

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 66

By Senators Nelson and Hamilton

[Introduced January 11, 2023; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §3-8-1a of the Code of West Virginia, 1931, as amended, relating to
 2 regulation and control of elections; and updating the definition of "electioneering
 3 communication" to be consistent with the Federal Election Commission.

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

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

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

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

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

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

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

18 (5) "Candidate's committee" means a political committee established with the approval of
 19 or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking
 20 a particular office or to support or aid his or her nomination or election to an office in an election

21 cycle. If a candidate directs or influences the activities of more than one active committee in a
22 current campaign, those committees shall be considered one committee for the purpose of
23 contribution limits.

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

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

32 (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
35 through an unambiguous reference to his or her status as a candidate, such as "the Democratic
36 candidate for Governor" or "the Republican candidate for Supreme Court of Appeals".

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

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

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

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

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

53 (12) "Direct costs of purchasing, producing, or disseminating electioneering
54 communications" means:

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

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

61 (13) "Disclosure date" means either of the following:

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

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

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

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

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

79 (ii) Is publicly disseminated within:

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

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

84 (iii) Is targeted to the relevant electorate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

147 (20) "Foreign national" means the following:

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

149 (i) A government of a foreign country;

150 (ii) A foreign political party;

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

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

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

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

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

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

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

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

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

170 (23) "Independent expenditure" means an expenditure by a person:

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

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

176 An expenditure which does not meet the criteria for an independent expenditure is

177 considered a contribution.

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

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

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

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

194 (28) "Person" means an individual, corporation, partnership, committee, association, and
195 any other organization or group of individuals.

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

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

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

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

202 (30) "Political committee" means any candidate committee, political action committee, or

203 political party committee.

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

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

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

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

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

223 (36) "Unaffiliated political action committee" means a political action committee that is not
224 affiliated with a corporation or a membership organization.