

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2597

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ISNER, CANESTRARO, LOVEJOY, CAPUTO AND LYNCH

[Introduced February 21, 2017; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §3-1D-1, §3-1D-2, §3-1D-3 and §3-1D-4, all relating to creating administrative
 3 sanction for false statements made against candidates for elective office; providing that
 4 all broadcasts, publications or mailings of any information about a candidate for elective
 5 office be submitted to the State Election Commission; establishing administrative penalties
 6 for failure to submit required information, or for distributing or causing to the distribution
 7 un-true information about a candidate; authorizing the elections commission to conduct
 8 investigations, pursue injunctions and propose legislative rules; and providing for appeals
 9 for commission decisions.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §3-1D-1, §3-1D-2, §3-1D-3 and §3-1D-4, all to read as follows:

ARTICLE 1D. CAMPAIGN ADVERTISING FAIRNESS ACT.

§3-1D-1. Legislative findings, purpose and intent.

1 The Legislature hereby finds that the fair administration and conduct of elections is the
 2 most basic tenant for our republic and is necessary for the preservation of the public trust and our
 3 democratic form of government; and that the integrity of the election process requires fair and
 4 truthful debate to allow voters to make informed decisions when selecting a candidate. Further,
 5 that persons entering into the process by advocating for or against a candidate for public office
 6 during an election must do so fairly and honestly, and establishing a process to assure
 7 truthfulness and fairness in their advocacy is an appropriate government function. Therefore, the
 8 purpose of this article is to establish a process of providing accountability for those persons
 9 advocating for a candidate for public office, and creating a process of investigation and
 10 enforcement actions against those who attempt to deceive voters with misrepresentations and
 11 false statements.

§3-1D-2. Campaign advertisements submission to Election Commission.

1 Each person, within twenty-four hours of publishing, mailing, issuing or circulating or
2 broadcasting or causing the publishing, mailing, issuing or circulating or broadcasting of an
3 advertisement or other publication or broadcast advocating for the election or defeat of any
4 candidate for public office, shall submit to the State Election Commission a copy of that document,
5 publication or broadcast, or alternatively, in the case of a broadcast, a verbatim transcript thereof.

**§3-1D-3. Administrative penalties for failure to submit advertisement or publish untrue
campaign advertisements.**

1 (a) Any person publishing, mailing, issuing or circulating or broadcasting of an
2 advertisement or other publication or broadcast in any form advocating for the election or defeat
3 of any candidate for public office containing a statement found by the commission as untrue is to
4 be held strictly liable. Upon a finding of the commission that an assertion is substantially untrue,
5 the person stating the untrue assertion or any other person who publishes, mails, issues or
6 circulates or broadcasts of an advertisement or other publication or broadcast, or other untrue
7 fact, is subject to the administrative penalty established pursuant to this section. However, the
8 commission may consider intent and severity of the untrue statement in assessing the penalty.
9 Each separate untrue assertion is considered a separate act pursuant to this section.

10 (b) Failure to submit the publication, broadcast or transcript thereof, of any advocating for
11 the election or defeat of any candidate for public office, subjects the person to an administrative
12 penalty of \$2,000 for each offense.

13 (c) Any person found by the commission to have published, mailed, issued or circulated
14 or broadcasted or to have caused the publishing, mailing, issuing or circulating or broadcasting
15 of an advertisement or other publication or broadcast that contains a false statement regarding a
16 candidate for public office, is subject to an administrative penalty not less than \$2,000 nor more
17 than \$10,000 for each offense.

§3-1D-4. Commission investigations; promulgation of rules.

1 (a) The commission may on its own initiative or upon receipt of complaint by any person

2 conduct an investigation and pursue an enforcement action pursuant to this article. The
3 commission may utilize investigative officers as provided for in section eight, article one-a of this
4 chapter to investigate any complaint received pursuant to this article. In addition to the
5 administrative penalties established pursuant to this section, the commission may pursue an
6 injunction or take other necessary action to prohibit the dissemination of any untrue statements
7 contained in any publication or broadcast. Appeals of any decision of the commission may be
8 undertaken pursuant to the state administrative procedures act.

9 (b) The commission may propose rules for legislative approval in accordance with article
10 three, chapter twenty-nine-a of this code to effectuate the provisions of this article.

NOTE: The purpose of this bill is to create a process within the State Election Commission to sanction persons publishing untrue statements against a candidate for public office; by creating an administrative review process and penalties for enforcement.

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