

H. B. 2086

(By Delegates Manchin, Skinner and Caputo)

[Introduced January 16, 2015; referred to the

Committee on the Judiciary.]

10 A BILL to amend and reenact §31D-1-150 of the Code of West Virginia, 1931, as amended; to
11 amend said code by adding thereto two new sections, designated §31D-7-740 and
12 §31D-7-741; to amend said code by adding thereto a new section, designated §31D-8-834;
13 to amend said code by adding thereto a new section, designated §31D-15-1540; and to amend
14 said code by adding thereto a new section, designated §31D-16-1621, all relating to the
15 accountability of a corporation's political activities; defining additional terms; requiring
16 annual authorization and approval by a majority of shareholders for corporations spending
17 a yearly aggregate of \$10,000 or more for political activities in this state; providing for
18 director liability for spending without proper authorization; requiring disclosure of corporate
19 political activities to shareholders and the public; and applying these new requirements to
20 foreign corporations.

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

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

6 PREAMBLE

7 This Act may be cited as the “West Virginia Corporate Political Accountability Act of 2015”.

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

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

16 WHEREAS, Historically, shareholders of corporations have not had a way to know of, or to influence, the
17 political activities of corporations they own. Shareholders and the public have a right to know how these corporations
18 are spending their funds to make political contributions or expenditures benefitting candidates, political parties, and
19 political causes; and

20 WHEREAS, Corporations should be accountable to their shareholders prior to making political contributions
21 or expenditures affecting local and state governance and public policy. Requiring the express approval of a corporation’s
22 shareholders prior to making political contributions or expenditures will help establish accountability; and

23 WHEREAS, If corporations use corporate general treasury funds for political expenditures, then those funds
24 should be clearly reported to shareholders and shareholders should be able to authorize the use of corporate general

1 treasury funds for political expenditures.

2 **ARTICLE 1. GENERAL PROVISIONS.**

3 **§31D-1-150. Definitions.**

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

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

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

9 (3) "Conspicuous" means written so that a reasonable person against whom the writing is to
10 operate should have noticed, including, but not limited to, printing in italics or boldface or
11 contrasting color, or typing in capitals or underlined.

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

1 applicable banking laws and regulations and in the ordinary course of business) to any candidate,
2 campaign committee or political party or organization, in connection with any election to any office.

3 The term “contribution or expenditure” does not include:

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

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

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

10 ~~(4)~~ (5) "Corporation" or "domestic corporation" means a corporation for profit, which is not
11 a foreign corporation, incorporated under or subject to the provisions of this chapter.

12 ~~(5)~~ (6) "Deliver" or "delivery" means any method of delivery used in conventional
13 commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and
14 electronic transmission.

15 ~~(6)~~ (7) "Distribution" means a direct or indirect transfer of money or other property or
16 incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any
17 of its shares: *Provided*, That "distribution" does not include a direct or indirect transfer of a
18 corporation's own shares. A distribution may be in the form of a declaration or payment of a
19 dividend; a purchase, redemption or other acquisition of shares; or a distribution of indebtedness.

20 ~~(7)~~ (8) "Effective date of notice" means the date as determined pursuant to section one
21 hundred fifty-one of this article.

1 ~~(8)~~ (9) "Electronic transmission" or "electronically transmitted" means any process of
2 communication not directly involving the physical transfer of paper that is suitable for the retention,
3 retrieval and reproduction of information by the recipient.

4 ~~(9)~~ (10) "Employee" includes an officer and may include a director: *Provided*, That the
5 director has accepted duties that make him or her also an employee.

6 ~~(10)~~ (11) "Entity" includes corporations and foreign corporations; nonprofit corporations;
7 profit and nonprofit unincorporated associations; limited liability companies and foreign limited
8 liability companies; business trusts, estates, partnerships, trusts and two or more persons having a
9 joint or common economic interest; and state, United States and foreign government.

10 ~~(11)~~ (12) "Foreign corporation" means a corporation for profit incorporated under a law other
11 than the laws of this state.

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

16 ~~(12)~~ (14) "Governmental subdivision" includes, but is not limited to, authorities, counties,
17 districts and municipalities.

18 ~~(13)~~ (15) "Individual" includes, but is not limited to, the estate of an incompetent or deceased
19 individual.

20 (16) "Issue advocacy campaign" means contributions or expenditures for any communication
21 to the general public intended to encourage the public to contact a government official regarding

1 pending legislation, public policy or a government rule or regulation. Issue advocacy campaign does
 2 not include contributions or expenditures for registered lobbyists or other persons employed by the
 3 corporation to lobby directly state or federal government officials.

4 (17) "Known at the time of the authorization vote" means that, at the time the corporation
 5 seeks authorization from shareholders to spend corporate funds for political activities in this state:
 6 (A) The corporation's officers, directors or employees have identified a specific political activity for
 7 the corporation to support or oppose; (B) corporate officers, directors or employees have taken steps
 8 to obligate funds to a political activity; or (C) the corporation has a regularly scheduled payment to
 9 a trade association or other entity to pay for a political activity in the next twelve months.

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

13 ~~(14)~~ (19) "Person" includes, but is not limited to, an individual and an entity.

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

18 ~~(15)~~ (21) "Principal office" means the office so designated in the return required pursuant to
 19 section three, article twelve-c, chapter eleven of this code where the principal executive offices of
 20 a domestic or foreign corporation are located.

21 ~~(16)~~ (22) "Proceeding" includes, but is not limited to, civil suits and criminal, administrative

1 and investigatory actions.

2 ~~(17)~~ (23) "Record date" means the date established under article six or seven of this chapter
3 on which a corporation determines the identity of its shareholders and their shareholdings. The
4 determinations are to be made as of the close of business on the record date unless another time for
5 doing so is specified when the record date is fixed.

6 ~~(18)~~ (24) "Registered agent" means the agent identified by the corporation pursuant to section
7 five hundred one, article five of this chapter.

8 ~~(19)~~ (25) "Registered office" means the address of the registered agent for the corporation,
9 as provided in section five hundred one, article five of this chapter.

10 ~~(20)~~ (26) "Secretary" means the corporate officer to whom the board of directors has
11 delegated responsibility under subsection (c), section eight hundred forty, article eight of this chapter
12 for custody of the minutes of the meetings of the board of directors and the meetings of the
13 shareholders and for authenticating records of the corporation.

14 (27) "Separate Segregated Fund" means a political action committee formed by a corporation
15 for the purpose of making contributions to candidates for office or to political parties. A "Separate
16 Segregated Fund" which supports federal candidates has the same meaning as that found in 2 U.S.C.
17 §441b.

18 ~~(21)~~ (28) "Shareholder" means the person in whose name shares are registered in the records
19 of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee
20 certificate on file with a corporation.

21 ~~(22)~~ (29) "Shares" means the units into which the proprietary interests in a corporation are

1 divided.

2 ~~(23)~~ (30) "Sign" or "signature" includes, but is not limited to, any manual, facsimile,
3 conformed or electronic signature with means to identify a record by signature, mark or other
4 symbol, with intent to authenticate it.

5 ~~(24)~~ (31) "State" when referring to a part of the United States, includes a state and
6 commonwealth and a territory and insular possession of the United States and their agencies and
7 governmental subdivisions.

8 ~~(25)~~ (32) "Subscriber" means a person who subscribes for shares in a corporation, whether
9 before or after incorporation.

10 ~~(26)~~ (33) "United States" includes, but is not limited to, districts, authorities, bureaus,
11 commissions, departments and any other agency of the United States.

12 ~~(27)~~ (34) "Voting group" means all shares of one or more classes or series that, pursuant to
13 the articles of incorporation or this chapter, are entitled to vote and be counted together collectively
14 on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this
15 chapter to vote generally on the matter are for that purpose a single voting group.

16 ~~(28)~~ (35) "Voting power" means the current power to vote in the election of directors.

17 **ARTICLE 7. SHAREHOLDERS.**

18 **PART 4. SHAREHOLDERS VOTE ON CORPORATE**

19 **POLITICAL ACTIVITIES.**

20 **§31D-7-740. Annual vote.**

21 (a) A corporation spending in the aggregate \$10,000 or more of corporate treasury funds on

1 political activities in this state shall comply with the requirements of this section and section seven
2 hundred forty-one of this article.

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

8 (c) Notwithstanding the requirement of subsection (b) of this section for an annual
9 shareholder vote to authorize any spending of \$10,000 or more by the corporation for political
10 activity, a corporation may request authorization for spending on political activities in this state on
11 a more frequent basis. Any authorization request by the corporation that is not made during an
12 annual authorization shall be considered a special authorization.

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

15 **§31D-7-741. Shareholder approval of political activities.**

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

19 (b) If known at the time of the shareholder vote, the corporation shall articulate whether the
20 corporate treasury funds so authorized are intended to benefit or defeat specific candidates, ballot
21 measures or issue advocacy campaigns or whether it will be paid to specific nonprofits or trade

1 associations for political activities in this state;

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

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

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

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

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

16 **ARTICLE 8. DIRECTORS AND OFFICERS.**

17 **PART 3. DIRECTORS.**

18 **§31D-8-834. Directors' liability for unlawful political expenditures.**

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

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

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

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

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

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

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

9 (c) Where only part of any expenditure or contribution was made or incurred in violation of
10 the provisions of section seven hundred forty, article seven of this chapter, this section applies only
11 to that portion made or incurred in violation of section seven hundred forty, article seven of this
12 chapter.

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

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

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

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

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

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

1 **ARTICLE 15. FOREIGN CORPORATIONS.**

2 PART 4. CORPORATE POLITICAL ACTIVITY.

3 **§31D-15-1540. Applicability of provisions in this chapter related to political activity to foreign**
4 **corporations.**

5 Prior to engaging in any political activities in this state, a foreign corporation shall comply
6 with the requirements of sections seven hundred forty and seven hundred forty-one, article seven of
7 this chapter, section eight hundred thirty-four, article eight of this chapter, and section one thousand
8 six hundred twenty-one, article sixteen of this chapter, inclusively.

9 **ARTICLE 16. RECORDS AND REPORTS.**

10 PART 2. REPORTS.

11 **§31D-16-1621. Disclosure of corporate political activities to shareholders.**

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

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

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

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

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

21 (4) If the contributions or expenditures were made for or against a candidate, including an

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

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

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

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

10 (c) (1) The quarterly reports of political activities in this state by a corporation are public
 11 records.

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

NOTE: The purpose of this bill is to create the “West Virginia Corporate Political Accountability Act of 2015” 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.