

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 115

BY SENATORS ROMANO AND BALDWIN

[Introduced January 9, 2019; Referred
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 §3-8-2(b)(1)(C) of this code 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 §3-8-2(b)(1)(E) of this

38 code, 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 §3-8-8a(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 15th day, but more than 12
66 hours, before the date of an election, shall file a report on a form prescribed by the Secretary of
67 State, describing the expenditures within 24 hours: *Provided*, That a person making expenditures
68 in the amount of \$1,000 or more for any statewide or legislative candidate on or after the 15th day
69 but more than 12 hours before the day of any election shall report such expenditures in
70 accordance with §11-15-2b of this code and shall not file an additional report as provided herein.

71 (2) Any person who files a report under §3-8-2(c)(1) of this code, shall file an additional
72 report within 24 hours after each time the person makes or contracts to make independent
73 expenditures aggregating an additional \$500 with respect to the same election, for any county
74 office, single-county judicial candidate, committee supporting or opposing a candidate on the
75 ballot in more than one county, or any municipal candidate on a municipal election ballot, as that
76 to which the initial report relates.

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

81 (2) A person who files a report under §3-8-2(d)(1) of this code, the person shall file an
82 additional report within 48 hours after each time the person makes or contracts to make
83 independent expenditures aggregating an additional \$10,000 with respect to the same election
84 as that to which the initial report relates.

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

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

89 (2) Clearly identifies the person making the expenditure: *Provided*, That if the

90 communication appears on or is disseminated by broadcast, cable or satellite transmission, the
91 statement required by this subsection must be both spoken clearly and appear in clearly readable
92 writing at the end of the communication.

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

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

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

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

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

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

115 (j) The Secretary of State may promulgate emergency and legislative rules, in accordance

116 with the provisions of §29A-1-1 *et seq.* of this code, to establish guidelines for the administration
117 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 “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 “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 “Covered transfer” means any transfer or payment of funds by a person to another person
37 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 “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 “Person” means an individual, corporation, partnership, committee, association and any
57 other legal entity, organization or group of individuals, including, but not limited to, an organization
58 described in Section 501(c) of the Internal Revenue Code of 1986 and any political organization
59 under Section 527 of the Internal Revenue Code of 1986, other than a political committee with an
60 account established under this article that complies with the contribution limits and source
61 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 §3-8-8a(d) of this
64 code within 48 hours of the transfer: *Provided*, That if the contributor and the recipient of the
65 covered transfer are affiliates then this subsection only applies to transfers of \$50,000 or more.
66 The recipient of the covered transfer may not make a covered transfer of funds or a campaign-
67 related disbursement until it receives the information required by §3-8-8a(d) of this code from the
68 contributor. If the contributor of the covered transfer fails to send the information required by §3-
69 8-8a(d) of this code, then the recipient shall return the covered transfer funds to the contributor or
70 immediately transfer the funds into another account that is not used to campaign-related
71 expenditures in this state.

72 (d) All persons making covered transfers that meet the thresholds set forth in §3-8-8a(c)
73 of this code, shall submit within 48 hours of the covered transfer the following information to the
74 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 §11-
91 15-2 of this code, all of the information required by §11-15-2 of this code and all of the information
92 received pursuant to §3-8-8a(c) and §3-8-8a(d) of this code from any covered transfer received
93 in the 24 months prior to the campaign-related disbursement. If a person makes a campaign-
94 related disbursement that is an electioneering communication regulated by §11-15-2b of this
95 code, then it shall disclose in the filing required by §11-15-2b of this code, all of the information
96 required by §11-15-2 of this code and all of the information received pursuant to §3-8-8a(c) and
97 §3-8-8a(d) of this code from any covered transfer received in the 24 months prior to the campaign-
98 related disbursement.

99 (f) Any person who willfully fails to comply with this section is guilty of a misdemeanor and,
100 upon conviction, shall be fined not less than \$1,000 and not more than \$100,000, or confined in
101 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.