

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2927

BY DELEGATES YOUNG, WALKER, STATLER, WORRELL,

SKAFF, LOVEJOY, BARACH AND FLEISCHAUER

[Introduced March 05, 2021; referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §3-8-1a and §3-8-9 of the Code of West Virginia, 1931, as amended,
2 relating to campaign finance expenses; adding caregiving services as a defined term; and
3 adding caregiving services as a lawful campaign expense.

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, municipal, or party office to be filled
17 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) "Caregiving services" means direct care, protection, and supervision of a child or other
25 person for which a candidate has direct caregiving responsibility. For the purposes of this article,
26 the caregiving service expense incurred shall be in direct connection with the candidate's
27 campaign activities during the current election cycle.

28 ~~(6)~~ (7) "Caucus campaign committee" means a West Virginia House of Delegates or
29 Senate political party caucus campaign committee that receives contributions and makes
30 expenditures to support or oppose one or more specific candidates or slates of candidates for
31 nomination, election, or committee membership.

32 ~~(7)~~ (8) "Clearly identified" means that the name, nickname, photograph, drawing, or other
33 depiction of the candidate appears, or the identity of the candidate is otherwise apparent through
34 an unambiguous reference, such as "the Governor", "your Senator", or "the incumbent", or through
35 an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate
36 for Governor" or "the Republican candidate for Supreme Court of Appeals".

37 ~~(8)~~ (9) "Contribution" means a gift, subscription, loan, assessment, payment for services,
38 dues, advance, donation, pledge, contract, agreement, forbearance, promise of money, or other
39 tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other
40 tangible thing of value to a person, made for the purpose of influencing the nomination, election,
41 or defeat of a candidate.

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

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

47 ~~(9)~~ (10) “Coordinated expenditure” is an expenditure made in concert with, in cooperation
48 with, or at the request or suggestion of a candidate or candidate’s committee and meeting the
49 criteria provided in §3-8-9a of this code.

50 ~~(40)~~ (11) “Corporate political action committee” means a political action committee that is
51 a separate segregated fund of a corporation that may only accept contributions from its restricted
52 group as outlined by the rules of the State Election Commission.

53 ~~(44)~~ (12) “Direct costs of purchasing, producing, or disseminating electioneering
54 communications” means:

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

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

61 ~~(42)~~ (13) “Disclosure date” means either of the following:

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

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

68 ~~(43)~~ (14) “Election” means any primary, general, or special election conducted under the
69 provisions of this code or under the charter of any municipality at which the voters nominate or
70 elect candidates for public office. For purposes of this article, each primary, general, special, or
71 local election constitutes a separate election. This definition is not intended to modify or abrogate
72 the definition of the term “nomination” as used in this article.

73 ~~(44)~~ (15) (A) "Electioneering communication" means any paid communication made by
74 broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or
75 publication in any newspaper, magazine, or other periodical that:

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

79 (ii) Is publicly disseminated within:

80 (I) 30 days before a primary election in which the nomination for office sought by the
81 candidate is to be determined; or

82 (II) 60 days before a general or special election in which the office sought by the candidate
83 is to be filled; and

84 (iii) Is targeted to the relevant electorate.

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

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

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

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

95 (ii) Activity by a candidate committee, party executive committee, a caucus campaign
96 committee, or a political action committee that is required to be reported to the State Election
97 Commission or the Secretary of State as an expenditure pursuant to §3-8-5 of this code or the
98 rules of the State Election Commission or the Secretary of State promulgated pursuant to such

99 provision: *Provided*, That independent expenditures by a party executive committee, caucus
100 committee, or a political action committee required to be reported pursuant to §3-8-2 of this code
101 are not exempt from the reporting requirements of this section;

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

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

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

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

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

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

122 ~~(15)~~ (16) "Expressly advocating" means any communication that:

123 (A) Uses phrases such as "vote for the Governor", "re-elect your Senator", "support the
124 incumbent nominee for Supreme Court", "cast your ballot for the Republican challenger for House

125 of Delegates”, “Smith for House”, “Bob Smith in ‘04”, “vote Pro-Life”, or “vote Pro-Choice”
126 accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice,
127 “vote against Old Hickory”, “defeat” accompanied by a picture of one or more candidates, “reject
128 the incumbent”;

129 (B) Communicates campaign slogans or individual words that can have no other
130 reasonable meaning than to urge the election or defeat of one or more clearly identified
131 candidates, such as posters, bumper stickers, advertisements, etc., which say “Smith’s the One”,
132 “Jones ‘06”, “Baker”, etc.; or

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

135 ~~(16)~~ (17) “Financial agent” means any individual acting for and by himself or herself, or
136 any two or more individuals acting together or cooperating in a financial way to aid or take part in
137 the nomination or election of any candidate for public office, or to aid or promote the success or
138 defeat of any political party at any election.

139 ~~(17)~~ (18) “Financial transactions” means all contributions or loans received and all
140 repayments of loans or expenditures made to promote the candidacy of any person by any
141 candidate or any organization advocating or opposing the nomination, election, or defeat of any
142 candidate to be voted on.

143 ~~(18)~~ (19) “Firewall” means a policy designed and implemented to prohibit the flow of
144 information between employees or consultants providing services for the person paying for a
145 communication and those employees or consultants currently or previously providing services to
146 a candidate, or to a committee supporting or opposing a candidate, clearly identified in the
147 communication.

148 ~~(19)~~ (20) “Foreign national” means the following:

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

150 (i) A government of a foreign country;

151 (ii) A foreign political party;

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

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

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

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

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

162 ~~(20)~~ (21) "Fund-raising event" or "fundraiser" means an event such as a dinner, reception,
163 testimonial, cocktail party, auction, or similar affair through which contributions are solicited or
164 received.

165 ~~(24)~~ (22) "In concert or cooperation with or at the request or suggestion of" means that a
166 candidate or his or her agent consulted with:

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

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

171 ~~(22)~~ (23) "Independent expenditure" means an expenditure by a person:

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

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

177 An expenditure which does not meet the criteria for an independent expenditure is
178 considered a contribution.

179 ~~(23)~~ (24) “Local” refers to the election of candidates to a city, county, or municipal office
180 and any issue to be voted on by only the residents of a particular political subdivision.

181 ~~(24)~~ (25) “Mass mailing” means a mailing by United States mail, facsimile, or electronic
182 mail of more than 500 pieces of mail matter of an identical or substantially similar nature within
183 any 30-day period. For purposes of this subdivision, “substantially similar” includes
184 communications that contain substantially the same template or language, but vary in nonmaterial
185 respects such as communications customized by the recipient’s name, occupation, or geographic
186 location.

187 ~~(25)~~ (26) “Membership organization” means a group that grants bona fide rights and
188 privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to
189 its members and which uses a majority of its membership dues for purposes other than political
190 purposes. “Membership organization” does not include organizations that grant membership upon
191 receiving a contribution.

192 ~~(26)~~ (27) “Name” means the full first name, middle name, or initial, if any, and full legal last
193 name of an individual and the full name of any association, corporation, committee, or other
194 organization of individuals, making the identity of any person who makes a contribution apparent
195 by unambiguous reference.

196 ~~(27)~~ (28) “Person” means an individual, corporation, partnership, committee, association,
197 and any other organization or group of individuals.

198 ~~(28)~~ (29) “Political action committee” means a committee organized by one or more
199 persons, the primary purpose of which is to support or oppose the nomination or election of one
200 or more candidates. The following are types of political action committees:

201 (A) A corporate political action committee, as that term is defined in this section;

202 (B) A membership organization, as that term is defined in this section; and

203 (C) An unaffiliated political action committee, as that term is defined in this section.

204 ~~(29)~~ (30) "Political committee" means any candidate committee, political action committee,
205 or political party committee.

206 ~~(30)~~ (31) "Political party" means a political party as that term is defined by §3-1-8 of this
207 code or any committee established, financed, maintained, or controlled by the party, including any
208 subsidiary, branch, or local unit thereof and including national or regional affiliates of the party.

209 ~~(34)~~ (32) "Political party committee" means a committee established by a political party or
210 political party caucus for the purposes of engaging in the influencing of the election, nomination,
211 or defeat of a candidate in any election.

212 ~~(32)~~ (33) "Political purposes" means supporting or opposing the nomination, election, or
213 defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the
214 retirement of the debt of a candidate or political committee or the administration or activities of an
215 established political party or an organization which has declared itself a political party, and
216 determining the advisability of becoming a candidate under the pre-candidacy financing
217 provisions of this chapter.

218 ~~(33)~~ (34) "Targeted to the relevant electorate" means a communication which refers to a
219 clearly identified candidate for statewide office or the Legislature and which can be received by
220 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or
221 more individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more
222 individuals in the district in the case of a candidacy for the House of Delegates.

223 ~~(34)~~ (35) "Telephone bank" means telephone calls that are targeted to the relevant
224 electorate, other than telephone calls made by volunteer workers, regardless of whether paid
225 professionals designed the telephone bank system, developed calling instructions, or trained
226 volunteers.

227 ~~(35)~~ (36) "Unaffiliated political action committee" means a political action committee that
228 is not affiliated with a corporation or a membership organization.

§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 may pay, give, or lend,
2 either directly or indirectly, any money or other thing of value for any election expenses, except
3 for the 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 employees;

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

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

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

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

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

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

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

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

29 (10) For conducting public opinion poll or polls. For the purpose of this section, the phrase
30 “conducting of public opinion poll or polls” shall mean and be limited to the gathering, collection,
31 collation, and evaluation of information reflecting public opinion, needs, and preferences as to any
32 candidate, group of candidates, party, issue, or issues. No such poll may be deceptively designed
33 or intentionally conducted in a manner calculated to advocate the election or defeat of any
34 candidate or group of candidates or calculated to influence any person or persons so polled to
35 vote for or against any candidate, group of candidates, proposition, or other matter to be voted on
36 by the public at any election: *Provided*, That nothing herein may prevent the use of the results of
37 any such poll or polls to further, promote or enhance the election of any candidate or group of
38 candidates or the approval or defeat of any proposition or other matter to be voted on by the public
39 at any election;

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

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

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

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

49 (15) For contributions to a county party executive committee, state party executive
50 committee, or a caucus campaign committee;

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

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

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

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

61 (20) For contributions to a candidate committee: *Provided*, That a candidate committee
62 may not contribute to another candidate committee except as otherwise provided by §3-8-10 of
63 this code; and

64 (21) For expenses related to caregiving services.

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

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

70 (d) Every advertising agency subject to the provisions of this article shall file, in the manner
71 and form required by §3-8-5a of this code, the financial statements required by §3-8-5 of this code
72 at the times required therein and include therein, in itemized detail, all receipts from and

73 expenditures made on behalf of a candidate, financial agent, or treasurer of a political party
74 committee.

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

NOTE: The purpose of this bill is to add caregiving expenses to lawful election campaign expenses.

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