

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 622

BY SENATOR TARR

[Introduced February 15, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to repeal §3-8-10 of the Code of West Virginia, 1931, as amended; to amend and reenact
 2 §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-4a, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8, §3-8-
 3 9, and §3-8-12 of said code; and to amend said code by adding thereto five new sections,
 4 designated §3-8-1b, §3-8-2d, §3-8-5c, §3-8-9a, and §3-8-9b, all relating generally to the
 5 regulation and control of financing elections; modifying findings and definitions; modifying
 6 provisions relating to receipts and expenditures in elections, electioneering
 7 communications, reporting requirements, and financial statements; modifying offenses
 8 and criminal penalties; modifying provisions relating to loans to candidates, organizations,
 9 or persons for election purposes; and modifying provisions relating to corporate
 10 contributions and use of certain contributions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

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

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

5 (2) "Ballot issue committee" means a political action committee that advocates or opposes
 6 a ballot issue. The threshold amount for ballot issue committees is \$5,000 for contributions or
 7 political expenditures.

8 ~~(2)~~ (3) "Billboard Advertisement" means a commercially available outdoor advertisement,
 9 sign or similar display regularly available for lease or rental to advertise a person, place or product.

10 ~~(3)~~ (4) "Broadcast, cable or satellite communication" means a communication that is
 11 publicly distributed by a television station, radio station, cable television system or satellite
 12 system.

13 ~~(4)~~ (5) "Candidate" means an individual who:

14 (A) Has filed a certificate of announcement under §3-5-7 of this code or a municipal
15 charter;

16 (B) Has filed a declaration of candidacy under §3-5-23 of this code;

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

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

21 ~~(5)~~ (6) "Candidate's committee" means a political committee established with the approval
22 of or in cooperation with a candidate or a prospective candidate to explore the possibilities of
23 seeking a particular office or to support or aid his or her nomination or election to an office in an
24 election cycle. If a candidate directs or influences the activities of more than one active committee
25 in a current campaign, those committees shall be considered one committee for the purpose of
26 contribution limits.

27 (7) "Caucus campaign committee" means one of the following political party caucus
28 organizations that receive contributions and make political expenditures to support or oppose one
29 or more specific candidates or slates of candidates for nomination or election, or a committee:

30 (A) House political party caucus campaign committee; and

31 (B) Senate political party caucus campaign committee.

32 ~~(6)~~ (8) "Clearly identified" means that the name, nickname, photograph, drawing or other
33 depiction of the candidate appears, or the identity of the candidate is otherwise apparent through
34 an unambiguous reference, such as "the Governor", "your Senator" or "the incumbent" or through
35 an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate
36 for Governor" or "the Republican candidate for Supreme Court of Appeals".

37 ~~(7) "Contribution" means a gift, subscription, loan, assessment, payment for services,~~
38 ~~dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other~~
39 ~~tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other~~

40 ~~tangible thing of value to a person, made for the purpose of influencing the nomination, election~~
41 ~~or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and~~
42 ~~unconditionally rejected or returned. A contribution does not include volunteer personal services~~
43 ~~provided without compensation: *Provided*, That a nonmonetary contribution is to be considered~~
44 ~~at fair market value for reporting requirements and contribution limitations~~

45 ~~(8)~~ (9) "Corporate political action committee" means a political action committee that is a
46 separate segregated fund of a corporation that may only accept contributions from its restricted
47 group as outlined by the rules of the State Election Commission.

48 ~~(9)~~ (10) "Direct costs of purchasing, producing or disseminating electioneering
49 communications" means:

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

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

56 ~~(10)~~ (11) "Disclosure date" means either of the following:

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

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

63 ~~(11)~~ (12) "Election" means any primary, general or special election or ballot issue
64 conducted under the provisions of this code or under the charter of any municipality at which the
65 voters nominate or elect candidates for public office, or vote on a constitutional amendment,

66 special levy, bond issue, local option referendum, municipal charter or revision, an increase or
67 decrease of corporate limits or any other question that is placed before the voters for a binding
68 decision. For purposes of this article, each primary, general, special ballot issue or local election
69 constitutes a separate election. This definition is not intended to modify or abrogate the definition
70 of the term “nomination” as used in this article.

71 ~~(42)~~ (13) (A) “Electioneering communication” means any paid communication made by
72 broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement or
73 published in any newspaper, magazine or other periodical that:

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

77 (ii) Is publicly disseminated within:

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

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

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

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

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

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

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

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

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

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

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

110 ~~A statement or depiction by~~ Any communication by persons made in the regular course
111 and scope of their business or any communication made by a membership organization ~~in~~
112 ~~existence prior to the date on which the individual named or depicted became a candidate, made~~
113 ~~in a newsletter or other communication distributed only to bona fide~~ solely to its members of that
114 ~~organization~~ and their families;

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

118 candidate; or

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

123 (ix) A communication exclusively between an organization formed under Section 501(c)(6)
124 of the Internal Revenue Code and its members; or

125 (x) Any communication that refers to any candidate only as part of the popular name of a
126 bill or statute.

127 ~~(13)~~ (14) "Expressly advocating" means any communication that:

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

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

139 (C) ~~Is susceptible of no reasonable interpretation other than~~ as an appeal to vote for or
140 against a specific candidate; or

141 (D) Expressly advocating the election of a clearly identified candidate includes expressly
142 advocating the election or defeat of candidates of a political party.

143 ~~(14)~~ (15) "Financial agent" means any individual acting for and by himself or herself, or

144 any two or more individuals acting together or cooperating in a financial way to aid or take part in
145 the nomination or election of any candidate for public office, or to aid or promote the success or
146 defeat of any political party at any election.

147 ~~(15)~~ (16) "Fund-raising event" means an event such as a dinner, reception, testimonial,
148 cocktail party, auction or similar affair through which contributions are solicited or received by
149 such means as the purchase of a ticket, payment of an attendance fee or by the purchase of
150 goods or services.

151 ~~(16)~~ (17) "Independent expenditure" means an expenditure by a person:

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

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

156 ~~Supporting or opposing the election of a clearly identified candidate includes supporting~~
157 ~~or opposing the candidates of a political party. An A political expenditure which does not meet the~~
158 ~~criteria for an independent expenditure due to being in concert or cooperation with or at the~~
159 ~~request or suggestion of a candidate or candidate's committee is considered a contribution to the~~
160 ~~candidate's committee.~~

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

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

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

167 ~~(17)~~ (19) "Mass mailing" means a mailing by United States mail, facsimile or electronic
168 mail of more than 500 pieces of mail matter of an identical or substantially similar nature within
169 any 30-day period. For purposes of this subdivision, "substantially similar" includes

170 communications that contain substantially the same template or language, but vary in nonmaterial
171 respects such as communications customized by the recipient's name, occupation or geographic
172 location.

173 ~~(18)~~ (20) "Membership organization" means a group organized with the Internal Revenue
174 Service that:

175 (A) Grants bona fide rights and privileges, such as the right to vote, to elect officers or
176 directors and the ability to hold office, to its members, and

177 (B) Offers membership rights or privileges in its duly adopted bylaws, and;

178 (C) Which ~~uses~~ a majority of its ~~membership dues~~ expenditures are for purposes other
179 than political ~~purposes~~ expenditures as defined by 3-8-1a(26) of this code; and

180 (D) ~~"Membership organization"~~ This definition does not include organizations that grant
181 membership upon receiving a contribution.

182 (21) "Membership organization political action committee" means a political action
183 committee that is a separate segregated fund of a membership organization that may only accept
184 contributions from its restricted group as outlined by the rules of the State Election Commission.

185 ~~(19)~~ (22) "Name" means the full first name, middle name or initial, if any, and full legal last
186 name of an individual and the full name of any association, corporation, committee or other
187 organization of individuals, making the identity of any person who makes a contribution apparent
188 by unambiguous reference.

189 ~~(20)~~ (23) "Person" means an individual, corporation, partnership, committee, association
190 and any other organization or group of individuals.

191 ~~(21)~~ (24) "Political action committee" means ~~a committee organized by one or more~~
192 ~~persons for the purpose of supporting or opposing the nomination or election of one or more~~
193 ~~candidates~~ any group of two or more persons unrelated by marriage, or any other organization or
194 entity, that makes political expenditures which are made for political purposes of more than the
195 threshold amount during any calendar year and the major purpose of which is the making of

196 political expenditures. A group or entity has the major purpose of making political expenditures if,
197 during any calendar year, the total amount of political expenditures that it makes exceeds half of
198 its total spending on all program activities, including political expenditures. Total spending shall
199 not include fundraising and administrative expenses. In any law-enforcement proceeding,
200 investigation, or litigation concerning a group or entity's alleged failure to register as a political
201 committee, its principal purpose shall not be considered before it has first been established by
202 the applicable standard of evidence that the group or entity has made total contributions or political
203 expenditures of more than the threshold amount. The threshold amount shall be \$5,000 for
204 contributions or political expenditures for a candidacy or candidacies for statewide office, \$1,000
205 for a candidacy or candidacies for the State Senate or House of Delegates, and \$1,000 for a ballot
206 issue. The following are types of political action committees:

207 (A) The following are types of political action committees:

208 (A) (i) A corporate political action committee, as that term is defined by subdivision ~~(8)~~ (10)
209 of this section;

210 ~~(B)~~ (ii) A political action committee that is a separate segregated fund of a membership
211 organization, as that term is defined by subdivision ~~(48)~~ (21) of this section. A political action
212 committee of a membership organization may only solicit and accept political contributions from
213 its restricted group as promulgated by the rules of the State Election Commission;

214 ~~(C)~~ (iii) An unaffiliated political action committee, as that term is defined by subdivision
215 ~~(29)~~ (32) of this section; and

216 (iv) (iv) A caucus campaign committee as that term is defined in subdivision (7) of this
217 section.

218 (v) In addition to the types of political action committees mentioned in sub sections (i), (ii),
219 (iii) and (iv) of this section, a political action committee may also be categorized as an independent
220 expenditure only political action committee.

221 ~~(22)~~ (25) "Political committee" means any candidate committee, political action committee,

222 ballot issue committee, caucus campaign committee or political party committee.

223 (26) "Political contribution" means a political contribution as that term is defined in §3-8-
 224 1b of this code.

225 (27) "Political expenditure" means the payment for:

226 (A) Any communication that is expressly advocating the election or defeat of a clearly
 227 identified candidate or ballot issue, or

228 (B) The republication of campaign materials for any candidate, candidate committee, party
 229 committee or political committee, except for:

230 (i) The republication of materials in a voter guide described under §3-8-1b(6) of this code;

231 (ii) The republication of campaign materials commenting or explaining a candidate's
 232 position on any issue that does not otherwise in express terms call for the election or defeat of
 233 any clearly identified candidate; or

234 (iii) The republication of publicly available photographs or video footage of a candidate
 235 that is devoid of any text or audio content in or from the original material.

236 (C) The term "political expenditure" does not include anything that is excluded from the
 237 definition of a "political contribution", as set forth in §3-8-1b of this code.

238 ~~(23)~~ (28) "Political party" means a political party as that term is defined by §3-1-8 of this
 239 code or any committee established, financed, maintained or controlled by the party, including any
 240 subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

241 (29) "Political party caucus" means the committees that are established by the Republican
 242 and Democrat caucuses of both the West Virginia House of Delegates and the West Virginia State
 243 Senate, or by any other political party recognized by the State of West Virginia.

244 ~~(24)~~ (30) "Political party committee" means a committee established by a political party or
 245 political party caucus for the purposes of engaging in the influencing of the election, nomination
 246 or defeat of a candidate in any election.

247 ~~(25)~~ (31) "Political purposes" means supporting or opposing the nomination, election or

248 defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the
 249 retirement of the debt of a candidate or political committee or the administration or activities of an
 250 established political party or an organization which has declared itself a political party and
 251 determining the advisability of becoming a candidate under the precandidacy financing provisions
 252 of this chapter.

253 ~~(26)~~ (32) "Targeted to the relevant electorate" means a communication which refers to a
 254 clearly identified candidate for statewide office or the Legislature and which can be received by
 255 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220, or
 256 more individuals in the district in the case of a candidacy for the State Senate and 2,410 or more
 257 individuals in the district in the case of a candidacy for the House of Delegates.

258 ~~(27)~~ (33) "Telephone bank" means telephone calls that are targeted to the relevant
 259 electorate, other than telephone calls made by volunteer workers, regardless of whether paid
 260 professionals designed the telephone bank system, developed calling instructions or trained
 261 volunteers.

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

264 ~~(29)~~ (34) "Unaffiliated political action committee" means a political action committee that
 265 is not affiliated with a corporation or a membership organization as any other type of political
 266 action committee.

§3-8-1b. Political contribution defined.

1 (a) "Political contribution" means:

2 (1) Any gift, subscription, loan, advance, deposit of money or payment or anything of value
 3 given to any entity that is registered or is required to be registered as a political committee at the
 4 time the political contribution is made, or that is given to be used specifically for making political
 5 contributions to other recipients or for making political expenditures; or

6 (2) Any political expenditure, as that term is defined in §3-8-1a of this code, that is made

7 in coordination with a candidate, candidate committee or party committee.

8 (b) The term "political contribution" does not include:

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

13 (2) The payment by any corporation or membership organization for the costs of
14 establishing, administering, and soliciting contributions from its restricted class to its separate
15 segregated fund;

16 (3) The payment by any corporation or membership organization for the costs of
17 communicating with its restricted class about any subject;

18 (4) The appearance of a candidate at any residence or the facilities of any corporation,
19 membership organization, social or civic organization, or educational institution to speak about
20 the candidate's campaign: *Provided*, That the use of such venue is furnished by the venue's owner
21 and is not paid for by a third party;

22 (5) The costs of hosting a debate or candidates' forum: *Provided*, That at least two
23 opposing candidates with respect to any given office sought are invited with the same or similar
24 advance notice and method of invitation;

25 (6) The preparation and distribution of voter guides, subject to the following:

26 (A) The sponsor may include in the voter guide similar biographical information on each
27 featured candidate, such as education, employment positions, offices held and community
28 involvement;

29 (B) Comparable information shall be provided on each candidate featured in the voter
30 guide for a particular office or each candidate featured shall be provided an equal opportunity to
31 respond to questions;

32 (C) No featured candidate may receive greater prominence in the voter guide than any

33 other candidate, or substantially more space for descriptions of his or her positions or responses;

34 and

35 (D) The sponsor of the voter guide may not include the sponsor's own message meeting
 36 the definition of a political expenditure under §3-8-1(27) of this code;

37 (7) The value of services provided without compensation by any individual who volunteers
 38 on behalf of any candidate, candidate committee, party committee or other political committee, or
 39 any unreimbursed payment for expenses related to the volunteer activity;

40 (8) Any cost incurred for covering or carrying a news story, commentary or editorial by a
 41 broadcasting station or cable television operator, Internet website, or newspaper or other
 42 periodical publication, including an Internet or other electronic publication: *Provided*, That the cost
 43 for the news story, commentary or editorial is not paid for by, and the medium is not owned or
 44 controlled by, a candidate, candidate committee, party committee or other political committee;

45 and

46 (9) The payment for or provision of legal and accounting services rendered to a candidate,
 47 candidate committee, party committee or other political committee if the services are solely for
 48 the purpose of ensuring compliance with or challenging the constitutional validity or interpretation
 49 of the provisions of this chapter.

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

1 (a) Except for: (1) Candidates for party committeeman and committeewoman; and (2)
 2 candidates for delegate to the national presidential nominating convention for a political party;
 3 and (3) federal committees required to file under the provisions of 2 U.S.C. §434 52 U.S.C.
 4 §30104, all candidates for nomination or election and all persons supporting, aiding or opposing
 5 the nomination, election or defeat of any candidate political committees shall keep for a period of
 6 six months records of receipts and expenditures. which are made for political purposes All of the
 7 receipts and expenditures are subject to regulation by the provisions of this article. Verified

8 financial statements of the records and expenditures shall be made and filed as public records by
9 all candidates and by their financial agents, representatives or any person acting for and on behalf
10 of any candidate and by the treasurers of all political party committees.

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

23 ~~(D) The elections to which the independent expenditure pertain, the names, if known, of~~
24 ~~the candidates referred to or to be referred to therein, whether the expenditure is intended to~~
25 ~~support or oppose the identified candidates and the amount of the total expenditure reported~~
26 ~~pursuant to paragraph (C) of this subdivision spent to support or oppose each of the identified~~
27 ~~candidates;~~

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

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

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

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

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

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

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

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

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

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

52 ~~(c) (1) A person, including a political committee, who makes or contracts to make~~
53 ~~independent expenditures aggregating \$1,000 or more for any statewide, legislative or~~
54 ~~multicounty judicial candidate or \$500 or more for any county office, single-county judicial~~
55 ~~candidate, committee supporting or opposing a candidate on the ballot in more than one county,~~
56 ~~or any municipal candidate on a municipal election ballot, after the fifteenth day, but more than~~
57 ~~twelve hours, before the date of an election, shall file a report on a form prescribed by the~~
58 ~~Secretary of State, describing the expenditures within twenty-four hours: *Provided*, That a person~~
59 ~~making expenditures in the amount of \$1,000 or more for any statewide or legislative candidate~~

60 ~~on or after the fifteenth day but more than twelve hours before the day of any election shall report~~
61 ~~such expenditures in accordance with section two-b of this article and shall not file an additional~~
62 ~~report as provided herein.~~

63 ~~(2) Any person who files a report under subdivision (1) of this subsection, shall file an~~
64 ~~additional report within twenty-four hours after each time the person makes or contracts to make~~
65 ~~independent expenditures aggregating an additional \$500 with respect to the same election, for~~
66 ~~any county office, single county judicial candidate, committee supporting or opposing a candidate~~
67 ~~on the ballot in more than one county, or any municipal candidate on a municipal election ballot,~~
68 ~~as that to which the initial report relates.~~

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

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

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

79 ~~(1) Clearly states that the communication is not authorized by the candidate or the~~
80 ~~candidate's committee; and~~

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

85 ~~(f) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing,~~

86 ~~producing or disseminating electioneering communications during any calendar year shall~~
87 ~~maintain all financial records and receipts related to such expenditure for a period of six months~~
88 ~~following the filing of a disclosure pursuant to subsection (a) of this section and, upon request,~~
89 ~~shall make such records and receipts available to the Secretary of State or county clerk for the~~
90 ~~purpose of an audit as provided in section seven of this article.~~

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

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

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

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

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

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

108 ~~(b) State, county or municipal independent expenditure reporting required in §3-8-2(d) and~~
109 ~~state level electioneering communication reports required in §3-8-2(b) do not qualify for a federal~~
110 ~~committee reporting exemption within subsection (a) of this section.~~

§3-8-2d. Requirements for reporting independent expenditures.

1 (a) In addition to any other reporting required by the provisions of this chapter, any person
2 who makes independent expenditures, as defined by §3-8-1a(18) of this code, in an aggregate
3 amount or value in excess of \$1,000 during a calendar year shall file a disclosure statement
4 pursuant to §3-8-5 of this code, on a form prescribed by the Secretary of State, that contains all
5 of the following information:

6 (1) The name of:

7 (A) The person or entity making the expenditure; and

8 (B) Each officer and director, mailing addresses and the highest compensated employee,
9 if it is an entity; and

10 (C) The custodian of the books and accounts of the person making the expenditure.

11 (2) If the person making the expenditure is not an individual, the principal place of business
12 of the partnership, corporation, committee, association, organization or group which made the
13 expenditure;

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

16 (4) The elections to which the independent expenditure pertains, the names, if known, of
17 the candidates referred to or to be referred to therein, whether the expenditure is intended to
18 support or oppose the identified candidates and the amount of the total expenditure reported
19 pursuant to paragraph (C) of this subdivision spent to support or oppose each of the identified
20 candidates;

21 (D) The name and address of any person who contributed a total of more than \$250
22 between the first day of the preceding calendar year, and the disclosure date, and whose
23 contributions were made for the explicit purpose of furthering any independent expenditure or
24 independent expenditures.

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

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

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

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

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

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

35 (F)(1) A certification that such independent expenditure was not made in cooperation,
36 consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized
37 committee or agent of such candidate.

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

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

46 (b)(1) Any person or political committee, including federal committees required to file
47 under the provisions of 52 U.S.C. §30104, who makes or contracts to make independent
48 expenditures aggregating \$5,000 or more for any statewide, legislative or multicounty judicial
49 candidate or \$1,000 or more for any county office, single-county judicial candidate, committee
50 supporting or opposing a candidate on the ballot in more than one county, or any municipal
51 candidate on a municipal election ballot, after the 15th day, but more than 12 hours, before the
52 date of an election, shall file a report on a form prescribed by the Secretary of State, describing

53 the expenditures within 24 hours: *Provided*, That a person making expenditures in the amount of
54 \$5,000 or more for any statewide or \$1,000 for any legislative candidate on or after the 15th day
55 but more than 12 hours before the day of any election shall report the expenditures in accordance
56 with §3-8-2b of this code, and may not file an additional report as provided herein.

57 (2) Any person who files a report under subdivision (1) of this subsection, shall file an
58 additional report within 24 hours after each time the person makes or contracts to make
59 independent expenditures aggregating an additional \$1,000 with respect to the same election, for
60 any county office, single-county judicial candidate, committee supporting or opposing a candidate
61 on the ballot in more than one county, or any municipal candidate on a municipal election ballot,
62 as that to which the initial report relates.

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

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

71 (d) Any communication paid for by an independent expenditure shall include a clear and
72 conspicuous public notice that:

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

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

79 (e) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing,
80 producing or disseminating electioneering communications during any calendar year shall
81 maintain all financial records and receipts related to such expenditure for a period of six months
82 following the filing of a disclosure pursuant to subsection (a) of this section and, upon request,
83 shall make such records and receipts available to the Secretary of State or county clerk for the
84 purpose of an audit as provided in §3-8-7 of this code.

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

88 (g) (1) Any person or political committee who is required to file a statement under this
89 section shall file such reports electronically in accordance with rules as the Secretary of State
90 may promulgate.

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

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

98 (h) This section does not apply to candidates for federal office.

99 (i) The Secretary of State may promulgate emergency and legislative rules, in accordance
100 with §29A-3-1 et seq., of this code, to establish guidelines for the administration of this section.

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

1 Every political committee shall appoint and retain a Treasurer to receive, keep and
2 disburse all sums of money which may be collected or received by such committee, or by any of
3 its members, for election expenses, and, unless such Treasurer is first appointed and thereafter

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

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

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

16 (b) No person may act as the Treasurer for any candidate nominee for nomination or

17 election to any statewide office, or to any office encompassing an election district larger than a
 18 county or to any legislative office or circuit judge unless a written statement designating that
 19 person as the Treasurer or financial agent is filed with the Secretary of State: ~~at least twenty-eight~~
 20 ~~days before the election at which that person is to act as a treasurer and is received by the~~
 21 ~~Secretary of State before midnight, eastern standard time, of that day or if mailed, is postmarked~~
 22 ~~before that hour~~ *Provided*, That a change of Treasurer or financial agent may be made at any
 23 time by filing a written statement with the Secretary of State.

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

33 (d) The statement of organization form required by this section shall include:

34 (1) The name of the political committee;

35 (2) The name of the treasurer;

36 (3) The mailing address, telephone number and e-mail address, if applicable, of the
 37 committee and of the treasurer if different from the committee information;

38 (4) The chairman of the committee;

39 (5) The affiliate organization, if any;

40 (6) The type, or types, of political committee, as defined in subdivision (24), section one-
 41 a of this article;

42 (7) And whether the committee will participate in statewide, county or municipal elections.

43 The form shall be certified as accurate and true and signed by the chairman and the
 44 treasurer of the committee

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

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

57 (g) This section creates no obligation upon any entity or person other than a political
 58 committee, candidate, or treasurer or financial agent for any candidate as described in this
 59 section.

60 (h) The State Election Commission shall promulgate emergency and legislative rules, in
 61 accordance with §29A-3-1 et seq., of this code, to establish guidelines for the administration of
 62 this section regarding the establishment and consolidation of candidate committees to one
 63 singular campaign committee to be used by a candidate for successive candidacies.

§3-8-4a. Termination of political committees.

1 (a) A political committee may terminate by filing a written request, in accordance with ~~the~~
 2 ~~provisions of §3-8-4 of this code,~~ and by stating in the request that it will no longer receive any
 3 contributions or make any disbursements and that it has no outstanding debts or obligations. ~~At~~
 4 ~~such time, any excess funds of the committee may be transferred to a political committee~~

5 ~~established by the same candidate pursuant to the provisions of section four or five e of this article~~

6 (b) The provisions of this section may not be construed to eliminate or limit the authority
7 of the Secretary of State, in consultation with the state election commission, to establish
8 procedures for: (1) The determination of insolvency with respect to any political committee; (2)
9 the orderly liquidation of an insolvent political committee and the orderly application of its assets
10 for the reduction of outstanding debts; and (3) the termination of an insolvent political committee
11 after such liquidation and application of assets.

12 (c) Notwithstanding any other provision of this code, any political committee which has
13 been terminated within three years prior to the effective date of the reenactment of this section
14 during the regular session of the Legislature in the year 2002, pursuant to a written request made
15 in accordance with the provisions of section four of this article, may file a written request and be
16 authorized by the Secretary of State to reestablish the political committee. Any request to
17 reestablish a political committee pursuant to the provisions of this subsection must be filed on or
18 before July 1, 2002. The provisions of this subsection may not be construed to increase the
19 maximum contribution authorized during an election cycle, as provided in section twelve of this
20 article.

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

1 ~~(a) Every candidate, treasurer, person and association of persons, organization of any~~
2 ~~kind, including every corporation, directly, or by an independent expenditure, supporting a political~~
3 ~~committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of~~
4 ~~this article or engaging in other activities permitted by this section and also including the treasurer~~
5 ~~or equivalent officer of the association or organization, expressly advocating the election or defeat~~
6 ~~of a clearly identified candidate for state, district, county or municipal office, and the treasurer of~~
7 ~~every political committee shall keep detailed accounts of every sum of money or other thing of~~
8 ~~value received by him or her, including all loans of money or things of value and of all expenditures~~
9 ~~and disbursements made, liabilities incurred, by the candidate, financial agent, person,~~

10 ~~association or organization or committee, for political purposes, or by any of the officers or~~
11 ~~members of the committee, or any person acting under its authority or on its behalf.~~

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

14 ~~(1) Of all financial transactions, whenever the total exceeds \$500, which have taken place~~
15 ~~before the last Saturday in March, to be filed within six days thereafter and annually whenever~~
16 ~~the total of all financial transactions relating to an election exceeds \$500;~~

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

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

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

26 ~~(c) Every person who announces as a write-in candidate for any elective office and his or~~
27 ~~her financial agent or election organization of any kind shall comply with all of the requirements~~
28 ~~of this section after public announcement of the person's candidacy has been made.~~

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

33 ~~(e) Candidates for the office of conservation district supervisor elected pursuant to the~~
34 ~~provisions of article twenty-one a, chapter nineteen of this code are required to file only the reports~~
35 ~~required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after~~

36 ~~the primary election: *Provided*, That during the election in the year 2008, the statements required~~
37 ~~by this subsection shall be filed immediately prior to and after the general election~~

38 (a) Record keeping requirements are as follows:

39 (1) Every candidate or Treasurer of every political committee shall keep detailed accounts
40 of every sum of money or other thing of value received by him or her, including all loans of money
41 or things of value and of all expenditures and disbursements made, liabilities incurred, by the
42 candidate or political committee.

43 (2) Any entity that is not a political committee and makes independent expenditures or
44 electioneering communications must keep detailed accounts of every sum of money or other thing
45 of value received by him or her received for the explicit purpose of furthering any independent
46 expenditure, independent expenditures, electioneering communication or electioneering
47 communications, and of all disbursements made for independent expenditures or electioneering
48 communications.

49 (b) Reporting requirements for political committees are as follows:

50 (1) Every candidate or political committee required to keep detailed accounts under §3-8-
51 2 of this code shall file with the officers prescribed by §3-8-5b of this code, a detailed itemized
52 sworn statement, as prescribed in West Virginia Code §3-8-5a, according to the following
53 schedule:

54 (A) On April 1 of each year of all financial transactions dating from January 1 to the last
55 day in March of the same year, to be filed within six days thereafter; and

56 (B) On July 1 of each year of all financial transactions dating from April 1 to the last day in
57 June of the same year, to be filed within six days thereafter; and

58 (C) On October 1 of each year of all financial transactions dating from July 1 to the last
59 day in September of the same year, to be filed within six days thereafter; and

60 (D) On January 1 of each year of all financial transactions dating from October 1 to the
61 last day in December of the previous year, to be filed within six days thereafter.

62 (2) In addition to the statements required in subsection (b) of this section, a candidate or
63 candidate's committee is responsible for detailed itemized sworn statements, as prescribed in
64 West Virginia Code §3-8-5a, according to the following schedule:

65 (A) On the 15th day preceding the primary election in which a candidate is on the ballot,
66 of all financial transactions subsequent to the previous statement, if any, to be filed within four
67 business days after the 15th day;

68 (B) On the 15th day preceding the general election in which a candidate is on the ballot,
69 or an official write in candidate, of all financial transactions subsequent to the previous statement,
70 if any, to be filed within four business days after the 15th day.

71 (c) Every person who is qualified as an official write-in candidate for any elective office
72 shall individually, or by candidate committee, comply with all of the applicable requirements of
73 this section as a candidate.

74 (d) For purposes of this section, the term "financial transactions" includes all contributions,
75 expenditures, loans received, and all repayments of loans made, unpaid bills, or any other
76 financial receipts by any candidate or political committee.

77 (e) Candidates for the office of conservation district supervisor elected pursuant to the
78 §19-21A-1 et seq. of this code are required to file only the report required by subdivision (2),
79 subsection (c) of this section immediately prior to the candidate's general election that is held
80 concurrently to state's primary.

§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 and family court judge, and
4 for statewide and other offices to be nominated or elected by the voters of a political division
5 greater than a county;

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

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

11 ~~(b) The statements may be filed by mail, in person, or by facsimile or other electronic~~
12 ~~means of transmission: *Provided*, That the Financial statements filed by or on behalf of candidates~~
13 ~~for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of~~
14 ~~Agriculture , State Senate, House of Delegates, and Supreme Court of Appeals , circuit judge,~~
15 ~~family court judge, as well as, political action committees, political party caucus committees,~~
16 ~~political party executive committees, ballot issue committees, electioneering communication~~
17 ~~reports, and independent expenditure reports filed with the Secretary of State shall be filed~~
18 ~~electronically by the means of an Internet program that has been established by the Secretary of~~
19 ~~State on forms or in a format prescribed by the Secretary of State: *Provided*, That after January~~
20 ~~1, 2018, unless a committee has been granted an exemption in case of hardship pursuant to~~
21 ~~subsection (c) of this section, all such statements required to be filed with the Secretary of State,~~
22 ~~on or behalf of a candidate for any elective office, shall be filed electronically by means of the~~
23 ~~internet program that has been established by the Secretary of State. If through or by no fault of~~
24 ~~the candidate, the candidate is unable to file the campaign financial statement, the candidate shall~~
25 ~~then file said statement in person, via facsimile or other electronic means of transmission, or by~~
26 ~~certified mail postmarked at the first reasonable opportunity.~~

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

30 (d) Candidates for all other offices or political committees other than those identified in
31 subsection (b) of this section may file statements by mail, in person or by facsimile or other

32 electronic means of transmission. For purposes of this article, the filing date of a financial
 33 statement shall, in the case of mailing, be the date of the postmark of the United States Postal
 34 Service, and in the case of hand delivery or delivery by facsimile or other electronic means of
 35 transmission, the date delivered to the office of the Secretary of State or to the office of the clerk
 36 of the county commission, in accordance with the provisions of subsection (a) of this section,
 37 during regular business hours of that office.

38 (e) The sworn financial statements required to be filed by this section with the Secretary
 39 of State shall be posted on the internet by the Secretary of State within 10 business days from
 40 the date the financial statement is filed.

**§3-8-5c. Contribution limitations to candidate committees; indexing of candidate's
 committee thresholds; prohibition against contributions by foreign nationals.**

1 (a) Except as provided in §3-8-8 of this code, a person, political party or political action
 2 committee may not:

3 (1) Contribute more than \$2,700, as adjusted pursuant to subsection (d) of this section,
 4 directly to a candidate's committee for a candidate seeking nomination; or

5 (2) Contribute more than \$2,700, as adjusted pursuant to subsection (d) of this section,
 6 directly to a candidate's committee for a candidate seeking election: *Provided*, That a candidate
 7 may receive contributions for the general election prior to nomination, however, such funds may
 8 not be expended until after the date of the nomination is declared.

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

12 (c) Notwithstanding the provisions of subsection (a) of this section to the contrary, an
 13 individual may not, directly or indirectly, make contributions to a state party executive committee,
 14 or subsidiary thereof, or state party legislative caucus committee which, in the aggregate, exceed
 15 the value of \$10,000 in any calendar year: *Provided*, That a person may not earmark or otherwise

16 designate any portion of a contribution made pursuant to this subsection to be used to support or
17 oppose the election of a particular candidate: *Provided, however,* That any such designation or
18 earmark that accompanies a contribution made pursuant to this subsection may not be binding
19 on the entity that receives the contribution.

20 (d) On the last day of every even numbered calendar year, the Secretary of State shall
21 adjust the dollar values for the fixed dollar amounts for limitations on contributions under this
22 chapter to equal the contribution limits established by the Federal Election Commission pursuant
23 to 52 U.S.C. §30101 *et seq.*, for the same upcoming election cycle. The State Election
24 Commission shall announce the adjustments made under this subsection within 30 days after the
25 relevant index of consumer prices is published.

26 (e) *Prohibition against contributions by foreign nationals.* --

27 (1) It is unlawful for:

28 (A) A foreign national, directly or indirectly, to make:

29 (i) A contribution or donation of money or other thing of value, or to make an express or
30 implied promise to make a contribution or donation, in connection with a state or local election;

31 (ii) A contribution or donation to a committee of a political party; or

32 (iii) A political expenditure, independent expenditure or disbursement for an electioneering
33 communication, as those terms are defined in this article; or

34 (B) A person to solicit, accept or receive a contribution or donation described in
35 subparagraph (i) or (ii), paragraph (A) of this subdivision.

36 (2) As used in this section, the term “foreign national” means:

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

38 (i) A government of a foreign country;

39 (ii) A foreign political party;

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

41 (l) Is an individual and a citizen of the United States; or

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

45 (iv) A partnership, association, corporation, organization or other combination of persons
 46 organized under the laws of or having its principal place of business in a foreign country; and

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

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

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

11 (b) Any person undertaking to determine the advisability of becoming or preparing to be a
 12 candidate, who desires to receive contributions before filing a certificate of candidacy, ~~shall name~~
 13 shall have himself or another individual to act as a treasurer and shall file a designation of
 14 treasurer in the manner provided in section four of this chapter before receiving any contributions
 15 permitted by this section. Any expenditures made before the filing of a designation of Treasurer
 16 shall be reported in accordance with the provisions of this section, regardless of the source of
 17 funds used for such expenditures.

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

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

1 (a) Any person, candidate, financial agent or Treasurer of a political party committee who

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

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

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

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

26 (4) The Secretary of State shall publish online a list of all late filing violators for each
27 deadline in an election cycle. This list shall be maintained and be publicly available online to

28 include late activity for, at a minimum, the previous five years to the current year.

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

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

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

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

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

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

54 or other election.

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

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

6 (b) A person may not solicit or receive any payment, contribution or other thing from any
7 membership organization or any corporation or from any officer, agent or other person acting on
8 behalf of the membership organization or corporation to any candidate or candidate's campaign
9 for nomination or election to any statewide office or any other elective office in the state or any of
10 its subdivisions.

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

17 (2) It is unlawful for:

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

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

22 (B) Any person soliciting a membership organization member, stockholder or executive or
23 administrative personnel and members of their families for a contribution to a membership

24 organization, corporation or separate segregated fund to fail to inform the person solicited of the
25 political purposes of the separate segregated fund at the time of the solicitation;

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

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

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

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

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

47 (H) A membership organization or corporation to pay, give or lend or to authorize payment,
48 giving or lending of any moneys or other things of value belonging to the membership organization
49 or corporation to a separate segregated fund for the purpose of making a contribution to a

50 candidate or a candidate's committee. This provision does not prohibit a separate segregated
51 fund from using the property, real or personal, facilities and equipment of a membership
52 organization or corporation solely to establish, administer and solicit contributions to the fund,
53 subject to the rules of the State Election Commission as provided in subsection (d) of this section:
54 *Provided, That any such membership organization or corporation shall also permit any group of*
55 *its employees represented by a bona fide political action committee to use the real property of the*
56 *membership organization or corporation solely to establish, administer and solicit contributions to*
57 *the fund of the political action committee, subject to the rules of the State Election Commission*
58 *promulgated in accordance with said subsection.*

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

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

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

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

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

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

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

82 (4) To report any alleged violations of this article to the appropriate prosecuting attorney
83 having jurisdiction, which prosecuting attorney shall, upon determining that a reason to believe
84 that a violation has occurred, present to the grand jury such alleged violations, together with all
85 evidence relating thereto, no later than the next term of court after receiving the report.

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

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

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

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

98 (k) The effective date of the amendments to this section enacted during the second
99 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 may be deceptively
35 designed or intentionally conducted in a manner calculated to advocate the election or defeat of
36 any candidate or group of candidates or calculated to influence any person or persons so polled
37 to vote for or against any candidate, group of candidates, proposition or other matter to be voted
38 on by the public at any election: *Provided*, That nothing herein shall may prevent the use of the
39 results of any such poll or polls to further, promote or enhance the election of any candidate or
40 group of candidates or the approval or defeat of any proposition or other matter to be voted on by
41 the public at any election;

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

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

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

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

51 (15) For contributions to a county party executive committee, state party executive

52 committee or a state party legislative caucus political committee; and

53 (16) For any political expenditure;

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

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

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

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

64 ~~(16)~~ (21) For contributions to a candidate committee; *Provided*, That a candidate
65 committee may not contribute to another candidate committee except as otherwise provided by
66 section ten of this article

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

69 (23) Contributed to any charitable organization without limitation;

70 (24) Contributed to any state party executive committee or state party legislative caucus
71 committee without limitation; and

72 (25) Contributed to any local committee of any political party or any other candidate for
73 public office without limitation.

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

77 ~~(c)~~ (b) Every liability incurred and payment made shall be for the fair market value of the

78 services rendered.

79 ~~(d)~~ (c) Every advertising agency subject to the provisions of this article shall file, in the
80 manner and form required by §3-8-5a of this code, the financial statements required by section
81 five of this article at the times required therein and include therein, in itemized detail, all receipts
82 from and expenditures made on behalf of a candidate, financial agent or treasurer of a political
83 party committee.

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

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

1 (a) Except as provided and allowed in §3-8-9b of this code, political expenditures may not
2 be made in concert or cooperation with or at the request or suggestions of a candidate or
3 candidate's committee unless considered as a contribution.

4 (b) A "political expenditure" is "made in concert or cooperation with or at the request or
5 suggestions of a candidate" or otherwise considered to be coordinated if:

6 (1) The communication resulting from the expenditure is paid for, in whole or in part, by a
7 person other than that candidate, candidate committee or party committee; and

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

9 (A) The communication is created, produced, distributed or undertaken at the request or
10 suggestion of a candidate, candidate committee, party committee; or

11 (B) The candidate or candidate committee assents to the creation, production, or
12 distribution of the communication.

13 (C) The candidate, candidate committee, or party committee is involved in the creation,
14 production, or distribution of the communication, or has had discussions about the communication
15 with any person or the agents of a person who has paid for or played a role in creation, production,
16 or distribution of the communications. However, this paragraph is not satisfied if the information

17 or materials used in the creation, production, distribution or undertaking of the communication
18 was obtained from a publicly available source.

19 (D) Any person involved in creation, production, or distribution of the communication has,
20 in the 18 months preceding the election for which the expenditure is made, been an employee or
21 vendor of campaign services for the candidate, candidate committee, or party committee.

22 (c) A "political expenditure" is not "made in coordination" or otherwise considered to be
23 coordinated due to the fact that any of the following occur:

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

28 (2) A candidate endorses another candidate;

29 (3) 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 (4) 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 (d) The conduct standard in §3-8-9a(b)(2) of this code is not met if a commercial vendor,
36 former employee or political committee has established and implemented a firewall that meets
37 the following requirements: *Provided*, That the communication does not qualify for this exemption
38 if specific information indicates that, despite the firewall, information about a candidate,
39 candidate's committees, measure committees, or party committee's campaign plans, projects,
40 activities or needs that is material to the creation, production or distribution of the political
41 expenditure was used or conveyed to the person paying for the political expenditure:

42 (1) 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 a candidate committee or measure committee supporting or
 46 opposing a candidate or measure clearly identified in the political expenditure; and

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

49 (e) Any communication that results from a political expenditure and is made in coordination
 50 with a candidate or candidate's committee must contain a disclaimer that clearly identifies that
 51 the expenditure is coordinated with the candidate or candidate's committee with whom it was
 52 coordinated.

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

1 Notwithstanding any other provision of law with respect to limitations on expenditures or
 2 limitations on contributions, the state committee of a political party and political party caucus may
 3 make coordinated political expenditures, as that term is defined in §3-8-9-a of this code, in an
 4 amount not to exceed \$5,000 in connection with the general election campaign of candidates for
 5 Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer,
 6 State Senate and House of Delegates which do not apply in the definition of a coordinated political
 7 expenditure as defined in §3-8-9a of this code.

§3-8-10. Use of certain contributions.

1 [Repealed].

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

1 (a) A person may not publish, issue or circulate, or cause to be published, issued or

2 circulated, any anonymous letter, circular, placard, radio or television advertisement or other
3 publication supporting or aiding the election or defeat of a clearly identified candidate.

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

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

21 (d) Except as provided in §3-8-8 of this code, a person or entity 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 or solicit any contribution to any political party, political
29 committee that makes contributions to any candidate or political party or candidate for public office
30 or to any person for political purposes or use ~~nor may any person or firm solicit any contributions~~
31 ~~for any purpose~~ other than independent expenditures during any that period.

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

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

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

54 person may not, directly or indirectly, make contributions to a state party executive committee or
55 state party legislative caucus committee which, in the aggregate, ~~exceed the value of \$1,000 in~~
56 ~~any calendar year~~ are in excess of the amounts permitted by §3-8-5c of this code in any calendar
57 year.

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

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

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

80 ~~volunteer~~

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

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

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

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

NOTE: The purpose of this bill is to make significant revisions to the law regulating election financing. The bill modifies what qualifies as a federal reporting exemption. The bill adds certain offices to the electronic filing requirements of financial statements, namely, circuit judges, family court judges and magistrates. 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 political action committee to contribute to another political action committee. The bill permits candidates, after a general election, to transfer any unused contributions to state party 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.

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