

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 622

SENATOR TARR, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on February 22, 2019]

1 A BILL to amend and reenact §3-8-1a, §3-8-2, §3-8-4, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8,
2 §3-8-9, and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said
3 code by adding thereto five new sections, designated §3-8-5c, 3-8-5g, §3-8-9a, §3-8-9b,
4 and §3-8-9c, all relating generally to the regulation and control of elections; modifying and
5 adding definitions; modifying requirements for information to be included in independent
6 expenditure reports; providing that persons or committees required to file federal
7 expenditure reports are not exempt from requirement to file state-level expenditure and
8 electioneering disclosure reports; raising the threshold amounts for required disclosure of
9 independent expenditures occurring within a certain time frame preceding elections;
10 requiring electronic filing of certain financial disclosure statements; removing the deadline
11 before an election for a political action committee or political party committee to file a
12 statement of organization; modifying record-keeping requirements for certain receipts and
13 expenditures made for political purposes and requiring that records be maintained for a
14 period of five years; modifying deadlines for financial disclosure reports; providing that
15 candidates for certain offices may file financial disclosure statements by mail, facsimile, or
16 electronic means; modifying limits on contributions to candidates and candidate
17 committees; modifying limits on contributions to state party executive committees and
18 legislative caucus campaign committees; modifying limits on contributions to political
19 action committees; providing that precandidates may accept contributions for a general
20 election campaign prior to nomination, but may not expend such funds until after
21 nomination is declared; providing that persons receiving precandidacy contributions are
22 subject to certain expenditure reporting requirements; prohibiting foreign nationals from
23 making contributions or donations to candidates, committees, and parties, and prohibiting
24 receipt of a contribution or donation by a foreign national; modifying daily rate of civil
25 penalty for persons filing late, inaccurate, or incomplete financial statements; requiring the
26 Secretary of State to publish an online list of persons filing late financial statements;

27 providing that membership organizations are subject to certain limitations applying to
28 corporate contributions and solicitation of contributions by corporations; adding certain
29 expenses to the list of permissible expenses of political committees; providing that
30 coordinated expenditures are treated as contributions and providing exceptions thereto;
31 permitting political party committees and legislative caucus campaign committees to make
32 coordinated expenditures up to certain limits in connection with certain state-level
33 candidates; permitting political committees to engage in joint fundraising efforts pursuant
34 to a written agreement filed with the Secretary of State subject to certain requirements;
35 requiring the Secretary of State to promulgate legislative rules pertaining to joint
36 fundraising efforts; permitting unlimited transfers of money between and among state party
37 executive committees, legislative caucus campaign committees, and national committees
38 of the same political party for voter registration and get-out-the-vote initiatives; providing
39 that prohibition against intimidating or coercing certain government employees into
40 engaging in political activity also extends to intimidating or coercing employees into
41 refraining from political activity; eliminating prohibition on a political organization organized
42 under Section 527 of the Internal Revenue Code from soliciting or accepting donations
43 before registering with the Secretary of State; providing that it is unlawful for any person
44 to establish more than one political committee with the intent to evade contribution
45 limitations; and deleting obsolete language.

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
4 other 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
16 to seek nomination or election for any state, district, county, ~~or~~ municipal, ~~office~~ or party office to
17 be filled at 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 seeking
20 a particular office or to support or aid his or her nomination or election to an office in an election
21 cycle. If a candidate directs or influences the activities of more than one active committee in a
22 current campaign, those committees shall be considered one committee for the purpose of
23 contribution limits.

24 (6) "Caucus campaign committee" means a West Virginia House of Delegates or Senate
25 political party caucus campaign committee that receives contributions and makes expenditures
26 to support or oppose one or more specific candidates or slates of candidates for nomination,
27 election, or committee membership.

28 ~~(6)~~ (7) "Clearly identified" means that the name, nickname, photograph, drawing, or other
29 depiction of the candidate appears or the identity of the candidate is otherwise apparent through
30 an unambiguous reference, such as "the Governor", "your Senator", or "the incumbent", or through

31 an unambiguous reference to his or her status as a candidate, such as “the Democratic candidate
32 for Governor” or “the Republican candidate for Supreme Court of Appeals”.

33 ~~(7)~~ (8) “Contribution” means a gift, subscription, loan, assessment, payment for services,
34 dues, advance, donation, pledge, contract, agreement, forbearance, or promise of money, or
35 other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or
36 other tangible thing of value to a person, made for the purpose of influencing the nomination,
37 election, or defeat of a candidate.

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

39 (B) An offer or tender of a contribution is not a contribution if expressly and unconditionally
40 rejected or returned. A contribution does not include volunteer personal services provided without
41 compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value
42 for reporting requirements and contribution limitations.

43 (9) “Coordinated expenditure” is an expenditure made in concert with, in cooperation with,
44 or at the request or suggestion of a candidate or candidate’s committee and meeting the criteria
45 provided in §3-8-9a of this code.

46 ~~(8)~~ (10) “Corporate political action committee” means a political action committee that is
47 a separate segregated fund of a corporation that may only accept contributions from its restricted
48 group as outlined by the rules of the State Election Commission.

49 ~~(9)~~ (11) “Direct costs of purchasing, producing, or disseminating electioneering
50 communications” means:

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

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

57 ~~(40)~~ (12) “Disclosure date” means either of the following:

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

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

64 ~~(44)~~ (13) “Election” means any primary, general, or special election conducted under the
65 provisions of this code or under the charter of any municipality at which the voters nominate or
66 elect candidates for public office. For purposes of this article, each primary, general, special, or
67 local election constitutes a separate election. This definition is not intended to modify or abrogate
68 the definition of the term “nomination” as used in this article.

69 ~~(42)~~ (14) (A) “Electioneering communication” means any paid communication made by
70 broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or
71 ~~published~~ publication in any newspaper, magazine, or other periodical that:

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

75 (ii) Is publicly disseminated within:

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

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

80 (iii) Is targeted to the relevant electorate. ~~Provided, That for purposes of the general~~
81 ~~election of 2008 the amendments to this article are effective October 1, 2008.~~

82 (B) “Electioneering communication” does not include:

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

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

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

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

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

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

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

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

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

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

119 ~~(13)~~ (15) "Expressly advocating" means any communication that:

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

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

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

132 ~~(14)~~ (16) "Financial agent" means any individual acting for and by himself or herself, or
133 any two or more individuals acting together or cooperating in a financial way to aid or take part in

134 the nomination or election of any candidate for public office, or to aid or promote the success or
135 defeat of any political party at any election.

136 (17) “Financial transactions” means all contributions or loans received and all repayments
137 of loans or expenditures made to promote the candidacy of any person by any candidate or any
138 organization advocating or opposing the nomination, election, or defeat of any candidate to be
139 voted on.

140 (18) “Firewall” means a policy designed and implemented to prohibit the flow of information
141 between employees or consultants providing services for the person paying for a communication
142 and those employees or consultants currently or previously providing services to a candidate, or
143 to a committee supporting or opposing a candidate, clearly identified in the communication.

144 (19) “Foreign national” means the following:

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

146 (i) A government of a foreign country;

147 (ii) A foreign political party;

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

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

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

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

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

158 ~~(45)~~ (20) “Fund-raising event” or “fundraiser” means an event such as a dinner, reception,
159 testimonial, cocktail party, auction, or similar affair through which contributions are solicited or

160 received. ~~by such means as the purchase of a ticket, payment of an attendance fee, or by the~~
161 ~~purchase of goods or services.~~

162 (21) "In concert or cooperation with or at the request or suggestion of" means that a
163 candidate or his or her agent consulted with:

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

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

168 ~~(16)~~ (22) "Independent expenditure" means an expenditure by a person:

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

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

174 ~~Supporting or opposing the election of a clearly identified candidate includes supporting~~
175 ~~or opposing the candidates of a political party.~~ An expenditure which does not meet the criteria
176 for an independent expenditure is considered a contribution.

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

179 ~~(17)~~ (24) "Mass mailing" means a mailing by United States mail, facsimile, or electronic
180 mail of more than 500 pieces of mail matter of an identical or substantially similar nature within
181 any 30 day period. For purposes of this subdivision, "substantially similar" includes
182 communications that contain substantially the same template or language, but vary in nonmaterial
183 respects such as communications customized by the recipient's name, occupation, or geographic
184 location.

185 ~~(18)~~ (25) “Membership organization” means a group that grants bona fide rights and
186 privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to
187 its members and which uses a majority of its membership dues for purposes other than political
188 purposes. “Membership organization” does not include organizations that grant membership upon
189 receiving a contribution.

190 ~~(19)~~ (26) “Name” means the full first name, middle name, or initial, if any, and full legal last
191 name of an individual and the full name of any association, corporation, committee, or other
192 organization of individuals, making the identity of any person who makes a contribution apparent
193 by unambiguous reference.

194 ~~(20)~~ (27) “Person” means an individual, corporation, partnership, committee, association,
195 and any other organization or group of individuals.

196 ~~(21)~~ (28) “Political action committee” means a committee organized by one or more
197 persons, ~~for the purpose of supporting or opposing~~ the primary purpose of which is to support or
198 oppose the nomination or election of one or more candidates. The following are types of political
199 action committees:

200 (A) A corporate political action committee, as that term is defined ~~by subdivision (8) of~~ in
201 this section;

202 (B) A membership organization, as that term is defined ~~by subdivision (18) of~~ in this section;
203 and

204 (C) An unaffiliated political action committee, as that term is defined ~~by subdivision (29) of~~
205 in this section.

206 ~~(22)~~ (29) “Political committee” means any candidate committee, political action committee,
207 or political party committee.

208 ~~(23)~~ (30) “Political party” means a political party as that term is defined by §3-1-8 of this
209 code or any committee established, financed, maintained, or controlled by the party, including any
210 subsidiary, branch, or local unit thereof and including national or regional affiliates of the party.

211 ~~(24)~~ (31) "Political party committee" means a committee established by a political party or
212 political party caucus for the purposes of engaging in the influencing of the election, nomination,
213 or defeat of a candidate in any election.

214 ~~(25)~~ (32) "Political purposes" means supporting or opposing the nomination, election, or
215 defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the
216 retirement of the debt of a candidate or political committee or the administration or activities of an
217 established political party or an organization which has declared itself a political party, and
218 determining the advisability of becoming a candidate under the precandidacy financing provisions
219 of this chapter.

220 ~~(26)~~ (33) "Targeted to the relevant electorate" means a communication which refers to a
221 clearly identified candidate for statewide office or the Legislature and which can be received by
222 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or
223 more individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more
224 individuals in the district in the case of a candidacy for the House of Delegates.

225 ~~(27)~~ (34) "Telephone bank" means telephone calls that are targeted to the relevant
226 electorate, other than telephone calls made by volunteer workers, regardless of whether paid
227 professionals designed the telephone bank system, developed calling instructions, or trained
228 volunteers.

229 ~~(28)~~ ~~"Two year election cycle" means the twenty four month period that begins the day~~
230 ~~after a general election and ends on the day of the subsequent general election.~~

231 ~~(29)~~ (35) "Unaffiliated political action committee" means a political action committee that
232 is not affiliated with a corporation or a membership organization.

~~§3-8-2. Accounts for receipts and expenditures in elections; Requirements for reporting independent expenditures.~~

1 ~~(a) Except for: (1) Candidates for party committeeman and committeewoman; and (2)~~
2 ~~federal committees required to file under the provisions of 2 U.S.C. §434, all candidates for~~

3 ~~nomination or election and all persons supporting, aiding or opposing the nomination, election or~~
4 ~~defeat of any candidate shall keep for a period of six months records of receipts and expenditures~~
5 ~~which are made for political purposes. All of the receipts and expenditures are subject to~~
6 ~~regulation by the provisions of this article. Verified financial statements of the records and~~
7 ~~expenditures shall be made and filed as public records by all candidates and by their financial~~
8 ~~agents, representatives or any person acting for and on behalf of any candidate and by the~~
9 ~~treasurers of all political party committees.~~

10 ~~(b)(1)~~ (a) In addition to any other reporting required by the provisions of this chapter, any
11 person who makes independent expenditures in an aggregate amount or value in excess of
12 \$1,000 during a calendar year shall file a disclosure statement, according to the requirements of
13 §3-8-5 of this code, ~~on a form prescribed by the Secretary of State~~, that contains all of the following
14 information:

15 (1) The name of ~~(i)~~ the person making the expenditure;

16 ~~(ii)~~ (2) The name of any person sharing or exercising direction or control over the activities
17 of the person making the expenditure; ~~and~~

18 ~~(iii)~~ (3) The name of the custodian of the books and accounts of the person making the
19 expenditure;

20 ~~(B)~~ (4) If the person making the expenditure is ~~not an individual~~ an entity, the principal
21 place of business of the partnership, corporation, committee, association, organization, or group
22 which made the expenditure;

23 ~~(C)~~ (5) The amount of each independent expenditure ~~of more than \$1,000 made~~ during the
24 period covered by the statement and the name of the person to whom the expenditure was made;

25 ~~(D)~~ (6) The elections to which the independent expenditure pertain, the names, if known,
26 of the candidates referred to or to be referred to therein, whether the expenditure is intended to
27 support or oppose the identified candidates, and the amount of the total expenditure reported

28 pursuant to ~~paragraph (C)~~ subdivision (5) of this subsection spent to support or oppose each of
29 the identified candidates;

30 ~~(E)~~ (7) The name and address of any person who contributed a total of more than \$250
31 between the first day of the preceding calendar year, and the disclosure date, and whose
32 contributions were made for the purpose of furthering the expenditure;

33 ~~(F)~~ (8) With regard to the contributors required to be listed pursuant to ~~paragraph (E)~~
34 subsection (7) of this subdivision ~~the statement shall also include:~~

35 ~~(i)~~ (A) The month, day, and year that the contributions of any single contributor exceeded
36 \$250;

37 ~~(ii)~~ (B) If the contributor is a political action committee, the name and address the political
38 action committee registered with the Secretary of State, county clerk, or municipal clerk;

39 ~~(iii)~~ (C) If the contributor is an individual, the name and address of the individual, his or her
40 occupation, the name and address of the individual's current employer, if any, or, if the individual
41 is self-employed, the name and address of the individual's business, if any;

42 ~~(iv)~~ (D) A description of the contribution, if other than money; and

43 ~~(v)~~ (E) The value in dollars and cents of the contribution; and

44 ~~(G)(1)~~ (9) A certification that such independent expenditure was not made in cooperation,
45 consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized
46 committee or agent of such candidate.

47 ~~(2)~~ (b) Any person who makes a contribution for the purpose of funding an independent
48 expenditure under this subsection shall, at the time the contribution is made, provide his or her
49 name, address, occupation, his or her current employer, if any, or, if the individual is
50 self-employed, the name of his or her business, if any, to the recipient of the contribution.

51 ~~(3)~~ (c) The Secretary of State shall expeditiously prepare indices setting forth, on a
52 candidate-by-candidate basis, all independent expenditures separately, made by, or on behalf of,

53 or for, or against each candidate, as reported under this subsection, and ~~for~~ shall periodically
54 ~~publishing~~ publish such indices on a timely pre-election basis.

55 ~~(e) (d)(1) A person, including a political committee, who~~ Any person or political committee
56 that makes or contracts to make independent expenditures aggregating ~~\$1,000~~ \$5,000 or more
57 for any statewide, legislative, or multicounty judicial candidate or \$500 or more for any county
58 office candidate, single-county judicial candidate, committee supporting or opposing a candidate
59 on the ballot in more than one county, or any municipal candidate on a municipal election ballot,
60 after the 15th day, but more than 12 hours, before the date of an election, shall file a report on a
61 form prescribed by the Secretary of State, describing the expenditures within 24 hours: *Provided,*
62 That a person making expenditures ~~in the amount of \$1,000 or more~~ for any statewide or
63 legislative candidate on or after the 15th day but more than 12 hours before the day of any election
64 meeting the criteria of this section, but which are subject to the disclosure requirements of §3-8-2b
65 of this code, shall report such expenditures in accordance with the requirements of §3-8-2b of this
66 code and ~~shall~~ may not file ~~an additional report as provided herein~~ the report otherwise required
67 by this subsection.

68 (2) Any person who files a report under subdivision (1) of this subsection, shall file an
69 additional report within 24 hours after each time the person makes or contracts to make
70 independent expenditures aggregating ~~\$1,000~~ an additional \$5,000 or more for any statewide,
71 legislative, or multicounty judicial candidate or ~~an additional~~ \$500 with respect to the same
72 election, for any county office, single-county judicial candidate, committee supporting or opposing
73 a candidate on the ballot in more than one county, or any municipal candidate on a municipal
74 election ballot, as that to which the initial report relates.

75 ~~(d)~~ (e) (1) A person, including a political committee, who makes or contracts to make
76 independent expenditures aggregating \$10,000 or more at any time, up to and including the 15th
77 day before the date of an election, shall file a report on a form prescribed by the Secretary of
78 State, describing the expenditures within 48 hours.

79 (2) A Any person who files a report under subdivision (1) of this subsection ~~the person~~
80 shall file an additional report within 48 hours after each time the person makes or contracts to
81 make independent expenditures aggregating an additional \$10,000 with respect to the same
82 election as that to which the initial report relates.

83 ~~(e)~~ (f) Any communication paid for by an independent expenditure must include a clear
84 and conspicuous public notice that:

85 (1) Clearly states that the communication is not authorized by the candidate or the
86 candidate's committee; and

87 (2) Clearly identifies the person making the expenditure: *Provided*, That if the
88 communication appears on or is disseminated by broadcast, cable or satellite transmission, the
89 statement required by this subsection must be both spoken clearly and appear in clearly readable
90 writing at the end of the communication.

91 ~~(f)~~ (g) Any person who has spent a total of \$5,000 or more for the direct costs of
92 purchasing, producing, or disseminating electioneering communications during any calendar year
93 shall maintain all financial records and receipts related to such expenditure for a period of ~~six~~
94 ~~months~~ five years following the filing of a disclosure pursuant to ~~subsection (a) of this section~~
95 §3-8-2b of this code and, upon request, shall make such records and receipts available to the
96 Secretary of State or county clerk for the purpose of an audit as provided in §3-8-7 of this code.

97 ~~(g)~~ (h) Any person who willfully fails to comply with this section is guilty of a misdemeanor
98 and, upon conviction thereof, shall be fined not less than \$500, or confined in jail for not more
99 than one year, or both fined and confined.

100 ~~(h)~~ (i)(1) Any person or political committee who is required to file a statement under this
101 section ~~may~~ shall file the statement ~~by facsimile device or electronic mail~~ electronically in
102 accordance with such rules as the Secretary of State may promulgate.

103 (2) The Secretary of State shall make any document filed electronically, pursuant to this
104 subsection, accessible to the public on the Internet not later than 24 hours after the document is
105 received by the secretary.

106 (3) In promulgating a rule under this subsection, the secretary shall provide methods, other
107 than requiring a signature on the document being filed, for verifying the documents covered by
108 the rule. Any document verified under any of the methods shall be treated for all purposes,
109 including penalties for perjury, in the same manner as a document verified by signature.

110 ~~(j)~~ (i) This section does not apply to candidates for federal office.

111 ~~(j)~~ (k) The Secretary of State may promulgate emergency and legislative rules, in
112 accordance with the provisions of chapter 29A of this code, to establish guidelines for the
113 administration of this section.

§3-8-4. Treasurers and financial agents; written designation requirements.

1 (a) No person may act as the treasurer of any political action committee or political party
2 committee supporting, aiding or opposing the nomination, election, or defeat of any candidate for
3 an office encompassing an election district larger than a county unless a written statement of
4 organization, on a form to be prescribed by the Secretary of State, is filed with the Secretary of
5 State. ~~at least twenty eight days before the election at which that person is to act as a treasurer~~
6 ~~and is received by the Secretary of State before midnight, eastern standard time, of that day or,~~
7 ~~if mailed, is postmarked before that hour. The form shall include the name of the political~~
8 ~~committee; the name of the treasurer; the mailing address, telephone number and e-mail address,~~
9 ~~if applicable, of the committee and of the treasurer if different from the committee information; the~~
10 ~~chairman of the committee; the affiliate organization, if any; type of committee affiliation, as~~
11 ~~defined in subdivisions (21) and (24), section one-a of this article, if any; and whether the~~
12 ~~committee will participate in statewide, county or municipal elections. The form shall be certified~~
13 ~~as accurate and true and signed by the chairman and the treasurer of the committee~~ *Provided,*

14 ~~That~~ A change of treasurer or financial agent may be made at any time by filing a written statement
15 with the Secretary of State.

16 (b) No person may act as the treasurer for any candidate committee for a candidate for
17 ~~nomination or election to any statewide office, or to any office encompassing an election district~~
18 ~~larger than a county, or to any legislative office, or any circuit judgeship,~~ unless a written statement
19 of organization designating that person as the treasurer or financial agent is filed with the
20 Secretary of State. ~~at least twenty-eight days before the election at which that person is to act as~~
21 ~~a treasurer and is received by the Secretary of State before midnight, eastern standard time, of~~
22 ~~that day or if mailed, is postmarked before that hour~~ *Provided*, That A change of treasurer or
23 financial agent may be made at any time by filing a written statement with the Secretary of State.

24 (c) No person may act as treasurer of any political committee ~~or as financial agent for any~~
25 ~~candidate~~ advocating for candidates to be nominated or elected by the voters of a county or a
26 district therein, except legislative and circuit judge candidates, ~~or as the financial agent for a~~
27 ~~candidate for the nomination or election to any other office,~~ unless a written statement of
28 organization designating him or her as the treasurer ~~or financial agent~~ is filed with the clerk of the
29 county commission or the Secretary of State. ~~at least twenty-eight days before the election at~~
30 ~~which he or she is to act and is received before midnight, eastern standard time, of that day or if~~
31 ~~mailed, is postmarked before that hour~~ *Provided*, That A change of treasurer may be made at any
32 time by filing a written statement with the clerk of the county commission.

33 (d) Prior to engaging in any activity, a political committee shall file a statement of
34 organization required by subsection (a) of this section. A statement of organization form required
35 by this section shall be certified as accurate and true and signed by the treasurer and the chairman
36 of the committee, and shall include the following information:

37 (1) The name of the political committee;

38 (2) The name of the treasurer;

39 (3) The mailing address, telephone number, and e-mail address of the committee;

40 (4) The mailing address, telephone number, and e-mail address of the treasurer, if
41 different from the committee information;

42 (5) The name of the chairman of the committee;

43 (6) The affiliate organization, if any;

44 (7) The type of political committee, as determined by the description of types of
45 committees included in the definitions of “political committee” and “political action committee” in
46 §3-8-1a of this code; and

47 (8) Whether the committee will participate in statewide or local elections.

48 ~~(d)~~ (e) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a filing
49 designating a treasurer for a state, ~~or~~ county, or municipal political ~~executive~~ committee may be
50 made any time before the committee either accepts or spends funds. Once a designation is made
51 by a state, ~~or~~ county, or municipal political ~~executive~~ committee, no additional designations are
52 required under this section until a successor treasurer is designated.

53 (f) A state, ~~or~~ county, or municipal political ~~executive~~ committee may terminate a
54 designation made pursuant to this section by making a written request to terminate the
55 designation on a form prescribed by the Secretary of State and by stating in the request filing a
56 report of financial information required in §3-8-5 of this code, indicating that the political committee
57 has no funds or debts remaining in the committee’s account. This written request shall be filed
58 with either the Secretary of State or the clerk of the county commission as provided by subsections
59 (a), (b), and (c) of this section.

§3-8-5. Detailed accounts and verified financial statements required.

1 (a) Record-keeping requirements. —

2 (1) Except for candidates for party committeeman and committeewoman, all candidates
3 for nomination or election to state or local offices and all persons supporting, aiding, or opposing
4 the nomination, election, or defeat of any such candidate shall keep, for a period of five years,
5 records of receipts and expenditures which are made for political purposes.

6 (2) Every candidate or treasurer of every political committee shall keep detailed accounts
7 of every sum of money or other thing of value received by him or her, including all loans of money
8 or things of value, and of all expenditures and disbursements made, or liabilities incurred, by the
9 candidate or political committee.

10 (3) A person that is not a political committee and makes independent expenditures or
11 electioneering communications must keep detailed accounts of every sum of money or other thing
12 of value received by him or her for the purpose of furthering any independent expenditure or
13 electioneering communication and of all disbursements made for independent expenditures or
14 electioneering communications.

15 (b) Financial reporting requirements. —

16 (1) Every person required to keep detailed accounts under subsection (a) of this section
17 shall file a detailed, itemized sworn statement, as prescribed in §3-8-5a and §3-8-5b of this code,
18 according to the following schedule:

19 (A) On April 1 of each year, the person shall file a statement of all financial transactions
20 dating from January 1 to March 31 of the same year, to be filed within six days thereafter;

21 (B) On July 1 of each year, the person shall file a statement of all financial transactions
22 dating from April 1 to June 30 of the same year, to be filed within six days thereafter;

23 (C) On October 1 of each year, the person shall file a statement of all financial transactions
24 dating from July 1 to September 30 of the same year, to be filed within six days thereafter; and

25 (D) On January 1 of each year, the person shall file a statement of all financial transactions
26 dating from October 1 to December 31 of the previous year, to be filed within six days thereafter.

27 (2) In addition to the statements required in subdivision (1) of this section, a candidate or
28 candidate's committee shall file detailed itemized sworn statements, as prescribed in §3-8-5a and
29 §3-8-5b of this code, according to the following schedule:

30 (A) On the 15th day preceding the primary election in which a candidate is on the ballot,
31 the candidate or committee shall file a statement of all financial transactions subsequent to the
32 previous statement, if any, to be filed within four business days after the 15th day; and

33 (B) On the 15th day preceding the general election in which a candidate, including an
34 official write-in candidate, is on the ballot, the candidate or committee shall file a statement of all
35 financial transactions subsequent to the previous statement, if any, to be filed within four business
36 days after the 15th day.

37 (c) A person required to file reports pursuant to 52 U.S.C. §30104 is exempt from the
38 requirements of subsection (b) of this section but is not exempt from the state-level electioneering
39 communication reports requirements in §3-8-2b of this code or the independent expenditure
40 reporting requirements in §3-8-2 of this code.

41 (d) Every person who is qualified as an official write-in candidate for any elective office
42 shall individually, or by candidate committee, comply with all of the applicable requirements of
43 this section.

44 (e) Candidates for the office of conservation district supervisor elected pursuant to the
45 §19-21A-1 et seq. of this code are required to file only the report required by paragraph (A),
46 subdivision (2), subsection (b) of this section, immediately prior to the applicable general election
47 that is held concurrently with state's primary.

§3-8-5b. Where financial statements and reports shall be filed; filing date prescribed.

1 (a) The financial statements provided for in this article shall be filed, by or on behalf of
2 candidates, with:

3 (1) The Secretary of State for legislative offices, circuit judge, and family court judge, and
4 for statewide and other offices to be nominated or elected by the voters of a political division
5 greater than a county;

6 (2) The clerk of the county commission by candidates for offices to be nominated or
7 elected by the voters of a single county or a political division within a single county, except circuit
8 judge and family court judge; or

9 (3) The proper municipal officer by candidates for office to be nominated or elected to
10 municipal office.

11 ~~(b) The statements may be filed by mail, in person, or by facsimile or other electronic~~
12 ~~means of transmission: *Provided*, That the financial statements filed by or on behalf of candidates~~
13 ~~for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of~~
14 ~~Agriculture, and Supreme Court of Appeals, shall be filed electronically by the means of an~~
15 ~~Internet program that has been established by the Secretary of State on forms or in a format~~
16 ~~prescribed by the Secretary of State: *Provided*, That after January 1, 2018, unless a committee~~
17 ~~has been granted an exemption in case of hardship pursuant to subsection (c) of this section, all~~
18 ~~such statements required to be filed with the Secretary of State, on or behalf of a candidate for~~
19 ~~any elective office, shall be filed electronically by means of the internet program that has been~~
20 ~~established by the Secretary of State.~~

21 (1) The following statements or reports shall be filed electronically, in a manner prescribed
22 by the Secretary of State:

23 (A) Financial statements filed by or on behalf of candidates for Governor, Secretary of
24 State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, State Senate, House
25 of Delegates, Supreme Court of Appeals, circuit judge, or family court judge;

26 (B) Financial statements filed by political committees;

27 (C) Electioneering communication reports; and

28 (D) Independent expenditure reports.

29 (2) If through or by no fault of the candidate, the candidate is unable to file the campaign
30 financial statement, the candidate shall then file said statement in person, via facsimile or other

31 electronic means of transmission, or by certified mail postmarked at the first reasonable
32 opportunity.

33 ~~(e)~~ (3) Committees required to report electronically may apply to the State Election
34 Commission for an exemption from mandatory electronic filing in the case of hardship. An
35 exemption may be granted at the discretion of the State Election Commission.

36 (c) Candidates for all offices not identified in subsection (b) of this section, may file financial
37 statements by mail, in person, by facsimile, or by other electronic means of transmission. For
38 purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the
39 date of the postmark of the United States Postal Service, and in the case of hand delivery or
40 delivery by facsimile or other electronic means of transmission, the date delivered to the office of
41 the Secretary of State, or to the office of the clerk of the county commission, in accordance with
42 the provisions of subsection (a) of this section, during regular business hours of that office.

43 ~~(e)~~ (d) The sworn financial statements required to be filed by this section with the Secretary
44 of State shall be posted on the Internet by the Secretary of State within 10 business days from
45 the date the financial statement is filed.

§3-8-5c. Contribution limitations.

1 (a)(1) A person, political party, or political action committee may not, in an election cycle:

2 (A) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a
3 candidate seeking nomination, including by making contributions to the candidate's committee;

4 or

5 (B) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a
6 candidate seeking election, including by making contributions to the candidate's committee;

7 Provided, That a candidate may receive contributions for the general election prior to nomination,
8 however, such funds may not be expended until after the date of the nomination is declared.

9 (2) The contribution limits of this section apply only to elections to be held after the effective
10 date of this section, and do not apply to candidate committees that were created for elections held
11 prior to the effective date of this section.

12 (b) A person may not, directly or indirectly, make contributions to a state party executive
13 committee, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee
14 which, in the aggregate, exceed \$10,000 in any calendar year: *Provided*, That a person may not
15 earmark or otherwise designate any portion of a contribution made pursuant to this subsection to
16 be used to support or oppose the election of a particular candidate: *Provided, however*, That any
17 such designation or earmark that accompanies a contribution made pursuant to this subsection
18 may not be binding on the entity that receives the contribution.

19 (c) A person may not, directly or indirectly, make contributions to a political action
20 committee, related to a particular election, which, in the aggregate, exceed \$5,000.

§3-8-5e. Precandidacy financing and expenditures.

1 (a) Notwithstanding any other provisions of this code, it is lawful for a person, otherwise
2 qualified to be a candidate for any public office or position to be determined by public election, to
3 receive contributions or make expenditures, or both personally or by another individual acting as
4 a treasurer, to determine the advisability of becoming such a candidate or preparing to be such a
5 candidate: *Provided*, That such contributions may be received and such expenditures made only
6 during the four years immediately preceding the term for which such person may be a candidate
7 or during the term of office immediately preceding the term for which such person may be a
8 candidate, whichever is less: *Provided, however*, That no person is disqualified from receiving
9 contributions or making expenditures as permitted under the provisions of this section solely
10 because such person then holds a public office or position.

11 (b) Any person undertaking to determine the advisability of becoming or preparing to be a
12 candidate, who desires to receive contributions before filing a certificate of candidacy, ~~shall name~~
13 shall designate himself or another individual to act as a treasurer and shall file a designation of

14 treasurer in the manner provided in §3-8-4 of this code before receiving any contributions
15 permitted by this section. Any expenditures made before the filing of a designation of treasurer
16 shall be reported in accordance with the provisions of ~~this section~~ §3-8-5 of this code, regardless
17 of the source of funds used for such expenditures.

18 (c) A person who receives a contribution who is acting for and by himself or herself or as
19 treasurer or agent for another pursuant to the provisions of this section shall keep detailed
20 accounts of every sum of money or other thing of value received by him or her, and of all
21 expenditures and disbursements made, and liabilities incurred, in the same manner as such
22 accounts are required by §3-8-5 of this code. ~~for the period prior to the date of filing for candidacy~~
23 ~~for the office he is considering seeking. Any person who has received contributions or made~~
24 ~~expenditures subject to the provisions of this section shall file annually on the last Saturday in~~
25 ~~March or within six days thereafter preceding the election at which the names of candidates would~~
26 ~~appear on the ballot for the public office or position which the person originally considered~~
27 ~~seeking, a detailed itemized statement setting forth all contributions received and expenditures~~
28 ~~made pursuant to the provisions of this section concerning the candidacy of that person. If the~~
29 ~~person on whose behalf such contributions are received or expenditures are made becomes a~~
30 ~~candidate for any office or position to be decided at such election then the itemized statement~~
31 ~~shall be included within the first statement required to be filed by the provisions of section five of~~
32 ~~this article. If such person does not become a candidate for any office or position to be decided~~
33 ~~at such election, then the detailed itemized statements required by this subsection shall be the~~
34 ~~only statements required to be filed by such person.~~

35 (d) Regardless of whether such person becomes a candidate as originally intended, ~~or~~
36 becomes a candidate for some office other than the office or position originally intended, or does
37 not become a candidate, all limits on campaign contributions and campaign expenditures
38 applicable to the candidacy of or advocacy of the candidacy of such person for the office he or

39 she actually seeks, shall be applicable to and inclusive of the receipts had and expenditures made
40 during such precandidacy period as well as after the person becomes a candidate.

§3-8-5g. Prohibition on political contributions and expenditures by foreign nationals.

1 (a) A foreign national may not, directly or indirectly, make:

2 (1) A contribution or donation, or an express or implied promise to make a contribution or
3 donation, to a candidate's committee, a political committee, or a political party; or

4 (2) An independent expenditure or any disbursement for an electioneering communication
5 related to a state or local election.

6 (b) A person may not solicit, accept, or receive a contribution or donation described in
7 subsection (a) of this section.

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

12 (b) (1) Any person, candidate, financial agent, or treasurer of a political ~~party~~ committee
13 who fails to file a sworn, itemized statement as required in this article or who files a grossly
14 incomplete or grossly inaccurate statement ~~may~~ shall be assessed a civil penalty by the Secretary

15 of State of ~~\$25~~ \$10 a day for each day after the due date the statement is delinquent, grossly
16 incomplete, or grossly inaccurate. Sixty days after any primary or other election, the county clerk
17 shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of
18 any grossly incomplete, or grossly inaccurate statement by any person, candidate, financial agent,
19 or treasurer of a political party committee and forward copies of such delinquent, incomplete, or
20 inaccurate statements to the Secretary of State.

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

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

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

30 ~~(4)~~ (5) The Secretary of State and county clerk may review and audit any sworn statement
31 required to be filed pursuant to this article. The State Election Commission shall propose
32 legislative rules for promulgation, in accordance with §29A-3-1 *et seq.* of this code, to establish
33 procedures for the assessment of civil penalties as provided in this section.

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

40 indicated by §3-8-5b(a) of this code by the close of business on the 84th day before the general
41 election.

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

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

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

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

**§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules;
additional powers of State Election Commission.**

1 (a) An officer, agent, or person acting on behalf of any membership organization or any
2 corporation, whether incorporated under the laws of this or any other state or of a foreign country,
3 may not pay, give, lend, or authorize to be paid, any money, or other thing of value belonging to
4 the corporation to any candidate or candidate’s campaign committee for nomination or election to
5 any statewide office or any other elective office in the state or any of its subdivisions.

6 (b) A person may not solicit or receive any payment, contribution, or other thing from any
7 membership organization or any corporation or from any officer, agent, or other person acting on
8 behalf of the membership organization or corporation to any candidate or candidate’s campaign

9 committee for nomination or election to any statewide office or any other elective office in the
10 state or any of its subdivisions.

11 (c)(1) The provisions of this section do not prohibit a membership organization or
12 corporation from soliciting, through any officer, agent, or person acting on behalf of the
13 membership organization or corporation, contributions to a separate segregated fund to be used
14 for political purposes. Any separate segregated fund is considered a political action committee for
15 the purpose of this article and is subject to all reporting requirements applicable to political action
16 committees.

17 (2) It is unlawful for:

18 (A) A membership organization, corporation, or separate segregated fund to make a
19 primary or other election contribution or expenditure by using money or anything of value secured:

20 (i) By physical force, job discrimination, or financial reprisal; (ii) by the threat of force, job
21 discrimination, or financial reprisal; or (iii) as a condition of employment;

22 (B) Any person soliciting a membership organization member, stockholder, ~~or~~ executive,
23 or administrative personnel member and members of their families or their family members for a
24 contribution to a membership organization, corporation, or separate segregated fund to fail to
25 inform the person solicited of the political purposes of the separate segregated fund at the time
26 of the solicitation;

27 (C) Any person soliciting any other person for a contribution to a membership organization,
28 corporation, or separate segregated fund to fail to inform the person solicited at the time of the
29 solicitation of his or her right to refuse to contribute without any reprisal;

30 (D) A separate segregated fund established by a membership organization or a
31 corporation: (i) To solicit contributions to the fund from any person other than the membership
32 organization's members or the corporation's stockholders and their families, ~~and~~ or its executive
33 or administrative personnel and their families; or (ii) to contribute any membership organization
34 or corporate funds;

35 (E) A separate segregated fund established by a membership organization or corporation
36 to receive contributions to the fund from any person other than the membership organization's
37 members or corporation's stockholders and their immediate families and ~~its~~ their executive or
38 administrative personnel and their immediate families;

39 (F) A membership organization or corporation to engage in job discrimination or to
40 discriminate in job promotion or transfer because of a member's or an employee's failure to make
41 a contribution to the membership organization or corporation or a separate segregated fund;

42 (G) A separate segregated fund to make any contribution, directly or indirectly, in excess
43 of ~~\$1,000~~ the amounts permitted in §3-8-5c of this code in connection with or on behalf of any
44 campaign for nomination or election to any elective office in the state or any of its subdivisions,
45 or in connection with or on behalf of any committee or other organization or person engaged in
46 furthering, advancing, supporting, or aiding the nomination or election of any candidate for any
47 such office; or

48 (H) A membership organization or corporation to pay, give, or lend, or to authorize
49 payment, giving, or lending of any moneys or other things of value belonging to the membership
50 organization or corporation to a separate segregated fund for the purpose of making a contribution
51 to a candidate or a candidate's committee. This provision does not prohibit a separate segregated
52 fund from using the property, real or personal, facilities, and equipment of a membership
53 organization or corporation solely to establish, administer, and solicit contributions to the fund,
54 subject to the rules of the State Election Commission as provided in subsection ~~(d)~~ (e) of this
55 section: *Provided*, That any such membership organization or corporation shall also permit any
56 group of its employees represented by a bona fide political action committee to use the real
57 property of the membership organization or corporation solely to establish, administer, and solicit
58 contributions to the fund of the political action committee, subject to the rules of the State Election
59 Commission promulgated in accordance with said subsection.

60 (3) For the purposes of this section, the term “executive or administrative personnel”
61 means individuals employed by a membership organization or corporation who are paid on a
62 salary rather than hourly basis and who have policy-making, managerial, professional, or
63 supervisory responsibilities.

64 (d) Any person, membership organization, or corporation violating any provision of this
65 section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
66 \$10,000. A membership organization or corporation may not reimburse any person the amount
67 of any fine imposed pursuant to this section.

68 (e) To ensure uniform administration and application of the provisions of this section and
69 of those of the Federal Election Campaign Act Amendments of 1976 relating to membership
70 organization and corporate contributions, the State Election Commission shall propose rules for
71 legislative approval in accordance with ~~the provisions of §29A-3-1 et seq.~~ of this code, to
72 implement the provisions of this section consistent, insofar as practicable, with the rules and
73 regulations promulgated by the Federal Election Commission to carry out similar or identical
74 provisions of ~~2 U.S.C. §441b~~ 52 U.S.C. §30118.

75 (f) In addition to the powers and duties set forth in §3-1A-1 *et seq.* of this code, the State
76 Election Commission has the following powers and duties:

77 (1) To investigate, upon complaint or on its own initiative, any alleged violations or
78 irregularities of this article.

79 (2) To administer oaths and affirmations, issue subpoenas for the attendance of
80 witnesses, issue subpoenas duces tecum to compel the production of books, papers, records,
81 and all other evidence necessary to any investigation.

82 (3) To involve the aid of any circuit court in the execution of its subpoena power.

83 (4) To report any alleged violations of this article to the appropriate prosecuting attorney
84 having jurisdiction, which prosecuting attorney shall, upon determining that a reason to believe

85 that a violation has occurred, present to the grand jury such alleged violations, together with all
86 evidence relating thereto, no later than the next term of court after receiving the report.

87 (g) The Attorney General shall, when requested, provide legal and investigative assistance
88 to the State Election Commission.

89 (h) Any investigation, either upon complaint or initiative, shall be conducted in an executive
90 session of the State Election Commission and shall remain undisclosed except upon an
91 indictment by a grand jury.

92 (i) Any person who discloses the fact of any complaint, investigation or report or any part
93 thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof,
94 shall be fined not less than \$1,000, nor more than \$5,000, and shall be confined in jail not less
95 than six months nor more than one year.

96 (j) The amendments to this section enacted during the second extraordinary session of
97 the Legislature, 2008, are intended to conform to the existing proscription to constitutionally
98 permissible limits and not to create a new offense or offenses.

99 ~~(k) The effective date of the amendments to this section enacted during the second~~
100 ~~extraordinary legislative session of 2008 is October 1, 2008.~~

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

1 (a) No financial agent or treasurer of a political committee shall pay, give, or lend, either
2 directly or indirectly, any money or other thing of value for any election expenses, except for the
3 following purposes:

4 (1) For rent, maintenance, office equipment, and other furnishing of offices to be used as
5 political headquarters and for the payment of necessary ~~clerks, stenographers, typists, janitors~~
6 ~~and messengers actually employed therein~~ employees;

7 (2) In the case of a candidate who does not maintain a headquarters, for reasonable office
8 expenses, including, but not limited to, filing cabinets and other office equipment, and furnishings,
9 computers, computer hardware and software, scanners, typewriters, calculators, audio visual
10 equipment, the rental of the use of the same, or for the payment for the shared use of same with
11 the candidate's business and for the payment of necessary ~~clerks, stenographers and typists~~
12 ~~actually employed~~ employees;

13 (3) For printing and distributing books, pamphlets, circulars, and other printed matter, ~~and~~
14 radio and television broadcasting, and painting, printing and posting signs, banners and other
15 advertisements, including contributions to charitable, educational or cultural events, for the
16 promotion of the candidate or the candidate's name; or an issue on the ballot;

17 (4) For renting and decorating halls for public meetings and political conventions, for
18 advertising public meetings, and for the payment of traveling expenses of speakers and musicians
19 at such meetings;

20 (5) For the necessary traveling and hotel expenses of candidates, political agents, and
21 committees and for stationery, postage, telegrams, telephone, express, freight, and public
22 messenger service;

23 (6) For preparing, circulating, and filing petitions for nomination of candidates;

24 (7) For examining the lists of registered voters, securing copies thereof, investigating the
25 right to vote of the persons listed therein, and conducting proceedings to prevent unlawful
26 registration or voting;

27 (8) For conveying voters to and from the polls;

28 (9) For securing publication in newspapers and by radio and television broadcasting of
29 documents, articles, speeches, arguments, and any information relating to any political issue,
30 candidate, or question or proposition submitted to a vote;

31 (10) For conducting public opinion poll or polls. For the purpose of this section, the phrase
32 "conducting of public opinion poll or polls" shall mean and be limited to the gathering, collection,

33 collation and evaluation of information reflecting public opinion, needs, and preferences as to any
34 candidate, group of candidates, party, issue, or issues. No such poll ~~shall~~ may be deceptively
35 designed or intentionally conducted in a manner calculated to advocate the election or defeat of
36 any candidate or group of candidates or calculated to influence any person or persons so polled
37 to vote for or against any candidate, group of candidates, proposition, or other matter to be voted
38 on by the public at any election: *Provided*, That nothing herein ~~shall~~ may prevent the use of the
39 results of any such poll or polls to further, promote or enhance the election of any candidate or
40 group of candidates or the approval or defeat of any proposition or other matter to be voted on by
41 the public at any election;

42 (11) For legitimate advertising agency services, including commissions, in connection with
43 any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9),
44 and (10) of this subsection;

45 (12) For the purchase of memorials, flowers, or citations by political party executive
46 committees or political action committees representing a political party;

47 (13) For the purchase of nominal noncash expressions of appreciation following the close
48 of the polls of an election or within 30 days thereafter;

49 (14) For the payment of dues or subscriptions to any national, state, or local committee of
50 any political party;

51 (15) For contributions to a county party executive committee, state party executive
52 committee, or a ~~state party legislative caucus political committee~~ caucus campaign committee;
53 ~~and~~

54 (16) For transfers to any national, state, or local committee of any political party when that
55 committee is acting in the role of a vendor: *Provided*, That no such transfer may involve any
56 coordination between the candidate and the political party committee without being considered
57 as a contribution;

58 (17) For payment for legal and accounting services rendered to a candidate or candidate
59 committee if the services are solely related to the candidacy or campaign;

60 (18) For payment for food and drink for campaign-related purposes;

61 (19) For the payment of any required filing fees associated with the campaign, except that
62 a candidate may not pay any fines assessed against the candidate or the candidate's committee
63 pursuant to this article; and

64 ~~(16)~~ (20) For contributions to a candidate committee: *Provided*, That a candidate
65 committee may not contribute to another candidate committee except as otherwise provided by
66 §3-8-10 of this code.

67 (b) A political action committee may not contribute to another political action committee or
68 receive contributions from another political action committee: *Provided*, That a political action
69 committee may receive contributions from its national affiliate, if any.

70 (c) Every liability incurred and payment made shall be for the fair market value of the
71 services rendered.

72 (d) Every advertising agency subject to the provisions of this article shall file, in the manner
73 and form required by §3-8-5a of this code, the financial statements required by §3-8-5 of this code
74 at the times required therein and include therein, in itemized detail, all receipts from and
75 expenditures made on behalf of a candidate, financial agent, or treasurer of a political party
76 committee.

77 (e) Any candidate may designate a financial agent by a writing duly subscribed by ~~him~~ the
78 candidate which shall be in such form and filed in accordance with ~~the provisions of~~ §3-8-4 of this
79 code.

§3-8-9a. Coordinated expenditures.

1 (a) Except as provided in §3-8-9b of this code, a coordinated expenditure is considered to
2 be a contribution and is subject to all requirements for contributions contained in this article.

3 (b) An expenditure made in concert with, in cooperation with, or at the request or
4 suggestion of a candidate or candidate's committee is a coordinated expenditure if the
5 communication resulting from the expenditure is paid for, in whole or in part, by a person other
6 than the candidate, candidate committee, or party committee, and one of the following
7 circumstances exists:

8 (1) The communication is created, produced, distributed, or undertaken at the request or
9 suggestion of a candidate, candidate committee, or party committee.

10 (2) The candidate, candidate committee, or party committee is involved in the creation,
11 production, or distribution of the communication, or has had discussions about the communication
12 with any person or the agents of a person who has paid for or played a role in the creation,
13 production, or distribution of the communication: *Provided*, That this paragraph does not apply if
14 the information or materials used in the creation, production, distribution, or undertaking of the
15 communication was obtained from a publicly available source.

16 (3) Any person involved in the creation, production, or distribution of the communication
17 has, in the four months preceding the date on which the expenditure is made, been an employee
18 or vendor of campaign services for the candidate, candidate committee, or party committee.

19 (c) An expenditure is not a coordinated expenditure, based solely on any of the following
20 circumstances:

21 (1) A candidate committee or a political party committee responds to an inquiry about the
22 candidate's or political party committee's positions on legislative or policy issues, including
23 substantive discussion of the legislative or policy issues, but not including a discussion of
24 campaign plans, projects, activities, or needs;

25 (2) A candidate endorses another candidate;

26 (3) A candidate solicits funds for another candidate, a political committee, a party
27 committee, or organizations eligible to receive tax-deductible donations under 26 U. S. C. §170
28 (or any successor provision) and regulations of the U. S. Department of Treasury; or

29 (4) A candidate is clearly identified only in his or her capacity as the owner or operator of
30 a business that existed prior to the candidacy, if the communication does not refer to an election
31 or another candidate who seeks the same office as that candidate.

32 (d)(1) An expenditure otherwise meeting the description of a coordinated expenditure
33 contained in subdivision (3), subsection (b) of this section, is not a coordinated expenditure if the
34 commercial vendor, former employee, or political committee at issue has established and
35 implemented a firewall that meets the following requirements:

36 (A) The firewall is designed and implemented to prohibit the flow of information between
37 employees or consultants providing services for the person paying for the communication and
38 those employees or consultants currently or previously providing services to a candidate, or a
39 committee supporting or opposing a candidate, clearly identified in the communication; and

40 (B) The firewall is described in a written policy that is distributed to all relevant employees,
41 consultants, and clients affected by the policy.

42 (2) A communication does not qualify for the exemption contained in this subsection if,
43 despite the firewall, information subject to the firewall concerning a candidate, candidate's
44 committees, or a party committee's campaign plans, projects, activities, or needs that are material
45 to the creation, production, or distribution of the communication is used or conveyed to the person
46 paying for the communication.

47 (e) Any communication that results from a coordinated expenditure must contain a
48 disclaimer that clearly identifies that the expenditure is coordinated with the candidate, the
49 candidate committee, or the party committee with which it was coordinated.

**§3-8-9b. Coordinated expenditures by political party committees and political party
caucuses in connection with certain statewide candidates.**

1 (a) Notwithstanding the provisions of §3-8-9a of this code, the state committee of a political
2 party and caucus campaign committee may make coordinated expenditures in an amount not to
3 exceed \$5,000 in connection with the general election campaign of the candidate for each of the

4 following offices: Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of
5 State, Treasurer, State Senate, and House of Delegates.

6 (b) Any communication that results from a political expenditure and is made in coordination
7 with a state committee of a political party and caucus campaign committee must contain a
8 disclaimer that clearly identifies that the expenditure is coordinated with the candidate or
9 candidate's committee with whom it was coordinated.

§3-8-9c. Joint fundraising.

1 (a) Political committees may engage in joint fundraising efforts with other political
2 committees or with committees registered with the Federal Election Commission pursuant to a
3 written joint fundraising agreement.

4 (b) A written joint fundraising agreement must be filed with the Secretary of State and must
5 provide terms for the allocation of fundraising proceeds between or among political committees
6 engaging in the joint fundraising effort. The Secretary of State shall post all joint fundraising
7 agreements on the Internet within 10 business days from the date the agreement is filed.

8 (c) Any person soliciting funds for a joint fundraising effort shall disclose, in making or
9 publishing solicitations, the name of all political committees involved in the joint fundraising effort
10 and how any proceeds, including any contributions, will be allocated between or among such
11 committees.

12 (d) A person, not otherwise prohibited by this article from making contributions, may make
13 a contribution to a joint fundraising effort subject to the contribution limits in §3-8-5c of this code.

14 (e) The State Election Commission shall propose rules for legislative approval in
15 accordance with §29A-3-1 et seq. of this code, to provide requirements for written joint fundraising
16 agreements and to implement the provisions of this section consistently, insofar as practicable,
17 with the rules and regulations promulgated by the Federal Election Commission in 11 C.F.R.
18 §102.17.

§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 contributions; public contractors; penalty.

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

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

9 (c) A person may not, in any room or building occupied for the discharge of official duties
10 by any officer or employee of the state or a political subdivision of the state, solicit orally or by
11 written communication delivered within the room or building, or in any other manner, any
12 contribution of money or other thing of value for any party or political purpose, from any
13 postmaster or any other officer or employee of the federal government, or officer or employee of
14 the state, or a political subdivision of the state. An officer, agent, clerk or employee of the federal
15 government, or of this state, or any political subdivision of the state, who may have charge or
16 control of any building, office or room, occupied for any official purpose, may not knowingly permit
17 any person to enter any building, office, or room, occupied for any official purpose for the purpose
18 of soliciting or receiving any political assessments from, or delivering or giving written solicitations
19 for, or any notice of, any political assessments to, any officer or employee of the state, or a political
20 subdivision of the state.

21 (d) Except as provided in §3-8-8 of this code, a person entering into any contract with the
22 state or its subdivisions, or any department or agency of the state, either for rendition of personal

23 services or furnishing any material, supplies or equipment or selling any land or building to the
24 state, or its subdivisions, or any department or agency of the state, if payment for the performance
25 of the contract or payment for the material, supplies, equipment, land, or building is to be made,
26 in whole or in part, from public funds may not, during the period of negotiation for or performance
27 under the contract or furnishing of materials, supplies, equipment, land, or buildings, directly or
28 indirectly, make any contribution to any political party, committee, or candidate for public office,
29 or to any person for political purposes or use nor may any person or firm solicit any contributions
30 for any purpose during any period.

31 (e) A person may not, directly or indirectly, promise any employment, position, work,
32 compensation, or other benefit provided for, or made possible, in whole or in part, by act of the
33 Legislature, to any person as consideration, favor or reward for any political activity for the support
34 of or opposition to any candidate, or any political party in any election.

35 (f) ~~Except as provided in §3-8-8 of this code,~~ A person may not, directly or indirectly, make
36 any contribution in excess of the ~~value of \$1,000~~ amounts permitted by §3-8-5c of this code, in
37 connection with any campaign for nomination or election to or on behalf of any statewide office,
38 in connection with any other campaign for nomination or election to or on behalf of any other
39 elective office in the state or any of its subdivisions, or in connection with or on behalf of any
40 person engaged in furthering, advancing, supporting, or aiding the nomination or election of any
41 candidate for any of the offices.

42 ~~(g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code~~
43 ~~of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its~~
44 ~~existence and of the purposes for which it was formed. During the two-year election cycle, a~~
45 ~~political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986)~~
46 ~~may not accept contributions totaling more than \$1,000 from any one person prior to the primary~~
47 ~~election and contributions totaling more than \$1,000 from any one person after the primary and~~
48 ~~before the general election.~~

49 ~~(h)~~ (g) It is unlawful for any person to create, establish, or organize more than one political
50 organization ~~(as defined in Section 527(e)(1) of the Internal Revenue Code of 1986)~~ committee
51 with the intent to avoid or evade the contribution limitations contained in ~~subsection (g) of this~~
52 ~~section~~ this article.

53 ~~(i)~~ (h) ~~Notwithstanding the provisions of subsection (f) of this section to the contrary,~~ A
54 person may not, directly or indirectly, make contributions to a state party executive committee or
55 ~~state party legislative caucus~~ campaign committee which, in the aggregate, ~~exceed the value of~~
56 \$1,000 in any calendar year are in excess of the amounts permitted by §3-8-5c of this code in any
57 calendar year.

58 ~~(j)~~ (i) The limitations on contributions contained in this section do not apply to transfers
59 ~~between and among a state party executive committee, or a state party's legislative a caucus~~
60 ~~political~~ campaign committee, ~~from and a~~ national committees of the same political party:
61 *Provided*, That ~~transfers permitted by this subsection may not exceed \$50,000 in the aggregate~~
62 ~~in any calendar year to any state party executive committee or state party legislative caucus~~
63 ~~political committee: *Provided, however,* That the moneys transferred may only be used for voter~~
64 registration and get-out-the-vote activities of the state committees.

65 ~~(k)~~ (j) A person may not solicit any contribution, other than contributions to a campaign for
66 or against a county or local government ballot issue, from any nonelective salaried employee of
67 the state government or of any of its subdivisions: *Provided*, That in no event may any person
68 acting in a supervisory role solicit a person who is a subordinate employee for any contribution.
69 A person may not coerce or intimidate any nonelective salaried employee into making a
70 contribution. A person may not coerce or intimidate any nonsalaried employee of the state
71 government or any of its subdivisions into engaging in or refraining from any form of political
72 activity. The provisions of this subsection may not be construed to prevent any employee from
73 making a contribution or from engaging in political activity voluntarily without coercion, intimidation
74 or solicitation.

75 ~~(k)~~ (k) A person may not solicit a contribution from any other person without informing the
76 other person at the time of the solicitation of the amount of any commission, remuneration or other
77 compensation that the solicitor or any other person will receive or expect to receive as a direct
78 result of the contribution being successfully collected. Nothing in this subsection may be
79 construed to apply to solicitations of contributions made by any person serving as an unpaid
80 volunteer.

81 ~~(m)~~ (l) A person may not place any letter, circular, flyer, advertisement, election
82 paraphernalia, solicitation material or other printed or published item tending to influence voting
83 at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside
84 receptacle by the business or entity owning the receptacle; and (2) contains a written
85 acknowledgment of the approval. This subdivision does not apply to any printed material
86 contained in a newspaper or periodical published or distributed by the owner of the receptacle.
87 The term "roadside receptacle" means any container placed by a newspaper or periodical
88 business or entity to facilitate home or personal delivery of a designated newspaper or periodical
89 to its customers.

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

93 ~~(e) The provisions of subsection (k) of this section, permitting contributions to a campaign~~
94 ~~for or against a county or local government ballot issue shall become operable on and after~~
95 ~~January 1, 2005.~~

96 ~~(p) The limitations on contributions established by subsection (g) of this section do not~~
97 ~~apply to contributions made for the purpose of supporting or opposing a ballot issue, including a~~
98 ~~constitutional amendment.~~