

1 **H. B. 3032**

2
3 (By Delegates Skinner, Lawrence, Poore, Stowers,
4 Miley, Manchin, Hunt, Sponaugle, Lynch,
5 Reynolds and Fleischauer)
6

7 [Introduced March 21, 2013; referred to the
8 Committee on the Judiciary then Finance.]
9

10 A BILL to amend and reenact §3-8-1, §3-8-1a, §3-8-2 and §3-8-2b of
11 the Code of West Virginia, 1931, as amended; and to amend said
12 code by adding thereto a new section, designated §3-8-2d, all
13 relating to the regulation and control of elections; providing
14 certain legislative findings; amending definitions; amending
15 reporting requirements for independent expenditures; providing
16 for electronic filing of reports of independent expenditures;
17 and providing for disclosure of certain transfers of things of
18 value; authorizing the Secretary of State to promulgate rules
19 relating to reports of independent expenditures; retaining
20 prohibition on corporate contribution; and repealing the ban
21 on corporate independent expenditures.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §3-8-1, §3-8-1a, §3-8-2 and §3-8-2b of the Code of West
24 Virginia, 1931, as amended, be amended and reenacted; and that said
25 code be amended by adding thereto a new section, designated §3-8-
26 2d, all to read as follows:

1 **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

2 **§3-8-1. Provisions to regulate and control elections.**

3 (a) The Legislature finds that:

4 (1) According to the United States Census Bureau, West
5 Virginia's population as of 2012 is 1,808,344 was approximately
6 1,855,412, ranking 37th 38th among the fifty states.

7 (2) State Senate districts have a population of approximately
8 ~~one hundred six thousand three hundred seventy-three~~ 109,142, and
9 the average Delegate district has a population of approximately
10 ~~thirty-one thousand, one hundred seventy-eight~~ 27,693. The size of
11 these districts is substantially smaller than the United States
12 Senatorial and Congressional Districts.

13 (3) When the relatively small size of the state's legislative
14 and other voting districts is combined with the economics and
15 typical uses of various forms of electioneering communication,
16 history shows that nonbroadcast media is and will continue to be a
17 widely used means of making campaign related communications to
18 target relevant audiences. Consequently, nonbroadcast
19 communications are prevalent during elections.

20 (4) Disclosure provisions are appropriate legislative weapons
21 against the reality or appearance of improper influence stemming
22 from the dependence of candidates on large campaign contributions,
23 and the ceilings imposed accordingly serve the basic governmental
24 interest in safeguarding the integrity of the electoral process

1 without directly impinging upon the rights of individual citizens
2 and candidates to engage in political debate and discussion.

3 (5) Disclosure of expenditures serve a substantial
4 governmental interest in informing the electorate and preventing
5 the corruption of the political process.

6 (6) Disclosure by persons and entities that make expenditures
7 for communications that expressly advocate the election or defeat
8 of clearly identified candidates, or perform its functional
9 equivalent, is a reasonable and minimally restrictive method of
10 furthering First Amendment values by public exposure of the state
11 election system.

12 (7) Failing to regulate nonbroadcast media messages would
13 permit those desiring to influence elections to avoid the
14 principles and policies that are embodied in existing state law.

15 (8) The regulation of the various types of nonbroadcast media
16 in addition to broadcast media, is tailored to meet the
17 circumstances found in the State of West Virginia.

18 (9) Nonbroadcast media such as mass mailings, telephone banks,
19 leaflets, pamphlets, flyers, outdoor advertising, or publications
20 in newspapers, magazines and other periodicals, newspapers,
21 magazines or other periodicals have proven to be effective means of
22 election communication in West Virginia. Broadcast, satellite and
23 nonbroadcast media have all been used to influence election
24 outcomes.

1 (10) Certain nonbroadcast communications, such as newspaper
2 inserts, can be more effective campaign methods than broadcast
3 media because such communications can be targeted to registered
4 voters or historical voters in the particular district. In
5 contrast, broadcasted messages reach all of the general public,
6 including person ineligible to vote in the district.

7 (11) Nonbroadcast media communications in the final days of a
8 campaign can be particularly damaging to the public's confidence in
9 the election process because they reduce or make impossible an
10 effective response.

11 (12) Identifying those funding nonbroadcast media campaigns in
12 the final days of a campaign may at least permit voters to evaluate
13 the credibility of the message.

14 (13) In West Virginia, contributions up to the amounts
15 specified in this article allow contributors to express their
16 opinions, level of support and their affiliations.

17 (14) In West Virginia, campaign expenditures by entities and
18 persons who are not candidates have been increasing. Public
19 confidence is eroded when substantial amounts of such money, the
20 source of which is hidden or disguised, is expended. This is
21 particularly true during the final days of a campaign.

22 (15) In West Virginia, contributions to political
23 organizations, defined in Section 527(e) (1) of the Internal Revenue
24 Code of 1986, substantially larger than the amounts permitted to be

1 received by a candidate's political committee have been recorded
2 and are considered by the Legislature to be large contributions.

3 (16) Independent expenditures intended to influence
4 candidates' campaigns in the state are increasingly utilizing
5 nonbroadcast media to support or defeat candidates.

6 (17) Identification of persons or entities funding political
7 advertisements assists in enforcement of the contribution and
8 expenditure limitations established by this article and simply
9 informs voters of the actual identities of persons or entities
10 advocating the election or defeat of candidates.

11 (18) Identification of persons or entities funding political
12 advertisements allows voters to evaluate the credibility of the
13 message contained in the advertisement.

14 (19) Disclosure of the identity of persons or entities funding
15 political communications regarding candidates bolsters the right of
16 listeners to be fully informed.

17 (b) Political campaign contributions, receipts and
18 expenditures of money, advertising, influence and control of
19 employees, and other economic, political and social control factors
20 incident to primary, special and general elections shall be
21 regulated and controlled by the provisions of this article and
22 other applicable provisions of this chapter.

23 **§3-8-1a. Definitions.**

1 As used in this article, the following terms have the
2 following definitions:

3 (1) "Ballot issue" means a constitutional amendment, special
4 levy, bond issue, local option referendum, municipal charter or
5 revision, an increase or decrease of corporate limits or any other
6 question that is placed before the voters for a binding decision.

7 (2) "Broadcast, cable or satellite communication" means a
8 communication that is publicly distributed by a television station,
9 radio station, cable television system or satellite system.

10 (3) "Candidate" means an individual who:

11 (A) Has filed a certificate of announcement under section
12 seven, article five of this chapter or a municipal charter;

13 (B) Has filed a declaration of candidacy under section twenty-
14 three, article five of this chapter;

15 (C) Has been named to fill a vacancy on a ballot; or

16 (D) Has declared a write-in candidacy or otherwise publicly
17 declared his or her intention to seek nomination or election for
18 any state, district, county or municipal office or party office to
19 be filled at any primary, general or special election.

20 (4) "Candidate's committee" means a political committee
21 established with the approval of or in cooperation with a candidate
22 or a prospective candidate to explore the possibilities of seeking
23 a particular office or to support or aid his or her nomination or

1 election to an office in an election cycle. If a candidate directs
2 or influences the activities of more than one active committee in
3 a current campaign, those committees shall be considered one
4 committee for the purpose of contribution limits.

5 (5) "Clearly identified" means that the name, nickname,
6 photograph, drawing or other depiction of the candidate appears or
7 the identity of the candidate is otherwise apparent through an
8 unambiguous reference, such as "the Governor," "your Senator" or
9 "the incumbent" or through an unambiguous reference to his or her
10 status as a candidate, such as "the Democratic candidate for
11 Governor" or "the Republican candidate for Supreme Court of
12 Appeals."

13 (6) "Contribution" means a gift, subscription, loan,
14 assessment, payment for services, dues, advance, donation, pledge,
15 contract, agreement, forbearance or promise of money or other
16 tangible thing of value, whether conditional or legally
17 enforceable, or a transfer of money or other tangible thing of
18 value to a person, made for the purpose of influencing the
19 nomination, election or defeat of a candidate. An offer or tender
20 of a contribution is not a contribution if expressly and
21 unconditionally rejected or returned. A contribution does not
22 include volunteer personal services provided without compensation:
23 *Provided*, That a nonmonetary contribution is to be considered at

1 fair market value for reporting requirements and contribution
2 limitations.

3 (7) "Corporate political action committee" means a political
4 action committee that is a separate segregated fund of a
5 corporation that may only accept contributions from its restricted
6 group as outlined by the rules of the State Election Commission.

7 (8) "Covered transfer" means any transfer or payment of funds
8 by a person, other than an individual, to another person if the
9 person making the transfer or payment:

10 (A) Designates, requests, or suggests that the amounts be used
11 for;

12 (i) Independent expenditures or electioneering communications;
13 or

14 (ii) Making a transfer to another person for the purpose of
15 making or paying for an independent expenditure or an
16 electioneering communication;

17 (B) Made such transfer or payment in response to a
18 solicitation or other request for a donation or payment for;

19 (i) The making of or paying for an independent expenditure or
20 electioneering communication; or

21 (ii) Making a transfer to another person for the purpose of
22 making or paying for such independent expenditure or electioneering
23 communication;

1 (C) Engaged in discussions with the recipient of the transfer
2 or payment regarding.

3 (i) The making of or paying for an independent expenditure or
4 electioneering communication; or

5 (ii) Donating or transferring any amount of such transfer or
6 payment to another person for the purpose of making or paying for
7 such independent expenditure or electioneering communication;

8 (D) Made independent expenditures or electioneering
9 communications in an aggregate amount of \$50,000 or more during the
10 two year period ending on the date of the transfer or payment, or
11 knew or had reason to know that the person receiving the transfer
12 or payment made such disbursements in such an aggregate amount
13 during that two year period; or

14 (E) Knew or had reason to know that the person receiving the
15 transfer or payment would make independent expenditures or
16 electioneering communications in an aggregate amount of \$50,000 or
17 more during the two year period beginning on the date of the
18 transfer or payment.

19 (9) "Covered Transfer EXCLUSIONS.-The term 'covered transfer'
20 does not include any of the following:

21 (A) A disbursement made by a person in the ordinary course of
22 any trade or business conducted by the person or in the form of
23 investments made by the person.

1 (B) A disbursement made by a person if-

2 (i) The person prohibited, in writing, the use of such
3 disbursement for independent expenditures, electioneering
4 communications, and covered transfers; and

5 (ii) The recipient of the disbursement agreed to follow the
6 prohibition and deposited the disbursement in an account which is
7 segregated from any account used to make independent expenditures,
8 electioneering communications, or covered transfers.

9 (10) "Covered Transfer" EXCEPTION FOR CERTAIN TRANSFERS AMONG
10 AFFILIATES-

11 (A) EXCEPTION FOR CERTAIN TRANSFERS AMONG AFFILIATES.-The term
12 "covered transfer" does not include an amount transferred by one
13 person to another person which is treated as a transfer between
14 affiliates under subparagraph (B) if the aggregate amount
15 transferred during the year by such person to that same person is
16 equal to or less than \$50,000.

17 (B) DESCRIPTION OF TRANSFERS BETWEEN AFFILIATES- A transfer of
18 amounts from one person to another person shall be treated as a
19 transfer between affiliates if;

20 (i) One of the persons is an affiliate of the other person; or

21 (ii) Each of the persons is an affiliate of the same person;
22 except that the transfer shall not be treated as a transfer between
23 affiliates if one of the persons is established for the purpose of

1 making independent expenditures or electioneering communications.

2 (C) DETERMINATION OF AFFILIATE STATUS- For purposes of
3 subparagraph (B), a person is an affiliate of another person if:

4 (i) The governing instrument of the person requires it to be
5 bound by decisions of the other person;

6 (ii) The governing board of the person includes persons who
7 are specifically designated representatives of the other person or
8 are members of the governing board, officers, or paid executive
9 staff members of the other person, or whose service on the
10 governing board is contingent upon the approval of the other
11 person; or

12 (iii) The person is chartered by the other person.

13 ~~(8)~~ (11) "Direct costs of purchasing, producing or
14 disseminating electioneering communications" means:

15 (A) Costs charged by a vendor, including, but not limited to,
16 studio rental time, compensation of staff and employees, costs of
17 video or audio recording media and talent, material and printing
18 costs and postage; or

19 (B) The cost of air time on broadcast, cable or satellite
20 radio and television stations, the costs of disseminating printed
21 materials, studio time, use of facilities and the charges for a
22 broker to purchase air time.

23 ~~(9)~~ (12) "Disclosure date" means either of the following:

1 (A) The first date during any calendar year on which any
2 electioneering communication is disseminated after the person
3 paying for the communication has spent a total of \$5,000 or more
4 for the direct costs of purchasing, producing or disseminating
5 electioneering communications; or

6 (B) Any other date during that calendar year after any
7 previous disclosure date on which the person has made additional
8 expenditures totaling \$5,000 or more for the direct costs of
9 purchasing, producing or disseminating electioneering
10 communications.

11 ~~(10)~~ (13) "Election" means any primary, general or special
12 election conducted under the provisions of this code or under the
13 charter of any municipality at which the voters nominate or elect
14 candidates for public office. For purposes of this article, each
15 primary, general, special or local election constitutes a separate
16 election. This definition is not intended to modify or abrogate
17 the definition of the term "nomination" as used in this article.

18 ~~(11)~~ (14) (A) "Electioneering communication" means ~~any paid~~
19 ~~communication made by broadcast, cable or satellite signal, or~~
20 ~~published in any newspaper, magazine or other periodical that~~ any
21 paid communication made by broadcast, cable or satellite signal,
22 mass mailing, telephone bank, leaflet, pamphlet, flyer or outdoor
23 advertising or published in any newspaper, magazine or other

1 periodical that:

2 (i) Refers to a clearly identified candidate for Governor,
3 Secretary of State, Attorney General, Treasurer, Auditor,
4 Commissioner of Agriculture, Supreme Court of Appeals or the
5 Legislature;

6 (ii) Is publicly disseminated within:

7 (I) ~~Thirty~~ Sixty days before a primary election at which the
8 nomination for office sought by the candidate is to be determined;
9 or

10 (II) ~~Sixty~~ Ninety days before a general or special election at
11 which the office sought by the candidate is to be filled; and

12 (iii) Is targeted to the relevant electorate: *Provided, That*
13 for purposes of the general election of 2008 the amendments to this
14 article are effective October 1, 2008.

15 (B) "Electioneering communication" does not include:

16 (i) A news story, commentary or editorial disseminated through
17 the facilities of any broadcast, cable or satellite television or
18 radio station, newspaper, magazine or other periodical publication
19 not owned or controlled by a political party, political committee
20 or candidate: *Provided, That* a news story disseminated through a
21 medium owned or controlled by a political party, political
22 committee or candidate is nevertheless exempt if the news is:

23 (I) A bona fide news account communicated in a publication of

1 general circulation or through a licensed broadcasting facility;
2 and

3 (II) Is part of a general pattern of campaign-related news
4 that gives reasonably equal coverage to all opposing candidates in
5 the circulation, viewing or listening area;

6 (ii) Activity by a candidate committee, party executive
7 committee or caucus committee, or a political action committee that
8 is required to be reported to the State Election Commission or the
9 Secretary of State as an expenditure pursuant to section five of
10 this article or the rules of the State Election Commission or the
11 Secretary of State promulgated pursuant to such provision:
12 *Provided*, That independent expenditures by a party executive
13 committee or caucus committee or a political action committee
14 required to be reported pursuant to subsection (b), section two of
15 this article are not exempt from the reporting requirements of this
16 section;

17 (iii) A candidate debate or forum conducted pursuant to rules
18 adopted by the State Election Commission or the Secretary of State
19 or a communication promoting that debate or forum made by or on
20 behalf of its sponsor;

21 ~~(iv) A communication paid for by any organization operating~~
22 ~~under Section 501(c)(3) of the Internal Revenue Code of 1986;~~

23 ~~(v)~~ A communication made while the Legislature is in session

1 which, incidental to promoting or opposing a specific piece of
2 legislation pending before the Legislature, urges the audience to
3 communicate with a member or members of the Legislature concerning
4 that piece of legislation;

5 ~~(vi)~~ (v) A statement or depiction by a membership organization,
6 in existence prior to the date on which the individual named or
7 depicted became a candidate, made in a newsletter or other
8 communication distributed only to bona fide members of that
9 organization;

10 ~~(vii)~~ (vi) A communication made solely for the purpose of
11 attracting public attention to a product or service offered for
12 sale by a candidate or by a business owned or operated by a
13 candidate which does not mention an election, the office sought by
14 the candidate or his or her status as a candidate; or

15 ~~(viii)~~ (vii) A communication, such as a voter's guide, which
16 refers to all of the candidates for one or more offices, which
17 contains no appearance of endorsement for or opposition to the
18 nomination or election of any candidate and which is intended as
19 nonpartisan public education focused on issues and voting history.

20 ~~(12)~~ (15) "Expressly advocating" means any communication that:

21 (A) Uses phrases such as "vote for the Governor," "reelect
22 your Senator," "support the Democratic nominee for Supreme Court,"
23 "cast your ballot for the Republican challenger for House of

1 Delegates," "Smith for House," "Bob Smith in '04," "vote Pro-Life"
2 or "vote Pro-Choice" accompanied by a listing of clearly identified
3 candidates described as Pro-Life or Pro-Choice, "vote against Old
4 Hickory," "defeat" accompanied by a picture of one or more
5 candidates, "reject the incumbent";

6 (B) Communications of campaign slogans or individual words,
7 that can have no other reasonable meaning than to urge the election
8 or defeat of one or more clearly identified candidates, such as
9 posters, bumper stickers, advertisements, etc., which say "Smith's
10 the One," "Jones '06," "Baker", etc; or

11 (C) Is susceptible of no reasonable interpretation other than
12 as an appeal to vote for or against a specific candidate.

13 ~~(13)~~(16) "Financial agent" means any individual acting for and
14 by himself or herself, or any two or more individuals acting
15 together or cooperating in a financial way to aid or take part in
16 the nomination or election of any candidate for public office, or
17 to aid or promote the success or defeat of any political party at
18 any election.

19 ~~(14)~~(17) "Fund-raising event" means an event such as a dinner,
20 reception, testimonial, cocktail party, auction or similar affair
21 through which contributions are solicited or received by such means
22 as the purchase of a ticket, payment of an attendance fee or by the
23 purchase of goods or services.

1 ~~(15)~~(18) "Independent expenditure" means an expenditure by a
2 person:

3 (A) Expressly advocating the election or defeat of a clearly
4 identified candidate; and

5 (B) That is not made in concert or cooperation with or at the
6 request or suggestion of such candidate, his or her agents, the
7 candidate's authorized political committee or a political party
8 committee or its agents.

9 Supporting or opposing the election of a clearly identified
10 candidate includes supporting or opposing the candidates of a
11 political party. An expenditure which does not meet the criteria
12 for an independent expenditure is considered a contribution.

13 ~~(16)~~(19) "Membership organization" means a group that grants
14 bona fide rights and privileges, such as the right to vote, to
15 elect officers or directors and the ability to hold office, to its
16 members and which uses a majority of its membership dues for
17 purposes other than political purposes. "Membership organization"
18 does not include organizations that grant membership upon receiving
19 a contribution.

20 ~~(17)~~(20) "Name" means the full first name, middle name or
21 initial, if any, and full legal last name of an individual and the
22 full name of any association, corporation, committee or other
23 organization of individuals, making the identity of any person who

1 makes a contribution apparent by unambiguous reference.

2 ~~(18)~~(21) "Person" means an individual, corporation,
3 partnership, committee, association and any other organization or
4 group of individuals.

5 ~~(19)~~(22) "Political action committee" means a committee
6 organized by one or more persons for the purpose of supporting or
7 opposing the nomination or election of one or more candidates. The
8 following are types of political action committees:

9 (A) A corporate political action committee, as that term is
10 defined by subdivision (8) of this section;

11 (B) A membership organization, as that term is defined by
12 subdivision (18) of this section;

13 (C) An unaffiliated political action committee, as that term
14 is defined by subdivision (29) of this section.

15 ~~(20)~~(23) "Political committee" means any candidate committee,
16 political action committee or political party committee.

17 ~~(21)~~(24) "Political party" means a political party as that
18 term is defined by section eight, article one of this chapter or
19 any committee established, financed, maintained or controlled by
20 the party, including any subsidiary, branch or local unit thereof
21 and including national or regional affiliates of the party.

22 ~~(22)~~(25) "Political party committee" means a committee
23 established by a political party or political party caucus for the

1 purposes of engaging in the influencing of the election, nomination
2 or defeat of a candidate in any election.

3 ~~(23)~~(26) "Political purposes" means supporting or opposing the
4 nomination, election or defeat of one or more candidates or the
5 passage or defeat of a ballot issue, supporting the retirement of
6 the debt of a candidate or political committee or the
7 administration or activities of an established political party or
8 an organization which has declared itself a political party and
9 determining the advisability of becoming a candidate under the
10 precandidacy financing provisions of this chapter.

11 ~~(24)~~(27) "Targeted to the relevant electorate" means a
12 communication which refers to a clearly identified candidate for
13 statewide office or the Legislature and which can be received by
14 one hundred forty thousand or more individuals in the state in the
15 case of a candidacy for statewide office, eight thousand two
16 hundred twenty or more individuals in the district in the case of
17 a candidacy for the state Senate and two thousand four hundred ten
18 or more individuals in the district in the case of a candidacy for
19 the House of Delegates.

20 ~~(25)~~(28) "Two-year election cycle" means the twenty-four month
21 period that begins the day after a general election and ends on the
22 day of the subsequent general election.

23 ~~(26)~~(29) "Unaffiliated political action committee" means a

1 political action committee that is not affiliated with a
2 corporation or a membership organization.

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

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

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

1 (A) The name of (i) the person making the expenditure; (ii)
2 the name of any person sharing or exercising direction or control
3 over the activities of the person making the expenditure; and (iii)
4 the name of the custodian of the books and accounts of the person
5 making the expenditure;

6 (B) If the person making the expenditure is not an individual,
7 the principal place of business of the partnership, corporation,
8 committee, association, organization or group which made the
9 expenditure;

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

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

20 (E) (1) (i) If the person who makes the independent
21 expenditure pays for the expenditure exclusively using funds in a
22 segregated bank account consisting of funds that were contributed,
23 donated, transferred, or paid directly to the account by persons

1 other than the person who controls the account, for each
2 contribution, donation, transfer, payment of dues, or other payment
3 to the account, the name and address of each person who made the
4 contribution, donation, transfer, payment of dues, or other payment
5 during the period covered by the statement; but only if the
6 contribution, donation, transfer, payment of dues, or other payment
7 was made by a person who made contributions, donations, transfers,
8 payments of dues, or payments to the account in an aggregate amount
9 of more than \$250 between the first day of the preceding calendar
10 year, and the disclosure date.

11 (ii) If the person who makes the independent expenditure pays
12 for the expenditure using funds other than funds in a segregated
13 bank account described in subpart (E)(1)(I), the name and address
14 of each person who made the contribution, donation, transfer,
15 payment of dues, or other payment during the period covered by the
16 statement; but only if such contribution, donation, transfer,
17 payment of dues, or other payment was made by a person who made
18 contributions, donations, transfers, payments of dues, or payments
19 to the account in an aggregate amount of more than \$250 between the
20 first day of the preceding calendar year, and the disclosure date.

21 (2)(i) The requirement to include in a statement filed under
22 this section the information described in subparts (E) and (F) does
23 not apply to amounts received by the person who makes the

1 independent expenditure in the ordinary course of any trade or
2 business conducted by the person who makes the independent
3 expenditure or in the form of investments in the person making the
4 independent expenditure.

5 (ii) The requirement to include in a statement submitted under
6 this section the information described in subparts (E) and (F) does
7 not apply if:

8 (I) The person described in such subpart prohibited, in
9 writing, the use of the contribution, donation, transfer, payment
10 of dues, or other payment made by such person for independent
11 expenditures, electioneering communications, or covered transfers;
12 and

13 (II) The person who makes the independent expenditure agreed
14 to follow the prohibition and deposited the contribution, donation,
15 transfer, payment of dues, or other payment in an account which is
16 segregated from any account used for independent expenditures,
17 electioneering communications, or covered transfers. The name and
18 address of any person who contributed a total of more than \$250
19 between the first day of the preceding calendar year, and the
20 disclosure date, and whose contributions were made for the purpose
21 of furthering the expenditure.

22 (F) With regard to the contributors required to be listed
23 pursuant to paragraph (E) of this subdivision, the statement shall

1 also include:

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

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

7 (iii) If the contributor is an individual, the name and
8 address of the individual, his or her occupation, the name and
9 address of the individual's current employer, if any, or, if the
10 individual is self-employed, the name and address of the
11 individual's business, if any;

12 (iv) A description of the contribution, if other than money;
13 and

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

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

19 (2) Any person who makes a contribution for the purpose of
20 funding an independent expenditure under this subsection shall, at
21 the time the contribution is made, provide his or her name,
22 address, occupation, his or her current employer, if any, or, if
23 the individual is self-employed, the name of his or her business,

1 if any, to the recipient of the contribution.

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

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

22 (2) Any person who files a report under subdivision (1) of
23 this subsection, shall file an additional report within twenty-four

1 hours after each time the person makes or contracts to make
2 independent expenditures aggregating an additional \$500 with
3 respect to the same election, 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, as that to which the initial report
7 relates.

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

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

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

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

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

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

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

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

23 (2) The Secretary of State shall make any document filed

1 electronically pursuant to this subsection accessible to the public
2 on the Internet not later than twenty-four hours after the document
3 is received by the secretary.

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

10 (i) This section does not apply to candidates for federal
11 office.

12 (j) The Secretary of State may promulgate emergency and
13 legislative rules, in accordance with the provisions of chapter
14 twenty-nine-a of this code, to establish guidelines for the
15 administration of this section.

16 **§3-8-2b. Disclosure of electioneering communication.**

17 (a) Every person who has spent:

18 (1) A total of \$5,000 or more for the direct costs of
19 purchasing, producing or disseminating electioneering
20 communications during any calendar year; or

21 (2) A total of \$1,000 or more on or after the fifteenth day
22 but more than twelve hours before the day of any election for the
23 direct costs of purchasing, producing or disseminating

1 electioneering communications during any calendar year shall,
2 within twenty-four hours of each disclosure date, file with the
3 Secretary of State a statement which contains all of the
4 information listed in subsection (b) of this section.

5 (b) (1) The name of the person making the expenditure, the name
6 of any person sharing or exercising direction or control over the
7 activities of the person making the expenditure and the name of the
8 custodian of the books and accounts of the person making the
9 expenditure;

10 (2) If the person making the expenditure is not an individual,
11 the principal place of business of the partnership, committee,
12 association, organization or group which made the expenditure;

13 (3) The amount of each expenditure of more than \$1,000 made
14 for electioneering communications during the period covered by the
15 statement and the name of the person to whom the expenditure was
16 made;

17 (4) The elections to which the electioneering communications
18 pertain, the names, if known, of the candidates referred to or to
19 be referred to therein, whether the electioneering communication is
20 intended to support or oppose the identified candidates and the
21 amount of the total expenditure reported in subdivision (3) of this
22 subsection spent to support or oppose each of the identified
23 candidates; and

1 (5) (1)(i) If the person who makes the electioneering
2 communication pays for the expenditure exclusively using funds in
3 a segregated bank account consisting of funds that were
4 contributed, donated, transferred, or paid directly to the account
5 by persons other than the person who controls the account, for each
6 contribution, donation, transfer, payment of dues, or other payment
7 to the account-the name and address of each person who made the
8 contribution, donation, transfer, payment of dues, or other payment
9 during the period covered by the statement; but only if the
10 contribution, donation, transfer, payment of dues, or other payment
11 was made by a person who made contributions, donations, transfers,
12 payments of dues, or payments to the account in an aggregate amount
13 of more than \$1000 between the first day of the preceding calendar
14 year, and the disclosure date.

15 (ii) If the person who makes the electioneering communication
16 pays for the expenditure using funds other than funds in a
17 segregated bank account described in subpart (b) (5) (i)-the name and
18 address of each person who made the contribution, donation,
19 transfer, payment of dues, or other payment during the period
20 covered by the statement; but only if the contribution, donation,
21 transfer, payment of dues, or other payment was made by a person
22 who made contributions, donations, transfers, payments of dues, or
23 payments to the account in an aggregate amount of more than \$1000

1 between the first day of the preceding calendar year, and the
2 disclosure date.

3 (2)(i) The requirement to include in a statement filed under
4 this section the information described in subparts (5)(1)(i) and
5 (5)(1)(ii) does not apply to amounts received by the person who
6 makes the electioneering communication in the ordinary course of
7 any trade or business conducted by the person who makes the
8 electioneering communication or in the form of investments in the
9 person making the electioneering communication.

10 (ii) The requirement to include in a statement submitted under
11 this section the information described in subparts (5)(1)(i) and
12 (5)(1)(ii) does not apply if:

13 (I) The person described in the subparagraph prohibited, in
14 writing, the use of the contribution, donation, transfer, payment
15 of dues, or other payment made by the person for independent
16 expenditures, electioneering communications, or covered transfers;
17 and

18 (II) The person who makes the independent expenditure agreed
19 to follow the prohibition and deposited the contribution, donation,
20 transfer, payment of dues, or other payment in an account which is
21 segregated from any account used for independent expenditures,
22 electioneering communications, or covered transfers. The names and
23 addresses of any contributors who contributed a total of more than

1 \$1,000 between the first day of the preceding calendar year and the
2 disclosure date and whose contributions were used to pay for
3 electioneering communications.

4 (c) With regard to the contributors required to be listed
5 pursuant to subdivision (5), subsection (b) of this section, the
6 statement shall also include:

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

9 (2) If the contributor is a political action committee, the
10 name and address the political action committee registered with the
11 State Election Commission;

12 (3) If the contributor is an individual, the name and address
13 of the individual, his or her occupation, the name and address of
14 the individual's current employer, if any, or, if the individual is
15 self-employed, the name and address of the individual's business,
16 if any;

17 (4) A description of the contribution, if other than money;

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

19 (d) (1) Any person who makes a contribution for the purpose of
20 funding the direct costs of purchasing, producing or disseminating
21 an electioneering communication under this section shall, at the
22 time the contribution is made, provide his or her name and address
23 to the recipient of the contribution;

1 (2) Any individual who makes contributions totaling \$250 or
2 more between the first day of the preceding calendar year and the
3 disclosure date for the purpose of funding the direct costs of
4 purchasing, producing or disseminating electioneering
5 communications shall, at the time the contribution is made, provide
6 the name of his or her occupation and of his or her current
7 employer, if any, or, if the individual is self-employed, the name
8 of his or her business, if any, to the recipient of the
9 contribution.

10 (e) In each electioneering communication, a statement shall
11 appear or be presented in a clear and conspicuous manner that:

12 (1) Clearly indicates that the electioneering communication is
13 not authorized by the candidate or the candidate's committee; and

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

20 (f) Within five business days after receiving a disclosure of
21 electioneering communications statement pursuant to this section,
22 the Secretary of State shall make information in the statement
23 available to the public through the Internet.

1 (g) For the purposes of this section, a person is considered
2 to have made an expenditure when the person has entered into a
3 contract to make the expenditure at a future time.

4 (h) The Secretary of State is hereby directed to propose
5 legislative rules and emergency rules implementing this section for
6 legislative approval in accordance with the provisions of article
7 three, chapter twenty-nine-a of this code.

8 (i) If any person, including, but not limited to, a political
9 organization (as defined in Section 527(e)(1) of the Internal
10 Revenue Code of 1986) makes, or contracts to make, any expenditure
11 for electioneering communications which is coordinated with and
12 made with the cooperation, consent or prior knowledge of a
13 candidate, candidate's committee or agent of a candidate, the
14 expenditure shall be treated as a contribution and expenditure by
15 the candidate. If the expenditure is coordinated with and made
16 with the cooperation or consent of a state or local political party
17 or committee, agent or official of that party, the expenditure
18 shall be treated as a contribution to and expenditure by the
19 candidate's party.

20 (j) This section does not apply to candidates for federal
21 office. This section is not intended to restrict or to expand any
22 limitations on, obligations of or prohibitions against any
23 candidate, committee, agent, contributor or contribution contained

1 in any other provision of this chapter.

2 **§3-8-2d. Disclosure of covered transfers.**

3 (a) Every person, other than an individual, who makes a
4 covered transfer equal to:

5 (1) A total of \$5,000 or more; or

6 (2) A total of \$1,000 or more on or after the fifteenth day
7 but more than twelve hours before the day of any election shall,
8 within twenty-four hours of each disclosure date, file with the
9 Secretary of State a statement which contains all of the
10 information listed in subsection (b) of this section.

11 (b) (1) The name of the person who made the covered transfer,
12 the name of any person sharing or exercising direction or control
13 over the activities of the person who made the covered transfer,
14 and the name of the custodian of the books and accounts of the
15 person who made the covered transfer;

16 (2) The principal place of business of the person who made the
17 covered transfer;

18 (3) (i) (I) If the person who makes the covered transfer pays
19 for the transfer exclusively using funds in a segregated bank
20 account consisting of funds that were contributed, donated,
21 transferred, or paid directly to the account by persons other than
22 the person who controls the account, for each contribution,
23 donation, transfer, payment of dues, or other payment to the

1 account-the name and address of each person who made the
2 contribution, donation, transfer, payment of dues, or other payment
3 during the period covered by the statement; but only if the
4 contribution, donation, transfer, payment of dues, or other payment
5 was made by a person who made contributions, donations, transfers,
6 payments of dues, or payments to the account in an aggregate amount
7 of more than \$1000 between the first day of the preceding calendar
8 year, and the disclosure date.

9 (II) If the person who makes the covered transfer pays for the
10 transfer using funds other than funds in a segregated bank account
11 described in subpart (3) (i) (I)-the name and address of each person
12 who made such contribution, donation, transfer, payment of dues, or
13 other payment during the period covered by the statement; but only
14 if such contribution, donation, transfer, payment of dues, or other
15 payment was made by a person who made contributions, donations,
16 transfers, payments of dues, or payments in an aggregate amount of
17 more than \$1000 between the first day of the preceding calendar
18 year, and the disclosure date.

19 (ii) The requirement to include in a statement filed under
20 this section the information described in subparts (3) (i) (I) and
21 (3) (i) (II) does not apply to amounts received by the person who
22 makes the covered transfer in the ordinary course of any trade or
23 business conducted by the person who makes the covered transfer or

1 in the form of investments in the person making the covered
2 transfer.

3 (iii) The requirement to include in a statement submitted
4 under this section the information described in subparts (3)(i)(I)
5 and (3)(i)(II) does not apply if:

6 (I) The person described in the subparagraph prohibited, in
7 writing, the use of the contribution, donation, transfer, payment
8 of dues, or other payment made by the person for independent
9 expenditures, electioneering communications, or covered transfers;
10 and

11 (II) The person who makes the covered transfer agreed to
12 follow the prohibition and deposited the contribution, donation,
13 transfer, payment of dues, or other payment in an account which is
14 segregated from any account used for independent expenditures,
15 electioneering communications, or covered transfers.

16 (c) With regard to the persons required to be listed pursuant
17 to subdivision (3) of this section, the statement shall also
18 include:

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

21 (2) If the person making the contribution is a political
22 action committee, the name and address the political action
23 committee registered with the State Election Commission;

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

6 (4) A description of the contribution, if other than money;

7 (5) The value in dollars and cents of the covered transfer.

8 (d) Within five business days after receiving a disclosure of
9 covered transfer statement pursuant to this section, the Secretary
10 of State shall make information in the statement available to the
11 public through the Internet.

12 (e) For the purposes of this section, a person is considered
13 to have made a covered transfer when the person has entered into a
14 contract to make the covered transfer at a future time.

15 (f) The Secretary of State is hereby directed to propose
16 legislative rules and emergency rules implementing this section for
17 legislative approval in accordance with the provisions of article
18 three, chapter twenty-nine-a of this code.

19 (g) This section does not apply to candidates for federal
20 office. This section is not intended to restrict or to expand any
21 limitations on, obligations of or prohibitions against any
22 candidate, committee, agent, contributor or contribution contained
23 in any other provision of this chapter.

NOTE: The purpose of this bill is to amend provisions relating to the regulation and control of elections.

§3-8-2d is new; therefore, it has been completely underscored.

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