

H. B. 2085

(By Delegates Manchin and Caputo)

[Introduced January 16, 2015; referred to the

Committee on the Judiciary.]

A BILL to amend and reenact §3-8-12 of the Code of West Virginia, 1931, as amended, relating to the solicitation of public employees of the state or its political subdivisions by a candidate for an elective office; clarifying that the solicitation of public employees, in their work place, for contributions, services or other things of value by electronic communications is prohibited; clarifying that solicitations of public employees for contributions, services or other thing of value for a candidate, party or political purpose is prohibited; creating a specific exception for the solicitation of votes outside the workplace; and removing postmasters and federal officers and employees from those persons who may not be solicited.

Be it enacted by the Legislature of West Virginia:

That §3-8-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising;

1 **solicitation of contributions; intimidation and coercion of employees; promise**
2 **of employment or other benefits; limitations on contributions; public**
3 **contractors; penalty.**

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

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

12 (c) A person may not, in any room or building occupied for the discharge of official duties
13 by any officer or employee of the state or a political subdivision of the state, solicit orally or by
14 written communication, including a communication disseminated electronically, delivered within
15 the room or building, or in any other manner, any contribution, ~~of money~~ service or other thing of
16 value for any candidate, party or political purpose, from any ~~postmaster or any other officer or~~
17 ~~employee of the federal government, or~~ officer or employee of the state, or a political subdivision
18 of the state. An officer, agent, clerk or employee of ~~the federal government, or of~~ this state, or any
19 political subdivision of the state, who may have charge or control of any building, office or room,
20 occupied for any official purpose, may not knowingly permit any person to enter any building, office
21 or room, occupied for any official purpose for the purpose of soliciting or receiving any political
22 assessments from, or delivering or giving written solicitations, including solicitations delivered

1 electronically, for, or any notice of, any political assessments to, any officer or employee of the state,
2 or a political subdivision of the state.

3 (d) Except as provided in section eight of this article, a person entering into any contract with
4 the state or its subdivisions, or any department or agency of the state, either for rendition of personal
5 services or furnishing any material, supplies or equipment or selling any land or building to the state,
6 or its subdivisions, or any department or agency of the state, if payment for the performance of the
7 contract or payment for the material, supplies, equipment, land or building is to be made, in whole
8 or in part, from public funds may not, during the period of negotiation for or performance under the
9 contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly,
10 make any contribution to any political party, committee or candidate for public office or to any
11 person for political purposes or use; nor may any person or firm solicit any contributions for any
12 purpose during any period.

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

17 (f) Except as provided in section eight of this article, a person may not, directly or indirectly,
18 make any contribution in excess of the value of \$1,000 in connection with any campaign for
19 nomination or election to or on behalf of any statewide office, in connection with any other campaign
20 for nomination or election to or on behalf of any other elective office in the state or any of its
21 subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing,
22 supporting or aiding the nomination or election of any candidate for any of the offices.

1 (g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code
2 of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its
3 existence and of the purposes for which it was formed. During the two-year election cycle, a
4 political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986) may
5 not accept contributions totaling more than \$1,000 from any one person prior to the primary election
6 and contributions totaling more than \$1,000 from any one person after the primary and before the
7 general election.

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

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

15 (j) The limitations on contributions contained in this section do not apply to transfers between
16 and among a state party executive committee or a state party's legislative caucus political committee
17 from national committees of the same political party: *Provided*, That transfers permitted by this
18 subsection may not exceed \$50,000 in the aggregate in any calendar year to any state party executive
19 committee or state party legislative caucus political committee: *Provided, however*, That the moneys
20 transferred may only be used for voter registration and get-out-the-vote activities of the state
21 committees.

22 (k) A person may not solicit any contribution, service or other thing of value for any

1 candidate, party or political purpose, other than contributions to a campaign for or against a county
2 or local government ballot issue, from any nonelective salaried employee of the state government
3 or of any of its subdivisions: *Provided*, That so long as the communication is not coercive or
4 intimidating, it is not a violation of this article to solicit votes outside of the workplace of the public
5 employee: *Provided, however*, That in no event may any person acting in a supervisory role solicit
6 a person who is a subordinate employee for any contribution, service or other thing of value for any
7 candidate, party or political purpose. A person may not coerce or intimidate any nonelective salaried
8 employee into making a contribution. A person may not coerce or intimidate any nonsalaried
9 employee of the state government or any of its subdivisions into engaging in any form of political
10 activity. ~~The provisions of this~~ This subsection may not be construed to prevent any employee from
11 making a contribution or providing a service for any candidate, party or political purpose or from
12 engaging in political activity voluntarily without coercion, intimidation or solicitation.

13 (l) A person may not solicit a contribution from any other person without informing the other
14 person at the time of the solicitation of the amount of any commission, remuneration or other
15 compensation that the solicitor or any other person will receive or expect to receive as a direct result
16 of the contribution being successfully collected. Nothing in this subsection may be construed to
17 apply to solicitations of contributions made by any person serving as an unpaid volunteer.

18 (m) A person may not place any letter, circular, flyer, advertisement, election paraphernalia,
19 solicitation material or other printed or published item tending to influence voting at any election in
20 a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the
21 business or entity owning the receptacle; and (2) contains a written acknowledgment of the
22 approval. This subdivision does not apply to any printed material contained in a newspaper or

1 periodical published or distributed by the owner of the receptacle. The term “roadside receptacle”
2 means any container placed by a newspaper or periodical business or entity to facilitate home or
3 personal delivery of a designated newspaper or periodical to its customers.

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

7 (o) ~~The provisions of subsection~~ Subsection (k) of this section, permitting contributions to
8 a campaign for or against a county or local government ballot issue shall become operable on and
9 after January 1, 2005.

10 (p) The limitations on contributions established by subsection (g) of this section do not apply
11 to contributions made for the purpose of supporting or opposing a ballot issue, including a
12 Constitutional amendment.

NOTE: The purpose of this bill is to clarify that the solicitation of public employees, in their work place, for contributions, services or other things of value by electronic communications is prohibited. It clarifies that solicitations of public employees for contributions, services or other things of value for a candidate, party or political purpose is prohibited. The bill creates a specific exception for the solicitation of votes outside the workplace. And the bill removes postmasters and federal officers and employees from those persons who may not be solicited.

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