

MODEL BILL

AN ACT

RELATING TO THE POWERS OF ARTIFICIAL PERSONS

Section 1. Short title.

This act may be cited as the “Corporate Power Reset Act.”

Section 2. Findings and purpose.

The Legislature finds and declares that:

- (1) All political power is inherent in the people, and corporations and other artificial persons are creations of statute that exist only by virtue of powers affirmatively granted by the State.
- (2) The creation, continued existence, and enjoyment of charter privileges by an artificial person are not natural rights; they are conditional grants of legal status made by the State and accepted subject to the State’s reserved authority to define, limit, revise, or withdraw the powers and privileges it confers.
- (3) State law has historically included broad grants of powers to artificial persons, including powers described as necessary or convenient to lawful purposes, and these broad formulations have more recently been construed to include the legal capacity to engage in political spending, including both monetary expenditures and expenditures of other things of value, to support or oppose the outcome of a vote of the electorate.
- (4) Because the general grants of powers to artificial persons have been construed to include political spending power in a manner that does not reflect the will of the people, it is therefore necessary to enact this act to redefine those grants and make their contents explicit, so that the legal privileges conferred on artificial persons by the people through the State are not used to compromise the integrity of the people’s political process.
- (5) Every artificial person formed under the laws of this State, or authorized to transact business or hold property in this State, has accepted its legal status and any charter privileges subject to the continuing authority of the State to define the scope of its powers; an artificial person has not acquired a vested right to the continuation of a particular statutory grant of power; and this principle is well established in law.
- (6) The State does not grant political spending power to the artificial persons it charters. That absence is not a rule of place. It is an attribute of the artificial person, carried wherever the artificial person acts. And because artificial persons operating in this State may exercise only the powers that the State grants its own artificial persons, no artificial person, wherever organized, holds political spending power within this State. Nothing in this act defines, limits, or affects the powers an artificial person organized under another jurisdiction’s laws may exercise in the elections or ballot measures of another jurisdiction.
- (7) The purposes of this act are to:
 - (a) establish that state-conferred legal status and charter privileges are granted to an artificial person only on the condition that the artificial person operate within the powers granted by the State;

- (b) make explicit that political spending power is not among the powers granted to artificial persons, except as expressly provided in Section 4(f);
- (c) establish a single, uniform definition of the powers granted to artificial persons under this act;
- (d) provide clear and enforceable consequences for the exercise or purported exercise of political spending power not granted by the State; and
- (e) leave wholly undisturbed the constitutional rights of natural persons.

Section 3. Definitions.

As used in this act:

- (1) “Artificial person” means an entity or legal arrangement whose existence, legal status, or limited liability is conferred by the laws of this State, including an entity or legal arrangement organized or existing under the laws of another jurisdiction that is authorized to transact business, is otherwise transacting business, or holds property in this State. An entity or legal arrangement organized or existing under the laws of another jurisdiction that directly or indirectly undertakes, finances, or directs acts constituting an exercise or purported exercise of political spending power in this State is deemed to be transacting business in this State for purposes of jurisdiction and enforcement.
- (2) “Artificial-person powers” means the powers necessary or convenient for an artificial person to carry out lawful business, charitable, cooperative, or organizational purposes under the laws of this State, excluding political spending power. Political spending power may not be deemed necessary or convenient under any circumstances.
- (3) “Charter privileges” means any legal benefit that exists only because the State confers it on an artificial person, including limited liability, perpetual duration, succession in entity name, or any statutory limitation on personal liability.
- (4) “Political spending power.”
 - (a) “Political spending power” means the legal capacity to, directly or indirectly, pay, contribute, expend, transfer, or disburse money or anything of value to support or oppose:
 - (i) a candidate, political party, or political committee in any election; or
 - (ii) an initiative, referendum, recall, constitutional amendment, charter amendment, or other question that has been certified, approved, authorized, or otherwise made eligible for circulation for signature, or that has been qualified, certified, submitted, or otherwise presented to the electors of any jurisdiction.
 - (b) The term does not include the legal capacity to:
 - (i) gather, prepare, produce, publish, broadcast, host, disseminate, or distribute any news story, commentary, or editorial through the facilities of a broadcasting station or of any print, online, or digital newspaper, magazine, blog, or other periodical publication, unless the broadcasting, print, online, or digital facility is owned or controlled by a candidate, political committee, or political party;
 - (ii) determine whether to endorse a candidate or ballot measure;
 - (iii) use resources to communicate an endorsement to members, shareholders, employees, or officers, including through organizational members;

- (iv) use de minimis resources to communicate an endorsement to the general public, provided that, in the case of a candidate endorsement, the public communication of the endorsement is not coordinated with the candidate, the candidate's committee, or their agents;
- (v) communicate with members, shareholders, employees, or officers, including through organizational members, regarding a candidate, political party, political committee, or ballot measure, provided that the artificial person does not distribute, republish, promote, or otherwise make the communication available to the general public;
- (vi) use resources for the establishment, administration, or solicitation of contributions to a political committee, to the extent permitted under the campaign finance laws governing that political committee; or
- (vii) support or oppose a measure before the measure has been certified, approved, authorized, or otherwise made eligible for circulation for signature or, if circulation for signature is not required, before the measure is submitted to the electors.

Section 4. Powers of artificial persons.

- (a) The creation and continued existence of an artificial person is not a right but a conditional grant of legal status by the State and remains subject to complete withdrawal at any time.
- (b) On the effective date of this act, all powers granted by the laws of this State to artificial persons are revoked. Simultaneously, this State grants to artificial persons only artificial-person powers.
- (c) Nothing in subsection (b), solely by reason of the revocation and grant of powers under that subsection, may be construed to impair the continued existence, legal status, or charter privileges of an artificial person; to affect its ability to initiate, defend, or participate in legal proceedings; or to affect any license, permit, approval, registration, or authorization otherwise held by the artificial person.
- (d) Every artificial person formed under the laws of this State possesses only the artificial-person powers defined in Section 3(2) and possesses no legal capacity to exercise or purport to exercise political spending power except as provided in subsection (f). That absence of capacity is not confined to acts within this State; it is an attribute of the artificial person wherever the artificial person acts.
- (e) Within this State, no artificial person, wherever organized, may exercise or purport to exercise political spending power except as provided in subsection (f). As to political spending power, an artificial person organized under the laws of another jurisdiction has, within this State, no greater and no lesser powers than an artificial person formed under the laws of this State.
- (f) Notwithstanding any other provision of this act, political spending power may be exercised by a political committee registered with the appropriate campaign finance authority as a political committee and subject to the reporting requirements applicable to political committees under the campaign finance laws of this State or under federal campaign finance law, as provided by those laws.
- (g) Nothing in this act defines, limits, withdraws, or otherwise affects the capacity of an artificial person organized under the laws of another jurisdiction to exercise political

spending power directed at the elections or ballot measures of a jurisdiction other than this State. As to such an artificial person, this act governs only its powers and conduct within this State.

(h) The absence of political spending power is a condition of state-conferred legal status and charter privileges. An artificial person that exercises or purports to exercise political spending power it does not possess acts outside the powers it holds as a condition of that status.

Section 5. Applicability.

(a) This act applies to all artificial persons formed, organized, or existing under the laws of this State.

(b) This act applies to any artificial person organized under the laws of another jurisdiction that is authorized to transact business, is otherwise transacting business, or holds property in this State, with respect to its powers and conduct within this State.

(c) This act does not apply to:

- (1) natural persons acting solely in an individual capacity;
- (2) the State or any agency, authority, or political subdivision of the State; or
- (3) any public body corporate and politic of this State expressly identified as such by statute.

(d) This act does not restrict the lawful activities of a political committee described in Section 4(f).

Section 6. Ultra vires acts; voidness; nonratification.

(a) An act by an artificial person that exercises or purports to exercise political spending power in violation of Sections 4(d) or 4(e) is ultra vires and void.

(b) An act described in subsection (a):

- (1) is void from the beginning;
- (2) may not be ratified, validated, or given effect by consent, waiver, estoppel, reliance, course of dealing, or any other equitable doctrine; and
- (3) creates no enforceable rights, obligations, or defenses.

(c) The voidness of a purported exercise of political spending power under this section does not limit forfeiture, disgorgement, injunctive relief, revocation, or any other remedy authorized by this act.

Section 7. Forfeiture of charter privileges; reinstatement.

(a) An artificial person that exercises or purports to exercise political spending power in violation of Sections 4(d) or 4(e) forfeits all charter privileges conferred by the laws of this State as a matter of law.

(b) Charter privileges forfeited under this section include, without limitation, limited liability, perpetual duration, succession in entity name, and any statutory limitation on personal liability conferred by the laws of this State.

(c) An artificial person whose charter privileges are forfeited may be reinstated only pursuant to procedures administered by the State and only upon:

- (1) full disgorgement of all money or things of value expended, contributed, transferred, or disbursed in the exercise or purported exercise of political spending power; and
- (2) certification of future compliance with this act.

(d) For an artificial person organized or existing under the laws of another jurisdiction, forfeiture under this section reaches only authority, status, charter privileges, liability limitations, and other legal effects conferred by the laws of this State. This act does not alter the law of another jurisdiction or the formation, existence, or status of an artificial person under that law.

(e) For purposes of this section, “disgorgement” means payment to the State of the amount of money and the fair-market value of any thing of value, expended, contributed, transferred, or disbursed in the exercise or purported exercise of political spending power, as determined by the Secretary of State or a court of competent jurisdiction.

Section 8. Administration and enforcement.

(a) The Secretary of State shall administer this act and shall adopt rules to implement this act, including rules establishing procedures for the forfeiture and reinstatement of charter privileges, disgorgement, certification of compliance, and notice and opportunity to be heard consistent with due process; rules defining or further specifying the exclusions set forth in Section 3(4)(b); rules specifying when a measure is eligible for circulation for signature for purposes of Section 3(4); rules defining “de minimis”; rules specifying the circumstances under which a communication is distributed, republished, promoted, or otherwise made available to the general public; and rules specifying the persons who qualify as members for purposes of Sections 3(4)(b)(iii) and 3(4)(b)(v).

(b) The Attorney General has authority and responsibility to bring actions to enforce this act, including actions seeking declaratory relief, injunctive relief, disgorgement, confirmation of forfeiture of charter privileges, revocation of an artificial person’s charter or authority to transact business in this State, and confirmation or enforcement of forfeiture.

Section 9. Supersession and construction.

(a) The powers of an artificial person under the laws of this State are limited to artificial-person powers as defined in this act.

(b) No provision of this State’s corporation or entity statutes may be construed to grant political spending power to an artificial person except as provided in Section 4(f).

(c) Any grant of power, authority, or capacity to an artificial person that could otherwise be construed to include political spending power is superseded by this act and shall be given no effect.

Section 10. Savings.

(a) Nothing in this act invalidates, impairs, or modifies any contract, debt instrument, security, or other legal obligation lawfully entered into before the effective date of this act.

(b) Nothing in this act authorizes the exercise or purported exercise of political spending power on or after the effective date.

Section 11. Severability; nonrevival; inseverability.

(a) Except as provided in subsection (c), if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

(b) A power, privilege, or capacity withdrawn or not granted by this act may not be revived, reinstated, or implied by operation of law or judicial construction.

(c) No provision of this act, and no other provision of law, may be construed, severed, or applied to confer, recognize, revive, reinstate, or imply political spending power in an artificial person. If invalidation of any provision would otherwise result in an artificial person acquiring, retaining, reviving, or being deemed to possess political spending power, the grant, recognition, extension, or preservation of powers, privileges, or capacities to the affected class of artificial persons is inseverable from the invalid provision and has no force or effect. The Legislature would not have enacted a grant of artificial-person powers that includes political spending power. In any other case, subsection (a) governs and the remaining provisions of this act continue in full effect.

Section 12. Effective date.

This act shall take effect January 1, 20__.