

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 40

BY SENATORS ROMANO, OJEDA, BALDWIN, AND WOELFEL

[Introduced January 10, 2018; Referred
to the Committee on Government Organization; and then
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-8-2 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §3-8-8a, all relating to
3 requiring certain disclosures of election expenditures; clarifying when contributions are
4 required to be disclosed; creating exceptions; clarifying that certain federal entities must
5 make certain state disclosures; requiring disclosure of covered transfers; stating legislative
6 findings; defining terms; providing requirements for disclosure of donations related to the
7 transfer of certain sums of money related to campaign-related disbursements; requiring
8 certain disclosures be made within 48 hours; specifying information required in the
9 disclosures; clarifying the relationship between covered transfers and other regulated
10 areas of election expenditures; creating a misdemeanor offense; and authorizing
11 rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

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

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

10 (b) (1) In addition to any other reporting required by the provisions of this chapter, any
11 person who makes independent expenditures in an aggregate amount or value in excess of

12 \$1,000 during a calendar year shall file a disclosure statement, on a form prescribed by the
13 Secretary of State, that contains all of the following information:

14 (A) The name of:

15 (i) The person making the expenditure;

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

18 (iii) The name of the custodian of the books and accounts of the person making the
19 expenditure;

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

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

25 (D) The elections to which the independent expenditure pertains, the names, if known, of
26 the candidates referred to or to be referred to therein, whether the expenditure is intended to
27 support or oppose the identified candidates and the amount of the total expenditure reported
28 pursuant to paragraph (C) of this subdivision spent to support or oppose each of the identified
29 candidates;

30 (E) The name and address of any person who contributed a total of more than \$250 to the
31 entity making the expenditure between the first day of the preceding calendar year, and the
32 disclosure date: ~~and whose contributions were made for the purpose of furthering the expenditure~~
33 Provided, That any contribution placed into a separate segregated account that is not used for
34 campaign-related expenditures, any money received in the ordinary course of any trade or
35 business or any contribution that is explicitly made for a nonpolitical purpose is not required to be
36 reported.

37 (F) With regard to the contributors required to be listed pursuant to paragraph (E) of this

38 subdivision, the statement shall also include:

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

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

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

45 (iv) If the contributor is an entity other than a registered political action committee subject
46 to the requirements of this article or an individual, the information required by §11-15-8a(e) of this
47 code;

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

49 ~~(v)~~ (vi) The value in dollars and cents of the contribution.

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

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

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

61 (c) (1) A person, including a political committee, who makes or contracts to make
62 independent expenditures aggregating \$1,000 or more for any statewide, legislative or
63 multicounty judicial candidate or \$500 or more for any county office, single-county judicial

64 candidate, committee supporting or opposing a candidate on the ballot in more than one county,
65 or any municipal candidate on a municipal election ballot, after the fifteenth day, but more than
66 twelve hours, before the date of an election, shall file a report on a form prescribed by the
67 Secretary of State, describing the expenditures within twenty-four hours: *Provided*, That a person
68 making expenditures in the amount of \$1,000 or more for any statewide or legislative candidate
69 on or after the fifteenth day but more than twelve hours before the day of any election shall report
70 such expenditures in accordance with §11-15-2b of this code and shall not file an additional report
71 as provided herein.

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

78 (d) (1) A person, including a political committee, who makes or contracts to make
79 independent expenditures aggregating \$10,000 or more at any time up to and including the
80 fifteenth day before the date of an election shall file a report on a form prescribed by the Secretary
81 of State, describing the expenditures within forty-eight hours.

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

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

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

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

94 (f) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing,
95 producing or disseminating electioneering communications during any calendar year shall
96 maintain all financial records and receipts related to such expenditure for a period of six months
97 following the filing of a disclosure pursuant to subsection (a) of this section and, upon request,
98 shall make such records and receipts available to the Secretary of State or county clerk for the
99 purpose of an audit as provided in section seven of this article.

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

103 (h) (1) Any person who is required to file a statement under this section may file the
104 statement by facsimile device or electronic mail, in accordance with such rules as the Secretary
105 of State may promulgate.

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

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

113 (i) This section does not apply to candidates for federal office, but it does apply to any
114 federal political action committee that makes state level independent expenditures or engages in
115 state level electioneering communications.

116 (j) The Secretary of State may promulgate emergency and legislative rules, in accordance
117 with ~~the provisions of~~ §29A-1-1 *et seq.* of this code, to establish guidelines for the administration
118 of this section.

§3-8-8a. Disclosure requirements for covered transfers.

1 (a) The Legislature finds that:

2 (1) An informed public is critical for the government of this state to function successfully
3 as a true democracy;

4 (2) There has been a dramatic influx of “dark money” political advertising in recent election
5 cycles that make it difficult or sometimes impossible for the public to determine who is funding
6 campaign-related disbursements for or against certain candidates;

7 (3) The United States Supreme Court has found that campaign-related disbursements are
8 protected speech under the First Amendment and, therefore, states have a limited ability to restrict
9 campaign-related disbursements;

10 (4) The United States Supreme Court has found, on the other hand, that requiring
11 reasonable disclosures does not violate the First Amendment because the disclosure
12 requirements do not restrict the speech, but rather help inform the public about the speech;

13 (5) It is now common practice for the money used to fund campaign-related disbursements
14 to be transferred through multiple entities in an effort to sidestep state and federal campaign
15 finance disclosure laws, thereby creating the so-called dark money;

16 (6) The prevalence of dark money funding political advertising, combined with the increase
17 in dubious and misleading names for these organizations, serves to potentially mislead the voting
18 public by eliminating the public’s ability to know who funded the communication and, therefore,
19 who is exercising their First Amendment protected speech; and

20 (7) Requiring greater disclosures of covered transfers, as defined in this section, will serve
21 the state’s interest and the public’s interest in shining light on dark money and ensuring that the
22 voters of this state will know who pays for campaign-related disbursements made by these

23 currently unknown organizations.

24 (b) For the purposes of this section:

25 (1) "Affiliate" means two or more persons where:

26 (A) The governing instrument of one person is required to be bound by decisions of the
27 other person;

28 (B) The governing board of one person includes individuals who are specifically
29 designated representatives of the other person or are members of the governing board, officers
30 or paid executive staff members of the other person, or whose service on the governing board is
31 contingent upon the approval of the other person; or

32 (C) The person is chartered by the other person;

33 (2) "Campaign-related disbursement" means an independent expenditure consisting of a
34 public communication or an electioneering communication, as those terms are defined in this
35 article;

36 (3) "Covered transfer" means any transfer or payment of funds by a person to another
37 person if:

38 (A) The person making the transfer designates, requests or suggests that the amounts be
39 used for one or more campaign-related disbursements or for making a transfer to another person
40 for the purpose of making or paying for one or more campaign-related disbursements;

41 (B) The person made the transfer or payment in response to a solicitation or other request
42 for donation or payment for the making of or paying for one or more campaign-related
43 disbursements or for making a transfer to another person for the purpose of making or paying for
44 one or more campaign-related disbursements; or

45 (C) The person engaged in discussions with the recipient of the transfer or payment
46 regarding the making of or paying for campaign-related disbursements or donating or transferring
47 any amount of that transfer or payment to another person for the purpose of making or paying for
48 one or more campaign-related disbursements;

49 (4) "Covered transfer" does not include:

50 (A) A disbursement made by a person in the ordinary course of any trade or business or
51 in the form of investment; or

52 (B) A disbursement made by a person if the person prohibited, in writing, the use of that
53 disbursement for campaign-related disbursements and the recipient of the funds agreed to follow
54 the prohibition and deposited the disbursement in an account which is segregated from any
55 account used to make campaign-related disbursements; and

56 (5) "Person" means an individual, corporation, partnership, committee, association and
57 any other legal entity, organization or group of individuals, including, but not limited to, an
58 organization described in section 501(c) of the Internal Revenue Code of 1986 and any political
59 organization under section 527 of the Internal Revenue Code of 1986, other than a political
60 committee with an account established under this article that complies with the contribution limits
61 and source prohibitions of this article with respect to accounts established for that purpose.

62 (c) When a person receives a covered transfer of \$10,000 or more, the recipient shall
63 notify the contributor that the contributor must submit the information required in subsection (d) of
64 this section within forty-eight hours of the transfer: *Provided*, That if the contributor and the
65 recipient of the covered transfer are affiliates then this subsection only applies to transfers of
66 \$50,000 or more. The recipient of the covered transfer may not make a covered transfer of funds
67 or a campaign-related disbursement until it receives the information required by subsection (d) of
68 this section from the contributor. If the contributor of the covered transfer fails to send the
69 information required by subsection (d) of this section, then the recipient shall return the covered
70 transfer funds to the contributor or immediately transfer the funds into another account that is not
71 used to campaign-related expenditures in this state.

72 (d) All persons making covered transfers that meet the thresholds set forth in subsection
73 (c) of this section, shall submit within forty-eight hours of the covered transfer the following
74 information to the recipient:

75 (1) The name and address of any person who contributed a total of more than the
76 maximum contribution amount that an individual may make to a political candidate, as stated in
77 §11-15-12 of this code, to the person making the covered transfer within the previous twelve
78 months;

79 (2) The month, day, and year that the contributions of any single contributor exceeded the
80 maximum contribution amount that an individual may make to a political candidate, as stated in
81 §11-15-12 of this code;

82 (3) If the person is a political action committee, the name and address the political action
83 committee registered with the Secretary of State, county clerk or municipal clerk;

84 (4) If the person is an individual, the person's name, occupation, employer name, if any,
85 and if the individual is self-employed, the name of the individual's business and address of the
86 business; and

87 (5) A description of the contribution, if other than money, and the value in dollars and cents
88 of the contribution.

89 (e) If a person makes a campaign-related disbursement that is an independent
90 expenditure regulated by §11-15-2 of this code, then it shall disclose in the filing required by
91 §11-15-2 of this code, all of the information required by §11-15-2 of this code and all of the
92 information received pursuant to subsections (c) and (d) of this section from any covered transfer
93 received in the twenty-four months prior to the campaign-related disbursement. If a person makes
94 a campaign-related disbursement that is an electioneering communication regulated by
95 §11-15-2b of this code, then it shall disclose in the filing required by §11-15-2b of this code, all of
96 the information required by §11-15-2 of this code and all of the information received pursuant to
97 subsections (c) and (d) of this section from any covered transfer received in the twenty-four
98 months prior to the campaign-related disbursement.

99 (f) Any person who willfully fails to comply with this section is guilty of a misdemeanor and,
100 upon conviction thereof, shall be fined not less than \$1,000 and not more than \$100,000, or

- 101 confined in jail for not more than one year, or both fined and confined.
- 102 (g) The Secretary of State may promulgate emergency rules and propose legislative rules,
- 103 in accordance with §29A-1-1 et seq. this code, to implement the provisions of this section.

NOTE: The purpose of this bill is to require disclosure of dark money political expenditures to allow the public to know who is paying for political advertisements.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.