~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 13, 2015

**H. 3189**

Introduced by Reps. Finlay, Cole, Anderson, Bales, G.A. Brown, R.L. Brown, Felder, Funderburk, Hart, Knight, Lucas, Murphy, Newton, Norman, Norrell, Pope, Putnam, Rivers, Southard, Spires, Tallon, Taylor, Wells, Williams, Willis, Long, Henderson, G.M. Smith, G.R. Smith, McCoy, Clary, J.E. Smith, W.J. McLeod, Weeks, Whipper and Hicks

S. Printed 5/13/15--S.

Read the first time February 17, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3189) to amend the Code of Laws of South Carolina, 1976, by adding Section 8‑13‑1313 so as to require a person who is not a committee and who makes, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 8‑13‑1300(6) of the 1976 Code is amended to read:

“(6) ‘Committee’ means ~~an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes:~~

~~(a)~~ ~~contributions aggregating at least twenty‑five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them; or~~

~~(b)~~ ~~independent expenditures aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate.~~ a person, two or more individuals, such as any person, association, organization, or other entity that makes or accepts anything of value to make contributions or expenditures, and has one or more of the following characteristics:

(a) is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party; or

(b) has the major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

If the entity qualifies as a ‘committee’ pursuant to this section, it continues to be a committee if it receives contributions or makes expenditures or maintains assets or liabilities. A committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

‘Committee’ includes a party committee, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for ~~the purpose of influencing an election~~ and has as the major purpose to support or oppose the nomination or election of a candidate to an elective office.”

SECTION 2. Section 8‑13‑1300(7) of the 1976 Code is amended to read:

“(7) ‘Contribution’ means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in‑kind contribution or expenditure, a deposit of money, or anything of value made to a candidate or committee to influence an election; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge, whether any of the above are made or offered directly or indirectly. ‘Contribution’ does not include ~~(a)~~ volunteer personal services on behalf of a candidate or committee for which the volunteer or any person acting on behalf of or instead of the volunteer receives no compensation either in cash or in‑kind, directly or indirectly, from any source~~; or (b) a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in‑kind contribution or expenditure, a deposit of money, or anything of value made to a committee, other than a candidate committee, and is used to pay for communications made not more than forty‑five days before the election to influence the outcome of an elective office as defined in Section 8‑13‑1300(31)(c). These funds must be deposited in an account separate from a campaign account as required in Section 8‑13‑1312~~.”

SECTION 3. Section 8‑13‑1300(17) of the 1976 Code is amended to read:

“(17) ‘Independent expenditure’ means:

(a) an expenditure made or incurred directly or indirectly by a person to advocate the election or defeat of a clearly identified candidate or ballot measure; and

(b) when taken as a whole and in context, the expenditure made by a person to influence the outcome of an elective office or ballot measure but which is not:

(i) made to;

(ii) controlled by;

(iii) coordinated with;

(iv) requested by; or

(v) made upon consultation with a candidate or an agent of a candidate; or a committee or agent of a committee; or a ballot measure committee or an agent of a ballot measure committee.”

SECTION 4. Section 8‑13‑1300(23) of the 1976 Code is amended to read:

“(23) ‘Noncandidate committee’ means a committee that is not a campaign committee for a candidate but is organized ~~to influence an election or to support or oppose a candidate or public official,~~ for the major purpose to support or oppose the nomination or election of a candidate to elective office, which receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. ‘Noncandidate committee’ does not include political action committees that contribute solely to federal campaigns.”

SECTION 5. Section 8‑13‑1300(31) of the 1976 Code is amended to read:

“(31) ‘Influence the outcome of an elective office’ means:

(a) expressly advocating the election or defeat of a clearly identified candidate using words including or substantially similar to ‘vote for’, ‘elect’, ‘cast your ballot for’, ‘Smith for Governor’, ‘vote against’, ‘defeat’, or ‘reject’; or

(b) communicating campaign slogans or individual words that, taken in context, have no other reasonable meaning other than to urge the election or defeat of a clearly identified candidate including or substantially similar to slogans or words such as ‘Smith’s the One’, ‘Jones 2000’, ‘Smith/Jones’ , ‘Jones!’, or ‘Smith‑A man for the People!’~~;~~ ~~or~~

~~(c)~~ ~~any communication made, not more than forty‑five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. For purposes of this paragraph, “communication” means (i) any paid advertisement or purchased program time broadcast over television or radio; (ii) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (iii) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (i) or (ii) of this paragraph. “Communication” does not include news, commentary, or editorial programming or article, or communication to an organization’s own members~~.”

SECTION 6. Section 8‑13‑1300(32) of the 1976 Code is amended to read:

“(32) ‘Ballot measure committee’ means~~:~~

~~(a)~~ ~~an association, club, an organization, or a group of persons which, to influence the outcome of a ballot measure, receives contributions or makes expenditures in excess of two thousand five hundred dollars in the aggregate during an election cycle;~~

~~(b)~~ ~~a person, other than an individual, who, to influence the outcome of a ballot measure, makes contributions aggregating at least fifty thousand dollars during an election cycle to or at the request of a ballot measure committee; or~~

~~(c)~~ ~~a person, other than an individual, who, to influence the outcome of a ballot measure, makes independent expenditures aggregating two thousand five hundred dollars or more during an election cycle~~.

a person, two or more individuals, such as any person, association, organization, or other entity that makes or accepts anything of value to make contributions or expenditures that has the major purpose to support or oppose the passage of a ballot measure.”

SECTION 7. Section 8‑13‑1300 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“( ) ‘electioneering communication’ means any broadcast, cable, or satellite communication or mass postal mailing or telephone bank that has the following characteristics:

(a) refers to a candidate for elected office;

(b) is publicly aired or distributed within sixty days prior to a general election or within thirty days prior to a primary for that office; and

(c) may be received by either:

(i) fifty thousand or more individuals in the State in an election for statewide office, or seven thousand five hundred or more individuals in any other election if in the form of broadcast, cable, or satellite communication; or

(ii) twenty thousand or more households, cumulative per election, in a statewide election or two thousand five hundred households, cumulative per election, in any other election if in the form of mass mailing or telephone bank.

(d) The definition does not include:

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication that constitutes an expenditure or independent expenditure under this Article;

(iii) a communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by a political party or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(iv) a communication made which, incidental to advocacy for or against a specific piece of legislation, ordinance, or local initiative pending before the General Assembly or governing body of a political subdivision, urges the audience to communicate with a member or members of the General Assembly or the governing body of a political subdivision, concerning that piece of legislation, ordinance, or local initiative; or

(v) a communication that meets all of the following criteria:

(1) does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;

(2) does not take a position on the candidate’s character or qualifications and fitness for office; and

(3) proposes a commercial transaction.”

SECTION 8. Section 8‑13‑1300 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“( ) ‘Independent expenditure‑only committee’ means a committee that:

(a) is not made by, controlled by, coordinated with, requested by, or made in consultation with a candidate, an agent of a candidate, a political party, or an agent of a political party;

(b) does not make contributions to any candidate or other committee, with the exception of other independent expenditure‑only committees;

(c) makes only independent expenditures; and

(d) is organized for the major purpose to support or oppose the nomination or election of a candidate to elective office.”

SECTION 9. Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1301. For purposes of this article, factors that shall be considered to determine whether a committee, ballot measure committee, a party committee, a legislative caucus committee, a noncandidate committee, or independent expenditure‑only committee as the major purpose of supporting or opposing one or more candidates or the passage of one or more ballot measures include, but are not limited to:

(A) any of the committee’s organizational documents, including bylaws or articles of incorporation, identify advocacy to support or to oppose one or more candidates or the passage of one or more ballot measures as its major purpose;

(B) over fifty percent of the committee’s disbursements made within the State in a calendar year are made to support or to oppose one or more candidates or the passage of one or more ballot measures; or

(C) over fifty percent of the committee’s total disbursements made in a calendar year are made to support or to oppose one or more candidates or the passage of one or more ballot measures; or

(D) the committee’s public statements, including statements made in oral or written fundraising solicitations, identify advocacy in support of or in opposition to one or more candidates or the passage of one or more ballot measures as its major purpose.”

SECTION 10. Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1311. Independent expenditure‑only committees must:

(A) file a statement of organization with the State Ethics Commission no later than five days after receiving or expending more than five hundred dollars in the aggregate during an election cycle to influence the outcome of an elective office;

(B) under penalty of perjury, the chief executive officer or the controlling individual of the committee must file a certification that the independent expenditure‑only committee is 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;

(C) only make independent expenditures; and

(D) comply with all requirements, disclosures, and restrictions of committees under this Article except contribution limits under section 8‑13‑1322.”

SECTION 11. Section 8‑13‑1312 of the 1976 Code is amended to read:

“Section 8‑13‑1312. ~~Except as is required for the separation of funds and expenditures under the provisions of Section 8‑13‑1300(7), a~~ A candidate shall not establish more than one campaign checking account ~~and one campaign savings account~~ for each office sought, and a committee shall not establish more than one checking account ~~and one savings account~~ unless federal or state law requires additional accounts. A candidate or a committee may not establish more than one campaign savings account, unless the amount in the candidate’s or committee’s campaign savings account exceeds the amount of insurance coverage applicable to the campaign savings account. If the amount in a candidate’s or committee’s campaign savings account exceeds the insurable amount, the candidate or committee may open one additional campaign savings account. A candidate or committee must not establish more than two campaign savings accounts, unless federal or state law requires additional accounts. The appropriate supervisory office must be notified by the candidate or committee within five business days of a second campaign savings account’s establishment. A campaign savings account means a “savings deposit” as defined by the Code of Federal Regulations, Title 12, Regulation 204.2, or its successor. For purposes of this article, certificates of deposit or other interest bearing instruments are not considered separate accounts. A candidate’s accounts must be established in a financial institution that conducts business within the State and in an office located within the State that conducts business with the general public. The candidate or a duly authorized officer of a committee must maintain the accounts in the name of the candidate or committee. An acronym must not be used in the case of a candidate’s accounts. An acronym or abbreviation may be used in the case of a committee’s accounts if the acronym or abbreviation commonly is known or clearly recognized by the general public. Except as otherwise provided under Section 8‑13‑1348(C), expenses paid on behalf of a candidate or committee must be drawn from the campaign account and issued on a check signed by the candidate or a duly authorized officer of a committee. All contributions received by the candidate or committee, directly or indirectly, must be deposited in the campaign checking account by the candidate or committee within ten days after receipt. All contributions received by an agent of a candidate or committee must be forwarded to the candidate or committee not later than five days after receipt. A contribution must not be deposited until the candidate or committee receives information regarding the name and address of the contributor. If the name and address cannot be determined within seven days after receipt, the contribution must be remitted to the Children’s Trust Fund.”

SECTION 12. Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1313. A person who is not a committee required to file subject to Section 8‑13‑1304 and who makes an independent expenditure in an aggregate amount or value in excess of five hundred dollars during a calendar year or makes an electioneering communication must file a report of such expenditure or communication with the State Ethics Commission pursuant to Section 8‑13‑365. This report must be filed within thirty days of making the independent expenditure or electioneering communication, or if the independent expenditure or electioneering communication is made within thirty days before an election, the report must be filed within forty‑eight hours. The report must include:

(1) a detailed description of the use of the expenditure or communication and the amount of the expenditure or the cost of the communication;

(2) the full name, primary occupation, street address, and phone number of the reporting person;

(3) the identification of the chief executive officer, or for all controlling individuals if the reporting person is a business or another organization that is not an individual, to include name, title, employer, and address;

(4) the name of the candidate or ballot measure that is the target of the independent expenditure or electioneering communication and whether the expenditure or communication was made in support of, or opposition to, the candidate or ballot measure;

(5) the chief executive officer or controlling individual must file, under penalty of perjury, a certification that the independent expenditure is 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;

(6) the identification of the top five donors to the reporting person and for any donor who has donated more than ten thousand dollars to the committee within the previous twelve months, to include name, primary occupation, address, and amount of the donation; and

(7) if the donor is a business or another organization that is not an individual, then the identification must indicate the name and title of the chief executive officer or the controlling individual of the donor organization.”

SECTION 13. Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1315. An elected official, or a candidate for public office, may not, directly or indirectly, coordinate, consult with, solicit for, or act in concert or at the request of an independent expenditure‑only committee registered with the State Ethics Commission that supports or opposes a candidate for that office.”

SECTION 14. Section 8‑13‑1322 of the 1976 Code is amended to read:

“Section 8‑13‑1322. (A) A person may not contribute to a committee and a committee may not accept from a person contributions aggregating more than three thousand five hundred dollars in a calendar year.

(B) A person may not contribute to a committee and a committee may not accept from a person a cash contribution unless the cash contribution does not exceed twenty‑five dollars for each election and is accompanied by a record of the amount of the contribution and the name and address of the contributor.

(C) The provisions of subsection (A) do not apply to independent expenditure‑only committees registered with the State Ethics Commission.”

SECTION 15. The provisions of this act are effective upon the Governor’s signature. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

LARRY A. MARTIN LEE BRIGHT

For Majority. For Minority.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 8‑13‑1313 SO AS TO REQUIRE A PERSON WHO IS NOT A COMMITTEE AND WHO MAKES AN INDEPENDENT EXPENDITURE IN AN AGGREGATE AMOUNT OR VALUE IN EXCESS OF FIVE HUNDRED DOLLARS DURING A CALENDAR YEAR OR MAKES AN ELECTIONEERING COMMUNICATION TO FILE A REPORT OF SUCH EXPENDITURE OR COMMUNICATION WITH THE STATE ETHICS COMMISSION; AND TO AMEND SECTION 8‑13‑1300, AS AMENDED, RELATING TO DEFINITIONS IN REGARD TO CAMPAIGN PRACTICES, SO AS TO DEFINE “ELECTIONEERING COMMUNICATION”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 13, Chapter 13, Title 8 of the 1976 Code is amended by adding:

“Section 8‑13‑1313. A person who is not a committee required to file subject to Section 8‑13‑1304 and who makes an independent expenditure in an aggregate amount or value in excess of five hundred dollars during a calendar year or makes an electioneering communication must file a report of the expenditure or communication with the State Ethics Commission electronically in the manner prescribed by the commission pursuant to Section 8‑13‑365 within thirty days of the expenditure being made, or if the independent expenditure or electioneering communication is made within thirty days before an election, the report must be filed within forty‑eight hours of the expenditure being made. The report must include:

(1) a detailed description of the use of the expenditure or communication and the amount of the expenditure or the cost of the communication;

(2) the full name, primary occupation of the reporting person, as well as the physical address and phone number for the residence or place of business for the reporting person;

(3) the identification of the chief executive officer or for all controlling individuals if the reporting person is a business or another organization that is not an individual, to include name, title, employer, and address;

(4) the name of the candidate or ballot measure that is the subject of the independent expenditure or electioneering communication and whether the expenditure or communication was made in support of, or opposition to, the candidate or ballot measure;

(5) the chief executive officer or controlling individual must file, under penalty of perjury, a certification that the independent expenditure is not made in cooperation, consultation, or coordination with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(6)(a) the identification of each person or entity making a donation of more than one hundred dollars to the entity filing the report if the donation was made to further the reported independent expenditure or electioneering communication.

(b) If the donor is an individual, the statement shall include the name, primary occupation, address, and amount of the donation.

(c) If the donor is a business or another organization that is not an individual, then the identification shall indicate the name and title of the chief executive officer or the controlling individual of the donor organization, and include the address and amount of the donation.

(7) For the purposes of item (6) of this section, a donation to the person or entity making the independent expenditure or electioneering communication is deemed to have been donated to further the independent expenditure or electioneering communication if any of items (1) through (4) of this section apply. For purposes of this section, the ‘filer’ is the person or entity making the independent expenditure or electioneering communication and responsible for filing the report, or an agent of that person or entity. For purposes of this section, the ‘donor’ is the person or entity donating to the filer the funds or other thing of value, or an agent of that person or entity.

(a) The donor designates, requests, or suggests that the donation be used for an independent expenditure or electioneering communication or for multiple independent expenditures or electioneering communication, and the filer agrees to use the donation for an independent expenditure or electioneering communication.

(b) The filer expressly solicited the donor for a donation for making or paying for an independent expenditure or electioneering communication.

(c) The donor and the filer engaged in substantial written or oral discussion regarding the donor’s making, donating, or paying for an independent expenditure or electioneering communication.

(d) The donor or the filer knew or had reason to know of the filer’s intent to make independent expenditures or electioneering communications with the donation.

A donation must not be deemed to be made to further an independent expenditure or electioneering communication if the donation was a commercial transaction occurring in the ordinary course of business between the donor and the filer unless there is affirmative evidence that the amounts were donated to further an independent expenditure or electioneering communication. In determining the amount of a donation that was made to further a particular independent expenditure or electioneering communication, there must be excluded any amount that was designated by the donor with respect to a different election than the election that is the subject of the independent expenditure or electioneering communication covered by the report.”

SECTION 2. Section 8‑13‑1300 of the 1976 Code, as last amended by Act 245 of 2008, is further amended by adding at the end:

“(35)(a) ‘Electioneering communication’ means a broadcast, cable, or satellite communication or mass postal mailing or telephone bank that has the following characteristics:

(1) refers to a clearly identified candidate for elected office or ballot measure; and

(2) that is publicly aired or distributed within sixty days prior to a general election or within thirty days prior to a primary election for that office.

(b) ‘Electioneering communication’ does not mean:

(1) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by a political party, political committee, or candidate;

(2) a communication that constitutes an expenditure or independent expenditure pursuant to this article;

(3) a communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by a political party or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(4) a communication that meets all of the following criteria:

(i) does not mention any election, candidacy, political party, opposing candidate, or voting by the general public;

(ii) does not take a position on the candidate’s character or qualifications and fitness for office; and

(iii) proposes a commercial transaction.”

SECTION 3. This act takes effect upon approval by the Governor.

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