

1 adding thereto two new sections, designated §31D-7-740 and §31D-7-
2 741; that said code be amended by adding thereto a new section
3 designated §31D-8-834; and that said code be amended by adding
4 thereto a new section, designated §31D-16-1621, all to read as
5 follows:

6 **ARTICLE 1. GENERAL PROVISIONS.**

7 PART 5. DEFINITIONS.

8 **§31D-1-150. Definitions.**

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

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

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

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

20 (4) "Contribution or expenditure" means any monetary and
21 nonmonetary political contributions and expenditures not deductible
22 under section 162 (e)(1)(B) of the Internal Revenue Code,
23 including, but not limited to, contributions to or expenditures on
24 behalf of political candidates, political parties, political

1 committees and other political entities organized and operating
2 under 26 U.S.C. Sec. 527 of the Internal Revenue Code and any
3 portion of any dues or similar payments made to any tax exempt
4 organization that is used for an expenditure or contribution if
5 made directly by the corporation would not be deductible under
6 section 162 (e)(1)(B) of the Internal Revenue Code, any
7 contribution or expenditure, as those terms are defined in 2 U.S.C.
8 §431, as well as any contribution or expenditure defined under
9 section 2-A, article eight, chapter three of this code, and also
10 includes any direct or indirect payment, distribution, loan,
11 advance, deposit, or gift of money, or any services, or anything of
12 value (except a loan of money by a national or state bank made in
13 accordance with the applicable banking laws and regulations and in
14 the ordinary course of business) to any candidate, campaign
15 committee, or political party or organization, in connection with
16 any election to any office. The term "contribution or expenditure"
17 does not include:

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

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

24 (C) The establishment, administration, and solicitation of

1 contributions to a separate segregated fund to be utilized for
2 political purposes by a corporation.

3 ~~(4)~~ (5) "Corporation" or "domestic corporation" means a
4 corporation for profit, which is not a foreign corporation,
5 incorporated under or subject to the provisions of this chapter.

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

10 ~~(6)~~ (7) "Distribution" means a direct or indirect transfer of
11 money or other property or incurrence of indebtedness by a
12 corporation to or for the benefit of its shareholders in respect of
13 any of its shares: *Provided*, That "distribution" does not include
14 a direct or indirect transfer of a corporation's own shares. A
15 distribution may be in the form of a declaration or payment of a
16 dividend; a purchase, redemption or other acquisition of shares; or
17 a distribution of indebtedness.

18 ~~(7)~~ (8) "Effective date of notice" means the date as
19 determined pursuant to section one hundred fifty-one of this
20 article.

21 ~~(8)~~ (9) "Electronic transmission" or "electronically
22 transmitted" means any process of communication not directly
23 involving the physical transfer of paper that is suitable for the
24 retention, retrieval and reproduction of information by the

1 recipient.

2 ~~(9)~~ (10) "Employee" includes an officer and may include a
3 director: *Provided*, That the director has accepted duties that
4 make him or her also an employee.

5 ~~(10)~~ (11) "Entity" includes corporations and foreign
6 corporations; nonprofit corporations; profit and nonprofit
7 unincorporated associations; limited liability companies and
8 foreign limited liability companies; business trusts, estates,
9 partnerships, trusts and two or more persons having a joint or
10 common economic interest; and state, United States and foreign
11 government.

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

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

19 ~~(12)~~ (14) "Governmental subdivision" includes, but is not
20 limited to, authorities, counties, districts and municipalities.

21 ~~(13)~~ (15) "Individual" includes, but is not limited to, the
22 estate of an incompetent or deceased individual.

23 (16) "Issue advocacy campaign" means contributions or
24 expenditures for any communication to the general public intended

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

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

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

22 ~~(14)~~ (19) "Person" includes, but is not limited to, an
23 individual and an entity.

24 (20) "Political activities" means any contributions or

1 expenditures made directly or indirectly to, or in support of or
2 opposition to, any candidate, political party, committee,
3 electioneering communication, ballot measure campaign, or an issue
4 advocacy campaign. Political activities do not include activities
5 defined as lobbying under any local, state or federal law.

6 ~~(15)~~ (21) "Principal office" means the office so designated in
7 the return required pursuant to section three, article twelve-c,
8 chapter eleven of this code where the principal executive offices
9 of a domestic or foreign corporation are located.

10 ~~(16)~~ (22) "Proceeding" includes, but is not limited to, civil
11 suits and criminal, administrative and investigatory actions.

12 ~~(17)~~ (23) "Record date" means the date established under
13 article six or seven of this chapter on which a corporation
14 determines the identity of its shareholders and their
15 shareholdings. The determinations are to be made as of the close
16 of business on the record date unless another time for doing so is
17 specified when the record date is fixed.

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

21 ~~(19)~~ (25) "Registered office" means the address of the
22 registered agent for the corporation, as provided in section five
23 hundred one, article five of this chapter.

24 ~~(20)~~ (26) "Secretary" means the corporate officer to whom the

1 board of directors has delegated responsibility under subsection
2 (c), section eight hundred forty, article eight of this chapter for
3 custody of the minutes of the meetings of the board of directors
4 and the meetings of the shareholders and for authenticating records
5 of the corporation.

6 (27) "Separate segregated fund" means a political action
7 committee formed by a corporation for the purpose of making
8 contributions to candidates for office or to political parties. A
9 "separate segregated fund" which supports federal candidates shall
10 have the same meaning as that found in 2 U.S.C. §441b.

11 ~~(21)~~ (28) "Shareholder" means the person in whose name shares
12 are registered in the records of a corporation or the beneficial
13 owner of shares to the extent of the rights granted by a nominee
14 certificate on file with a corporation.

15 ~~(22)~~ (29) "Shares" means the units into which the proprietary
16 interests in a corporation are divided.

17 ~~(23)~~ (30) "Sign" or "signature" includes, but is not limited
18 to, any manual, facsimile, conformed or electronic signature with
19 means to identify a record by signature, mark or other symbol, with
20 intent to authenticate it.

21 ~~(24)~~ (31) "State", when referring to a part of the United
22 States, includes a state and commonwealth and a territory and
23 insular possession of the United States and their agencies and
24 governmental subdivisions.

1 ~~(25)~~ (32) "Subscriber" means a person who subscribes for
2 shares in a corporation, whether before or after incorporation.

3 ~~(26)~~ (33) "United States" includes, but is not limited to,
4 districts, authorities, bureaus, commissions, departments and any
5 other agency of the United States.

6 ~~(27)~~ (34) "Voting group" means all shares of one or more
7 classes or series that, pursuant to the articles of incorporation
8 or this chapter, are entitled to vote and be counted together
9 collectively on a matter at a meeting of shareholders. All shares
10 entitled by the articles of incorporation or this chapter to vote
11 generally on the matter are for that purpose a single voting group.

12 ~~(28)~~ (35) "Voting power" means the current power to vote in
13 the election of directors.

14 **ARTICLE 7. SHAREHOLDERS.**

15 PART 4. SHAREHOLDERS VOTE ON CORPORATE

16 POLITICAL ACTIVITIES.

17 **§31D-7-740. Annual vote.**

18 (a) A corporation spending in the aggregate \$10,000 or more of
19 corporate treasury funds on political activities, shall comply with
20 the requirements of this section and section seven hundred forty-
21 one of this article.

22 (b) Any proxy or consent or authorization for an annual
23 meeting of the shareholders of a corporation held pursuant to
24 section seven hundred one of this article, or a special meeting

1 held pursuant to section seven hundred two of this article, shall
2 provide for a separate resolution subject to shareholder vote to
3 approve any spending of \$10,000 or more by the corporation for any
4 political activity.

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

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

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

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

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

1 political activities;

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

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

7 (e) Notwithstanding the requirement for an annual shareholder
8 vote to authorize any spending of \$10,000 or more by the
9 corporation for any political activity, a corporation may request
10 a special authorization for additional spending on political
11 activities, provided that:

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

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

20 **ARTICLE 8. DIRECTORS AND OFFICERS.**

21 PART 3. DIRECTORS.

22 **§31D-8-834. Directors' liability for unlawful political**
23 **expenditures.**

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

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

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

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

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

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

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

19 (c) Where only part of any expenditure or contribution was
20 made or incurred in violation of the provisions of section seven
21 hundred forty, article seven of this chapter, the provisions of
22 this section applies only to that portion made or incurred in
23 violation of section seven hundred forty, article seven of this
24 chapter.

- 1 (1) The date of the contributions or expenditures;
2 (2) The amount of the contributions or expenditures;
3 (3) The identity of the candidate, political party, committee,
4 electioneering communication, ballot measure campaign or issue
5 advocacy campaign;
6 (4) If the contributions or expenditures were made for or
7 against a candidate, including an electioneering communication as
8 defined in section two-a, article eight, chapter three of this
9 code, the office sought by the candidate and the political party
10 affiliation of the candidate;
11 (5) If the contributions or expenditures were made for or
12 against a ballot measure, the purpose of the measure and whether
13 the contributions or expenditures were made in support or
14 opposition to the ballot measure;
15 (6) If the contributions or expenditures were made for or
16 against an issue advocacy campaign, the nature of the political
17 issue and whether the contributions were made in support or
18 opposition to the political issue; and
19 (7) All expenditures made by a separate segregated fund
20 affiliated with the corporation.
21 (c) (1) The quarterly reports of political activities by a
22 corporation shall be public records.
23 (2) A copy of the reports filed pursuant to subsection (a)
24 shall be posted for at least one year on the corporation's website,

if any.

NOTE: The purpose of the bill is to require corporations that use corporate general treasury funds for political expenditures, to clearly report those expenditures to shareholders and further require shareholder authorize the use of corporate general treasury funds for political expenditures.

Strike-through 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 and §31D-16-1621 are new; therefore, they have been completely underscored.