

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute for Senate Bill 622

SENATOR TARR, *original sponsors*
[Originating in the Committee on the Judiciary;
Reported on February 22, 2019]

A BILL to amend and reenact [§3-8-1a](#), [§3-8-2](#), [§3-8-4](#), [§3-8-5](#), [§3-8-5b](#), [§3-8-5e](#), [§3-8-7](#), [§3-8-8](#), [§3-8-9](#), and [§3-8-12](#) of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated [§3-8-5c](#), [§3-8-5g](#), [§3-8-9a](#), [§3-8-9b](#), and [§3-8-9c](#), all relating generally to the regulation and control of elections; modifying and adding definitions; modifying requirements for information to be included in independent expenditure reports; providing that persons or committees required to file federal expenditure reports are not exempt from requirement to file state-level expenditure and electioneering disclosure reports; raising the threshold amounts for required disclosure of independent expenditures occurring within a certain time frame preceding elections; requiring electronic filing of certain financial disclosure statements; removing the deadline before an election for a political action committee or political party committee to file a statement of organization; modifying record-keeping requirements for certain receipts and expenditures made for political purposes and requiring that records be maintained for a period of five years; modifying deadlines for financial disclosure reports; providing that candidates for certain offices may file financial disclosure statements by mail, facsimile, or electronic means; modifying limits on contributions to candidates and candidate committees; modifying limits on contributions to state party executive committees and legislative caucus campaign committees; modifying limits on contributions to political

action committees; providing that precandidates may accept contributions for a general election campaign prior to nomination, but may not expend such funds until after nomination is declared; providing that persons receiving precandidacy contributions are subject to certain expenditure reporting requirements; prohibiting foreign nationals from making contributions or donations to candidates, committees, and parties, and prohibiting receipt of a contribution or donation by a foreign national; modifying daily rate of civil penalty for persons filing late, inaccurate, or incomplete financial statements; requiring the Secretary of State to publish an online list of persons filing late financial statements; providing that membership organizations are subject to certain limitations applying to corporate contributions and solicitation of contributions by corporations; adding certain expenses to the list of permissible expenses of political committees; providing that coordinated expenditures are treated as contributions and providing exceptions thereto; permitting political party committees and legislative caucus campaign committees to make coordinated expenditures up to certain limits in connection with certain state-level candidates; permitting political committees to engage in joint fundraising efforts pursuant to a written agreement filed with the Secretary of State subject to certain requirements; requiring the Secretary of State to promulgate legislative rules pertaining to joint fundraising efforts; permitting unlimited transfers of money between and among state party executive committees, legislative caucus campaign committees, and national committees of the same political party for voter registration and get-out-the-vote initiatives; providing that prohibition against intimidating or coercing certain government employees into engaging in political activity also extends to intimidating or coercing employees into refraining from political activity; eliminating prohibition on a political organization organized under Section 527 of the Internal Revenue Code from soliciting or accepting donations before registering with the Secretary of State; providing that it is unlawful for any person to establish more than one political committee with the intent to evade contribution limitations; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

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

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

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

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

(4) "Candidate" means an individual who:

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

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

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

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

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

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

~~(6)~~ (7) "Clearly identified" means that the name, nickname, photograph, drawing, or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference, such as "the Governor", "your Senator", or "the incumbent", or through an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate for Governor" or "the Republican candidate for Supreme Court of Appeals".

~~(7)~~ (8) "Contribution" means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance, ~~or promise of money~~, or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election, or defeat of a candidate.

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

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

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

~~(8)~~ (10) "Corporate political action committee" means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

~~(9)~~ (11) "Direct costs of purchasing, producing, or disseminating electioneering communications" means:

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

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

~~(10)~~ (12) "Disclosure date" means either of the following:

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

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

~~(11)~~ (13) "Election" means any primary, general, or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special, or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

~~(12)~~ (14) (A) "Electioneering communication" means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or ~~published~~ publication in any newspaper, magazine, or other periodical that:

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

(ii) Is publicly disseminated within:

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

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

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

(B) "Electioneering communication" does not include:

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

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

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

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

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

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

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the

audience to communicate with a member or members of the Legislature concerning that piece of legislation;

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

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

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

~~(13)~~ (15) "Expressly advocating" means any communication that:

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

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

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

~~(14)~~ (16) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

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

(18) "Firewall" means a policy designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for a communication

and those employees or consultants currently or previously providing services to a candidate, or to a committee supporting or opposing a candidate, clearly identified in the communication.

(19) "Foreign national" means the following:

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

(i) A government of a foreign country;

(ii) A foreign political party;

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

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

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

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

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

~~(15) (20) "Fund-raising event" or "fundraiser" means an event such as a dinner, reception, testimonial, cocktail party, auction, or similar affair through which contributions are solicited or received. by such means as the purchase of a ticket, payment of an attendance fee, or by the purchase of goods or services.~~

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

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

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

~~(16) (22) "Independent expenditure" means an expenditure by a person:~~

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

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

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

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

~~(17)~~ (24) "Mass mailing" means a mailing by United States mail, facsimile, or electronic mail of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30 day period. For purposes of this subdivision, "substantially similar" includes communications that contain substantially the same template or language, but vary in nonmaterial respects such as communications customized by the recipient's name, occupation, or geographic location.

~~(18)~~ (25) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to its members and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.

~~(19)~~ (26) "Name" means the full first name, middle name, or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee, or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

~~(20)~~ (27) "Person" means an individual, corporation, partnership, committee, association, and any other organization or group of individuals.

~~(21)~~ (28) "Political action committee" means a committee organized by one or more persons, ~~for the purpose of supporting or opposing~~ the primary purpose of which is to support or oppose the nomination or election of one or more candidates. The following are types of political action committees:

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

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

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

~~(22)~~ (29) "Political committee" means any candidate committee, political action committee, or political party committee.

~~(23)~~ (30) "Political party" means a political party as that term is defined by §3-1-8 of this code or any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof and including national or regional affiliates of the party.

~~(24)~~ (31) "Political party committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination, or defeat of a candidate in any election.

~~(25)~~ (32) "Political purposes" means supporting or opposing the nomination, election, or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party, and determining the advisability of becoming a candidate under the precandidacy financing provisions of this chapter.

~~(26)~~ (33) "Targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or more individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more individuals in the district in the case of a candidacy for the House of Delegates.

~~(27)~~ (34) "Telephone bank" means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions, or trained volunteers.

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

~~(29)~~ (35) "Unaffiliated political action committee" means a political action committee that is not affiliated with a corporation or a membership organization.

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

~~(a) Except for: (1) Candidates for party committeeman and committeewoman; and (2) federal committees required to file under the provisions of 2 U.S.C. §434, all candidates for nomination or election and all persons supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for a period of six months records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.~~

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

(1) The name of ~~(i)~~ the person making the expenditure;

~~(ii)~~ (2) The name of any person sharing or exercising direction or control over the activities of the person making the expenditure; ~~and~~

~~(iii)~~ (3) The name of the custodian of the books and accounts of the person making the expenditure;

~~(B)~~ (4) If the person making the expenditure is ~~not an individual~~ an entity, the principal place of business of the partnership, corporation, committee, association, organization, or group which made the expenditure;

~~(C)~~ (5) The amount of each independent expenditure ~~of more than \$1,000 made~~ during the period covered by the statement and the name of the person to whom the expenditure was made;

~~(D)~~ (6) The elections to which the independent expenditure pertain, the names, if known, of the candidates referred to or to be referred to therein, whether the expenditure is intended to support or oppose the identified candidates, and the amount of the total expenditure reported pursuant to ~~paragraph (C)~~ subdivision (5) of this subsection spent to support or oppose each of the identified candidates;

~~(E)~~ (7) The name and address of any person who contributed a total of more than \$250 between the first day of the preceding calendar year, and the disclosure date, and whose contributions were made for the purpose of furthering the expenditure;

~~(F)~~ (8) With regard to the contributors required to be listed pursuant to ~~paragraph (E)~~ subsection (7) of this subdivision ~~the statement shall also include:~~

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

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

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

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

~~(v)~~ (E) The value in dollars and cents of the contribution; and

~~(G)(1)~~ (9) A certification that such independent expenditure was not made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

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

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

~~(e)~~ (d)(1) ~~A person, including a political committee, who~~ Any person or political committee that makes or contracts to make independent expenditures aggregating ~~\$1,000~~ \$5,000 or more for any statewide, legislative, or multicounty judicial candidate or \$500 or more for any county office candidate, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the 15th day, but more than 12 hours, before the date of an election, shall file a report on a form prescribed by the Secretary of State, describing the expenditures within 24 hours: *Provided*, That a person making expenditures ~~in the amount of \$1,000 or more~~ for any statewide or legislative candidate on or after the 15th day but more than 12 hours before the day of any election meeting the criteria of this section, but which are subject to the disclosure requirements of §3-8-2b of this code, shall report such expenditures in accordance with the requirements of §3-8-2b of this code and ~~shall may not file an additional report as provided herein~~ the report otherwise required by this subsection.

(2) Any person who files a report under subdivision (1) of this subsection, shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating ~~\$1,000~~ an additional \$5,000 or more for any statewide, legislative, or multicounty judicial candidate or an additional \$500 with respect to the same election, for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to which the initial report relates.

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

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

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

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

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

~~(f)~~ (g) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of ~~six months~~ five years following the filing of a disclosure pursuant to ~~subsection (a) of this section~~ §3-8-2b of this code and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for the purpose of an audit as provided in §3-8-7 of this code.

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

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

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

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

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

~~(j)~~ (k) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter 29A of this code, to establish guidelines for the administration of this section.

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

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

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

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

(d) Prior to engaging in any activity, a political committee shall file a statement of organization required by subsection (a) of this section. A statement of organization form required

by this section shall be certified as accurate and true and signed by the treasurer and the chairman of the committee, and shall include the following information:

(1) The name of the political committee;

(2) The name of the treasurer;

(3) The mailing address, telephone number, and e-mail address of the committee;

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

(5) The name of the chairman of the committee;

(6) The affiliate organization, if any;

(7) The type of political committee, as determined by the description of types of committees included in the definitions of "political committee" and "political action committee" in §3-8-1a of this code; and

(8) Whether the committee will participate in statewide or local elections.

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

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

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

(a) Record-keeping requirements. -

(1) Except for candidates for party committeeman and committeewoman, all candidates for nomination or election to state or local offices and all persons supporting, aiding, or opposing the nomination, election, or defeat of any such candidate shall keep, for a period of five years, records of receipts and expenditures which are made for political purposes.

(2) Every candidate or treasurer of every political committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money

or things of value, and of all expenditures and disbursements made, or liabilities incurred, by the candidate or political committee.

(3) A person that is not a political committee and makes independent expenditures or electioneering communications must keep detailed accounts of every sum of money or other thing of value received by him or her for the purpose of furthering any independent expenditure or electioneering communication and of all disbursements made for independent expenditures or electioneering communications.

(b) *Financial reporting requirements.* -

(1) Every person required to keep detailed accounts under subsection (a) of this section shall file a detailed, itemized sworn statement, as prescribed in §3-8-5a and §3-8-5b of this code, according to the following schedule:

(A) On April 1 of each year, the person shall file a statement of all financial transactions dating from January 1 to March 31 of the same year, to be filed within six days thereafter;

(B) On July 1 of each year, the person shall file a statement of all financial transactions dating from April 1 to June 30 of the same year, to be filed within six days thereafter;

(C) On October 1 of each year, the person shall file a statement of all financial transactions dating from July 1 to September 30 of the same year, to be filed within six days thereafter; and

(D) On January 1 of each year, the person shall file a statement of all financial transactions dating from October 1 to December 31 of the previous year, to be filed within six days thereafter.

(2) In addition to the statements required in subdivision (1) of this section, a candidate or candidate's committee shall file detailed itemized sworn statements, as prescribed in §3-8-5a and §3-8-5b of this code, according to the following schedule:

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

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

(c) A person required to file reports pursuant to 52 U.S.C. §30104 is exempt from the requirements of subsection (b) of this section but is not exempt from the state-level electioneering communication reports requirements in §3-8-2b of this code or the independent expenditure reporting requirements in §3-8-2 of this code.

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

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

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

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

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

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

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

~~(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission: *Provided*, That the financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, and Supreme Court of Appeals, shall be filed electronically by the means of an Internet program that has been established by the Secretary of State on forms or in a format prescribed by the Secretary of State: *Provided*, That after January 1, 2018, unless a committee has been granted an exemption in case of hardship pursuant to subsection (c) of this section, all such statements required to be filed with the Secretary of State, on or behalf of a candidate for any elective office, shall be filed electronically by means of the internet program that has been established by the Secretary of State.~~

(1) The following statements or reports shall be filed electronically, in a manner prescribed by the Secretary of State:

(A) Financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, State Senate, House of Delegates, Supreme Court of Appeals, circuit judge, or family court judge;

(B) Financial statements filed by political committees;

(C) Electioneering communication reports; and

(D) Independent expenditure reports.

(2) If through or by no fault of the candidate, the candidate is unable to file the campaign financial statement, the candidate shall then file said statement in person, via facsimile or other electronic means of transmission, or by certified mail postmarked at the first reasonable opportunity.

~~(e)~~ (3) Committees required to report electronically may apply to the State Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(c) Candidates for all offices not identified in subsection (b) of this section, may file financial statements by mail, in person, by facsimile, or by other electronic means of transmission. For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State, or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of that office.

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

§3-8-5c. Contribution limitations.

(a)(1) A person, political party, or political action committee may not, in an election cycle:

(A) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a candidate seeking nomination, including by making contributions to the candidate's committee;
or

(B) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a candidate seeking election, including by making contributions to the candidate's committee: *Provided*, That a candidate may receive contributions for the general election prior to nomination, however, such funds may not be expended until after the date of the nomination is declared.

(2) The contribution limits of this section apply only to elections to be held after the effective date of this section, and do not apply to candidate committees that were created for elections held prior to the effective date of this section.

(b) A person may not, directly or indirectly, make contributions to a state party executive committee, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee which, in the aggregate, exceed \$10,000 in any calendar year: *Provided*, That a person may not

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

(c) A person may not, directly or indirectly, make contributions to a political action committee, related to a particular election, which, in the aggregate, exceed \$5,000.

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

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

(b) Any person undertaking to determine the advisability of becoming or preparing to be a candidate, who desires to receive contributions before filing a certificate of candidacy, shall ~~name~~ shall designate himself or another individual to act as a treasurer and shall file a designation of treasurer in the manner provided in §3-8-4 of this code before receiving any contributions permitted by this section. Any expenditures made before the filing of a designation of treasurer shall be reported in accordance with the provisions of ~~this section~~ §3-8-5 of this code, regardless of the source of funds used for such expenditures.

(c) A person who receives a contribution who is acting for and by himself or herself or as treasurer or agent for another pursuant to the provisions of this section shall keep detailed accounts of every sum of money or other thing of value received by him or her, and of all expenditures and disbursements made, and liabilities incurred, in the same manner as such accounts are required by §3-8-5 of this code. ~~for the period prior to the date of filing for candidacy for the office he is considering seeking. Any person who has received contributions or made expenditures subject to the provisions of this section shall file annually on the last Saturday in March or within six days thereafter preceding the election at which the names of candidates would appear on the ballot for the public office or position which the person originally considered seeking, a detailed itemized statement setting forth all contributions received and expenditures~~

~~made pursuant to the provisions of this section concerning the candidacy of that person. If the person on whose behalf such contributions are received or expenditures are made becomes a candidate for any office or position to be decided at such election then the itemized statement shall be included within the first statement required to be filed by the provisions of section five of this article. If such person does not become a candidate for any office or position to be decided at such election, then the detailed itemized statements required by this subsection shall be the only statements required to be filed by such person.~~

(d) Regardless of whether such person becomes a candidate as originally intended, or becomes a candidate for some office other than the office or position originally intended, or does not become a candidate, all limits on campaign contributions and campaign expenditures applicable to the candidacy of or advocacy of the candidacy of such person for the office he or she actually seeks, shall be applicable to and inclusive of the receipts had and expenditures made during such precandidacy period as well as after the person becomes a candidate.

§3-8-5g. Prohibition on political contributions and expenditures by foreign nationals.

(a) A foreign national may not, directly or indirectly, make:

(1) A contribution or donation, or an express or implied promise to make a contribution or donation, to a candidate's committee, a political committee, or a political party; or

(2) An independent expenditure or any disbursement for an electioneering communication related to a state or local election.

(b) A person may not solicit, accept, or receive a contribution or donation described in subsection (a) of this section.

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

(a) Any person, candidate, financial agent, or treasurer of a political party committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 or confined in jail for not more than one year, or both fined and confined. Sixty days after any primary or other election, the Secretary of State, county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent, or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the

prosecuting attorney of the county where the person, candidate, financial agent, or treasurer resides, is located or has its principal place of business.

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

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

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

(4) The Secretary of State shall publish online, a list of all persons required to file statements with the Secretary of State who file statements after the deadline in an election cycle. This list shall be maintained and be publicly available online to include late activity for, at a minimum, the previous five years up to the current year.

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

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

(2) It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file any sworn statement required by this article and no person may enter upon the duties of his or her office until he or she

has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of the statement.

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

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

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

[§3-8-8](#). Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

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

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

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

(2) It is unlawful for:

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

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

(B) Any person soliciting a membership organization member, stockholder, or executive, or administrative personnel member and members of their families or their family members for a contribution to a membership organization, corporation, or separate segregated fund to fail to inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

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

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

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

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

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

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

contributions to the fund of the political action committee, subject to the rules of the State Election Commission promulgated in accordance with said subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(k) The effective date of the amendments to this section enacted during the second 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(16)~~ (20) For contributions to a candidate committee: *Provided*, That a candidate committee may not contribute to another candidate committee except as otherwise provided by §3-8-10 of this code.

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

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

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

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

§3-8-9a. Coordinated expenditures.

(a) Except as provided in §3-8-9b of this code, a coordinated expenditure is considered to be a contribution and is subject to all requirements for contributions contained in this article.

(b) An expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate's committee is a coordinated expenditure if the communication resulting from the expenditure is paid for, in whole or in part, by a person other than the candidate, candidate committee, or party committee, and one of the following circumstances exists:

(1) The communication is created, produced, distributed, or undertaken at the request or suggestion of a candidate, candidate committee, or party committee.

(2) The candidate, candidate committee, or party committee is involved in the creation, production, or distribution of the communication, or has had discussions about the communication with any person or the agents of a person who has paid for or played a role in the creation, production, or distribution of the communication: *Provided*, That this paragraph does not apply if

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

(3) Any person involved in the creation, production, or distribution of the communication has, in the four months preceding the date on which the expenditure is made, been an employee or vendor of campaign services for the candidate, candidate committee, or party committee.

(c) An expenditure is not a coordinated expenditure, based solely on any of the following circumstances:

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

(2) A candidate endorses another candidate;

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

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

(d)(1) An expenditure otherwise meeting the description of a coordinated expenditure contained in subdivision (3), subsection (b) of this section, is not a coordinated expenditure if the commercial vendor, former employee, or political committee at issue has established and implemented a firewall that meets the following requirements:

(A) The firewall is designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to a candidate, or a committee supporting or opposing a candidate, clearly identified in the communication; and

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

(2) A communication does not qualify for the exemption contained in this subsection if, despite the firewall, information subject to the firewall concerning a candidate, candidate's committees, or a party committee's campaign plans, projects, activities, or needs that are material to the creation, production, or distribution of the communication is used or conveyed to the person paying for the communication.

(e) Any communication that results from a coordinated expenditure must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate, the candidate committee, or the party committee with which it was coordinated.

§3-8-9b. Coordinated expenditures by political party committees and political party caucuses in connection with certain statewide candidates.

(a) Notwithstanding the provisions of §3-8-9a of this code, the state committee of a political party and caucus campaign committee may make coordinated expenditures in an amount not to exceed \$5,000 in connection with the general election campaign of the candidate for each of the following offices: Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate, and House of Delegates.

(b) Any communication that results from a political expenditure and is made in coordination with a state committee of a political party and caucus campaign committee must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate or candidate's committee with whom it was coordinated.

§3-8-9c. Joint fundraising.

(a) Political committees may engage in joint fundraising efforts with other political committees or with committees registered with the Federal Election Commission pursuant to a written joint fundraising agreement.

(b) A written joint fundraising agreement must be filed with the Secretary of State and must provide terms for the allocation of fundraising proceeds between or among political committees engaging in the joint fundraising effort. The Secretary of State shall post all joint fundraising agreements on the Internet within 10 business days from the date the agreement is filed.

(c) Any person soliciting funds for a joint fundraising effort shall disclose, in making or publishing solicitations, the name of all political committees involved in the joint fundraising effort and how any proceeds, including any contributions, will be allocated between or among such committees.

(d) A person, not otherwise prohibited by this article from making contributions, may make a contribution to a joint fundraising effort subject to the contribution limits in §3-8-5c of this code.

(e) The State Election Commission shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, to provide requirements for written joint fundraising agreements and to implement the provisions of this section consistently, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission in 11 C.F.R. §102.17.

§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.

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

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

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

(d) Except as provided in [§3-8-8](#) of this code, a person entering into any contract with the state or its subdivisions, or any department or agency of the state, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land, or building is to be made, in whole or in part, from public funds may not, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land, or buildings, directly or indirectly, make any contribution to any political party, committee, or candidate for public office, or to any person for political purposes or use nor may any person or firm solicit any contributions for any purpose during any period.

(e) A person may not, directly or indirectly, promise any employment, position, work, compensation, or other benefit provided for, or made possible, in whole or in part, by act of the

Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

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

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

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

(i) ~~(h)~~ Notwithstanding the provisions of subsection (f) of this section to the contrary, A person may not, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus campaign committee which, in the aggregate, ~~exceed the value of \$1,000 in any calendar year~~ are in excess of the amounts permitted by §3-8-5c of this code in any calendar year.

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

~~(k)~~ (j) A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: *Provided*, That in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution.

A person may not coerce or intimidate any nonelective salaried employee into making a contribution. A person may not coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in or refraining from any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation or solicitation.

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

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

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

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

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