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**H. B. 3098**

(By Delegates Manchin, Skinner, Poore, Hunt,  
Wells, Pino, Marcum, Moore, Caputo  
and Longstreth)

[Introduced March 25, 2013; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §31D-1-150 of the Code of West  
Virginia, 1931, as amended; to amend said code by adding  
thereto two new sections, designated §31D-7-740 and §31D-7-  
741; to amend said code by adding thereto a new section,  
designated §31D-8-834; to amend said code by adding thereto a  
new section, designated §31D-15-1540; and to amend said code  
by adding thereto a new section, designated §31D-16-1621, all  
relating to the accountability of a corporation's political  
activities; defining additional terms; requiring 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; providing for director  
liability for spending without proper authorization; requiring  
disclosure of corporate political activities to shareholders  
and the public; and applying these new requirements to foreign  
corporations.

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

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

10 **ARTICLE 1. GENERAL PROVISIONS.**

11 **§31D-1-150. Definitions.**

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

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

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

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

23       (4) "Contribution or expenditure" means any monetary and  
24 nonmonetary political contributions and expenditures not deductible

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

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

23 (B) Nonpartisan registration and get-out-the-vote campaigns by  
24 a corporation aimed at its stockholders and executive or

1 administrative personnel and their families; and

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

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

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

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

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

23 ~~(8)~~ (9) "Electronic transmission" or "electronically  
24 transmitted" means any process of communication not directly

1 involving the physical transfer of paper that is suitable for the  
2 retention, retrieval and reproduction of information by the  
3 recipient.

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

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

14 ~~(11)~~ (12) "Foreign corporation" means a corporation for profit  
15 incorporated under a law other than the laws of this state.

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

21 ~~(12)~~ (14) "Governmental subdivision" includes, but is not  
22 limited to, authorities, counties, districts and municipalities.

23 ~~(13)~~ (15) "Individual" includes, but is not limited to, the  
24 estate of an incompetent or deceased individual.

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

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

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

24       ~~(14)~~ (19) "Person" includes, but is not limited to, an

1 individual and an entity.

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

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

12 ~~(16)~~ (22) "Proceeding" includes, but is not limited to, civil  
13 suits and criminal, administrative and investigatory actions.

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

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

23 ~~(19)~~ (25) "Registered office" means the address of the  
24 registered agent for the corporation, as provided in section five

1 hundred one, article five of this chapter.

2 ~~(20)~~ (26) "Secretary" means the corporate officer to whom the  
3 board of directors has delegated responsibility under subsection  
4 (c), section eight hundred forty, article eight of this chapter for  
5 custody of the minutes of the meetings of the board of directors  
6 and the meetings of the shareholders and for authenticating records  
7 of the corporation.

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

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

17 ~~(22)~~ (29) "Shares" means the units into which the proprietary  
18 interests in a corporation are divided.

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

23 ~~(24)~~ (31) "State", when referring to a part of the United  
24 States, includes a state and commonwealth and a territory and



1 insular possession of the United States and their agencies and  
2 governmental subdivisions.

3 ~~(25)~~ (32) "Subscriber" means a person who subscribes for  
4 shares in a corporation, whether before or after incorporation.

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

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

14 ~~(28)~~ (35) "Voting power" means the current power to vote in  
15 the election of directors.

## 16 **ARTICLE 7. SHAREHOLDERS.**

### 17 PART 4. SHAREHOLDERS VOTE ON CORPORATE

#### 18 POLITICAL ACTIVITIES.

### 19 **§31D-7-740. Annual vote.**

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

24 (b) Any proxy or consent or authorization for an annual

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

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

14 (d) If the corporation spends less than an aggregate of  
15 \$10,000 in a twelve-month period for political activities in this  
16 state, it does not have to seek shareholder authorization for such  
17 spending.

18 **§31D-7-741. Shareholder approval of political activities.**

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

23 (b) If known at the time of the shareholder vote, the  
24 corporation shall articulate whether the corporate treasury funds

1 so authorized are intended to benefit or defeat specific  
2 candidates, ballot measures or issue advocacy campaigns, or whether  
3 it will be paid to specific nonprofits or trade associations for  
4 political activities in this state;

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

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

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

16 (1) All spending on political activities in this state of  
17 \$10,000 or more shall be authorized by a shareholder majority vote;  
18 and

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

1 **ARTICLE 8. DIRECTORS AND OFFICERS.**

2 PART 3. DIRECTORS.

3 §31D-8-834. Directors' liability for unlawful political  
4 expenditures.

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

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

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

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

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

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

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

23 (c) Where only part of any expenditure or contribution was  
24 made or incurred in violation of the provisions of section seven

1 hundred forty, article seven of this chapter, this section applies  
2 only to that portion made or incurred in violation of section seven  
3 hundred forty, article seven of this chapter.

4 (d) It shall be a defense to liability imposed by this  
5 section:

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

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

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

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

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

16 **ARTICLE 15. FOREIGN CORPORATIONS.**

17 PART 4. CORPORATE POLITICAL ACTIVITY.

18 **§31D-15-1540. Applicability of provisions in this chapter related**  
19 **to political activity to foreign corporations.**

20 Prior to engaging in any political activities in this state,  
21 a foreign corporation shall comply with the requirements of  
22 sections seven hundred forty and seven hundred forty-one, article  
23 seven of this chapter, section eight hundred thirty-four, article  
24 eight of this chapter, and section one thousand six hundred twenty-

1 one, article sixteen of this chapter, inclusively.

2 **ARTICLE 16. RECORDS AND REPORTS.**

3 PART 2. REPORTS.

4 **§31D-16-1621. Disclosure of corporate political activities to**  
5 **shareholders.**

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

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

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

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

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

20 (4) If the contributions or expenditures were made for or  
21 against a candidate, including an electioneering communication as  
22 defined in section one-a, article eight, chapter three of this  
23 code, the office sought by the candidate and the political party  
24 affiliation of the candidate;

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

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

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

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

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

NOTE: The purpose of the bill is to address the accountability of a corporation's political activities. The bill 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. The bill provides for director liability for spending without proper authorization. The bill requires disclosure of corporate political activities to shareholders and the public. The bill applies these new requirements to foreign corporations. The bill defines new terms.

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, §31D-15-1540 and §31D-16-1621 are new; therefore, they have been completely underscored.