

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 348

By Senator Nelson

[Originating in the Committee on Government
Organization; reported February 22, 2024]

1 A BILL to amend and reenact §3-8-1a, §3-8-2b, and §3-8-7 of the Code of West Virginia, 1931, as
2 amended, all relating to regulation and control of elections; updating the definition of
3 "electioneering communication"; disclosure of electioneering communication; failure to file
4 statement; delinquent or incomplete filing; criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a.

Definitions.

1 As used in this article, the following terms have the following definitions:

2 (1) "Ballot issue" means a constitutional amendment, special levy, bond issue, local option
3 referendum, municipal charter or revision, an increase or decrease of corporate limits, or any other
4 question that is placed before the voters for a binding decision.

5 (2) "Billboard advertisement" means a commercially available outdoor advertisement,
6 sign, or similar display regularly available for lease or rental to advertise a person, place, or
7 product.

8 (3) "Broadcast, cable, or satellite communication" means a communication that is publicly
9 distributed by a television station, radio station, cable television system, or satellite system.

10 (4) "Candidate" means an individual who:

11 (A) Has filed a certificate of announcement under §3-5-7 of this code or a municipal
12 charter;

13 (B) Has filed a declaration of candidacy under §3-5-23 of this code;

14 (C) Has been named to fill a vacancy on a ballot; or

15 (D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to
16 seek nomination or election for any state, district, county, municipal, or party office to be filled at
17 any primary, general, or special election.

18 (5) "Candidate's committee" means a political committee established with the approval of,
19 or in cooperation with, a candidate or a prospective candidate to explore the possibilities of

20 seeking a particular office or to support or aid his or her nomination or election to an office in an
21 election cycle. If a candidate directs or influences the activities of more than one active committee
22 in a current campaign, those committees shall be considered one committee for the purpose of
23 contribution limits.

24 (6) "Caregiving services" means direct care, protection, and supervision of a child, or other
25 person with a disability or a medical condition, for which a candidate has direct caregiving
26 responsibility. For the purposes of this article, the caregiving service expense incurred shall be in
27 direct connection with the candidate's campaign activities during the current election cycle.

28 (7) "Caucus campaign committee" means a West Virginia House of Delegates or Senate
29 political party caucus campaign committee that receives contributions and makes expenditures to
30 support or oppose one or more specific candidates or slates of candidates for nomination,
31 election, or committee membership.

32 (8) "Clearly identified" means that the name, nickname, photograph, drawing, or other
33 depiction of the candidate appears, or the identity of the candidate is otherwise apparent through
34 an unambiguous reference, such as "the Governor", "your Senator", or "the incumbent", or
35 through an unambiguous reference to his or her status as a candidate, such as "the Democratic
36 candidate for Governor" or "the Republican candidate for Supreme Court of Appeals".

37 (9) "Contribution" means a gift, subscription, loan, assessment, payment for services,
38 dues, advance, donation, pledge, contract, agreement, forbearance, promise of money, or other
39 tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other
40 tangible thing of value to a person, made for the purpose of influencing the nomination, election, or
41 defeat of a candidate.

42 (A) A coordinated expenditure is a contribution for the purposes of this article.

43 (B) An offer or tender of a contribution is not a contribution if expressly and unconditionally
44 rejected or returned. A contribution does not include volunteer personal services provided without
45 compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value

46 for reporting requirements and contribution limitations.

47 (10) "Coordinated expenditure" is an expenditure made in concert with, in cooperation
48 with, or at the request or suggestion of a candidate or candidate's committee and meeting the
49 criteria provided in §3-8-9a of this code.

50 (11) "Corporate political action committee" means a political action committee that is a
51 separate segregated fund of a corporation that may only accept contributions from its restricted
52 group as outlined by the rules of the State Election Commission.

53 (12) "Direct costs of purchasing, producing, or disseminating electioneering
54 communications" means:

55 (A) Costs charged by a vendor, including, but not limited to, studio rental time,
56 compensation of staff and employees, costs of video or audio recording media and talent, material
57 and printing costs, and postage; or

58 (B) The cost of airtime on broadcast, cable, or satellite radio and television stations, the
59 costs of disseminating printed materials, studio time, use of facilities, and the charges for a broker
60 to purchase airtime.

61 (13) "Disclosure date" means either of the following:

62 (A) The first date during any calendar year on which any electioneering communication is
63 disseminated after the person paying for the communication has made expenditures in excess of
64 the amount provided in §3-8-2b of this code ~~spent a total of \$5,000 or more~~ for the direct costs of
65 purchasing, producing, or disseminating electioneering communications; or

66 (B) Any other date during that calendar year after any previous disclosure date on which
67 the person has made additional expenditures in excess of amounts provided in §3-8-2b of this
68 code ~~totaling \$5,000 or more~~ for the direct costs of purchasing, producing, or disseminating
69 electioneering communications.

70 (14) "Election" means any primary, general, or special election conducted under the
71 provisions of this code or under the charter of any municipality at which the voters nominate or

72 elect candidates for public office. For purposes of this article, each primary, general, special, or
73 local election constitutes a separate election. This definition is not intended to modify or abrogate
74 the definition of the term "nomination" as used in this article.

75 (15)(A) "Electioneering communication" means any paid communication made by
76 broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or
77 publication in any newspaper, magazine, or other periodical that:

78 (i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney
79 General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals, or the
80 Legislature; county commissioner, county clerk, circuit clerk, assessor, sheriff, or prosecuting
81 attorney;

82 (ii) Is publicly disseminated within:

83 (I) Thirty days before a primary election in which the nomination for office sought by the
84 candidate is to be determined; or

85 (II) Sixty days before a general or special election in which the office sought by the
86 candidate is to be filled; and

87 (iii) Is targeted to the relevant electorate.

88 (B) "Electioneering communication" does not include:

89 (i) A news story, commentary, or editorial disseminated through the facilities of any
90 broadcast, cable or satellite television, radio station, newspaper, magazine, or other periodical
91 publication not owned or controlled by a political party, political committee, or candidate: *Provided,*
92 That a news story disseminated through a medium owned or controlled by a political party, political
93 committee, or candidate is nevertheless exempt if the news is:

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

96 (II) Is part of a general pattern of campaign-related news that gives reasonably equal
97 coverage to all opposing candidates in the circulation, viewing, or listening area;

98 (ii) Activity by a candidate committee, party executive committee, a caucus campaign
99 committee, or a political action committee that is required to be reported to the State Election
100 Commission or the Secretary of State as an expenditure pursuant to §3-8-5 of this code, or the
101 rules of the State Election Commission, or the Secretary of State promulgated pursuant to such
102 provision: *Provided*, That independent expenditures by a party executive committee, caucus
103 committee, or a political action committee required to be reported pursuant to §3-8-2 of this code
104 are not exempt from the reporting requirements of this section;

105 (iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election
106 Commission, or the Secretary of State, or a communication promoting that debate or forum made
107 by or on behalf of its sponsor;

108 (iv) A communication paid for by any organization operating under Section 501(c)(3) of the
109 Internal Revenue Code of 1986;

110 (v) A communication made while the Legislature is in session which, incidental to
111 promoting or opposing a specific piece of legislation pending before the Legislature, urges the
112 audience to communicate with a member or members of the Legislature concerning that piece of
113 legislation;

114 (vi) A statement or depiction by a membership organization in existence prior to the date on
115 which the individual named or depicted became a candidate, made in a newsletter or other
116 communication distributed only to bona fide members of that organization;

117 ~~(vii) A communication made solely for the purpose of attracting public attention to a product~~
118 ~~or service offered for sale by a candidate or by a business owned or operated by a candidate which~~
119 ~~does not mention an election, the office sought by the candidate, or his or her status as a~~
120 ~~candidate; or~~

121 ~~(viii)~~(vii) A communication, such as a voter's guide, which refers to all of the candidates for
122 one or more offices, which contains no appearance of endorsement for, or opposition to, the
123 nomination or election of any candidate and which is intended as nonpartisan public education

124 focused on issues and voting history.

125 (16) "Expressly advocating" means any communication that:

126 (A) Uses phrases such as "vote for the Governor", "re-elect your Senator", "support the
127 incumbent nominee for Supreme Court", "cast your ballot for the Republican challenger for House
128 of Delegates", "Smith for House", "Bob Smith in '04", "vote Pro-Life", or "vote Pro-Choice"
129 accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice,
130 "vote against Old Hickory", "defeat" accompanied by a picture of one or more candidates, "reject
131 the incumbent";

132 (B) Communicates campaign slogans or individual words that can have no other
133 reasonable meaning than to urge the election or defeat of one or more clearly identified
134 candidates, such as posters, bumper stickers, advertisements, etc., which say, "Smith's the One",
135 "Jones '06", "Baker", etc.; or

136 (C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or
137 against a specific candidate.

138 (17) "Financial agent" means any individual acting for and by himself or herself, or any two
139 or more individuals acting together or cooperating in a financial way to aid or take part in the
140 nomination or election of any candidate for public office, or to aid or promote the success or defeat
141 of any political party at any election.

142 (18) "Financial transactions" means all contributions or loans received and all repayments
143 of loans or expenditures made to promote the candidacy of any person by any candidate or any
144 organization advocating or opposing the nomination, election, or defeat of any candidate to be
145 voted on.

146 (19) "Firewall" means a policy designed and implemented to prohibit the flow of information
147 between employees or consultants providing services for the person paying for a communication
148 and those employees or consultants currently or previously providing services to a candidate, or to
149 a committee supporting or opposing a candidate clearly identified in the communication.

150 (20) "Foreign national" means the following:

151 (A) A foreign principal, as such term is defined in 22 U.S.C. § 611(b), which includes:

152 (i) A government of a foreign country;

153 (ii) A foreign political party;

154 (iii) A person outside of the United States, unless it is established that such person:

155 (I) Is an individual and a citizen of the United States; or

156 (II) That such person is not an individual and is organized under or created by the laws of
157 the United States or of any state or other place subject to the jurisdiction of the United States and
158 has its principal place of business within the United States; and

159 (iv) A partnership, association, corporation, organization, or other combination of persons
160 organized under the laws of, or having its principal place of business in, a foreign country.

161 (B) An individual who is not a citizen of the United States or a national of the United States,
162 as defined in 8 U.S.C. § 1101(a)(22), and who is not lawfully admitted for permanent residence, as
163 defined by 8 U.S.C. § 1101(a)(20).

164 (21) "Fundraising event" or "fundraiser" means an event such as a dinner, reception,
165 testimonial, cocktail party, auction, or similar affair through which contributions are solicited or
166 received.

167 (22) "In concert or cooperation with or at the request or suggestion of" means that a
168 candidate or his or her agent consulted with:

169 (A) The sender regarding the content, timing, place, nature, or volume of a particular
170 communication or communication to be made; or

171 (B) A person making an expenditure that would otherwise offset the necessity for an
172 expenditure of the candidate or candidate's committee.

173 (23) "Independent expenditure" means an expenditure by a person:

174 (A) Expressly advocating the election or defeat of a clearly identified candidate, including
175 supporting or opposing the candidates of a political party; and

176 (B) That is not made in concert or cooperation with or at the request or suggestion of such
177 candidate, his or her agents, the candidate's authorized political committee, or a political party
178 committee or its agents.

179 An expenditure which does not meet the criteria for an independent expenditure is
180 considered a contribution.

181 (24) "Local" refers to the election of candidates to a city, county, or municipal office and any
182 issue to be voted on by only the residents of a particular political subdivision.

183 (25) "Mass mailing" means a mailing by United States mail, facsimile, or electronic mail of
184 more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day
185 period. For purposes of this subdivision, "substantially similar" includes communications that
186 contain substantially the same template or language but vary in nonmaterial respects such as
187 communications customized by the recipient's name, occupation, or geographic location.

188 (26) "Membership organization" means a group that grants bona fide rights and privileges,
189 such as the right to vote, to elect officers or directors, and the ability to hold office to its members
190 and which uses a majority of its membership dues for purposes other than political purposes.
191 "Membership organization" does not include organizations that grant membership upon receiving
192 a contribution.

193 (27) "Membership organization political action committee" means a labor organization or a
194 trade association, cooperative, or other incorporated membership organization that: Is composed
195 of members; expressly states the qualifications for membership in its articles and by-laws; makes
196 its articles, by-laws, and other organizational documents available to its members; expressly
197 seeks members; acknowledges acceptance of membership, such as by sending membership
198 cards to new members or including them on a membership newsletter list; and is organized such
199 that it operates a subsidiary entity or segregated fund within the membership organization
200 primarily for the purpose of influencing any election on the ballot in the State of West Virginia.

201 (28) "Name" means the full first name, middle name, or initial, if any, and full legal last

202 name of an individual and the full name of any association, corporation, committee, or other
203 organization of individuals, making the identity of any person who makes a contribution apparent
204 by unambiguous reference.

205 (29) "Person" means an individual, corporation, partnership, committee, association, and
206 any other organization or group of individuals.

207 (30) "Political action committee" means a committee organized by one or more persons,
208 the primary purpose of which is to support or oppose the nomination or election of one or more
209 candidates. The following are types of political action committees:

210 (A) A corporate political action committee, as that term is defined in this section;

211 (B) A membership organization political action committee, as that term is defined in this
212 section; and

213 (C) An unaffiliated political action committee, as that term is defined in this section.

214 (31) "Political committee" means any candidate committee, political action committee, or
215 political party committee.

216 (32) "Political party" means a political party as that term is defined by §3-1-8 of this code or
217 any committee established, financed, maintained, or controlled by the party, including any
218 subsidiary, branch, or local unit thereof, and including national or regional affiliates of the party.

219 (33) "Political party committee" means a committee established by a political party or
220 political party caucus for the purposes of engaging in the influencing of the election, nomination, or
221 defeat of a candidate in any election.

222 (34) "Political purposes" means supporting or opposing the nomination, election, or defeat
223 of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of
224 the debt of a candidate or political committee or the administration or activities of an established
225 political party or an organization which has declared itself a political party, and determining the
226 advisability of becoming a candidate under the pre-candidacy financing provisions of this chapter.

227 (35) "Targeted to the relevant electorate" means a communication which refers to a clearly

228 identified candidate for statewide office or the Legislature and which can be received by 140,000
229 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or more
230 individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more
231 individuals in the district in the case of a candidacy for the House of Delegates-, and five percent or
232 more individuals in the county in the case of a candidacy for county commissioner, county clerk,
233 circuit clerk, sheriff, or prosecuting attorney.

234 (36) "Telephone bank" means telephone calls that are targeted to the relevant electorate,
235 other than telephone calls made by volunteer workers, regardless of whether paid professionals
236 designed the telephone bank system, developed calling instructions, or trained volunteers.

237 (37) "Unaffiliated political action committee" means a political action committee that is not
238 affiliated with a corporation or a membership organization.

§3-8-2b. Disclosure of electioneering communication.

1 (a) Every person who has spent:

2 (1) A total of ~~\$5,000~~ \$15,000 or more for the direct costs of purchasing, producing, or
3 disseminating electioneering communications during any calendar year; ~~or shall, within 24 hours~~
4 of each disclosure date, file with the Secretary of State which contains all of the information listed
5 in subsection (b) of this section; or

6 (2) A total of ~~\$1,000~~ \$2,500 or more on or after the 15th day, but more than 12 hours before
7 the day of any election, for the direct costs of purchasing, producing, or disseminating
8 electioneering communications during any calendar year shall, within 24 hours of each disclosure
9 date, file with the Secretary of State a statement which contains all of the information listed in
10 subsection (b) of this section.

11 (b) A person required, by subsection (a) of this section, to file a statement with the
12 Secretary of State shall provide the following information:

13 (1) The name of the person making the expenditure, the name of any person sharing or
14 exercising direction or control over the activities of the person making the expenditure, and the

15 name of the custodian of the books and accounts of the person making the expenditure;

16 (2) If the person making the expenditure is not an individual, the principal place of business
17 of the partnership, committee, association, organization or group which made the expenditure;

18 (3) The amount of each expenditure of more than \$1,000 made for electioneering
19 communications during the period covered by the statement and the name of the person to whom
20 the expenditure was made;

21 (4) The elections to which the electioneering communications pertain, the names, if known,
22 of the candidates referred to or to be referred to therein, whether the electioneering
23 communication is intended to support or oppose the identified candidates, and the amount of the
24 total expenditure reported in subdivision (3) of this subsection spent to support or oppose each of
25 the identified candidates; and

26 (5) The names and addresses of any contributors who contributed a total of more than
27 \$1,000 between the first day of the preceding calendar year and the disclosure date, and whose
28 contributions were made for the purpose of furthering the electioneering communications.

29 (c) With regard to the contributors required to be listed pursuant to subdivision (5),
30 subsection (b) of this section, the statement shall also include:

31 (1) The month, day, and year that the contributions of any single contributor exceeded
32 \$1,000;

33 (2) If the contributor is a political action committee, the name and address the political
34 action committee registered with the State Election Commission;

35 (3) If the contributor is an individual, the name and address of the individual, his or her
36 occupation, the name and address of the individual's current employer, if any, or, if the individual is
37 self-employed, the name and address of the individual's business, if any;

38 (4) A description of the contribution, if other than money;

39 (5) The value in dollars and cents of the contribution.

40 (d)(1) Any person who makes a contribution for the purpose of funding the direct costs of

41 purchasing, producing or disseminating an electioneering communication under this section shall,
42 at the time the contribution is made, provide his or her name and address to the recipient of the
43 contribution;

44 (2) Any individual who makes contributions totaling \$1,000 or more between the first day of
45 the preceding calendar year and the disclosure date for the purpose of funding the direct costs of
46 purchasing, producing, or disseminating electioneering communications shall, at the time the
47 contribution is made, provide the name of his or her occupation and of his or her current employer,
48 if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of
49 the contribution.

50 (e) In each electioneering communication, a statement shall appear or be presented in a
51 clear and conspicuous manner that:

52 (1) Clearly indicates that the electioneering communication is not authorized by the
53 candidate or the candidate's committee; and

54 (2) Clearly identifies the person making the expenditure for the electioneering
55 communication: *Provided*, That if the electioneering communication appears on or is disseminated
56 by broadcast, cable, or satellite transmission, the statement required by this subsection shall be
57 both spoken clearly and appear in clearly readable writing at the end of the communication.

58 (f) Within five business days after receiving a disclosure of electioneering communications
59 statement pursuant to this section, the Secretary of State shall make information in the statement
60 available to the public through the Internet.

61 (g) For the purposes of this section, a person is considered to have made an expenditure
62 when the person has entered into a contract to make the expenditure at a future time.

63 (h) The Secretary of State shall propose emergency and legislative rules for legislative
64 approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

65 (i) If any person, including, but not limited to, a political organization (as defined in Section
66 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure for

67 electioneering communications which is coordinated with and made with the cooperation,
68 consent, or prior knowledge of a candidate, candidate's committee, or agent of a candidate, the
69 expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure
70 is coordinated with and made with the cooperation or consent of a state or local political party or
71 committee, agent, or official of that party, the expenditure shall be treated as a contribution to and
72 expenditure by the candidate's party.

73 (j) This section does not apply to candidates for federal office. This section is not intended
74 to restrict or to expand any limitations on, obligations of, or prohibitions against any candidate,
75 committee, agent, contributor, or contribution contained in any other provision of this chapter.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

1 (a) Any person, candidate, financial agent, or treasurer of a political committee who fails to
2 file a sworn, itemized statement required by this article within the time limitations specified in this
3 article or who willfully files a grossly incomplete or grossly inaccurate statement is guilty of a
4 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 or 10 percent of the
5 amount of expenditures, whichever is greater, or confined in jail for not more than one year, or both
6 fined and confined. Sixty days after any primary or other election, the Secretary of State, county
7 clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn
8 statement or the filing of any grossly incomplete or grossly inaccurate statement by any person,
9 candidate, financial agent, or treasurer of a political party committee and forward copies of any
10 grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county
11 where the person, candidate, financial agent, or treasurer resides, is located, or has its principal
12 place of business.

13 (b)(1) Any person, candidate, financial agent, or treasurer of a political committee who fails
14 to file a sworn, itemized statement as required in this article or who files a grossly incomplete or
15 grossly inaccurate statement shall be assessed a civil penalty by the Secretary of State of \$10 a
16 day for each day after the due date the statement is delinquent, grossly incomplete, or grossly

17 inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the
18 Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete, or
19 grossly inaccurate statement by any person, candidate, financial agent, or treasurer of a political
20 committee and forward copies of such delinquent, incomplete, or inaccurate statements to the
21 Secretary of State.

22 (2) A civil penalty assessed pursuant to this section shall be payable to the State of West
23 Virginia and is collectable as authorized by law for the collection of debts.

24 (3) The Secretary of State may negotiate and enter into settlement agreements for the
25 payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete, or
26 inaccurate statement.

27 (4) The Secretary of State shall publish online a list of all persons required to file
28 statements with the Secretary of State who file statements after the deadline in an election cycle.
29 This list shall be maintained and be publicly available online to include late activity for, at a
30 minimum, the previous five years up to the current year.

31 (5) The Secretary of State and county clerk may review and audit any sworn statement
32 required to be filed pursuant to this article. The State Election Commission shall propose
33 legislative rules for promulgation, in accordance with §29A-3-1 *et seq.* of this code, to establish
34 procedures for the assessment of civil penalties as provided in this section.

35 (c)(1) Any candidate, whether nominated by primary election or appointed by executive
36 committee or executive committee chair, who has failed to file any sworn statement as required by
37 this article relating to the immediately preceding primary election for any office by the 84th day
38 before the general election, is disqualified and may not have his or her name appear on the
39 general election ballot. The provisions of §3-8-5b(d) of this code notwithstanding, any sworn
40 statement filed after the deadline required by §3-8-5 of this code must be received in the office
41 indicated by §3-8-5b(a) of this code by the close of business on the 84th day before the general
42 election.

43 (2) It is unlawful to issue a commission or certificate of election, or to administer the oath of
44 office, to any person elected to any public office who has failed to file any sworn statement
45 required by this article and no person may enter upon the duties of his or her office until he or she
46 has filed such statement, nor may he or she receive any salary or emolument for any period prior
47 to the filing of the statement.

48 (3) The vacancy on the ballot created by the disqualification in this subsection is subject to
49 §3-5-19 of this code.

50 (d) As used in this section, “grossly” means substantive and material, and specifically
51 includes false or misleading representations and acts of omissions.

52 (e) The Secretary of State shall provide by rule protocols for written notice via certified mail,
53 return receipt requested, to the person, candidate, financial agent, or treasurer of a political party
54 committee that is not in compliance with the requirements of this section. With respect to a
55 violation of subsection (c) of this section, the notice shall be provided 60 days after any primary or
56 other election.