

**Senate Bill No. 604**

(By Senators Kessler (Mr. President) and Fitzsimmons)

\_\_\_\_\_  
[Introduced March 22, 2013; referred to the Committee on the  
Judiciary.]  
\_\_\_\_\_

10 A BILL to amend and reenact §3-8-1a of the Code of West Virginia,  
11 1931, as amended, relating to the regulation and control of  
12 elections, generally; and expanding the definition of  
13 "electioneering communication" to include certain nonbroadcast  
14 media.

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

16 That §3-8-1a of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

18 **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

19 **§3-8-1a. Definitions.**

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

22 (1) "Ballot issue" means a constitutional amendment, special  
23 levy, bond issue, local option referendum, municipal charter or

1 revision, an increase or decrease of corporate limits or any other  
2 question that is placed before the voters for a binding decision.

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

6 (3) "Candidate" means an individual who:

7 (A) Has filed a certificate of announcement under section  
8 seven, article five of this chapter or a municipal charter;

9 (B) Has filed a declaration of candidacy under section  
10 twenty-three, article five of this chapter;

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

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

16 (4) "Candidate's committee" means a political committee  
17 established with the approval of or in cooperation with a candidate  
18 or a prospective candidate to explore the possibilities of seeking  
19 a particular office or to support or aid his or her nomination or  
20 election to an office in an election cycle. If a candidate directs  
21 or influences the activities of more than one active committee in  
22 a current campaign, those committees shall be considered one  
23 committee for the purpose of contribution limits.

1           (5) "Clearly identified" means that the name, nickname,  
2 photograph, drawing or other depiction of the candidate appears or  
3 the identity of the candidate is otherwise apparent through an  
4 unambiguous reference, such as "the Governor," "your Senator" or  
5 "the incumbent" or through an unambiguous reference to his or her  
6 status as a candidate, such as "the Democratic candidate for  
7 Governor" or "the Republican candidate for Supreme Court of  
8 Appeals."

9           (6) "Contribution" means a gift, subscription, loan,  
10 assessment, payment for services, dues, advance, donation, pledge,  
11 contract, agreement, forbearance or promise of money or other  
12 tangible thing of value, whether conditional or legally  
13 enforceable, or a transfer of money or other tangible thing of  
14 value to a person, made for the purpose of influencing the  
15 nomination, election or defeat of a candidate. An offer or tender  
16 of a contribution is not a contribution if expressly and  
17 unconditionally rejected or returned. A contribution does not  
18 include volunteer personal services provided without compensation:  
19 *Provided*, That a nonmonetary contribution is to be considered at  
20 fair market value for reporting requirements and contribution  
21 limitations.

22           (7) "Corporate political action committee" means a political  
23 action committee that is a separate segregated fund of a

1 corporation that may only accept contributions from its restricted  
2 group as outlined by the rules of the State Election Commission.

3 (8) "Direct costs of purchasing, producing or disseminating  
4 electioneering communications" means:

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

9 (B) The cost of air time on broadcast, cable or satellite  
10 radio and television stations, the costs of disseminating printed  
11 materials, studio time, use of facilities and the charges for a  
12 broker to purchase air time.

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

14 (A) The first date during any calendar year on which any  
15 electioneering communication is disseminated after the person  
16 paying for the communication has spent a total of \$5,000 or more  
17 for the direct costs of purchasing, producing or disseminating  
18 electioneering communications; or

19 (B) Any other date during that calendar year after any  
20 previous disclosure date on which the person has made additional  
21 expenditures totaling \$5,000 or more for the direct costs of  
22 purchasing, producing or disseminating electioneering  
23 communications.

1           (10) "Election" means any primary, general or special election  
2 conducted under the provisions of this code or under the charter of  
3 any municipality at which the voters nominate or elect candidates  
4 for public office. For purposes of this article, each primary,  
5 general, special or local election constitutes a separate election.  
6 This definition is not intended to modify or abrogate the  
7 definition of the term "nomination" as used in this article.

8           (11) (A) "Electioneering communication" means any paid  
9 communication made by broadcast, cable or satellite signal,  
10 nonbroadcast communication made by mass mailing, telephone bank,  
11 billboard advertisement or published in any newspaper, magazine or  
12 other periodical that:

13           (i) Refers to a clearly identified candidate for Governor,  
14 Secretary of State, Attorney General, Treasurer, Auditor,  
15 Commissioner of Agriculture, Supreme Court of Appeals or the  
16 Legislature;

17           (ii) Is publicly disseminated within:

18           (I) Thirty days before a primary election at which the  
19 nomination for office sought by the candidate is to be determined;  
20 or

21           (II) Sixty days before a general or special election at which  
22 the office sought by the candidate is to be filled; and

23           (iii) Is targeted to the relevant electorate: *Provided, That*

1 for purposes of the general election of 2008 the amendments to this  
2 article are effective October 1, 2008.

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

4 (i) A news story, commentary or editorial disseminated through  
5 the facilities of any broadcast, cable or satellite television or  
6 radio station, newspaper, magazine or other periodical publication  
7 not owned or controlled by a political party, political committee  
8 or candidate: *Provided*, That a news story disseminated through a  
9 medium owned or controlled by a political party, political  
10 committee or candidate is nevertheless exempt if the news is:

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

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

17 (ii) Activity by a candidate committee, party executive  
18 committee or caucus committee, or a political action committee that  
19 is required to be reported to the State Election Commission or the  
20 Secretary of State as an expenditure pursuant to section five of  
21 this article or the rules of the State Election Commission or the  
22 Secretary of State promulgated pursuant to such provision:  
23 *Provided*, That independent expenditures by a party executive

1 committee or caucus committee or a political action committee  
2 required to be reported pursuant to subsection (b), section two of  
3 this article are not exempt from the reporting requirements of this  
4 section;

5 (iii) A candidate debate or forum conducted pursuant to rules  
6 adopted by the State Election Commission or the Secretary of State  
7 or a communication promoting that debate or forum made by or on  
8 behalf of its sponsor;

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

11 (v) A communication made while the Legislature is in session  
12 which, incidental to promoting or opposing a specific piece of  
13 legislation pending before the Legislature, urges the audience to  
14 communicate with a member or members of the Legislature concerning  
15 that piece of legislation;

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

21 (vii) A communication made solely for the purpose of  
22 attracting public attention to a product or service offered for  
23 sale by a candidate or by a business owned or operated by a

1 candidate which does not mention an election, the office sought by  
2 the candidate or his or her status as a candidate; or

3 (viii) A communication, such as a voter's guide, which refers  
4 to all of the candidates for one or more offices, which contains no  
5 appearance of endorsement for or opposition to the nomination or  
6 election of any candidate and which is intended as nonpartisan  
7 public education focused on issues and voting history.

8 (12) "Expressly advocating" means any communication that:

9 (A) Uses phrases such as "vote for the Governor," "re-elect  
10 your Senator," "support the Democratic nominee for Supreme Court,"  
11 "cast your ballot for the Republican challenger for House of  
12 Delegates," "Smith for House," "Bob Smith in '04," "vote Pro-Life"  
13 or "vote Pro-Choice" accompanied by a listing of clearly identified  
14 candidates described as Pro-Life or Pro-Choice, "vote against Old  
15 Hickory," "defeat" accompanied by a picture of one or more  
16 candidates, "reject the incumbent";

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

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



1           (13) "Financial agent" means any individual acting for and by  
2 himself or herself, or any two or more individuals acting together  
3 or cooperating in a financial way to aid or take part in the  
4 nomination or election of any candidate for public office, or to  
5 aid or promote the success or defeat of any political party at any  
6 election.

7           (14) "Fund-raising event" means an event such as a dinner,  
8 reception, testimonial, cocktail party, auction or similar affair  
9 through which contributions are solicited or received by such means  
10 as the purchase of a ticket, payment of an attendance fee or by the  
11 purchase of goods or services.

12           (15) "Independent expenditure" means an expenditure by a  
13 person:

14           (A) Expressly advocating the election or defeat of a clearly  
15 identified candidate; and

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

20           Supporting or opposing the election of a clearly identified  
21 candidate includes supporting or opposing the candidates of a  
22 political party. An expenditure which does not meet the criteria  
23 for an independent expenditure is considered a contribution.

1           (16) "Membership organization" means a group that grants bona  
2 fide rights and privileges, such as the right to vote, to elect  
3 officers or directors and the ability to hold office, to its  
4 members and which uses a majority of its membership dues for  
5 purposes other than political purposes. "Membership organization"  
6 does not include organizations that grant membership upon receiving  
7 a contribution.

8           (17) "Name" means the full first name, middle name or initial,  
9 if any, and full legal last name of an individual and the full name  
10 of any association, corporation, committee or other organization of  
11 individuals, making the identity of any person who makes a  
12 contribution apparent by unambiguous reference.

13           (18) "Person" means an individual, corporation, partnership,  
14 committee, association and any other organization or group of  
15 individuals.

16           (19) "Political action committee" means a committee organized  
17 by one or more persons for the purpose of supporting or opposing  
18 the nomination or election of one or more candidates. The  
19 following are types of political action committees:

20           (A) A corporate political action committee, as that term is  
21 defined by subdivision (8) of this section;

22           (B) A membership organization, as that term is defined by  
23 subdivision(18) of this section;

1 (C) An unaffiliated political action committee, as that term  
2 is defined by subdivision (29) of this section.

3 (20) "Political committee" means any candidate committee,  
4 political action committee or political party committee.

5 (21) "Political party" means a political party as that term is  
6 defined by section eight, article one of this chapter or any  
7 committee established, financed, maintained or controlled by the  
8 party, including any subsidiary, branch or local unit thereof and  
9 including national or regional affiliates of the party.

10 (22) "Political party committee" means a committee established  
11 by a political party or political party caucus for the purposes of  
12 engaging in the influencing of the election, nomination or defeat  
13 of a candidate in any election.

14 (23) "Political purposes" means supporting or opposing the  
15 nomination, election or defeat of one or more candidates or the  
16 passage or defeat of a ballot issue, supporting the retirement of  
17 the debt of a candidate or political committee or the  
18 administration or activities of an established political party or  
19 an organization which has declared itself a political party and  
20 determining the advisability of becoming a candidate under the  
21 precandidacy financing provisions of this chapter.

22 (24) "Targeted to the relevant electorate" means a  
23 communication which refers to a clearly identified candidate for

1 statewide office or the Legislature and which can be received by  
2 one hundred forty thousand or more individuals in the state in the  
3 case of a candidacy for statewide office, eight thousand two  
4 hundred twenty or more individuals in the district in the case of  
5 a candidacy for the State Senate and two thousand four hundred ten  
6 or more individuals in the district in the case of a candidacy for  
7 the House of Delegates.

8       (25) "Two-year election cycle" means the twenty-four month  
9 period that begins the day after a general election and ends on the  
10 day of the subsequent general election.

11       (26) "Unaffiliated political action committee" means a  
12 political action committee that is not affiliated with a  
13 corporation or a membership organization.

NOTE: The purpose of this bill to include additional types of nonbroadcast media in the definition of "Electioneering Communication." These changes reflect the United States Court of Appeals for the Fourth Circuit's decision in *Center for Individual Freedom, et al v. Natalie H. Tennant, Secretary of State of West Virginia, et al.*

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