

**Senate Bill No. 541**

(By Senators Carmichael, Blair and D. Hall)

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[Introduced February 23, 2015; referred to the Committee on the Judiciary.]  
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9 A BILL to amend and reenact §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7,  
10 §3-8-8, §3-8-9, §3-8-10 and §3-8-12 of the Code of West Virginia, 1931, as amended; and  
11 to amend said code by adding thereto a new section, designated §3-8-9a, all relating generally  
12 to the regulation and control of elections; modifying what qualifies as a federal reporting  
13 exemption; requiring certain contributions be reported to State Election Commission within  
14 forty-eight hours of their receipt; deleting certain reports by membership organizations that  
15 raise funds for political purposes by payroll; permitting certain financial statements by mail  
16 or in person; requiring Secretary of State to maintain an online database; setting forth  
17 additional powers of State Election Commission; requiring Attorney General to provide  
18 assistance when requested; permitting a political committee to transfer funds to a national,  
19 state or local committee of a political party without limitation; permitting a candidate  
20 committee to contribute to another candidate committee for the purpose of retiring debt  
21 incurred during a prior election; permitting a political action committee to contribute to  
22 another political action committee; establishing expenditure limits by political party

1 committees, political party caucuses and candidates; permitting candidates, after a general  
2 election, to transfer any unused contributions to state party executive committees, state party  
3 legislative caucus committees, local committees of a political party or any other candidate  
4 for public office without limitation; modifying and adding definitions; and creating criminal  
5 penalties.

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

7 That §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7, §3-8-8, §3-8-9,  
8 §3-8-10 and §3-8-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
9 and that said code be amended by adding thereto a new section, designated §3-8-9a , all to read as  
10 follows:

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

12 **§3-8-1a. Definitions.**

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

14 (1) "Ballot issue" means a constitutional amendment, special levy, bond issue, local option  
15 referendum, municipal charter or revision, an increase or decrease of corporate limits or any other  
16 question that is placed before the voters for a binding decision.

17 (2) "Billboard Advertisement" means a commercially available outdoor advertisement, sign  
18 or similar display regularly available for lease or rental to advertise a person, place or product.

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

21 (4) "Candidate" means an individual who:

22 (A) Has filed a certificate of announcement under section seven, article five of this chapter

1 or a municipal charter;

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

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

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

8 ~~(5)~~ "Candidate's committee" means a political committee established with the approval of  
9 or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking  
10 a particular office or to support or aid his or her nomination or election to an office in an election  
11 cycle. If a candidate directs or influences the activities of more than one active committee in a  
12 current campaign, those committees shall be considered one committee for the purpose of  
13 contribution limits.

14 ~~(6)~~ "Clearly identified" means that the name, nickname, photograph, drawing or other  
15 depiction of the candidate appears or the identity of the candidate is otherwise apparent through an  
16 unambiguous reference, such as "the Governor" "your Senator" or "the incumbent" or through an  
17 unambiguous reference to his or her status as a candidate, such as "the Democratic candidate for  
18 Governor" or "the Republican candidate for Supreme Court of Appeals".

19 ~~(7)~~ "Contribution" means a gift, subscription, loan, assessment, payment for services, dues,  
20 advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible  
21 thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible  
22 thing of value to a person, made for the purpose of influencing the nomination, election or defeat of

1 a candidate. ~~An offer or tender of a contribution is not a contribution if expressly and~~  
2 ~~unconditionally rejected or returned. A contribution does not include volunteer personal services~~  
3 ~~provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at~~  
4 ~~fair market value for reporting requirements and contribution limitations.~~

5 (8) "Corporate political action committee" means a political action committee that is a  
6 separate segregated fund of a corporation that may only accept contributions from its restricted group  
7 as outlined by the rules of the State Election Commission.

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

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

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

16 (10) "Disclosure date" means either of the following:

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

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

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

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

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

11           (ii) Is publicly disseminated within:

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

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

16           (iii) Is targeted to the relevant electorate: *Provided*, That for purposes of the general election  
17 of 2008 the amendments to this article are effective October 1, 2008.

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

19           (i) A news story, commentary or editorial disseminated through the facilities of any  
20 broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical  
21 publication not owned or controlled by a political party, political committee or candidate: *Provided*,  
22 That a news story disseminated through a medium owned or controlled by a political party, political

1 committee or candidate is nevertheless exempt if the news is:

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

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

6 (ii) Activity by a candidate committee, party executive committee or caucus committee, or  
7 a political action committee that is required to be reported to the State Election Commission or the  
8 Secretary of State as an expenditure pursuant to section five of this article or the rules of the State  
9 Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided,*  
10 That independent expenditures by a party executive committee or caucus committee or a political  
11 action committee required to be reported pursuant to subsection (b), section two of this article are  
12 not exempt from the reporting requirements of this section;

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

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

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

21 (vi) A statement or depiction by a membership organization, in existence prior to the date on  
22 which the individual named or depicted became a candidate, made in a newsletter or other

1 communication distributed only to bona fide members of that organization;

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

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

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

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

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

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

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

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

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

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

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

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

16          ~~(17)~~ "Mass mailing" means a mailing by United States mail, facsimile or electronic mail of  
17 more than five hundred pieces of mail matter of an identical or substantially similar nature within  
18 any thirty-day period. For purposes of this subdivision "substantially similar" includes  
19 communications that contain substantially the same template or language, but vary in nonmaterial  
20 respects such as communications customized by the recipient's name, occupation or geographic  
21 location.

22          ~~(18)~~"Membership organization" means a group that grants bona fide rights and privileges,



1 such as the right to vote, to elect officers or directors and the ability to hold office, to its members  
2 and which uses a majority of its membership dues for purposes other than political purposes.  
3 "Membership organization" does not include organizations that grant membership upon receiving  
4 a contribution.

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

9 ~~(20)~~ "Person" means an individual, corporation, partnership, committee, association and any  
10 other organization or group of individuals.

11 ~~(21)~~ "Political action committee" means a committee organized by one or more persons for  
12 the purpose of supporting or opposing the nomination or election of one or more candidates. The  
13 following are types of political action committees:

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

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

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

19 ~~(22)~~ "Political committee" means any candidate committee, political action committee or  
20 political party committee.

21 "Political contribution" means:

22 (A) Any gift, subscription, loan, advance, deposit of money or payment or anything of value

1 given to any entity that is registered or is required to be registered as a political committee at the time  
2 the political contribution is made, or that is given to be used specifically for making political  
3 contributions to other recipients or for making political expenditures.

4 (B) Any political expenditure that is made in coordination with a candidate, candidate  
5 committee, measure committee, or party committee.

6 (C) The term "political contribution" does not include:

7 (i) Any payment, gift, subscription, loan, advance, or deposit of money or anything of value  
8 made, or given as part of a bona fide commercial transaction, including, but not limited to, any loans,  
9 refunds, rebates, or discounts offered to the general public or similar customers on substantially the  
10 same material terms.

11 (ii) The payment by any corporation or labor organization for the costs of establishing,  
12 administering, and soliciting contributions from its restricted class to its separate segregated fund.

13 (iii) The payment by any corporation or labor organization for the costs of communicating  
14 with its restricted class about any subject, regardless of whether the communications are made in  
15 coordination with any candidate, candidate committee, measure committee, party committee or  
16 officeholder committee.

17 (iv) The appearance of a candidate or representative of a measure committee at any residence  
18 or the facilities of any corporation, labor organization, social or civic organization, or educational  
19 institution to speak about the candidate's campaign or about a measure, provided that the use of such  
20 venue is furnished by the venue's owner and is not paid for by a third party, and the venue is not a  
21 sports stadium, coliseum, convention center, hotel ballroom, concert hall or other similar public  
22 arena.

1       (v) The costs of hosting a debate or candidates' forum, provided that at least two opposing  
2 candidates with respect to any given office sought, or representatives of at least two opposing  
3 measure committees with respect to any measure on the ballot, are invited with the same or similar  
4 advance notice and method of invitation.

5       (vi) The preparation and distribution of voter guides, subject to the following:

6       (I) The sponsor may include in the voter guide similar biographical information on each  
7 featured candidate, such as education, employment positions, offices held and community  
8 involvement or background information on each measure.

9       (II) Comparable information shall be provided on each candidate featured in the voter guide  
10 for a particular office or each candidate featured shall be provided an equal opportunity to respond  
11 to questions.

12       (III) No featured candidate may receive greater prominence in the voter guide than any other  
13 candidate, or substantially more space for descriptions of his or her positions or responses.

14       (IV) For each measure featured in the voter guide, one or more representatives of measure  
15 committees for and against each measure shall be provided an equal opportunity to present their  
16 arguments. If there is no measure committee either for or against a measure in the voter guide,  
17 individuals not representing a measure committee may argue for or against the measure.

18       (V) The sponsor of the voter guide shall not include the sponsor's own message meeting the  
19 definition of a political expenditure under paragraph (A) of this subdivision.

20       (i) The value of services provided without compensation by any individual who volunteers  
21 on behalf of any candidate, candidate committee, measure committee, party committee, or other  
22 political committee, or any unreimbursed payment for expenses related to the volunteer activity.

1        (ii) The cost of invitations, food and beverages if such items are voluntarily provided by an  
2 individual volunteering personal services on the individual's residential premises if less than \$1,000  
3 per candidate or political committee in a calendar year.

4        (iii) The payment for any communication by any organization eligible to receive  
5 tax-deductible donations under 26 U.S.C. §170 (or any successor provision) and regulations of the  
6 U.S. Department of Treasury.

7        (iv) Any cost incurred for covering or carrying a news story, commentary, or editorial by a  
8 broadcasting station or cable television operator, Internet website, or newspaper or other periodical  
9 publication, including an Internet or other electronic publication, provided that the cost for the news  
10 story, commentary, or editorial is not paid for by, and the medium is not owned or controlled by, a  
11 candidate, candidate committee, measure committee, party committee or other political committee.

12        (v) The payment of or provision of legal and accounting services rendered to a candidate,  
13 candidate committee, measure committee, party committee or other political committee if the  
14 services are solely for the purpose of ensuring compliance with or challenging the constitutional  
15 validity or interpretation of the provisions of this chapter.

16        (vi) The payment by a party committee of the costs of campaign materials, such as pins,  
17 bumper stickers, handbills, brochures, posters, party tabloids, and yard signs, used by the committee  
18 in connection with volunteer activities on behalf of and/or in behalf of nominees of such party,  
19 provided:

20        (I) The payments are not for the costs of campaign materials or activities used in connection  
21 with any broadcasting, newspaper, magazine, billboard, direct mail, or other similar type of paid  
22 general public advertising; and

1        (II) The payments are not made from contributions designated to be spent on behalf of any  
2 particular candidate(s).

3        (D) The term "political contribution" may not be construed to include any transactions not  
4 specifically listed in paragraph (C) of this subdivision if those contributions do not otherwise meet  
5 the definition of "political contribution" as set forth in paragraphs (A) and (B) of this subdivision.

6        "Political expenditure" means the payment for:

7        (A) Any communication that in express terms calls for the election, retention, recall, or defeat  
8 of a clearly identified candidate or candidates affiliated with a political party, or the passage or defeat  
9 of a measure clearly identified by its number, name or ballot title, by using phrases such as "Vote  
10 for the Governor," "Re-elect your Senator," "Retain Judge Smith," "Defeat Sheriff Jones," "Support  
11 the Democratic Nominee," "Cast your ballot for the Republican challenger for State Representative  
12 in District 1," "Doe for Mayor," "Yes on Measure 1," "Vote for champions of the taxpayers"  
13 accompanied by a listing of clearly identified candidates associated with being "champions of the  
14 taxpayers," "defeat" accompanied by a picture of one or more candidate(s), or "reject the incumbent."

15        (B) The republication of campaign materials for any candidate, candidate committee, measure  
16 committee, party committee, or political committee, except for:

17        (1) The republication of materials in a voter guide described under paragraph (C) of the  
18 definition of "political contribution;"

19        (2) The republication of campaign materials commenting or explaining a candidate's position  
20 on any issue that does not otherwise in express terms call for the election, or defeat of any clearly  
21 identified candidate; or

22        (3) The republication of publicly available photographs or video footage of a candidate that

1 is devoid of any text or audio content in or from the original material.

2 (C) The term "political expenditure" does not include anything that is excluded from the  
 3 definition of a "political contribution," as set forth in paragraph (C) of the definition of "political  
 4 contribution."

5 (D) A "political expenditure" is not a "coordinated communication" if:

6 (i) The communication is paid for, in whole or in part, by a person other than a candidate,  
 7 candidate committee, measure committee, or party committee; and

8 (ii) It satisfies at least one of the following conduct standards:

9 (I) Request or suggestion;

10 (II) The political expenditure is created, produced, distributed, or undertaken at the request  
 11 or suggestion of a candidate, candidate committee, measure committee, party committee; or

12 (III) The political expenditure is created, produced, distributed, or undertaken at the  
 13 suggestion of a person paying for the expenditure and the candidate, candidate committee, measure  
 14 committee or party committee affirmatively assents to the suggestion.

15 (E) Substantive involvement. -- A candidate, candidate committee, measure committee, or  
 16 party committee provides substantive information that is used to make decisions regarding:

17 (i) The content of the political expenditure;

18 (ii) The targeting of the specific recipients for the political expenditure;

19 (iii) The means or mode of the political expenditure;

20 (iv) The specific media outlet used for the political expenditure;

21 (v) The timing or frequency of the political expenditure; or

22 (vi) The size, amount, prominence, or duration of a political expenditure.

1 (F) Common vendor. --

2 (i) The person paying for the political expenditure contracts with or employs a commercial  
3 vendor to create, produce, or distribute the political expenditure;

4 (ii) The commercial vendor has provided, during the previous sixty days, any of the following  
5 services to a candidate or to a party committee, or to a candidate committee or measure committee  
6 supporting or opposing a candidate or measure clearly identified in the political expenditure:

7 (I) Development of media strategy, including the selection or purchasing of advertising slots;

8 (II) The targeting of the specific recipients for communications or solicitations;

9 (III) Polling;

10 (IV) Fund-raising;

11 (V) Developing the content of a political expenditure;

12 (VI) Producing a political expenditure;

13 (VII) Selecting personnel, contractors, or subcontractors; or

14 (VIII) Consulting or otherwise providing political or media advice; and

15 (iii) The commercial vendor uses or conveys to the person paying for the political  
16 expenditure:

17 (I) Information about the campaign plans, projects, activities, or needs of a candidate or a  
18 party committee, or a candidate committee or measure committee supporting or opposing a candidate  
19 or measure clearly identified in the political expenditure; or

20 (II) Information used previously by the commercial vendor in providing services to a  
21 candidate or to a party committee, or to a candidate committee or measure committee supporting or  
22 opposing a candidate or measure clearly identified in the political expenditure, and that information

1 is material to the creation, production, or distribution of the political expenditure.

2 (G) Former employee or independent contractor. – If both of the following statements are  
3 true:

4 (i) The political expenditure is paid for by a person, or by the employer of a person, who,  
5 during the previous sixty days, was an employee or independent contractor of a candidate or a party  
6 committee, or a candidate committee or measure committee supporting or opposing a candidate or  
7 measure clearly identified in the political expenditure; and

8 (ii) The former employee or independent contractor uses or conveys to the person paying for  
9 the communication:

10 (I) Information about the campaign plans, projects, activities, or needs of a candidate or a  
11 party committee, or a candidate committee or measure committee supporting or opposing a candidate  
12 or measure clearly identified in the political expenditure; or

13 (II) Information used previously by the commercial vendor in providing services to a  
14 candidate or to a party committee, or to a candidate committee or measure committee supporting or  
15 opposing a candidate or measure clearly identified in the political expenditure, and that information  
16 is material to the creation, production, or distribution of the political expenditure.

17 (H) For the purposes of determining a "coordinated communication." All references to a  
18 person paying for a political expenditure, candidate, candidate committee, measure committee or  
19 party committee also include their agents.

20 (I) Safe harbor for publicly available information. -- A political expenditure is not  
21 coordinated if the information material to the creation, production, distribution, or undertaking of  
22 the political expenditure was obtained from a publicly available source.



1           (J) Safe harbor for responses to inquiries about legislative or policy issues. – A candidate's  
2 or a political party committee's response to an inquiry about that candidate's or political party  
3 committee's positions on legislative or policy issues, including substantive discussion of the  
4 legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or  
5 needs, does not satisfy any of the coordination conduct standards of this section.

6           (K) Safe harbor for endorsements and solicitations by candidates. --

7           (i) A candidate's endorsement of another candidate does not satisfy any of the coordination  
8 conduct standards of this section.

9           (ii) A candidate's solicitation of funds for another candidate, a measure committee, a political  
10 committee, a party committee, or organizations eligible to receive tax-deductible donations under  
11 26 U.S.C. §170 (or any successor provision) and regulations of the U.S. Department of Treasury  
12 does not satisfy any of the coordination conduct standards of this section.

13           (L) Safe harbor for establishment and use of a firewall. -- The coordination conduct  
14 standards of this section are not met if the commercial vendor, former employee, or political  
15 committee has established and implemented a firewall that meets the following requirements:

16           (i) The firewall must be designed and implemented to prohibit the flow of information  
17 between employees or consultants providing services for the person paying for the communication  
18 and those employees or consultants currently or previously providing services to a candidate or party  
19 committee, or a candidate committee or measure committee supporting or opposing a candidate or  
20 measure clearly identified in the political expenditure; and

21           (ii) The firewall must be described in a written policy that is distributed to all relevant  
22 employees, consultants, and clients affected by the policy.

1        (M) The safe harbor provision does not apply if specific information indicates that, despite  
2 the firewall, information about a candidate's, candidate committee's, measure committee's, or party  
3 committee's campaign plans, projects, activities, or needs that is material to the creation, production,  
4 or distribution of the political expenditure was used or conveyed to the person paying for the political  
5 expenditure.

6        (N) Safe harbor for commercial transactions. – A communication in which a candidate is  
7 clearly identified only in his or her capacity as the owner or operator of a business that existed prior  
8 to the candidacy does not satisfy any of the coordination conduct standards of this section if the  
9 communication does not refer to an election or another candidate who seeks the same office as that  
10 candidate.

11        (O) In any law-enforcement proceeding, investigation, or litigation concerning an allegation  
12 of "coordinated communication" no discovery shall be taken unless it has first been established by  
13 the applicable standard of evidence that the defendant or respondent has in fact sponsored any  
14 activities meeting the definition of a "political expenditure."

15        ~~(23)~~ "Political party" means a political party as that term is defined by section eight, article  
16 one of this chapter or any committee established, financed, maintained or controlled by the party,  
17 including any subsidiary, branch or local unit thereof and including national or regional affiliates of  
18 the party.

19        "Political party caucus" means the committees that are established by the Republican and  
20 Democrat caucuses of both the West Virginia House of Delegates and the West Virginia State  
21 Senate.

22        ~~(24)~~ "Political party committee" means a committee established by a political party or

1 political party caucus for the purposes of engaging in the influencing of the election, nomination or  
2 defeat of a candidate in any election.

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

8       ~~(26)~~ "Targeted to the relevant electorate" means a communication which refers to a clearly  
9 identified candidate for statewide office or the Legislature and which can be received by one hundred  
10 forty thousand or more individuals in the state in the case of a candidacy for statewide office, eight  
11 thousand two hundred twenty or more individuals in the district in the case of a candidacy for the  
12 State Senate and two thousand four hundred ten or more individuals in the district in the case of a  
13 candidacy for the House of Delegates.

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

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

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

21 **§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting**  
22 **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 regulation  
6 by the provisions of this article. Verified financial statements of the records and expenditures shall  
7 be made and filed as public records by all candidates and by their financial agents, representatives  
8 or any person acting for and on behalf of any candidate and by the treasurers of all political party  
9 committees. State level independent expenditure reporting and state level electioneering  
10 communications reporting do not qualify for a federal exemption within this section.

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

15 (A) The name of (i) the person making the expenditure; (ii) the name of any person sharing  
16 or exercising direction or control over the activities of the person making the expenditure; and (iii)  
17 the name of the custodian of the books and accounts of the person making the expenditure;

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

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

1 (D) The elections to which the independent expenditure pertain, the names, if known, of the  
2 candidates referred to or to be referred to therein, whether the expenditure is intended to support or  
3 oppose the identified candidates and the amount of the total expenditure reported pursuant to  
4 paragraph (C) of this subdivision spent to support or oppose each of the identified candidates;

5 (E) The name and address of any person who contributed a total of more than \$250 between  
6 the first day of the preceding calendar year, and the disclosure date, and whose contributions were  
7 made for the purpose of furthering the expenditure. However, disclosure or reporting is not required  
8 for any person who makes a general contribution that does not further a specific independent  
9 expenditure or electioneering communications.

10 (F) With regard to the contributors required to be listed pursuant to paragraph (E) of this  
11 subdivision, the statement shall also include:

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

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

15 (iii) If the contributor is an individual, the name and address of the individual, his or her  
16 occupation, the name and address of the individual's current employer, if any, or, if the individual  
17 is self-employed, the name and address of the individual's business, if any;

18 (iv) A description of the contribution, if other than money; and

19 (v) The value in dollars and cents of the contribution.

20 (G) (1) A certification that such independent expenditure was not made in cooperation,  
21 consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized  
22 committee or agent of such candidate.

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

5           (3) The Secretary of State shall expeditiously prepare indices setting forth, on a  
6 candidate-by-candidate basis, all independent expenditures separately, made by, or on behalf of, or  
7 for, or against each candidate, as reported under this subsection, and for periodically publishing such  
8 indices on a timely preelection basis.

9           (c) (1) A person, including a political committee, who makes or contracts to make  
10 independent expenditures aggregating \$1,000 or more for any statewide, legislative or multicounty  
11 judicial candidate or \$500 or more for any county office, single-county judicial candidate, committee  
12 supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate  
13 on a municipal election ballot, after the fifteenth day, but more than twelve hours, before the date  
14 of an election, shall file a report on a form prescribed by the Secretary of State, describing the  
15 expenditures within twenty-four hours: *Provided*, That a person making expenditures in the amount  
16 of \$1,000 or more for any statewide or legislative candidate on or after the fifteenth day but more  
17 than twelve hours before the day of any election shall report such expenditures in accordance with  
18 section two-b of this article and shall not file an additional report as provided herein.

19           (2) Any person who files a report under subdivision (1) of this subsection, shall file an  
20 additional report within twenty-four hours after each time the person makes or contracts to make  
21 independent expenditures aggregating an additional \$500 with respect to the same election, for any  
22 county office, single-county judicial candidate, committee supporting or opposing a candidate on the

1 ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to  
2 which the initial report relates.

3 (d) (1) A person, including a political committee, who makes or contracts to make  
4 independent expenditures aggregating \$10,000 or more at any time up to and including the fifteenth  
5 day before the date of an election shall file a report on a form prescribed by the Secretary of State,  
6 describing the expenditures within forty-eight hours.

7 (2) A person who files a report under subdivision (1) of this subsection, the person shall file  
8 an additional report within forty-eight hours after each time the person makes or contracts to make  
9 independent expenditures aggregating an additional \$10,000 with respect to the same election as that  
10 to which the initial report relates.

11 (e) Any communication paid for by an independent expenditure must include a clear and  
12 conspicuous public notice that:

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

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

19 (f) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing,  
20 producing or disseminating electioneering communications during any calendar year shall maintain  
21 all financial records and receipts related to such expenditure for a period of six months following the  
22 filing of a disclosure pursuant to subsection (a) of this section and, upon request, shall make such

1 records and receipts available to the Secretary of State or county clerk for the purpose of an audit as  
2 provided in section seven of this article.

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

6 (h) (1) Any person who is required to file a statement under this section may file the  
7 statement by facsimile device or electronic mail, in accordance with such rules as the Secretary of  
8 State may promulgate.

9 (2) The Secretary of State shall make any document filed electronically pursuant to this  
10 subsection accessible to the public on the Internet not later than twenty-four hours after the document  
11 is received by the secretary.

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

16 (i) This section does not apply to candidates for federal office.

17 (j) The Secretary of State may promulgate emergency and legislative rules, in accordance  
18 with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the  
19 administration of this section.

20 **§3-8-3. Committee treasurers; required to receive and disburse funds.**

21 Every political committee shall appoint and retain a treasurer to receive, keep and disburse  
22 all sums of money which may be collected or received by such committee, or by any of its members,



1 for election expenses, and, unless such treasurer is first appointed and thereafter retained, it shall be  
2 unlawful for any such committee or any of its members to collect, receive or disburse money for any  
3 such purposes. All moneys collected or received by any such committee, or by any of its members,  
4 for election expenses shall be paid over to, and pass through the hands of, the treasurer, and shall be  
5 disbursed by ~~him~~ the Treasurer, and it shall be unlawful for any such committee, or any of its  
6 members, to disburse any money for election expenses unless such money shall be paid to, and  
7 disbursed by, the treasurer. The same person may be designated to act as treasurer for two or more  
8 political party committees. This section creates no obligation upon any entity or individual, other  
9 than a political committee as defined by this chapter.

10 **§3-8-4. Treasurers and financial agents; written designation requirements.**

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

1 by the chairman and the treasurer of the committee: *Provided*, That a change of treasurer or financial  
2 agent may be made at any time by filing a written statement with the Secretary of State.

3 (b) No person may act as the treasurer for any candidate for nomination or election to any  
4 statewide office, or to any office encompassing an election district larger than a county or to any  
5 legislative office unless a written statement designating that person as the treasurer or financial agent  
6 is filed with the Secretary of State at least twenty-eight days before the election at which that person  
7 is to act as a treasurer and is received by the Secretary of State before midnight, eastern standard  
8 time, of that day or if mailed, is postmarked before that hour: *Provided*, That a change of treasurer  
9 or financial agent may be made at any time by filing a written statement with the Secretary of State.

10 (c) No person may act as treasurer of any committee or as financial agent for any candidate  
11 to be nominated or elected by the voters of a county or a district therein, except legislative  
12 candidates, or as the financial agent for a candidate for the nomination or election to any other office,  
13 unless a written statement designating him or her as the treasurer or financial agent is filed with the  
14 clerk of the county commission at least twenty-eight days before the election at which he or she is  
15 to act and is received before midnight, eastern standard time, of that day or if mailed, is postmarked  
16 before that hour: *Provided*, That a change of treasurer may be made at any time by filing a written  
17 statement with the clerk of the county commission.

18 (d) Notwithstanding the provisions of subsections (a), (b) and (c) of this section, a filing  
19 designating a treasurer for a state or county political executive committee may be made anytime  
20 before the committee either accepts or spends funds. Once a designation is made by a state or county  
21 political executive committee, no additional designations are required under this section until a  
22 successor treasurer is designated. A state or county political executive committee may terminate a

1 designation made pursuant to this section by making a written request to terminate the designation  
2 and by stating in the request that the committee has no funds remaining in the committee's account.  
3 This written request shall be filed with either the Secretary of State or the clerk of the county  
4 commission as provided by subsections (a), (b) and (c) of this section.

5 (e) This section creates no obligation upon any entity or person other than a political action  
6 committee or political party committee, candidate or treasurer or financial agent for any candidate  
7 as described in this section.

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

9 (a) Every candidate, treasurer, person and association of persons, organization of any kind,  
10 including every corporation, directly, or by an independent expenditure, supporting a political  
11 committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this  
12 article or engaging in other activities permitted by this section and also including the treasurer or  
13 equivalent officer of the association or organization, expressly advocating the election or defeat of  
14 a clearly identified candidate for state, district, county or municipal office, and the treasurer of every  
15 political committee shall keep detailed accounts of every sum of money or other thing of value  
16 received by him or her, including all loans of money or things of value and of all expenditures and  
17 disbursements made, liabilities incurred, by the candidate, financial agent, person, association or  
18 organization or committee, for political purposes, or by any of the officers or members of the  
19 committee, or any person acting under its authority or on its behalf.

20 (b) Every person or association of persons required to keep detailed accounts under this  
21 section shall file with the officers hereinafter prescribed a detailed itemized sworn statement:

22 (1) Of all financial transactions, whenever the total exceeds \$500, which have taken place

1 before the last Saturday in March, to be filed within six days thereafter and annually whenever the  
2 total of all financial transactions relating to an election exceeds \$500;

3 (2) Of all financial transactions which have taken place before the fifteenth day preceding  
4 each primary or other election and subsequent to the previous statement, if any, to be filed within  
5 four business days after the fifteenth day;

6 (3) Of all financial transactions which have taken place before the thirteenth day after each  
7 primary or other election and subsequent to the previous statement, if any, to be filed within twenty  
8 business days after the thirteenth day; and

9 (4) Of all financial transactions, whenever the total exceeds \$500 or whenever any loans are  
10 outstanding, which have taken place before the forty-third day preceding the general election day,  
11 to be filed within four business days after the forty-third day.

12 (c) If any contribution of \$1,000 or more is received by any candidate committee or political  
13 committee after the sixteenth day, but more than forty-eight hours, before 12:01 a.m. of the day of  
14 the primary or general election, the treasurer of the candidate committee or political party committee  
15 shall notify the State Election Commission within forty-eight hours of receipt of the contribution.  
16 The notification shall be in writing and shall include the name of the candidate and office sought by  
17 the candidate, or the name of the political committee if appropriate, the identification of the  
18 contributor, and the date of receipt and amount of the contribution on a form prescribed by the State  
19 Election Commission. The notification shall be in addition to the reporting of these contributions  
20 on the post-election report.

21 (e) (d) Every person who announces as a write-in candidate for any elective office and his  
22 or her financial agent or election organization of any kind shall comply with all of the requirements

1 of this section after public announcement of the person's candidacy has been made.

2       ~~(d)~~(e) For purposes of this section, the term "financial transactions" includes all contributions  
3 or loans received and all repayments of loans or expenditures made to promote the candidacy of any  
4 person by any candidate or any organization advocating or opposing the nomination, election or  
5 defeat of any candidate to be voted on.

6       ~~(e)~~(f) Candidates for the office of conservation district supervisor elected pursuant to the  
7 provisions of article twenty-one-a, chapter nineteen of this code are required to file only the reports  
8 required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the  
9 primary election: *Provided*, That during the election in the year 2008, the statements required by this  
10 subsection shall be filed immediately prior to and after the general election.

11 **§3-8-5a. Information required in financial statement.**

12       (a) Each financial statement required by the provisions of this article, other than a disclosure  
13 of electioneering communications pursuant to section two-b of this article, shall contain only the  
14 following information:

15       (1) The name, residence and mailing address and telephone number of each candidate,  
16 financial agent, treasurer or person and the name, address and telephone number of each association,  
17 organization or committee filing a financial statement.

18       (2) The balance of cash and any other sum of money on hand at the beginning and the end  
19 of the period covered by the financial statement.

20       (3) The name of any person making a contribution and the amount of the contribution. If the  
21 total contributions of any one person in any one election cycle amount to more than \$250, the  
22 residence and mailing address of the contributor and, if the contributor is an individual, his or her

1 major business affiliation and occupation shall also be reported. A contribution totaling more than  
2 \$50 of currency of the United States or currency of any foreign country by any one contributor is  
3 prohibited and a violation of section five-d of this article. The statement on which contributions are  
4 required to be reported by this subdivision may not distinguish between contributions made by  
5 individuals and contributions made by partnerships, firms, associations, committees, organizations  
6 or groups.

7 (4) The total amount of contributions received during the period covered by the financial  
8 statement.

9 (5) The name, residence and mailing address of any individual or the name and mailing  
10 address of each lending institution making a loan or of the spouse cosigning a loan, as appropriate,  
11 the amount of any loan received, the date and terms of the loan, including the interest and repayment  
12 schedule, and a copy of the loan agreement.

13 (6) The name, residence and mailing address of any individual or the name and mailing  
14 address of each partnership, firm, association, committee, organization or group having previously  
15 made or cosigned a loan for which payment is made or a balance is outstanding at the end of the  
16 period, together with the amount of repayment on the loan made during the period and the balance  
17 at the end of the period.

18 (7) The total outstanding balance of all loans at the end of the period.

19 (8) The name, residence and mailing address of any person to whom each expenditure was  
20 made or liability incurred, including expenditures made on behalf of a candidate or political  
21 committee that otherwise are not made directly by the candidate or political committee, together with  
22 the amount and purpose of each expenditure or liability incurred and the date of each transaction.

1 (9) The total expenditure for the nomination, election or defeat of a candidate or any person  
2 supporting, aiding or opposing the nomination, election or defeat of any candidate in whose behalf  
3 an expenditure was made or a contribution was given for the primary or other election.

4 (10) The total amount of expenditures made during the period covered by the financial  
5 statement.

6 (b) Any unexpended balance at the time of making the financial statements herein provided  
7 for shall be properly accounted for in that financial statement and shall appear as a beginning balance  
8 in the next financial statement.

9 (c) Each financial statement required by this section shall contain a separate section setting  
10 forth the following information for each fund-raising event held during the period covered by the  
11 financial statement:

12 (1) The type of event, date held and address and name, if any, of the place where the event  
13 was held.

14 (2) All of the information required by subdivision (3), subsection (a) of this section.

15 (3) The total of all moneys received at the fund-raising event.

16 (4) The expenditures incident to the fund-raising event.

17 (5) The net receipts of the fund-raising event.

18 (d) When any lump sum payment is made to any advertising agency or other disbursing  
19 person who does not file a report of detailed accounts and verified financial statements as required  
20 in this section, such lump sum expenditures shall be accounted for in the same manner as provided  
21 for herein.

22 (e) Any contribution or expenditure made by or on behalf of a candidate for public office, to

1 any other candidate or committee for a candidate for any public office in the same election shall be  
2 accounted for in accordance with the provisions of this section.

3 (f) No person may make any contribution except from his, her or its own funds, unless such  
4 person discloses in writing to the person required to report under this section the name, residence,  
5 mailing address, major business affiliation and occupation of the person which furnished the funds  
6 to the contributor. All such disclosures shall be included in the statement required by this section.

7 (g) Any firm, association, committee or fund permitted by section eight of this article to be  
8 a political committee shall disclose on the financial statement its corporate or other affiliation.

9 (h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously  
10 or by one person through an agent, relative or other person so as to conceal the identity of the source  
11 of the contribution or in any other manner so as to effect concealment of the contributor's identity.

12 (i) No person may accept any contribution for the purpose of influencing the nomination,  
13 election or defeat of a candidate or for the passage or defeat of any ballot issue unless the identity  
14 of the donor and the amount of the contribution is known and reported.

15 (j) When any person receives an anonymous contribution which cannot be returned because  
16 the donor cannot be identified, that contribution shall be donated to the General Revenue Fund of  
17 the state. Any anonymous contribution shall be recorded as such on the candidate's financial  
18 statement, but may not be expended for election expenses. At the time of filing, the financial  
19 statement shall include a statement of distribution of anonymous contributions, which total amount  
20 shall equal the total of all anonymous contributions received during the period.

21 ~~(k) Any membership organization which raises funds for political purposes by payroll~~  
22 ~~deduction, assessing them as part of its membership dues or as a separate assessment, may report the~~



1 amount raised as follows:

2       ~~(1) If the portion of dues or assessments designated for political purposes equals \$25 or less~~  
3 ~~per member over the course of a calendar year, the total amount raised for political purposes through~~  
4 ~~membership dues or assessments during the period is reported by showing the amount required to~~  
5 ~~be paid by each member and the number of members.~~

6       ~~(2) If the total payroll deduction for political purposes of each participating member equals~~  
7 ~~\$25 or less over the course of a calendar or fiscal year, as specified by the organization, the~~  
8 ~~organization shall report the total amount received for political purposes through payroll deductions~~  
9 ~~during the reporting period and, to the maximum extent possible, the amount of each yearly payroll~~  
10 ~~deduction contribution level and the number of members contributing at each such specified level.~~  
11 ~~The membership organization shall maintain records of the name and yearly payroll deduction~~  
12 ~~amounts of each participating member.~~

13       ~~(3) If any member contributes to the membership organization through individual voluntary~~  
14 ~~contributions by means other than payroll deduction, membership dues, or assessments as provided~~  
15 ~~in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall~~  
16 ~~apply. Funds raised for political purposes must be segregated from the funds for other purposes and~~  
17 ~~listed in its report.~~

18       ~~(†) (k)~~ Notwithstanding the provisions of section five of this article or of the provisions of  
19 this section to the contrary, an alternative reporting procedure may be followed by a political party  
20 committee in filing financial reports for fund-raising events if the total profit does not exceed \$5,000  
21 per year. A political party committee may report gross receipts for the sale of food, beverages,  
22 services, novelty items, raffle tickets or memorabilia, except that any receipt of more than \$50 from

1 an individual or organization shall be reported as a contribution. A political party committee using  
2 this alternative method of reporting shall report:

3 (i) The name of the committee;

4 (ii) The type of fund-raising activity undertaken;

5 (iii) The location where the activity occurred;

6 (iv) The date of the fundraiser;

7 (v) The name of any individual who contributed more than \$50 worth of items to be sold;

8 (vi) The name and amount received from any person or organization purchasing more than  
9 \$50 worth of food, beverages, services, novelty items, raffle tickets or memorabilia;

10 (vii) The gross receipts of the fundraiser; and

11 (viii) The date, amount, purpose and name and address of each person or organization from  
12 whom items with a fair market value of more than \$50 were purchased for resale.

13 **§3-8-5b. Where financial statements shall be filed; filing date prescribed.**

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

16 (1) The Secretary of State for legislative offices and for statewide and other offices to be  
17 nominated or elected by the voters of a political division greater than a county;

18 (2) The clerk of the county commission by candidates for offices to be nominated or elected  
19 by the voters of a single county or a political division within a single county; or

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

22 ~~(b) The statements may be filed by mail, in person, or by facsimile or other electronic means~~

1 ~~of transmission: *Provided, That the financial*~~ Financial statements filed by or on behalf of candidates  
2 for House of Delegates, Senate, Governor, Secretary of State, Attorney General, Auditor, Treasurer,  
3 Commissioner of Agriculture and Supreme Court of Appeals shall be filed electronically by the  
4 means of an Internet program to be established by the Secretary of State. Candidates for House of  
5 Delegates and State Senate may file financial statements by mail, in person, or by facsimile or other  
6 electronic means of submission until the total amount of contributions received by the candidate  
7 exceeds \$10,000 for the election cycle. The Secretary of State may charge a \$25 processing fee for  
8 any financial statements that are not filed electronically.

9 (c) Committees required to report electronically may apply to the state Election Commission  
10 for an exemption from mandatory electronic filing in the case of hardship. An exemption may be  
11 granted at the discretion of the state Election Commission.

12 (d) For purposes of this article, the filing date of a financial statement shall, in the case of  
13 mailing, be the date of the postmark of the United States Postal Service, and in the case of hand  
14 delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the  
15 office of the Secretary of State or to the office of the clerk of the county commission, in accordance  
16 with the provisions of subsection (a) of this section, during regular business hours of such office.

17 (e) The sworn financial statements required to be filed by this section with the Secretary of  
18 State shall be posted on the Internet by the Secretary of State within ten business days from the date  
19 the financial statement was filed.

20 (f) The Secretary of State shall maintain an online searchable database accessible to the  
21 public on the Secretary of State's website. The database shall include the ability to search  
22 contribution and expenditure data submitted by candidates and political action committees.

1 Information capable of search shall include, but not be limited to, a contributor's first name, last  
2 name, city, state, occupation, employer, contribution amount, date, expenditure payee, payer, city  
3 state, purpose and amount.

4 **§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.**

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

16 (b) (1) Any person, candidate, financial agent or treasurer of a political party committee who  
17 fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete  
18 or grossly inaccurate statement ~~may~~ shall be assessed a civil penalty by the Secretary of State of ~~\$25~~  
19 \$10 a day for each day after the due date the statement is delinquent, grossly incomplete or grossly  
20 inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the  
21 Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete or  
22 grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party

1 committee and forward copies of such delinquent, incomplete or inaccurate statements to the  
2 Secretary of State. The Secretary of State shall also publish to the Secretary of State's website a list  
3 of any candidates who have failed to file financial statements in accordance with the time limitations  
4 set forth in this article.

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

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

10 (4) The Secretary of State shall publish online a list of all late filing violators for each  
11 deadline in an election cycle. This list shall be maintained and be publically available online to  
12 include late activity for the previous five years to the current year.

13 ~~(4)~~ (5) The Secretary of State and county clerk may review and audit any sworn statement  
14 required to be filed pursuant to this article. The State Election Commission shall propose legislative  
15 rules for promulgation, in accordance with chapter twenty-nine-a of this code, to establish procedures  
16 for the assessment of civil penalties as provided in this section.

17 (c) No candidate nominated at a primary election who has failed to file a sworn statement,  
18 as required by this article, shall have his or her name placed on the official ballot for the ensuing  
19 election, unless there has been filed by or on behalf of such candidate, or by his or her financial  
20 agent, if any, the financial statement relating to nominations required by this article. It is unlawful  
21 to issue a commission or certificate of election, or to administer the oath of office, to any person  
22 elected to any public office who has failed to file a sworn statement as required by this article and

1 no person may enter upon the duties of his or her office until he or she has filed such statement, nor  
2 may he or she receive any salary or emolument for any period prior to the filing of such statement.

3 **§3-8-8. Additional powers of the State Election Commission.**

4 (a) In addition to the powers and duties set forth in article one-a of this chapter, the State  
5 Election Commission has the following powers and duties:

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

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

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

12 (4) To report any alleged violations of this article to the appropriate prosecuting attorney  
13 having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged  
14 violations, together with all evidence relating thereto, no later than the next term of court after  
15 receiving the report.

16 (b) The Attorney General shall, when requested, provide legal and investigative assistance  
17 to the State Election Commission.

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

21 (d) Any person who discloses the fact of any complaint, investigation or report or any part  
22 thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction, shall be fined

1 not less than \$1,000, nor more than \$5,000, and shall be confined in jail not less than six months nor  
2 more than one year. However, it is not a violation of this subsection for a state official to confirm  
3 the existence of a pending investigation.

4 (e) It is unlawful for the Secretary of State's office, or any employee of the Secretary of  
5 State's office, to disclose the facts of any pending complaint, investigation or report or any part  
6 thereof, or any proceedings thereof prior to the completion of the investigation. Any person who  
7 violates this subsection is guilty of a misdemeanor and, upon conviction, shall be fined not less than  
8 \$1,000, nor more than \$5,000, and shall be confined in jail not less than six months nor more than  
9 one year.

10 **§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their**  
11 **purposes; limitation upon expenses; use of advertising agencies and reporting**  
12 **requirements; delegation of expenditures.**

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

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

19 (2) In the case of a candidate who does not maintain a headquarters, for reasonable office  
20 expenses, including, but not limited to, filing cabinets and other office equipment and furnishings,  
21 computers, computer hardware and software, scanners, typewriters, calculators, audio visual  
22 equipment, the rental of the use of the same, or for the payment for the shared use of same with the

1 candidate's business and for the payment of necessary clerks, stenographers and typists actually  
2 employed;

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

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

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

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

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

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

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

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



1 collation and evaluation of information reflecting public opinion, needs and preferences as to any  
2 candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed or  
3 intentionally conducted in a manner calculated to advocate the election or defeat of any candidate  
4 or group of candidates or calculated to influence any person or persons so polled to vote for or  
5 against any candidate, group of candidates, proposition or other matter to be voted on by the public  
6 at any election: *Provided*, That nothing herein shall prevent the use of the results of any such poll  
7 or polls to further, promote or enhance the election of any candidate or group of candidates or the  
8 approval or defeat of any proposition or other matter to be voted on by the public at any election;

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

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

14 (13) For the purchase of nominal noncash expressions of appreciation following the close  
15 of the polls of an election or within thirty days thereafter;

16 (14) For the payment of dues, transfers or subscriptions to any national, state or local  
17 committee of any political party without limitation;

18 (15) For contributions to a county party executive committee, state party executive committee  
19 or a state party legislative caucus political committee; and

20 (16) For contributions to a candidate committee. ~~*Provided, That*~~ However, a candidate  
21 committee may not contribute to another candidate committee except as otherwise provided by  
22 section ten of this article or for the purpose of retiring debt incurred during a prior election.

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

4           ~~(e)~~ (b) Every liability incurred and payment made shall be for the fair market value of the  
5 services rendered.

6           ~~(d)~~ (c) Every advertising agency subject to the provisions of this article shall file, in the  
7 manner and form required by section five-a of this article, the financial statements required by  
8 section five of this article at the times required therein and include therein, in itemized detail, all  
9 receipts from and expenditures made on behalf of a candidate, financial agent or treasurer of a  
10 political party committee.

11           ~~(e)~~ (d) Any candidate may designate a financial agent by a writing duly subscribed by him  
12 or her the candidate which shall be in such form and filed in accordance with the provisions of  
13 section four of this article.

14 **§3-8-9a. Expenditures by political party committees, political party caucuses and state**  
15 **candidates.**

16           (1) Notwithstanding any other provision of law with respect to limitations on expenditures  
17 or limitations on contributions, the state committee of a political party, including any subordinate  
18 committee of a state committee and political party caucus, may make expenditures in connection  
19 with the general election campaign of candidates for state office, subject to the limitations contained  
20 in subdivisions (2), (3), (4) and (5) of this section.

21           (2) The state committee of a political party may not make any expenditure in connection with  
22 the general election campaign of any candidate for Governor who is affiliated with such party which

1 exceeds an amount equal to \$250,000.

2 (3) The state committee of a political party may not make any coordinated political  
3 expenditure in connection with the general election campaign of any candidate for statewide election,  
4 other than Governor, who is affiliated with such party which exceeds an amount equal to \$150,000.

5 (4) The state committee of a political party, including any subordinate committee of a state  
6 committee and political party caucus, may not make any expenditure in connection with the general  
7 election campaign of a candidate for state office who is affiliated with such party which exceeds:

8 (A) In the case of a candidate for election to the office of senator, \$100,000.

9 (B) In the case of a candidate for election to the office of delegate, \$50,000.

10 **§3-8-10. Use of excess campaign contributions.**

11 (a) Notwithstanding any provision of this code to the contrary, amounts received by a  
12 candidate as contributions that are in excess of any amount necessary to defray his or her  
13 expenditures may be:

14 (1) Used by the candidate to defray any usual and customary expenses incurred in connection  
15 with his or her duties as a holder of public office; ~~and~~

16 (2) Used by the candidate to retire debt incurred by the candidate during the current or any  
17 prior election cycle; and

18 ~~(2)~~ (3) Contributed by the candidate, after the general election, to:

19 (A) Any charitable organization or subsequent campaign by the same candidate, without  
20 limitation;

21 (B) Any national committee in accordance with federal requirements;

22 (C) Any state party executive committee or state party legislative caucus committee ~~in an~~

1 ~~amount not to exceed \$15,000 in a calendar year without limitation; or~~

2 (D) Any local committee of any political party or any other candidate for public office ~~in~~  
3 ~~accordance with the existing limitations on contributions without limitation.~~

4 (b) The State Election Commission shall promulgate emergency and legislative rules, in  
5 accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the  
6 administration of this section.

7 **§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising;**  
8 **solicitation of contributions; intimidation and coercion of employees; promise of**  
9 **employment or other benefits; public contractors; penalty.**

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

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

18 (c) A person may not, in any room or building occupied for the discharge of official duties  
19 by any officer or employee of the state or a political subdivision of the state, solicit orally or by  
20 written communication delivered within the room or building, or in any other manner, any  
21 contribution of money or other thing of value for any party or political purpose, from any postmaster  
22 or any other officer or employee of the federal government, or officer or employee of the State, or

1 a political subdivision of the State. An officer, agent, clerk or employee of the federal government,  
2 or of this state, or any political subdivision of the state, who may have charge or control of any  
3 building, office or room, occupied for any official purpose, may not knowingly permit any person  
4 to enter any building, office or room, occupied for any official purpose for the purpose of soliciting  
5 or receiving any political assessments from, or delivering or giving written solicitations for, or any  
6 notice of, any political assessments to, any officer or employee of the state, or a political subdivision  
7 of the state.

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

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

22 ~~(f) Except as provided in section eight of this article, a person may not, directly or indirectly,~~

~~1 make any contribution in excess of the value of \$1,000 in connection with any campaign for  
2 nomination or election to or on behalf of any statewide office, in connection with any other campaign  
3 for nomination or election to or on behalf of any other elective office in the state or any of its  
4 subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing,  
5 supporting or aiding the nomination or election of any candidate for any of the offices.~~

~~6 (g) A political organization (as defined in Section 527(c)(1) of the Internal Revenue Code  
7 of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its  
8 existence and of the purposes for which it was formed. During the two-year election cycle, a  
9 political organization (as defined in Section 527 (c) (1) of the Internal Revenue Code of 1986) may  
10 not accept contributions totaling more than \$1,000 from any one person prior to the primary election  
11 and contributions totaling more than \$1,000 from any one person after the primary and before the  
12 general election.~~

~~13 (h) It is unlawful for any person to create, establish or organize more than one political  
14 organization (as defined in Section 527(c)(1) of the Internal Revenue Code of 1986) with the intent  
15 to avoid or evade the contribution limitations contained in subsection (g) of this section.~~

~~16 (i) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person  
17 may not, directly or indirectly, make contributions to a state party executive committee or state party  
18 legislative caucus committee which, in the aggregate, exceed the value of \$1,000 in any calendar  
19 year.~~

~~20 (j) The limitations on contributions contained in this section do not apply to transfers between  
21 and among a state party executive committee or a state party's legislative caucus political committee  
22 from national committees of the same political party: *Provided, That transfers permitted by this*~~

1 subsection may not exceed \$50,000 in the aggregate in any calendar year to any state party executive  
2 committee or state party legislative caucus political committee: *Provided, however,* That the moneys  
3 transferred may only be used for voter registration and get-out-the-vote activities of the state  
4 committees.

5       ~~(k)~~ (f) A person may not solicit any contribution, other than contributions to a campaign for  
6 or against a county or local government ballot issue, from any nonelective salaried employee of the  
7 state government or of any of its subdivisions: *Provided,* That in no event may any person acting  
8 in a supervisory role solicit a person who is a subordinate employee for any contribution. A person  
9 may not coerce or intimidate any nonelective salaried employee into making a contribution. A  
10 person may not coerce or intimidate any nonsalaried employee of the state government or any of its  
11 subdivisions into engaging in any form of political activity. The provisions of this subsection may  
12 not be construed to prevent any employee from making a contribution or from engaging in political  
13 activity voluntarily without coercion, intimidation or solicitation.

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

19       ~~(m)~~ (g) A person may not place any letter, circular, flyer, advertisement, election  
20 paraphernalia, solicitation material or other printed or published item tending to influence voting at  
21 any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside  
22 receptacle by the business or entity owning the receptacle; and (2) contains a written

1 acknowledgment of the approval. This subdivision does not apply to any printed material contained  
 2 in a newspaper or periodical published or distributed by the owner of the receptacle. The term  
 3 "roadside receptacle" means any container placed by a newspaper or periodical business or entity to  
 4 facilitate home or personal delivery of a designated newspaper or periodical to its customers.

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

8 ~~(o)~~ (i) The provisions of subsection (k) of this section, permitting contributions to a campaign  
 9 for or against a county or local government ballot issue shall become operable on and after January  
 10 1, 2005.

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

NOTE: The purpose of this bill is to make changes concerning the regulation and control of elections. The bill modifies what qualifies as a federal reporting exemption. The bill requires certain contributions be reported to the State Election Commission within forty-eight hours of their receipt. The bill deletes certain reports by membership organizations that raise funds for political purposes by payroll. The bill permits certain financial statements by mail or in person. The bill requires the Secretary of State to maintain an online database. The bill sets forth additional powers of the State Election Commission. The bill requires the Attorney General to provide assistance when requested. The bill permits a political committee to transfer funds to a national, state or local committee of a political party without limitation. The bill permits a candidate committee to contribute to another candidate committee for the purpose of retiring debt incurred during a prior election. The bill permits a political action committee to contribute to another political action committee. The bill establishes expenditure limits by political party committees, political party caucuses and candidates. The bill permits candidates, after a general election, to transfer any unused contributions to state part executive committees, state party legislative caucus committees, local



committees of a political party or any other candidate for public office without limitation. The bill modifies and adds definitions. The bill creates criminal penalties..

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

§3-8-8 has been completely rewritten; strike-throughs and underscoring have been omitted.

§3-8-9a and is new; therefore, strike-throughs and underscoring have been omitted.