to know of, or to influence, the political activities of corporations
3 they own. Shareholders and the public have a right to know how these
4 corporations are spending their funds to make political contributions or
5 expenditures benefitting candidates, political parties, and political
6 causes; and

7 WHEREAS, Corporations should be accountable to their shareholders
8 prior to making political contributions or expenditures affecting local
9 and state governance and public policy. Requiring the express approval of
10 a corporation's shareholders prior to making political contributions or
11 expenditures will help establish accountability; and

12 WHEREAS, If corporations use corporate general treasury funds for
13 political expenditures, then those funds should be clearly reported to
14 shareholders and shareholders should be able to authorize the use of
15 corporate general treasury funds for political expenditures.

16 **ARTICLE 1. GENERAL PROVISIONS.**

17 **§31D-1-150. Definitions.**

18 As used in this chapter, unless the context otherwise
19 requires a different meaning, the term:

20 (1) "Articles of incorporation" includes, but is not
21 limited to, amended and restated articles of incorporation and
22 articles of merger.

23 (2) "Authorized shares" means the shares of all classes
24 a domestic or foreign corporation is authorized to issue.

25 (3) "Conspicuous" means written so that a reasonable
26 person against whom the writing is to operate should have

1 noticed, including, but not limited to, printing in italics or
2 boldface or contrasting color, or typing in capitals or
3 underlined.

4 (4) "Contribution or expenditure" means any monetary and
5 nonmonetary political contributions and expenditures not
6 deductible under Section 162 (e) (1) (B) of the Internal Revenue
7 Code, including, but not limited to, contributions to or
8 expenditures on behalf of political candidates, political
9 parties, political committees and other political entities
10 organized and operating under 26 U.S.C. §527 of the Internal
11 Revenue Code and any portion of any dues or similar payments
12 made to any tax exempt organization that is used for an
13 expenditure or contribution if made directly by the
14 corporation would not be deductible under Section 162
15 (e) (1) (B) of the Internal Revenue Code, any contribution or
16 expenditure, as those terms are defined in 2 U.S.C. §431, as
17 well as any contribution or expenditure defined under section
18 two-a, article eight, chapter three of this code, and also
19 includes any direct or indirect payment, distribution, loan,
20 advance, deposit or gift of money, any services or anything of
21 value (except a loan of money by a national or state bank made
22 in accordance with the applicable banking laws and regulations
23 and in the ordinary course of business) to any candidate,
24 campaign committee or political party or organization, in

1 connection with any election to any office. The term
2 "contribution or expenditure" does not include:

3 (A) Communications by a corporation to its stockholders
4 and executive or administrative personnel and their families
5 on any subject;

6 (B) Nonpartisan registration and get-out-the-vote
7 campaigns by a corporation aimed at its stockholders and
8 executive or administrative personnel and their families; and

9 (C) The establishment, administration and solicitation of
10 contributions to a separate segregated fund to be utilized for
11 political purposes by a corporation.

12 ~~(4)~~ (5) "Corporation" or "domestic corporation" means a
13 corporation for profit, which is not a foreign corporation,
14 incorporated under or subject to the provisions of this
15 chapter.

16 ~~(5)~~ (6) "Deliver" or "delivery" means any method of
17 delivery used in conventional commercial practice, including,
18 but not limited to, delivery by hand, mail, commercial
19 delivery and electronic transmission.

20 ~~(6)~~ (7) "Distribution" means a direct or indirect
21 transfer of money or other property or incurrence of
22 indebtedness by a corporation to or for the benefit of its
23 shareholders in respect of any of its shares: *Provided*, That
24 "distribution" does not include a direct or indirect transfer

1 of a corporation's own shares. A distribution may be in the
2 form of a declaration or payment of a dividend; a purchase,
3 redemption or other acquisition of shares; or a distribution
4 of indebtedness.

5 ~~(7)~~ (8) "Effective date of notice" means the date as
6 determined pursuant to section one hundred fifty-one of this
7 article.

8 ~~(8)~~ (9) "Electronic transmission" or "electronically
9 transmitted" means any process of communication not directly
10 involving the physical transfer of paper that is suitable for
11 the retention, retrieval and reproduction of information by
12 the recipient.

13 ~~(9)~~ (10) "Employee" includes an officer and may include
14 a director: *Provided*, That the director has accepted duties
15 that make him or her also an employee.

16 ~~(10)~~ (11) "Entity" includes corporations and foreign
17 corporations; nonprofit corporations; profit and nonprofit
18 unincorporated associations; limited liability companies and
19 foreign limited liability companies; business trusts, estates,
20 partnerships, trusts and two or more persons having a joint or
21 common economic interest; and state, United States and foreign
22 government.

23 ~~(11)~~ (12) "Foreign corporation" means a corporation for
24 profit incorporated under a law other than the laws of this

1 state.

2 (13) "General treasury funds" means those moneys in
3 possession of a corporation incorporated under the laws of the
4 state in the normal course of business. General treasury
5 funds may include, among others, funds from sales, accounts
6 payable, loans, investments, bonds or debt instruments.

7 ~~(12)~~ (14) "Governmental subdivision" includes, but is not
8 limited to, authorities, counties, districts and
9 municipalities.

10 ~~(13)~~ (15) "Individual" includes, but is not limited to,
11 the estate of an incompetent or deceased individual.

12 (16) "Issue advocacy campaign" means contributions or
13 expenditures for any communication to the general public
14 intended to encourage the public to contact a government
15 official regarding pending legislation, public policy or a
16 government rule or regulation. Issue advocacy campaign does
17 not include contributions or expenditures for registered
18 lobbyists or other persons employed by the corporation to
19 lobby directly state or federal government officials.

20 (17) "Known at the time of the authorization vote" means
21 that, at the time the corporation seeks authorization from
22 shareholders to spend corporate funds for political activities
23 in this state: (A) The corporation's officers, directors or
24 employees have identified a specific political activity for

1 the corporation to support or oppose; (B) corporate officers,
2 directors or employees have taken steps to obligate funds to
3 a political activity; or (C) the corporation has a regularly
4 scheduled payment to a trade association or other entity to
5 pay for a political activity in the next twelve months.

6 (18) "Majority of all shareholders" means fifty percent
7 plus one of all outstanding voting securities, as provided in
8 section seven hundred twenty-one, article seven of this
9 chapter. Shareholders not casting votes shall not count
10 toward affirmative authorization under this chapter.

11 ~~(14)~~ (19) "Person" includes, but is not limited to, an
12 individual and an entity.

13 (20) "Political activities" means any contributions or
14 expenditures made directly or indirectly to, or in support of
15 or opposition to, any candidate, political party, committee,
16 electioneering communication, ballot measure campaign, or an
17 issue advocacy campaign. Political activities do not include
18 activities defined as lobbying under any local, state or
19 federal law.

20 ~~(15)~~ (21) "Principal office" means the office so
21 designated in the return required pursuant to section three,
22 article twelve-c, chapter eleven of this code where the
23 principal executive offices of a domestic or foreign
24 corporation are located.

1 ~~(16)~~ (22) "Proceeding" includes, but is not limited to,
2 civil suits and criminal, administrative and investigatory
3 actions.

4 ~~(17)~~ (23) "Record date" means the date established under
5 article six or seven of this chapter on which a corporation
6 determines the identity of its shareholders and their
7 shareholdings. The determinations are to be made as of the
8 close of business on the record date unless another time for
9 doing so is specified when the record date is fixed.

10 ~~(18)~~ (24) "Registered agent" means the agent identified
11 by the corporation pursuant to section five hundred one,
12 article five of this chapter.

13 ~~(19)~~ (25) "Registered office" means the address of the
14 registered agent for the corporation, as provided in section
15 five hundred one, article five of this chapter.

16 ~~(20)~~ (26) "Secretary" means the corporate officer to whom
17 the board of directors has delegated responsibility under
18 subsection (c), section eight hundred forty, article eight of
19 this chapter for custody of the minutes of the meetings of the
20 board of directors and the meetings of the shareholders and
21 for authenticating records of the corporation.

22 (27) "Separate segregated fund" means a political action
23 committee formed by a corporation for the purpose of making
24 contributions to candidates for office or to political

1 parties. A "separate segregated fund" which supports federal
2 candidates has the same meaning as that found in 2 U.S.C.
3 §441b.

4 ~~(21)~~ (28) "Shareholder" means the person in whose name
5 shares are registered in the records of a corporation or the
6 beneficial owner of shares to the extent of the rights granted
7 by a nominee certificate on file with a corporation.

8 ~~(22)~~ (29) "Shares" means the units into which the
9 proprietary interests in a corporation are divided.

10 ~~(23)~~ (30) "Sign" or "signature" includes, but is not
11 limited to, any manual, facsimile, conformed or electronic
12 signature with means to identify a record by signature, mark
13 or other symbol, with intent to authenticate it.

14 ~~(24)~~ (31) "State" when referring to a part of the United
15 States, includes a state and commonwealth and a territory and
16 insular possession of the United States and their agencies and
17 governmental subdivisions.

18 ~~(25)~~ (32) "Subscriber" means a person who subscribes for
19 shares in a corporation, whether before or after
20 incorporation.

21 ~~(26)~~ (33) "United States" includes, but is not limited
22 to, districts, authorities, bureaus, commissions, departments
23 and any other agency of the United States.

24 ~~(27)~~ (34) "Voting group" means all shares of one or more

1 classes or series that, pursuant to the articles of
 2 incorporation or this chapter, are entitled to vote and be
 3 counted together collectively on a matter at a meeting of
 4 shareholders. All shares entitled by the articles of
 5 incorporation or this chapter to vote generally on the matter
 6 are for that purpose a single voting group.

7 ~~(28)~~ (35) "Voting power" means the current power to vote
 8 in the election of directors.

9 **ARTICLE 7. SHAREHOLDERS.**

10 PART 4. SHAREHOLDERS VOTE ON CORPORATE

11 POLITICAL ACTIVITIES.

12 **§31D-7-740. Annual vote.**

13 (a) A corporation spending in the aggregate \$10,000 or
 14 more of corporate treasury funds on political activities in
 15 this state shall comply with the requirements of this section
 16 and section seven hundred forty-one of this article.

17 (b) Any proxy or consent or authorization for an annual
 18 meeting of the shareholders of a corporation held pursuant to
 19 section seven hundred one of this article, or a special
 20 meeting held pursuant to section seven hundred two of this
 21 article, shall provide for a separate resolution subject to
 22 shareholder vote to approve any spending of \$10,000 or more by
 23 the corporation for any political activity.

24 (c) Notwithstanding the requirement of subsection (b) of

1 this section for an annual shareholder vote to authorize any
2 spending of \$10,000 or more by the corporation for political
3 activity, a corporation may request authorization for spending
4 on political activities in this state on a more frequent
5 basis. Any authorization request by the corporation that is
6 not made during an annual authorization shall be considered a
7 special authorization.

8 (d) If the corporation spends less than an aggregate of
9 \$10,000 in a twelve-month period for political activities in
10 this state, it does not have to seek shareholder authorization
11 for the spending.

12 **§31D-7-741. Shareholder approval of political activities.**

13 (a) When seeking shareholder authorization for
14 expenditures for political activities in this state, the
15 corporation shall request the authority to spend a maximum
16 dollar amount in the next twelve months;

17 (b) If known at the time of the shareholder vote, the
18 corporation shall articulate whether the corporate treasury
19 funds so authorized are intended to benefit or defeat specific
20 candidates, ballot measures or issue advocacy campaigns or
21 whether it will be paid to specific nonprofits or trade
22 associations for political activities in this state;

23 (c) To be effective, the authorization vote must garner
24 support from a majority of the corporation's shareholders;

1 (d) A vote by the shareholders to approve or disapprove
2 any spending of \$10,000 or more by a corporation for a
3 political activity is binding on the corporation;

4 (e) Notwithstanding the requirement of subsection (b),
5 section seven hundred forty of this article for an annual
6 shareholder vote to authorize any spending of \$10,000 or more
7 by the corporation for any political activity, a corporation
8 may request a special authorization for additional spending on
9 political activities in this state, provided that:

10 (1) All spending on political activities in this state of
11 \$10,000 or more shall be authorized by a shareholder majority
12 vote; and

13 (2) For any special authorization, the corporation shall
14 articulate whether the corporate treasury funds so authorized
15 are intended to benefit or defeat candidates, ballot measures
16 or issue advocacy campaigns, or will be paid to specific
17 nonprofits or trade associations for political activities in
18 this state, at the time the special authorization is
19 requested.

20 **ARTICLE 8. DIRECTORS AND OFFICERS.**

21 PART 3. DIRECTORS.

22 **§31D-8-834. Directors' liability for unlawful political**
23 **expenditures.**

1 (a) A director who votes for or assents to a expenditure
2 or contribution without the authorization of shareholders
3 pursuant to section seven hundred forty, article seven of this
4 chapter, is personally liable to the corporation for:

5 (1) The amount of the unauthorized expenditure or
6 contribution;

7 (2) Damages in respect of any loss or damage sustained by
8 the corporation as a result of the unauthorized expenditure or
9 contribution; and

10 (3) Interest on the amount of the unauthorized
11 expenditure or contribution for the period:

12 (A) Beginning with the date when the expenditure or
13 contribution was made or incurred; and

14 (B) Ending with the date when that amount is repaid to
15 the corporation.

16 (b) Where two or more directors are subject to liability
17 pursuant to this section, each director is jointly and
18 severally liable.

19 (c) Where only part of any expenditure or contribution
20 was made or incurred in violation of the provisions of section
21 seven hundred forty, article seven of this chapter, this
22 section applies only to that portion made or incurred in
23 violation of section seven hundred forty, article seven of
24 this chapter.

1 (d) It is a defense to liability imposed by this section:

2 (1) If the unauthorized expenditure or contribution has
3 been repaid to the corporation, together with any interest on
4 that amount due under subdivision (3), subsection (a) of this
5 section;

6 (2) That repayment has been approved by the shareholders;
7 and

8 (3) The notice to shareholders of the meeting during
9 which full disclosure is made, the contents of the notice
10 include:

11 (A) The circumstances in which the unauthorized
12 expenditure or contribution; and

13 (B) The circumstances in which, and the person or persons
14 by whom, the repayment was made.

15 **ARTICLE 15. FOREIGN CORPORATIONS.**

16 PART 4. CORPORATE POLITICAL ACTIVITY.

17 **§31D-15-1540. Applicability of provisions in this chapter**
18 **related to political activity to foreign**
19 **corporations.**

20 Prior to engaging in any political activities in this
21 state, a foreign corporation shall comply with the
22 requirements of sections seven hundred forty and seven hundred
23 forty-one, article seven of this chapter, section eight

1 hundred thirty-four, article eight of this chapter, and
2 section one thousand six hundred twenty-one, article sixteen
3 of this chapter, inclusively.

4 **ARTICLE 16. RECORDS AND REPORTS.**

5 PART 2. REPORTS.

6 **§31D-16-1621. Disclosure of corporate political activities to**
7 **shareholders.**

8 (a) At least quarterly during each fiscal year, a
9 corporation that makes contributions or expenditures for
10 political activities in this state shall notify its
11 shareholders, in writing, of the nature of all its political
12 activities in this state, funded by either its separate
13 segregated fund or through its general corporate treasury,
14 including contributions or expenditures made directly or
15 indirectly.

16 (b) A report made pursuant to this section shall include
17 the following:

18 (1) The date of the contributions or expenditures;

19 (2) The amount of the contributions or expenditures;

20 (3) The identity of the candidate, political party,
21 committee, electioneering communication, ballot measure
22 campaign or issue advocacy campaign;

23 (4) If the contributions or expenditures were made for or

1 against a candidate, including an electioneering communication
2 as defined in section one-a, article eight, chapter three of
3 this code, the office sought by the candidate and the
4 political party affiliation of the candidate;

5 (5) If the contributions or expenditures were made for or
6 against a ballot measure, the purpose of the measure and
7 whether the contributions or expenditures were made in support
8 or opposition to the ballot measure;

9 (6) If the contributions or expenditures were made for or
10 against an issue advocacy campaign, the nature of the
11 political issue and whether the contributions were made in
12 support or opposition to the political issue; and

13 (7) All expenditures made by a separate segregated fund
14 affiliated with the corporation.

15 (c) (1) The quarterly reports of political activities in
16 this state by a corporation shall be public records.

17 (2) A copy of the reports filed pursuant to subsection
18 (a) shall be posted for at least one year on the corporation's
19 website, if any.

NOTE: The purpose of this bill is to create the "West Virginia Corporate Political Accountability Act of 2014" relating to the accountability of a corporation's political activities. It defines additional terms and requires annual authorization and approval by a majority of shareholders for

corporations spending a yearly aggregate of \$10,000 or more for political activities in this state. It provides for director liability for spending without proper authorization, requires disclosure of corporate political activities to shareholders and the public and applies these new requirements to foreign corporations.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§31D-7-740, §31D-7-741, §31D-8-834, §31D-15-1540 and §31D-16-1621 are new; therefore, they have been completely underscored.