

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 408

**FISCAL
NOTE**

BY SENATORS HALL, FERNS, GAUNCH AND MULLINS

[Introduced January 27, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-8-1a, §3-8-5b, §3-8-8, §3-8-9 and §3-8-12 of the Code of West
 2 Virginia, 1931, as amended; and to amend said code by adding thereto two new sections,
 3 designated §3-8-9a and §3-8-9b, all relating generally to regulation and control of
 4 elections; updating definitions; creating new definition for “political party caucus”; updating
 5 and removing outdated provisions; requiring candidates for circuit judge and family court
 6 judge to file financial statements with Secretary of State; requiring Secretary of State to
 7 maintain an online searchable database; setting contribution limits for any campaign for
 8 nomination or election; setting contribution limits to political organizations; setting
 9 contribution limits to state party executive committees, or any subsidiary thereof, or state
 10 party legislative caucus committees; providing for indexing of contribution limits; setting
 11 limits on contributions made from any separate segregated fund; prohibiting contributions
 12 by foreign nationals; identifying additional lawful election expenses; defining coordinated
 13 political expenditures; clarifying prohibition on coordinated political expenditures;
 14 permitting limited coordinated political expenditures by state political party committees and
 15 political party caucuses for certain elections; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

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

2 (1) “Ballot issue” means a Constitutional amendment, special levy, bond issue, local option
 3 referendum, municipal charter or revision, an increase or decrease of corporate limits or any other
 4 question that is placed before the voters for a binding decision.

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

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

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

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

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

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

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

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

24 (6) "Clearly identified" means that the name, nickname, photograph, drawing or other
25 depiction of the candidate appears or the identity of the candidate is otherwise apparent through
26 an unambiguous reference, such as "the Governor", "your Senator" or "the incumbent" or through
27 an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate
28 for Governor" or "the Republican candidate for ~~Supreme Court of Appeals~~ House of Delegates".

29 (7) "Contribution" means a gift, subscription, loan, assessment, payment for services,
30 dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other

31 tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other
32 tangible thing of value to a person, made for the purpose of influencing the nomination, election
33 or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and
34 unconditionally rejected or returned. A contribution does not include volunteer personal services
35 provided without compensation: *Provided*, That a nonmonetary contribution is to be considered
36 at fair market value for reporting requirements and contribution limitations.

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

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

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

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

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

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

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

55 (11) "Election" means any primary, general or special election conducted under the
56 provisions of this code or under the charter of any municipality at which the voters nominate or

57 elect candidates for public office. For purposes of this article, each primary, general, special or
58 local election constitutes a separate election. This definition is not intended to modify or abrogate
59 the definition of the term “nomination” as used in this article.

60 (12) (A) “Electioneering communication” means any paid communication made by
61 broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement or
62 published in any newspaper, magazine or other periodical that:

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

66 (ii) Is publicly disseminated within:

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

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

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

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

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

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

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

83 (ii) Activity by a candidate committee, party executive committee or political party caucus
84 ~~committee~~, or a political action committee that is required to be reported to the State Election
85 Commission or the Secretary of State as an expenditure pursuant to section five of this article or
86 the rules of the State Election Commission or the Secretary of State promulgated pursuant to
87 such provision: *Provided*, That independent expenditures by a party executive committee or
88 political party caucus ~~committee~~ or a political action committee required to be reported pursuant
89 to subsection (b), section two of this article are not exempt from the reporting requirements of this
90 section;

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

94 (iv) A communication paid for by any organization operating under section 501(c) (3) of
95 the Internal Revenue Code of 1986;

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

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

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

107 (viii) A communication, such as a voter's guide, which refers to all of the candidates for
108 one or more offices, which contains no appearance of endorsement for or opposition to the

109 nomination or election of any candidate and which is intended as nonpartisan public education
110 focused on issues and voting history.

111 (13) "Expressly advocating" means any communication that:

112 (A) Uses phrases such as "vote for the Governor", "reelect your Senator", "support the
113 ~~Democratic nominee~~ incumbent candidate for Supreme Court", "cast your ballot for the
114 Republican challenger for House of Delegates", "Smith for House", "Bob Smith in '04", "vote
115 ProLife" or "vote ProChoice" accompanied by a listing of clearly identified candidates described
116 as prolife or prochoice, "vote against Old Hickory", "defeat" accompanied by a picture of one or
117 more candidates, or "reject the incumbent";

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

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

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

128 (15) "Fundraising event" means an event such as a dinner, reception, testimonial, cocktail
129 party, auction or similar affair through which contributions are solicited or received by such means
130 as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

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

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

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

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

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

145 (18) "Membership organization" means a group that grants bona fide rights and privileges,
146 such as the right to vote, to elect officers or directors and the ability to hold office, to its members
147 and which uses a majority of its membership dues for purposes other than political purposes.
148 "Membership organization" does not include organizations that grant membership upon receiving
149 a contribution.

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

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

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

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

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

162 (C) An unaffiliated political action committee, as that term is defined by subdivision ~~(29)~~
163 (30) of this section.

164 (22) "Political committee" means any candidate's committee, political action committee or
165 political party committee, as defined in subdivision (5), (21) or (25) of this section.

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

170 (24) "Political party caucus" means the committees that are established by the Republican
171 and Democratic caucuses of both the West Virginia House of Delegates and the West Virginia
172 State Senate, or by any other political party recognized by the State of West Virginia.

173 ~~(24)~~ (25) "Political party committee" means a committee established by a political party or
174 political party caucus for the purposes of engaging in the influencing of the election, nomination
175 or defeat of a candidate in any election.

176 ~~(25)~~ (26) "Political purposes" means supporting or opposing the nomination, election or
177 defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the
178 retirement of the debt of a candidate or political committee or the administration or activities of an
179 established political party or an organization which has declared itself a political party and
180 determining the advisability of becoming a candidate under the precandidacy financing provisions
181 of this chapter.

182 ~~(26)~~ (27) "Targeted to the relevant electorate" means that a communication ~~which~~ refers
183 to a clearly identified candidate for statewide office or the Legislature and ~~which~~ can be received
184 by one hundred forty thousand or more individuals in the state in the case of a candidacy for

185 statewide office, eight thousand two hundred twenty or more individuals in the district in the case
 186 of a candidacy for the state Senate and two thousand four hundred ten or more individuals in the
 187 district in the case of a candidacy for the House of Delegates.

188 ~~(27)~~ (28) "Telephone bank" means telephone calls that are targeted to the relevant
 189 electorate, other than telephone calls made by volunteer workers, regardless of whether paid
 190 professionals designed the telephone bank system, developed calling instructions or trained
 191 volunteers.

192 ~~(28)~~(29) "Two-year election cycle" means the twenty-four month period that begins the
 193 day after a general election and ends on the day of the subsequent general election.

194 ~~(29)~~ (30) "Unaffiliated political action committee" means a political action committee that
 195 is not affiliated with a corporation or a membership organization.

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

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

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

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

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

10 (b) The statements may be filed by mail, in person, or by facsimile or other electronic
 11 means of transmission: *Provided*, That the financial statements filed by or on behalf of candidates
 12 for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of
 13 Agriculture and Supreme Court of Appeals shall be filed electronically by the means of an Internet
 14 program to be established by the Secretary of State.

15 (c) Committees required to report electronically may apply to the State Election
16 Commission for an exemption from mandatory electronic filing in the case of hardship. An
17 exemption may be granted at the discretion of the State Election Commission.

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

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

27 (f) The Secretary of State shall maintain an online searchable database accessible to the
28 public on the Secretary of State's website. The database shall include the ability to search
29 contribution and expenditure data submitted by candidates and political committees. Information
30 capable of search shall include, information required to be disclosed on the contribution and
31 expenditures disclosures.

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

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

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

8 candidate or candidate's campaign for nomination or election to any statewide office or any other
9 elective office in the state or any of its subdivisions.

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

15 (2) It is unlawful for:

16 (A) A corporation or separate segregated fund to make a primary or other election
17 contribution or expenditure by using money or anything of value secured: (i) By physical force,
18 job discrimination or financial reprisal; (ii) by the threat of force, job discrimination or financial
19 reprisal; or (iii) as a condition of employment;

20 (B) Any person soliciting a stockholder or executive or administrative personnel and
21 members of their families for a contribution to a corporation or separate segregated fund to fail to
22 inform the person solicited of the political purposes of the separate segregated fund at the time
23 of the solicitation;

24 (C) Any person soliciting any other person for a contribution to a corporation or separate
25 segregated fund to fail to inform the person solicited at the time of the solicitation of his or her
26 right to refuse to contribute without any reprisal;

27 (D) A separate segregated fund established by a corporation: (i) To solicit contributions to
28 the fund from any person other than the corporation's stockholders, and their families and ~~its~~ their
29 executive or administrative personnel and their families; or (ii) to contribute any corporate funds;

30 (E) A separate segregated fund established by a corporation to receive contributions to
31 the fund from any person other than the corporation's stockholders, and their immediate families
32 and ~~its~~ their executive or administrative personnel and their immediate families;

33 (F) A corporation to engage in job discrimination or to discriminate in job promotion or
34 transfer because of an employee's failure to make a contribution to the corporation or a separate
35 segregated fund;

36 (G) A separate segregated fund to make any contribution, directly or indirectly, in excess
37 of ~~\$1,000~~ the amounts permitted in section twelve of this article in connection with or on behalf of
38 any campaign for nomination or election to any elective office in the state or any of its subdivisions,
39 or in connection with or on behalf of any committee or other organization or person engaged in
40 furthering, advancing, supporting or aiding the nomination or election of any candidate for any
41 such office;

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

52 (3) For the purposes of this section, the term "executive or administrative personnel"
53 means individuals employed by a corporation who are paid on a salary rather than hourly basis
54 and who have policy-making, managerial, professional or supervisory responsibilities.

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

58 (e) To ensure uniform administration and application of the provisions of this section and
59 of those of the Federal Election Campaign Act Amendments of 1976 relating to corporate
60 contributions, the State Election Commission shall propose rules for legislative approval in
61 accordance with the provisions of article three, chapter twenty-nine-a of this code to implement
62 the provisions of this section consistent, insofar as practicable, with the rules and regulations
63 promulgated by the Federal Election Commission to carry out similar or identical provisions of 2
64 U. S. C. §441b.

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

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

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

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

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

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

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

82 (i) Any person who discloses the fact of any complaint, investigation or report or any part
83 thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof,

84 shall be fined not less than \$1,000 nor more than \$5,000 and shall be confined in jail not less than
85 six months nor more than one year.

86 ~~(j) The amendments to this section enacted during the second extraordinary session of~~
87 ~~2008 are intended to conform to the existing proscription to Constitutionally permissible limits and~~
88 ~~not to create a new offense or offenses.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (11) For payment for food and drink for campaign-related purposes;

43 (12) For payment for legal and accounting services rendered to a candidate or candidate
44 committee if the services are solely related to the candidacy or campaign;

45 (13) For the payment of any fees associated with the campaign, except that a candidate
46 may not pay any fines assessed against the candidate or the candidate's committee pursuant to
47 this article;

48 ~~(14)~~ (14) For legitimate advertising agency services, including commissions, in connection
49 with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7),
50 (9) and (10) of this subsection;

51 ~~(15)~~ (15) For the purchase of memorials, flowers or citations by political party executive
52 committees or political action committees representing a political party;

53 ~~(16)~~ (16) For the purchase of nominal noncash expressions of appreciation following the
54 close of the polls of an election or within thirty days thereafter;

55 ~~(17)~~ (17) For the payment of dues or subscriptions to any national, state or local committee
56 of any political party without limitation;

57 (18) For transfers to any national, state or local committee of any political party when that
58 committee is acting in the role of a vendor: *Provided*, That no such transfer shall involve any
59 coordination between the candidate and the political party committee;

60 ~~(19)~~ (19) For contributions to a county party executive committee, state party executive
61 committee or a state party legislative caucus political committee; and

62 ~~(20)~~ (20) For contributions to a candidate committee: *Provided*, That a candidate
63 committee may not contribute to another candidate committee except as otherwise provided by
64 section ten of this article.

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

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

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

75 (e) Any candidate may designate a financial agent by a writing duly subscribed by ~~him~~ the
 76 candidate which shall be in such form and filed in accordance with the provisions of section four
 77 of this article.

§3-8-9a. Coordinated political expenditure.

1 (a) Except as provided and allowed in section nine-b of this article, political expenditures
 2 shall not be made in coordination with any other person.

3 (b) For purposes of this section, a “political expenditure” means the payment for:

4 (1) Any communication that constitutes express advocacy or electioneering
 5 communications, as those terms are defined in subdivisions (12) and (13) of section one-a of this
 6 article, or

7 (2)The republication of campaign materials for any candidate, candidate committee, party
 8 committee or political committee that constitute express advocacy or electioneering
 9 communications.

10 (c) A political expenditure is made in coordination or otherwise considered to be
 11 coordinated if:

12 (1) The communication is paid for, in whole or in part, by a person other than a candidate,
 13 candidate committee or party committee; and

14 (2) It satisfies at least one of the following conduct standards:

15 (A) The political expenditure is created, produced, distributed or undertaken at the request
16 of a candidate, candidate committee, party committee; or

17 (B) The political expenditure is created, produced, distributed or undertaken at the request
18 of a person paying for the expenditure and the candidate, candidate committee or party committee
19 affirmatively assents to the suggestion.

20 (d) A political expenditure is not made in coordination or otherwise considered to be
21 coordinated if any of the following occur:

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

26 (2) Information or materials used in the creation, production, distribution or undertaking of
27 the political expenditure was obtained from a publicly available source;

28 (3) A candidate endorses another candidate;

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

32 (5) A candidate is clearly identified only in his or her capacity as the owner or operator of
33 a business that existed prior to the candidacy, if the communication does not refer to an election
34 or another candidate who seeks the same office as that candidate; or

35 (6) A commercial vendor, former employee or political committee has established and
36 implemented a firewall that meets the following requirements: *Provided*, That the communication
37 does not qualify for this exemption if specific information indicates that, despite the firewall,
38 information about the campaign plans, projects, activities or needs of a candidate, candidate
39 committee, measure committee, or party committee that is material to the creation, production or

40 distribution of the political expenditure was used or conveyed to the person paying for the political
 41 expenditure:

42 (A) The firewall must be designed and implemented to prohibit the flow of information
 43 between employees or consultants providing services for the person paying for the
 44 communication and those employees or consultants currently or previously providing services to
 45 a candidate or party committee or to a candidate committee or measure committee supporting or
 46 opposing a candidate or measure clearly identified in the political expenditure; and

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

§3-8-9b. Expenditures by political party committees, political party caucuses and state candidates.

1 (a) Notwithstanding any other provision of law with respect to limitations on expenditures
 2 or limitations on contributions, the state or county committee of a political party and political party
 3 caucus may make coordinated political expenditures, as that term is defined in section nine-a of
 4 this article, in an amount not to exceed \$20,000 in connection with the general election campaign
 5 of candidates for Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of
 6 State, Treasurer, State Senate, House of Delegates and any county office.

7 (b) For purposes of this section, all communications that are made in coordination with a
 8 candidate or candidate's committee must include a statement clearly identifying that the
 9 communications were made in coordination with the candidate or candidate's committee.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; prohibition against contributions by foreign nationals; penalty.

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

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

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

21 (d) Except as provided in section eight of this article, a person entering into any contract
22 with the state or its subdivisions, or any department or agency of the state, either for rendition of
23 personal services or furnishing any material, supplies or equipment or selling any land or building
24 to the state, or its subdivisions, or any department or agency of the state, if payment for the
25 performance of the contract or payment for the material, supplies, equipment, land or building is
26 to be made, in whole or in part, from public funds may not, during the period of negotiation for or

27 performance under the contract or furnishing of materials, supplies, equipment, land or buildings,
28 directly or indirectly, make any contribution to any political party, committee or candidate for public
29 office or to any person for political purposes or use; nor may any person or firm solicit any
30 contributions for any purpose during any period.

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

35 (f) Except as provided in section eight of this article, a person may not, directly or indirectly,
36 make any contribution in excess of the value of ~~\$1,000~~ \$2,700, as adjusted pursuant to subsection
37 (q) of this section, in connection with any campaign for nomination or election to or on behalf of
38 any statewide office, in connection with any other campaign for nomination or election to or on
39 behalf of any other elective office in the state or any of its subdivisions, or in connection with or
40 on behalf of any person engaged in furthering, advancing, supporting or aiding the nomination or
41 election of any candidate for any of the offices.

42 (g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code
43 of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its
44 existence and of the purposes for which it was formed. During the two-year election cycle, a
45 political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986)
46 may not accept contributions totaling more than ~~\$1,000~~ \$2,700, as adjusted pursuant to
47 subsection (q) of this section, from any one person prior to the primary election and contributions
48 totaling more than ~~\$1,000~~ \$2,700, as adjusted pursuant to subsection (q) of this section, from any
49 one person after the primary and before the general election.

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

53 (i) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person
54 may not, directly or indirectly, make contributions to a state party executive committee or state
55 party legislative caucus committee which, in the aggregate, exceed the value of ~~\$1,000~~ \$2,700,
56 as adjusted pursuant to subsection (g) of this section, in any calendar year.

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

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

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

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

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

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

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

97 (q) On the last day of every calendar year in which an election for House of Delegates is
98 held, the Secretary of State shall adjust the dollar values for the fixed dollar amounts for limitations
99 on contributions under this section to equal the contribution limits established by the Federal
100 Election Commission pursuant to 52 U.S.C. § 30101 et seq. for the same election cycle. The State
101 Election Commission shall announce the adjustments made under this subsection within thirty
102 days after the relevant index of consumer prices is published.

103 (r) Prohibition against contributions by foreign nationals.

104 (1) It shall be unlawful for:

- 105 (A) A foreign national, directly or indirectly, to make:
- 106 (i) A contribution or donation of money or other thing of value, or to make an express or
- 107 implied promise to make a contribution or donation, in connection with a state or local election;
- 108 (ii) A contribution or donation to a committee of a political party; or
- 109 (iii) A political expenditure, independent expenditure, or disbursement for an
- 110 electioneering communication, as those terms are defined in this article; or
- 111 (B) A person to solicit, accept or receive a contribution or donation described in
- 112 subparagraph (i) or (ii), paragraph (A) of this subdivision.
- 113 (2) As used in this section, the term “foreign national” means:
- 114 (A) A foreign principal, as such term is defined in 22 U.S.C. § 611(b), which includes:
- 115 (i) A government of a foreign country;
- 116 (ii) A foreign political party;
- 117 (iii) A person outside of the United States, unless it is established that such person:
- 118 (I) Is an individual and a citizen of the United States; or
- 119 (II) That such person is not an individual and is organized under or created by the laws of
- 120 the United States or of any state or other place subject to the jurisdiction of the United States and
- 121 has its principal place of business within the United States; and
- 122 (iv) A partnership, association, corporation, organization or other combination of persons
- 123 organized under the laws of or having its principal place of business in a foreign country; and
- 124 (B) An individual who is not a citizen of the United States or a national of the United States,
- 125 as defined in 8 U.S.C. §1101(a)(22), and who is not lawfully admitted for permanent residence,
- 126 as defined by 8 U.S.C. §1101(a)(20)
- 127 (s) For purposes of the general election of 2016 the amendments to this section are
- 128 effective May 11, 2016.

NOTE: The purpose of this bill is to update and amend the statutory provisions regulating and controlling elections, by: updating definitions; creating a new definition for “political party caucus;” updating and removing outdated provisions; requiring candidates for circuit

judge and family court judge to file financial statements with the Secretary of State; requiring Secretary of State to maintain an online searchable database; setting contribution limits for any campaign for nomination or election; setting contribution limits to political organizations; setting contribution limits to state party executive committees, or any subsidiary thereof, or state party legislative caucus committees; providing for indexing of contribution limits; setting limits on contributions made from any separate segregated fund; prohibiting contributions by foreign nationals; identifying additional lawful election expenses; defining coordinated political expenditures; clarifying prohibition on coordinated political expenditures; permitting limited coordinated political expenditures by state political party committees and political party caucuses for certain elections; and specifying effective dates.

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