

Senate Bill No. 445

(By Senators Green, Jenkins and K. Facemire)

[Introduced January 27, 2012; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §3-8-2 of the Code of West Virginia,
1931, as amended, relating to regulation and control of
elections; and prohibiting fundraising by members of the
Legislature during the sixty-day period of the regular
session.

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;
when fund raising prohibited by members of Legislature.**

(a) Except for: (1) Candidates for party committeeman and
committeewoman; and (2) federal committees required to file under

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

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

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

23 (B) If the person making the expenditure is not an individual,
24 the principal place of business of the partnership, corporation,

1 committee, association, organization or group which made the
2 expenditure;

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

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

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

17 (F) With regard to the contributors required to be listed
18 pursuant to paragraph (E) of this subdivision, the statement shall
19 also include:

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

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

1 (iii) If the contributor is an individual, the name and
2 address of the individual, his or her occupation, the name and
3 address of the individual's current employer, if any, or, if the
4 individual is self-employed, the name and address of the
5 individual's business, if any;

6 (iv) A description of the contribution, if other than money;
7 and

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

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

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

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

24 (c) (1) A person, including a political committee, who makes

1 or contracts to make independent expenditures aggregating \$1,000 or
2 more for any statewide, legislative or multicounty judicial
3 candidate or \$500 or more for any county office, single-county
4 judicial candidate, committee supporting or opposing a candidate on
5 the ballot in more than one county, or any municipal candidate on
6 a municipal election ballot, after the fifteenth day, but more than
7 twelve hours, before the date of an election, shall file a report
8 on a form prescribed by the Secretary of State, describing the
9 expenditures within twenty-four hours: *Provided*, That a person
10 making expenditures in the amount of \$1,000 or more for any
11 statewide or legislative candidate on or after the fifteenth day
12 but more than twelve hours before the day of any election shall
13 report such expenditures in accordance with section two-b of this
14 article and shall not file an additional report as provided herein.

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

24 (d) (1) A person, including a political committee, who makes

1 or contracts to make independent expenditures aggregating \$10,000
2 or more at any time up to and including the fifteenth day before
3 the date of an election shall file a report on a form prescribed by
4 the Secretary of State, describing the expenditures within forty-
5 eight hours.

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

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

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

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

21 (f) Any person who has spent a total of \$5,000 or more for the
22 direct costs of purchasing, producing or disseminating
23 electioneering communications during any calendar year shall
24 maintain all financial records and receipts related to such

1 expenditure for a period of six months following the filing of a
2 disclosure pursuant to subsection (a) of this section and, upon
3 request, shall make such records and receipts available to the
4 Secretary of State or county clerk for the purpose of an audit as
5 provided in section seven of this article.

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

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

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

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

24 (i) This section does not apply to candidates for federal

1 office.

2 (j) Notwithstanding any provision of this article or any other
3 provision of law to the contrary, members of the Legislature may
4 not participate in any fund raising effort during the sixty days of
5 the regular session of the Legislature.

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

NOTE: The purpose of this bill is to prohibit fund raising by members of the Legislature during the sixty-day period of the regular session of the Legislature.

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