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H. B. 4388

(By Delegate Lane)
[Introduced February 3, 2014; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §3-8-12 of the Code of West Virginia, 1931, as amended, relating to prohibiting certain political fundraising activities for members of the Legislature during certain periods of time before, during and after the Legislature is in session; and providing that existing misdemeanor penalties apply.

Be it enacted by the Legislature of West Virginia:

That §3-8-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§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

1 **contributions; public contractors; penalty.**

2 (a) A person may not publish, issue or circulate, or cause to
3 be published, issued or circulated, any anonymous letter, circular,
4 placard, radio or television advertisement or other publication
5 supporting or aiding the election or defeat of a clearly identified
6 candidate.

7 (b) An owner, publisher, editor or employee of a newspaper or
8 other periodical may not insert, either in its advertising or
9 reading columns, any matter, paid for or to be paid for, which
10 tends to influence the voting at any election, unless directly
11 designating it as a paid advertisement and stating the name of the
12 person authorizing its publication and the candidate in whose
13 behalf it is published.

14 (c) A person may not, in any room or building occupied for the
15 discharge of official duties by any officer or employee of the
16 state or a political subdivision of the state, solicit orally or by
17 written communication delivered within the room or building, or in
18 any other manner, any contribution of money or other thing of value
19 for any party or political purpose, from any postmaster or any
20 other officer or employee of the federal government, or officer or
21 employee of the state, or a political subdivision of the state. An
22 officer, agent, clerk or employee of the federal government, or of
23 this state, or any political subdivision of the state, who may have
24 charge or control of any building, office or room, occupied for any

1 official purpose, may not knowingly permit any person to enter any
2 building, office or room, occupied for any official purpose for the
3 purpose of soliciting or receiving any political assessments from,
4 or delivering or giving written solicitations for, or any notice
5 of, any political assessments to, any officer or employee of the
6 state, or a political subdivision of the state.

7 (d) Except as provided in section eight of this article, a
8 person entering into any contract with the state or its
9 subdivisions, or any department or agency of the state, either for
10 rendition of personal services or furnishing any material, supplies
11 or equipment or selling any land or building to the state, or its
12 subdivisions, or any department or agency of the state, if payment
13 for the performance of the contract or payment for the material,
14 supplies, equipment, land or building is to be made, in whole or in
15 part, from public funds may not, during the period of negotiation
16 for or performance under the contract or furnishing of materials,
17 supplies, equipment, land or buildings, directly or indirectly,
18 make any contribution to any political party, committee or
19 candidate for public office or to any person for political purposes
20 or use; nor may any person or firm solicit any contributions for
21 any purpose during any period.

22 (e) A person may not, directly or indirectly, promise any
23 employment, position, work, compensation or other benefit provided
24 for, or made possible, in whole or in part, by act of the

1 Legislature, to any person as consideration, favor or reward for
2 any political activity for the support of or opposition to any
3 candidate, or any political party in any election.

4 (f) Except as provided in section eight of this article, a
5 person may not, directly or indirectly, make any contribution in
6 excess of the value of \$1,000 in connection with any campaign for
7 nomination or election to or on behalf of any statewide office, in
8 connection with any other campaign for nomination or election to or
9 on behalf of any other elective office in the state or any of its
10 subdivisions, or in connection with or on behalf of any person
11 engaged in furthering, advancing, supporting or aiding the
12 nomination or election of any candidate for any of the offices.

13 (g) A political organization (as defined in Section 527(e)(1)
14 of the Internal Revenue Code of 1986) may not solicit or accept
15 contributions until it has notified the Secretary of State of its
16 existence and of the purposes for which it was formed. During the
17 two-year election cycle, a political organization (as defined in
18 Section 527 (e) (1) of the Internal Revenue Code of 1986) may not
19 accept contributions totaling more than \$1,000 from any one person
20 prior to the primary election and contributions totaling more than
21 \$1,000 from any one person after the primary and before the general
22 election.

23 (h) It is unlawful for any person to create, establish or
24 organize more than one political organization (as defined in

1 Section 527(e)(1) of the Internal Revenue Code of 1986) with the
2 intent to avoid or evade the contribution limitations contained in
3 subsection (g) of this section.

4 (i) Notwithstanding the provisions of subsection (f) of this
5 section to the contrary, a person may not, directly or indirectly,
6 make contributions to a state party executive committee or state
7 party legislative caucus committee which, in the aggregate, exceed
8 the value of \$1,000 in any calendar year.

9 (j) The limitations on contributions contained in this section
10 do not apply to transfers between and among a state party executive
11 committee or a state party's legislative caucus political committee
12 from national committees of the same political party: *Provided,*
13 That transfers permitted by this subsection may not exceed \$50,000
14 in the aggregate in any calendar year to any state party executive
15 committee or state party legislative caucus political committee:
16 *Provided, however,* That the moneys transferred may only be used for
17 voter registration and get-out-the-vote activities of the state
18 committees.

19 (k) A person may not solicit any contribution, other than
20 contributions to a campaign for or against a county or local
21 government ballot issue, from any nonelective salaried employee of
22 the state government or of any of its subdivisions: *Provided,* That
23 in no event may any person acting in a supervisory role solicit a
24 person who is a subordinate employee for any contribution. A

1 person may not coerce or intimidate any nonelective salaried
2 employee into making a contribution. A person may not coerce or
3 intimidate any nonsalaried employee of the state government or any
4 of its subdivisions into engaging in any form of political
5 activity. The provisions of this subsection may not be construed
6 to prevent any employee from making a contribution or from engaging
7 in political activity voluntarily without coercion, intimidation or
8 solicitation.

9 (1) A person may not solicit a contribution from any other
10 person without informing the other person at the time of the
11 solicitation of the amount of any commission, remuneration or other
12 compensation that the solicitor or any other person will receive or
13 expect to receive as a direct result of the contribution being
14 successfully collected. Nothing in this subsection may be
15 construed to apply to solicitations of contributions made by any
16 person serving as an unpaid volunteer.

17 (m) A person may not place any letter, circular, flyer,
18 advertisement, election paraphernalia, solicitation material or
19 other printed or published item tending to influence voting at any
20 election in a roadside receptacle unless it is: (1) Approved for
21 placement into a roadside receptacle by the business or entity
22 owning the receptacle; and (2) contains a written acknowledgment of
23 the approval. This subdivision does not apply to any printed
24 material contained in a newspaper or periodical published or

1 distributed by the owner of the receptacle. The term "roadside
2 receptacle" means any container placed by a newspaper or periodical
3 business or entity to facilitate home or personal delivery of a
4 designated newspaper or periodical to its customers.

5 (n) No person may conduct a fundraising event or a social
6 function or gathering for the purpose of soliciting, receiving
7 contributions, pledges or other forms of political contributions
8 for a member of the Legislature outside of the legislative district
9 of the member during the following time periods: (1) Four days
10 immediately before any regular or extraordinary session of the
11 Legislature; (2) during any regular or extraordinary session of the
12 Legislature; (3) seven days immediately following the adjournment
13 sine die of any regular or extraordinary session of the
14 Legislature; (4) the time period during any interim meetings of any
15 committee of the Legislature or any party caucus; and (5) the two-
16 day period immediately following any interim meetings of any
17 committee of the Legislature or any party caucus.

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

22 ~~(o)~~ (p) ~~The provisions of subsection~~ Subsection (k) of this
23 section, permitting contributions to a campaign for or against a
24 county or local government ballot issue shall become operable on

1 and after January 1, 2005.

2 ~~(p)~~ (q) The limitations on contributions established by
3 subsection (g) of this section do not apply to contributions made
4 for the purpose of supporting or opposing a ballot issue, including
5 a Constitutional amendment.

NOTE: The purpose of this bill is to prohibiting certain political fundraising activities for members of the Legislature during certain periods of time before, during and after the Legislature is in session. The bill provides that existing misdemeanor penalties also apply.

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