

H. B. 2393

(By Delegates Doyle, T. Campbell, Wells,
Manchin, Longstreth, Michael
and Overington)

[Introduced January 12, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §3-8-2 of the Code of West Virginia,
1931, as amended, relating to elections; and providing that
parties advocating passage or defeat of a public question by
referendum vote are subject to reporting requirements of
article eight, chapter three of said code.

Be it enacted by the Legislature of West Virginia:

That §3-8-2 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

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

(a) Except for: (1) Candidates for party committeeman and
committeewoman; and (2) federal committees required to file under
the provisions of 2 U.S.C. §434, all candidates for nomination or
election and all persons supporting, aiding or opposing the
nomination, election or defeat of any candidate shall keep for a

1 period of six months records of receipts and expenditures which are
2 made for political purposes. All of the receipts and expenditures
3 are subject to regulation by the provisions of this article.
4 Verified financial statements of the records and expenditures shall
5 be made and filed as public records by all candidates and by their
6 financial agents, representatives or any person acting for and on
7 behalf of any candidate and by the treasurers of all political
8 party committees.

9 (b) (1) In addition to any other reporting required by the
10 provisions of this chapter, any person who makes independent
11 expenditures in an aggregate amount or value in excess of \$1,000
12 during a calendar year shall file a disclosure statement, on a form
13 prescribed by the Secretary of State, that contains all of the
14 following information:

15 (A) The name of (i) The person making the expenditure; (ii)
16 the name of any person sharing or exercising direction or control
17 over the activities of the person making the expenditure; and (iii)
18 the name of the custodian of the books and accounts of the person
19 making the expenditure;

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

24 (C) The amount of each expenditure of more than \$1,000 made

1 during the period covered by the statement and the name of the
2 person to whom the expenditure was made;

3 (D) The elections to which the independent expenditure
4 pertain, the names, if known, of the candidates referred to or to
5 be referred to therein, whether the expenditure is intended to
6 support or oppose the identified candidates and the amount of the
7 total expenditure reported pursuant to paragraph (C) of this
8 subdivision spent to support or oppose each of the identified
9 candidates;

10 (E) The name and address of any person who contributed a total
11 of more than \$250 between the first day of the preceding calendar
12 year, and the disclosure date, and whose contributions were made
13 for the purpose of furthering the expenditure.

14 (F) With regard to the contributors required to be listed
15 pursuant to paragraph (E) of this subdivision, the statement shall
16 also include:

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

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

22 (iii) If the contributor is an individual, the name and
23 address of the individual, his or her occupation, the name and
24 address of the individual's current employer, if any, or, if the

1 individual is self-employed, the name and address of the
2 individual's business, if any;

3 (iv) A description of the contribution, if other than money;
4 and

5 (v) The value in dollars and cents of the contribution.

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

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

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

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

1 judicial candidate, committee supporting or opposing a candidate on
2 the ballot in more than one county, or any municipal candidate on
3 a municipal election ballot, after the fifteenth day, but more than
4 twelve hours, before the date of an election, shall file a report
5 on a form prescribed by the Secretary of State, describing the
6 expenditures within twenty-four hours: *Provided*, That a person
7 making expenditures in the amount of \$1,000 or more for any
8 statewide or legislative candidate on or after the fifteenth day
9 but more than twelve hours before the day of any election shall
10 report such expenditures in accordance with section two-b of this
11 article and shall not file an additional report as provided herein.

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

21 (d) (1) A person, including a political committee, who makes
22 or contracts to make independent expenditures aggregating \$10,000
23 or more at any time up to and including the fifteenth day before
24 the date of an election shall file a report on a form prescribed by

1 the Secretary of State, describing the expenditures within forty-
2 eight hours.

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

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

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

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

18 (f) Any person who has spent a total of \$5,000 or more for the
19 direct costs of purchasing, producing or disseminating
20 electioneering communications during any calendar year shall
21 maintain all financial records and receipts related to such
22 expenditure for a period of six months following the filing of a
23 disclosure pursuant to subsection (a) of this section and, upon
24 request, shall make such records and receipts available to the

1 Secretary of State or county clerk for the purpose of an audit as
2 provided in section seven of this article.

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

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

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

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

21 (i) This section does not apply to candidates for federal
22 office.

23 (j) In addition to any other reporting required by the
24 provisions of this chapter, all parties advocating passage or

1 defeat of a public question by referendum vote are subject to the
2 same reporting requirements as candidates for office under the
3 provisions this article.

4 (k) The Secretary of State may promulgate emergency and
5 legislative rules, in accordance with the provisions of chapter
6 twenty-nine-a of this code, to establish guidelines for the
7 administration of this section.

NOTE: The purpose of this bill is to provide that parties advocating passage or defeat of a public question by referendum vote are subject to reporting requirements of article eight, chapter three of the code.

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