

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

As Engrossed: H3/7/17 H3/14/17

# A Bill

HOUSE BILL 1005

5 By: Representatives Tucker, V. Flowers, D. Ferguson, Leding, Sabin, D. Whitaker  
6 By: Senators K. Ingram, Elliott, L. Chesterfield, U. Lindsey, Maloch, E. Cheatham, S. Flowers  
7

## For An Act To Be Entitled

9 AN ACT TO REQUIRE REPORTING AND DISCLOSURE OF  
10 ELECTIONEERING COMMUNICATIONS; TO RESTRICT THE AMOUNT  
11 OF MONEY SPENT ON CAMPAIGN COMMUNICATIONS PRODUCED IN  
12 COORDINATION WITH A CANDIDATE FOR OFFICE; TO AMEND  
13 THE LAW CONCERNING CAMPAIGN FINANCE CONTRIBUTIONS;  
14 AND FOR OTHER PURPOSES.

## Subtitle

18 TO REQUIRE REPORTING AND DISCLOSURE OF  
19 ELECTIONEERING COMMUNICATIONS; AND TO  
20 RESTRICT THE AMOUNT OF MONEY SPENT ON  
21 CAMPAIGN COMMUNICATIONS PRODUCED IN  
22 COORDINATION WITH A CANDIDATE FOR OFFICE.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26  
27 *SECTION 1. Arkansas Code Title 7, Chapter 6, Subchapter 2, is amended*  
28 *to add an additional section to read as follows:*

29 *7-6-230. Coordinated communications.*

30 *(a)(1) A coordinated communication is an in-kind contribution to the*  
31 *candidate or political party who or to the candidate or political party whose*  
32 *authorized committee or agent cooperated, consulted, requested, suggested, or*  
33 *acted in concert with:*

34 *(A) The person making the coordinated communication or his*  
35 *or her authorized agent; or*

36 *(B) The person making the expenditure for the coordinated*



1 communication or his or her authorized agent.

2 (2) The in-kind contribution under subdivision (a)(1) of this  
3 section shall be subject to the contribution limits set forth under § 7-6-  
4 203.

5 (b)(1) As used in this section, "coordinated communication" means a  
6 political advertisement or communication funded by expenditures that contain  
7 express advocacy or the functional equivalent of express advocacy made:

8 (A) In cooperation or consultation between:

9 (i) A candidate or his or her authorized committee  
10 or agent; and

11 (ii) The person making the:

12 (a) Communication or his or her authorized  
13 agent; or

14 (b) Expenditure for the communication or his  
15 or her authorized agent;

16 (B) In cooperation or consultation between:

17 (i) A political party or its authorized agent; and

18 (ii) The person making the:

19 (a) Communication or his or her authorized  
20 agent; or

21 (b) Expenditure for the communication or his  
22 or her authorized agent;

23 (C) In concert with or at the request or suggestion of a  
24 candidate or his or her authorized committee or agent; or

25 (D) In concert with or at the request or suggestion of a  
26 political party or its authorized agent.

27 (2) "Coordinated communication" does not include:

28 (A) A candidate's or a political party committee's  
29 response to an inquiry about that candidate's or that political party  
30 committee's positions on legislative or policy issues unless the response or  
31 the inquiry concerns the plans, projects, activities, or needs of the  
32 campaign;

33 (B) Unless the public communication promotes, supports,  
34 attacks, or opposes the endorsing candidate or another candidate who seeks  
35 election to the same office the endorsing candidate is seeking, a public  
36 communication;

1 (i) In which a candidate endorses another candidate;  
2 and

3 (ii) That is made by the endorsing candidate;  
4 (C) Unless the public communication promotes, supports,  
5 attacks, or opposes the soliciting candidate or another candidate who seeks  
6 election to the same office the soliciting candidate is seeking, a public  
7 communication:

8 (i) In which a candidate solicits funds:  
9 (a) For another candidate;  
10 (b) For a political committee; or  
11 (c) On behalf of an organization concerning a  
12 state or local election in a manner corresponding to the circumstances set  
13 forth in 11 C.F.R. § 300.65; and

14 (ii) That is made by the soliciting candidate; or  
15 (D) A public communication in which a candidate is clearly  
16 identified only in his or her capacity as the owner or operator of a business  
17 that existed prior to the candidacy if:

18 (i) The medium, timing, content, and geographic  
19 distribution of the public communication are consistent with public  
20 communications made prior to the candidacy; and

21 (ii) The public communication does not promote,  
22 support, attack, or oppose the communicating candidate or another candidate  
23 who seeks election to the same office the communicating candidate is seeking.

24 (c)(1) In making a determination as to whether a communication is a  
25 coordinated communication, the Arkansas Ethics Commission shall consider the  
26 following without limitation:

27 (A) Whether the coordinated communication was paid for, in  
28 whole or in part, by a person other than the candidate or his or her agent,  
29 the candidate's authorized committee or its agent, or a political party or  
30 its agent;

31 (B) Whether the content of the coordinated communication  
32 is a public communication that republishes, disseminates, or distributes, in  
33 whole or in part, campaign materials prepared by a candidate or a candidate's  
34 campaign committee other than a photograph or other likeness of the candidate  
35 obtained from a publicly available source; and

36 (C) Whether the conduct of the coordinated communication

1 meets one (1) or more of the following standards:

2 (i) The coordinated communication was created,  
3 produced, or distributed at the request or suggestion of the candidate or his  
4 or her agent, the candidate's committee or its agent, or the political party  
5 or its agent;

6 (ii) The coordinated communication was created,  
7 produced, or distributed at the request or suggestion of the person paying  
8 for the communication, and the candidate or his or her agent, the candidate's  
9 committee or its agent, or the political party or its agent approves the  
10 request or suggestion;

11 (iii) The candidate or his or her agent, the  
12 candidate's committee or its agent, or the political party or its agent was  
13 materially involved in decisions regarding the content, intended audience,  
14 means or mode of the coordinated communication, specific media outlet used,  
15 timing, frequency, size, or prominence of the coordinated communication; or

16 (iv) The coordinated communication was created,  
17 produced, or distributed after one (1) or more substantial discussions about  
18 the communication between the person paying for the communication or the  
19 employees or agents of that person and:

20 (a) The candidate or his or her agent;

21 (b) The candidate's committee or its agent; or

22 (c) The political party or its agent.

23 (2) As used in this subsection, the "candidate" means the  
24 candidate who is positioned to benefit from the coordinated communication,  
25 whether the coordinated communication promotes that candidate or criticizes  
26 his or her opponent.

27 (d)(1) A person or an entity is an authorized agent of a candidate, a  
28 candidate's committee, or a political party under this section if the person  
29 or entity:

30 (A) Has actual authorization, either expressed or implied,  
31 from a specific principal to engage in specific activities; and

32 (B) Engages in the activities on behalf of that specific  
33 principal.

34 (2) If the activities carried out by an authorized agent would  
35 result in a coordinated communication if carried out directly by the  
36 candidate, authorized committee staff, or a political party official, the

1 activities of the authorized agent result in a coordinated communication.

2 (e) As used in this section:

3 (1)(A) "Political advertisement" means any campaign  
4 communication:

5 (i) That is in any form, including without  
6 limitation the following medias:

7 (a) Broadcast;

8 (b) Satellite;

9 (c) Cable;

10 (d) Electronic;

11 (e) Digital;

12 (f) Written;

13 (g) Print;

14 (h) Graphic; and

15 (i) Design;

16 (ii) That is publicly distributed;

17 (iii) Except as provided in subdivision (e)(1)(B) of  
18 this section, that the person or committee making the advertisement or  
19 communication pays money for the production or dissemination of the  
20 advertisement or communication;

21 (iv) That refers to a clearly identified candidate  
22 for public office;

23 (v) That is targeted to the relevant electorate for  
24 that candidate; and

25 (vi) For which the only reasonable interpretation of  
26 the advertisement or communication is that the advertisement or communication  
27 is an attempt to influence a vote for or against a specific candidate or  
28 specific set of candidates.

29 (B)(i) Payment of money under subdivision (e)(1)(A)(iii)  
30 of this section does not include:

31 (a) Utility payments for telephone or internet  
32 service made by the person or committee making the advertisement or  
33 communication; or

34 (b) The costs of producing copies of flyers,  
35 handbills, or other documents to be distributed by hand by one (1) or more  
36 volunteers.

1 (ii) Payment of money under subdivision  
2 (e)(1)(A)(iii) of this section includes without limitation money paid to a  
3 person in exchange for the distribution by hand of printed advertisement or  
4 printed communication such as door hangers or push cards.

5 (C) In making a determination under subdivision  
6 (e)(1)(A)(v) of this section, the Arkansas Ethics Commission shall consider:

7 (i) Whether the advertisement or communication  
8 offers preferential support for or criticism of a clearly identified  
9 candidate for office;

10 (ii) The proximity between the date of the  
11 advertisement or communication and the date of the election for the clearly  
12 identified candidate for office; and

13 (iii) Any other factor the commission deems relevant  
14 to its determination.

15 (D) "Political advertisement" does not include any  
16 communication that:

17 (i) Unless the facilities are owned or controlled by  
18 any political party, political committee, or candidate, appears in a news  
19 story, commentary, or editorial distributed through the facilities of any:

20 (a) Broadcast, cable, satellite radio, or  
21 television station; or

22 (b) Newspaper, magazine, print media, or  
23 internet media business;

24 (ii) Constitutes an independent expenditure that is  
25 reported as required under this subchapter;

26 (iii) Constitutes a candidate debate or forum  
27 conducted, or that solely promotes such a debate or forum and is made by or  
28 on behalf of the person sponsoring the debate or forum;

29 (iv) Is disseminated as a flyer, handbill, or other  
30 document distributed by hand by one (1) or more volunteers;

31 (v) Is disseminated by an organization to the  
32 organization's own membership or to persons who have requested to receive  
33 communications from the organization for the purpose of indicating candidates  
34 whom the organization supports in an upcoming election; or

35 (vi) Is disseminated by a person or committee on the  
36 official website or social media account maintained by the person or

1 committee making the advertisement or communication;

2 (2) "Refers to a clearly identified candidate" means that the  
3 candidate's name, nickname, photograph, or drawing appears, or the identity  
4 of the candidate is otherwise apparent through an unambiguous reference such  
5 as "the Governor", "your county judge", or "the incumbent", or through an  
6 unambiguous reference to his or her status as a candidate such as "the  
7 Republican nominee for Governor" or "the Democratic candidate for Secretary  
8 of State in the State of Arkansas"; and

9 (3) "Targeted to the relevant electorate" means:

10 (A) If the advertisement or communication is publicly  
11 distributed by a broadcast, cable, satellite radio, or television station or  
12 by a newspaper, magazine, or other print media, the advertisement or  
13 communication can be seen, heard, or read:

14 (i) By at least twenty-five thousand (25,000)  
15 viewers, listeners, or readers in the state, in the case of a candidate for  
16 statewide office;

17 (ii) By at least ten percent (10%) of a county,  
18 municipality, or district population, in the case of a candidate for a county  
19 office, municipal office, school district board of directors, or other  
20 district office that is not the Senate or the House of Representatives; or

21 (iii) By at least two thousand five hundred (2,500)  
22 viewers, listeners, or readers in the district, in the case of a candidate  
23 for the Senate or the House of Representatives;

24 (B) If the advertisement or communication is publicly  
25 distributed by direct mail, electronic mail, telephone, or by hand by a  
26 person who has been paid to distribute the advertisement or communication,  
27 the advertisement or communication is sent to or distributed to:

28 (i) At least two thousand five hundred (2,500)  
29 individuals in the state, in the case of a candidate for statewide office;

30 (ii) At least one percent (1%) of a county,  
31 municipality, or district population, in the case of a candidate for a county  
32 office, municipal office, school district board of directors, or other  
33 district office that is not the Senate or the House of Representatives; or

34 (iii) At least two hundred and fifty (250)  
35 individuals, in the case of a candidate for the Senate or the House of  
36 Representatives; or

1 (C) If the advertisement or communication is publicly  
2 distributed by internet website, the advertisement or communication is  
3 intended to be viewed by:

4 (i) At least two thousand five hundred (2,500)  
5 individuals in the state, in the case of a candidate for statewide office;

6 (ii) At least one percent (1%) of a county,  
7 municipality, or district population, in the case of a candidate for a county  
8 office, municipal office, school district board of directors, or other  
9 district office that is not the Senate or the House of Representatives; or

10 (iii) At least two hundred and fifty (250)  
11 individuals, in the case of a candidate for the Senate or the House of  
12 Representatives.

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14 /s/Tucker  
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