

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2966

By Delegates Funkhouser, Linville, Marple, Hornby,

Flanigan, Ridenour, and Fluharty

[Introduced February 25, 2025; 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 the code by adding a new section, designated §3-8-8a, relating to requiring certain
3 disclosures of election expenditures; clarifying when contributions are required to be
4 disclosed; creating exceptions; clarifying that certain federal entities must make certain
5 state disclosures; requiring disclosure of covered transfers; stating legislative findings;
6 defining terms; providing requirements for disclosure of donations related to the transfer of
7 certain sums of money regarding campaign-related disbursements; requiring certain
8 disclosures be made within 48 hours; specifying information required in the disclosures;
9 clarifying the relationship between covered transfers and other regulated areas of election
10 expenditures; creating criminal penalties; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2. Requirements for reporting independent expenditures.

1 (a) In addition to any other reporting required by the provisions of this chapter, any person
2 who makes independent expenditures in an aggregate amount or value in excess of \$1,000 during
3 a calendar year shall file a disclosure statement, according to the requirements of §3-8-5 of this
4 code, that contains all of the following information:

- 5 (1) The name of the person making the expenditure;
- 6 (2) The name of any person sharing or exercising direction or control over the activities of
7 the person making the expenditure;
- 8 (3) The name of the custodian of the books and accounts of the person making the
9 expenditure;
- 10 (4) If the person making the expenditure is an entity, the principal place of business of the
11 partnership, corporation, committee, association, organization, or group which made the
12 expenditure;
- 13 (5) The amount of each independent expenditure during the period covered by the

14 statement and the name of the person to whom the expenditure was made;

15 (6) The elections to which the independent expenditure pertains, the names, if known, of
16 the candidates referred to or to be referred to therein, whether the expenditure is intended to
17 support or oppose the identified candidates, and the amount of the total expenditure reported
18 pursuant to subdivision (5) of this subsection spent to support or oppose each of the identified
19 candidates;

20 (7) The name and address of any person who contributed a total of more than \$1,000 to
21 the entity making the expenditure between the first day of the preceding calendar year, and the
22 disclosure date, ~~and whose contributions were made for the purpose of furthering the expenditure;~~
23 : Provided, That any contribution placed into a separate segregated account that is not used for
24 campaign-related expenditures, any money received in the ordinary course of any trade or
25 business, or any contribution that is explicitly made for a nonpolitical purpose is not required to be
26 reported;

27 (8) With regard to the contributors required to be listed pursuant to subdivision (7) of this
28 subsection the statement shall also include:

29 (A) The month, day, and year that the contributions of any single contributor exceeded
30 \$1,000;

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

33 (C) If the contributor is an individual, the name and address of the individual, his or her
34 occupation, the name and address of the individual's current employer, if any, or, if the individual is
35 self-employed, the name and address of the individual's business, if any;

36 (D) If the contributor is an entity other than a registered political action committee subject to
37 the requirements of this article or an individual, the information required by §3-8-8a(e) of this code;

38 ~~(D)~~(E) A description of the contribution, if other than money; and

39 ~~(E)~~(F) The value in dollars and cents of the contribution; and

40 (9) A certification that such independent expenditure was not made in cooperation,
41 consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized
42 committee or agent of such candidate.

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

47 (c) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-
48 by-candidate basis, all independent expenditures separately, made by, on behalf of, for, or against
49 each candidate, as reported under this subsection, and shall periodically publish such indices on a
50 timely pre-election basis.

51 (d)(1) Any person or political committee that makes or contracts to make independent
52 expenditures aggregating \$5,000 or more for any statewide, legislative, or multicounty judicial
53 candidate, or \$500 or more for any county office candidate, single-county judicial candidate,
54 committee supporting or opposing a candidate on the ballot in more than one county, or any
55 municipal candidate on a municipal election ballot, after the 15th day, but more than 12 hours
56 before the date of an election, shall file a report on a form prescribed by the Secretary of State
57 describing the expenditures within 24 hours: *Provided*, That a person making expenditures for any
58 statewide or legislative candidate on or after the 15th day, but more than 12 hours before the day
59 of any election meeting the criteria of this section, but which are subject to the disclosure
60 requirements of §3-8-2b of this code, shall report such expenditures in accordance with the
61 requirements of §3-8-2b of this code and may not file the report otherwise required by this
62 subsection.

63 (2) Any person who files a report under subdivision (1) of this subsection shall file an
64 additional report within 24 hours after each time the person makes or contracts to make
65 independent expenditures aggregating an additional \$5,000 or more for any statewide, legislative,

66 or multicounty judicial candidate, or \$500 with respect to the same election, for any county office,
67 single-county judicial candidate, committee supporting or opposing a candidate on the ballot in
68 more than one county, or any municipal candidate on a municipal election ballot, as that to which
69 the initial report relates.

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

74 (2) Any person who files a report under subdivision (1) of this subsection shall file an
75 additional report within 48 hours after each time the person makes or contracts to make
76 independent expenditures aggregating an additional \$10,000 with respect to the same election as
77 that to which the initial report relates.

78 (f) Any communication paid for by an independent expenditure must include a clear and
79 conspicuous public notice that:

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

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

86 (g) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing,
87 producing, or disseminating electioneering communications during any calendar year shall
88 maintain all financial records and receipts related to such expenditure for a period of five years
89 following the filing of a disclosure pursuant to §3-8-2b of this code and, upon request, shall make
90 such records and receipts available to the Secretary of State or county clerk for the purpose of an
91 audit as provided in §3-8-7 of this code.

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

95 (i)(1) Any person or political committee who is required to file a statement under this
96 section shall file the statement electronically in accordance with rules promulgated by the
97 Secretary of State.

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

101 (3) In promulgating a rule under this subsection, the secretary shall provide methods, other
102 than requiring a signature on the document being filed, for verifying the documents covered by the
103 rule. Any document verified by such methods shall be treated for all purposes, including penalties
104 for perjury, in the same manner as a document verified by signature.

105 (j) This section does not apply to candidates for federal office.

106 (k) The Secretary of State may propose emergency and legislative rules for legislative
107 approval in accordance with §29A-3-1 *et seq.* of this code. However, this section does apply to any
108 federal political action committee that makes state level independent expenditures or engages in
109 state level electioneering communications.

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

1 (a) This section may be known as the "Smear Merchant Transparency and Accountability
2 Act".

3 (b) The Legislature finds that:

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

6 (2) There has been a dramatic influx of "dark money" political advertising in recent election
7 cycles that make it difficult or sometimes impossible for the public to determine who is funding

8 campaign-related disbursements for or against certain candidates;

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

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

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

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

22 (7) Requiring greater disclosures of covered transfers, as defined in this section, will serve
23 the state's interest and the public's interest in shining light on dark money and ensuring that the
24 voters of this state will know who pays for campaign-related disbursements made by these
25 currently unknown organizations.

26 (c) For the purposes of this section:

27 "Affiliate" means two or more persons where:

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

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

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

35 "Campaign-related disbursement" means an independent expenditure consisting of a
36 public communication or an electioneering communication, as those terms are defined in this
37 article;

38 "Covered transfer" means any transfer or payment of funds by a person to another person
39 if:

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

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

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

51 "Covered transfer" does not include:

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

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

58 "Person" means an individual, corporation, partnership, committee, association and any
59 other legal entity, organization or group of individuals, including, but not limited to, an organization

60 described in Section 501(c) of the Internal Revenue Code of 1986, and any political organization
61 under Section 527 of the Internal Revenue Code of 1986, other than a political committee with an
62 account established under this article that complies with the contribution limits and source
63 prohibitions of this article with respect to accounts established for that purpose.

64 (d) When a person receives a covered transfer of \$10,000 or more, the recipient shall notify
65 the contributor that the contributor must submit the information required in §3-8-8a(d) of this code
66 within 48 hours of the transfer: *Provided*, That if the contributor and the recipient of the covered
67 transfer are affiliates then this subsection only applies to transfers of \$50,000 or more. The
68 recipient of the covered transfer may not make a covered transfer of funds or a campaign-related
69 disbursement until it receives the information required by §3-8-8a(d) of this code from the
70 contributor. If the contributor of the covered transfer fails to send the information required by §3-8-
71 8a(d) of this code, then the recipient shall return the covered transfer funds to the contributor or
72 immediately transfer the funds into another account that is not used to campaign-related
73 expenditures in this state.

74 (e) All persons making covered transfers that meet the thresholds set forth in §3-8-8a(c) of
75 this code, shall submit within 48 hours of the covered transfer the following information to the
76 recipient:

77 (1) The name and address of any person who contributed a total of more than the
78 maximum contribution amount that an individual may make to a political candidate, as stated in
79 §11-15-12 of this code, to the person making the covered transfer within the previous 12 months;

80 (2) The month, day, and year that the contributions of any single contributor exceeded the
81 maximum contribution amount that an individual may make to a political candidate, as stated in
82 §11-15-12 of this code;

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

85 (4) If the person is an individual, the person's name, occupation, employer name, if any,

86 and if the individual is self-employed, the name of the individual's business and address of the
87 business; and

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

90 (f) If a person makes a campaign-related disbursement that is an independent expenditure
91 regulated by §11-15-2 of this code, then it shall disclose in the filing required by §11-15-2 of this
92 code, all of the information required by §11-15-2 of this code and all of the information received
93 pursuant to §3-8-8a(c) and §3-8-8a(d) of this code from any covered transfer received in the 24
94 months prior to the campaign-related disbursement. If a person makes a campaign-related
95 disbursement that is an electioneering communication regulated by §11-15-2 of this code, then it
96 shall disclose in the filing required by §11-15-2 of this code, all of the information required by §11-
97 15-2 of this code and all of the information received pursuant to §3-8-8a(c), and §3-8-8a(d) of this
98 code from any covered transfer received in the 24 months prior to the campaign-related
99 disbursement.

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

103 (g) (h) The Secretary of State may promulgate emergency rules and propose legislative
104 rules, in accordance with §29A-1-1 *et seq.* of 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.