

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4579

BY DELEGATE WARD

[Introduced February 13, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-8-8, and §3-8-12 of the Code of West Virginia, 1931, as
 2 amended, all relating generally to financing political campaigns for elections; prohibiting
 3 corporate contributions to political committees; prohibiting soliciting for certain forms of
 4 campaign contributions; updating references to federal law; prohibiting certain forms of
 5 anonymous mass communications relating to political campaigns; establishing monetary
 6 limits for various forms of contributions for political purposes; and providing for subsequent
 7 adjustments to those limits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

1 ~~(a) An officer, agent or person acting on behalf of any corporation, whether incorporated~~
 2 ~~under the laws of this or any other state or of a foreign country, may not pay, give, lend or authorize~~
 3 ~~to be paid, any No money or other thing of value belonging to the corporation to any candidate or~~
 4 ~~candidate's campaign for nomination or election to any statewide office or any other elective office~~
 5 ~~in the state or any of its subdivisions a corporation may be made as a contribution to any political~~
 6 ~~committee: *Provided*, That an independent expenditure only political action committee is not~~
 7 ~~subject to contribution limitations or corporate prohibitions of this section.~~

8 (b) A person may not solicit or receive ~~any payment, contribution or other thing from any~~
 9 ~~corporation or from any officer, agent or other person acting on behalf of the contributions from~~
 10 ~~any corporation to any candidate or candidate's campaign for nomination or election to any~~
 11 ~~statewide office or any other elective office in the state or any of its subdivisions.~~

12 (c)(1) The provisions of this section do not prohibit a corporation from soliciting, through
 13 any officer, agent or person acting on behalf of the corporation, contributions to a separate
 14 segregated fund to be used for political purposes. Any separate segregated fund is considered a
 15 political action committee for the purpose of this article and is subject to all reporting requirements

16 applicable to political action committees;

17 (2) It is unlawful for:

18 (A) A corporation or separate segregated fund to make a primary or other election
19 contribution or expenditure by using money or anything of value secured: (i) By physical force,
20 job discrimination or financial reprisal; (ii) by the threat of force, job discrimination or financial
21 reprisal; or (iii) as a condition of employment;

22 (B) Any person soliciting a stockholder or executive or administrative personnel and
23 members of their families for a contribution to a corporation or separate segregated fund to fail to
24 inform the person solicited of the political purposes of the separate segregated fund at the time
25 of the solicitation;

26 (C) Any person soliciting any other person for a contribution to a corporation or separate
27 segregated fund to fail to inform the person solicited at the time of the solicitation of his or her
28 right to refuse to contribute without any reprisal;

29 (D) A separate segregated fund established by a corporation: (i) To solicit contributions to
30 the fund from any person other than the corporation's stockholders and their families and its
31 executive or administrative personnel and their families; or (ii) to contribute any corporate funds;

32 (E) A separate segregated fund established by a corporation to receive contributions to
33 the fund from any person other than the corporation's stockholders and their immediate families
34 and its executive or administrative personnel and their immediate families;

35 (F) A corporation to engage in job discrimination or to discriminate in job promotion or
36 transfer because of an employee's failure to make a contribution to the corporation or a separate
37 segregated fund;

38 ~~(G) A separate segregated fund to make any contribution, directly or indirectly, in excess~~
39 ~~of \$1,000 in connection with or on behalf of any campaign for nomination or election to any~~
40 ~~elective office in the state or any of its subdivisions, or in connection with or on behalf of any~~
41 ~~committee or other organization or person engaged in furthering, advancing, supporting or aiding~~

42 ~~the nomination or election of any candidate for any such office~~

43 (H) (G) A corporation to pay, give or lend or to authorize payment, giving or lending of any
44 moneys or other things of value belonging to the corporation to a separate segregated fund for
45 the purpose of making a contribution to a candidate or a candidate's committee. This provision
46 does not prohibit a separate segregated fund from using the property, real or personal, facilities
47 and equipment of a corporation solely to establish, administer and solicit contributions to the fund,
48 subject to the rules of the State Election Commission as provided in subsection (d) of this section:
49 *Provided*, That any such corporation shall also permit any group of its employees represented by
50 a bona fide political action committee to use the real property of the corporation solely to establish,
51 administer and solicit contributions to the fund of the political action committee, subject to the
52 rules of the State Election Commission promulgated in accordance with said subsection.

53 (3) For the purposes of this section, the term "executive or administrative personnel"
54 means individuals employed by a corporation who are paid on a salary rather than hourly basis
55 and who have policy-making, managerial, professional or supervisory responsibilities.

56 (d) Any person or corporation violating any provision of this section is guilty of a
57 misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000. A corporation
58 may not reimburse any person the amount of any fine imposed pursuant to this section.

59 (e) To ensure uniform administration and application of the provisions of this section and
60 of those of the Federal Election Campaign Act Amendments of 1976 relating to corporate
61 contributions, the State Election Commission shall propose rules for legislative approval in
62 accordance with the provisions of article three, chapter twenty-nine-a of this code to implement
63 the provisions of this section consistent, insofar as practicable, with the rules and regulations
64 promulgated by the Federal Election Commission to carry out similar or identical provisions of 2
65 ~~U.S.C. §441b~~ 52 U.S.C. § 30118.

66 (f) In addition to the powers and duties set forth in article one-a of this chapter, the State
67 Election Commission has the following powers and duties:

68 (1) To investigate, upon complaint or on its own initiative, any alleged violations or
69 irregularities of this article.

70 (2) To administer oaths and affirmations, issue subpoenas for the attendance of
71 witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and
72 all other evidence necessary to any investigation.

73 (3) To involve the aid of any circuit court in the execution of its subpoena power.

74 (4) To report any alleged violations of this article to the appropriate prosecuting attorney
75 having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged
76 violations, together with all evidence relating thereto, no later than the next term of court after
77 receiving the report.

78 (g) The Attorney General shall, when requested, provide legal and investigative assistance
79 to the State Election Commission.

80 (h) Any investigation, either upon complaint or initiative, shall be conducted in an executive
81 session of the State Election Commission and shall remain undisclosed except upon an
82 indictment by a grand jury.

83 (i) Any person who discloses the fact of any complaint, investigation or report or any part
84 thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof,
85 shall be fined not less than \$1,000, nor more than \$5,000, and shall be confined in jail not less
86 than six months nor more than one year.

87 ~~(j) The amendments to this section enacted during the second extraordinary session of~~
88 ~~2008 are intended to conform to the existing proscription to constitutionally permissible limits and~~
89 ~~not to create a new offense or offenses.~~

90 ~~(k) The effective date of the amendments to this section enacted during the second~~
91 ~~extraordinary legislative session of 2008 is October 1, 2008~~

**§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising;
solicitation of contributions; intimidation and coercion of employees; promise of**

employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) A person may not publish, issue or circulate, or cause to be published, issued or
2 circulated, any anonymous letter, circular, placard, radio or television advertisement or other
3 publication supporting or aiding the election or defeat of a clearly identified candidate
4 communication made by broadcast, cable or satellite signal, mass mailing, telephone bank,
5 billboard advertisement, or published in any newspaper, magazine, or other periodical that:

6 (i) Is a paid communication expressly advocating for the election or defeat of a clearly
7 identified candidate;

8 (ii) Is targeted to the relevant electorate, and

9 (iii) Is not a news story, commentary or editorial disseminated through the facilities of any
10 broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical
11 publication not owned or controlled by a political party, political committee or candidate: *Provided,*
12 That a news story disseminated through a medium owned or controlled by a political party, political
13 committee or candidate is nevertheless exempt if the news is:

14 (A) A bona fide news account communicated in a publication of general circulation or
15 through a licensed broadcasting facility; and

16 (B) Is part of a general pattern of campaign-related news that gives reasonably equal
17 coverage to all opposing candidates in the circulation, viewing or listening area.

18 (b) An owner, publisher, editor or employee of a newspaper or other periodical may not
19 insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which
20 ~~tends to influence the voting at~~ expressly advocates for or against any candidate in any election,
21 unless directly designating it as a paid advertisement and stating the name of the person
22 authorizing its publication and the candidate in whose behalf it is published.

23 (c) A person may not, in any room or building occupied for the discharge of official duties
24 by any officer or employee of the state or a political subdivision of the state, solicit orally or by

25 written communication delivered within the room or building, or in any other manner, any
26 contribution of money or other thing of value for any party or political purpose, from any
27 postmaster or any other officer or employee of the federal government, or officer or employee of
28 the State, or a political subdivision of the state. An officer, agent, clerk or employee of the federal
29 government, or of this state, or any political subdivision of the state, who may have charge or
30 control of any building, office or room, occupied for any official purpose, may not knowingly permit
31 any person to enter any building, office or room, occupied for any official purpose for the purpose
32 of soliciting or receiving any political assessments from, or delivering or giving written solicitations
33 for, or any notice of, any political assessments to, any officer or employee of the state, or a political
34 subdivision of the state.

35 (d) Except as provided in section eight of this article, a person entering into any contract
36 with the state or its subdivisions, or any department or agency of the state, either for rendition of
37 personal services or furnishing any material, supplies or equipment or selling any land or building
38 to the state, or its subdivisions, or any department or agency of the state, if payment for the
39 performance of the contract or payment for the material, supplies, equipment, land or building is
40 to be made, in whole or in part, from public funds may not, during the period of negotiation for or
41 performance under the contract or furnishing of materials, supplies, equipment, land or buildings,
42 directly or indirectly, make any contribution or solicit any contribution to any political party, political
43 committee that makes contributions to any candidate or political party, or candidate for public
44 office or to any person for political purposes or use; ~~nor may any person or firm solicit any~~
45 ~~contributions for any purpose~~ other than independent expenditures during ~~any~~ that period.

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

50 (f) Except as provided in section eight of this article, a person may not, directly or indirectly,

51 make any contribution in excess of the value of \$1,000 in connection with any campaign for
52 nomination or election to or on behalf of any statewide office, in connection with any other
53 campaign for nomination or election to or on behalf of any other elective office in the state or any
54 of its subdivisions, or in connection with or on behalf of any person engaged in furthering,
55 advancing, supporting or aiding the nomination or election of any candidate for any of the offices:
56 Provided, That this provision shall be in effect for all candidate and political action committees for
57 elections through the 2018 election cycle: *Provided, however,* That an independent expenditure
58 only political action committee is not subject to contribution limitations or corporate prohibitions of
59 this section. Candidates and political action committees operating in a 2019 election cycle and
60 beyond will follow subsections (h), (i), (j) and (k) of this section.

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

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

71 ~~(i) (g) Notwithstanding the provisions of subsection (f) of this section to the contrary, a~~
72 ~~person may not, directly or indirectly, make contributions to a state party executive committee or~~
73 ~~state party legislative caucus committee which, in the aggregate, exceed the value of \$1,000 in~~
74 ~~any calendar year: Provided, That this provision will be in effect for all party executive committees~~
75 ~~or state party legislative caucus committees for elections through the 2018 election cycle ending~~
76 ~~at the end of the 2018 calendar year. Party executive committees or state party legislative caucus~~

77 committees operating in the 2020 election cycle and beyond shall follow subsections (h), (i), (j)
78 and (k) of this section.

79 (h) Except as provided in §3-8-8 of this code, a person may not make contributions to any
80 precandidate, candidate, or his or her authorized candidate campaign committees with respect to
81 any election beginning with the 2019 election cycle, and thereafter, that in the aggregate exceed
82 the individual contribution limitation as provided by the Federal Election Commission for individual
83 contributions. The initial contribution limitation is \$2,700 per candidate per election, but this
84 amount may be updated, when necessary, in odd numbered years to follow adjusted limits
85 promulgated by the Federal Election Commission. In February of every odd numbered year, the
86 State Election Commission shall publish the amount of the contribution limitation in effect and
87 place such information on the website of the Secretary of State.

88 (i) Beginning with the 2020 election cycle, that starts on January 1, 2019, and thereafter,
89 a person may not make contributions to any state, district or county party committee, which, in
90 the combined aggregate for the committee, exceed the value of \$10,000 in any calendar year.

91 (j) Beginning with the 2020 election cycle, that starts on January 1, 2019, and thereafter,
92 a person may not make contributions to any caucus campaign committee, which in the aggregate,
93 exceed the value of \$10,000 in any calendar year.

94 (k) A person may not make contributions to any political action committee, which in the
95 aggregate, exceed the value of \$5,000 in any election. However, a person may make a
96 contribution in any amount to any political action committee that only makes independent
97 expenditures. The independent expenditure only committee may not make contributions to any
98 political committee other than another independent expenditure only political action committee.

99 ~~(j)~~ (l) The limitations on contributions contained in this section do not apply to transfers
100 between and among a state party executive committee, or a state party's legislative a caucus
101 political campaign committee from national committees of the same political party: *Provided, That*
102 transfers permitted by this subsection may not exceed \$50,000 in the aggregate in any calendar

103 ~~year to any state party executive committee or state party legislative caucus political committee:~~
104 ~~Provided, however~~ That the moneys transferred may only be used for voter registration and get-
105 out-the-vote activities of the state committees.

106 ~~(k)~~ (m) A person may not solicit any contribution, other than contributions to a campaign
107 for or against a county or local government ballot issue, from any nonelective salaried employee
108 of the state government or of any of its subdivisions: *Provided*, That in no event may any person
109 acting in a supervisory role solicit a person who is a subordinate employee for any contribution.
110 A person may not coerce or intimidate any nonelective salaried employee into making a
111 contribution. A person may not coerce or intimidate any nonsalaried employee of the state
112 government or any of its subdivisions into engaging in or deterring from any form of political
113 activity. The provisions of this subsection may not be construed to prevent any employee from
114 making a contribution or from engaging in political activity voluntarily without coercion, intimidation
115 or solicitation.

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

122 ~~(m)~~ (o) A person may not place any letter, circular, flyer, advertisement, election
123 paraphernalia, solicitation material or other printed or published item tending to influence voting
124 at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside
125 receptacle by the business or entity owning the receptacle; and (2) contains a written
126 acknowledgment of the approval. This subdivision does not apply to any printed material
127 contained in a newspaper or periodical published or distributed by the owner of the receptacle.
128 The term "roadside receptacle" means any container placed by a newspaper or periodical

129 business or entity to facilitate home or personal delivery of a designated newspaper or periodical
130 to its customers.

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

134 ~~(o)~~ (q) The provisions of subsection ~~(k)~~ (m) of this section, permitting contributions to a
135 campaign for or against a county or local government ballot issue, shall become operable on and
136 after January 1, 2005.

137 ~~(p)~~ (r) The limitations on contributions established by ~~subsection (g)~~ of this section do not
138 apply to contributions made for the purpose of supporting or opposing a ballot issue, including a
139 constitutional amendment.

NOTE: The purpose of this bill is to revise provisions of state election law relating to contributions for political campaigns, anonymous advertising to influence elections, and limits for various forms and circumstances of political contributions.

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