

H. B. 4463

(By Delegates Manchin, Caputo, Reynolds,
Boggs and Longstreth)

[Introduced February 11, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §3-8-1a and §3-8-2b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §3-8-8a, §3-8-15, §3-8-16 and §3-8-17, all relating to the disclosure of information on campaign contributions and spending; setting forth reporting and disclosure requirements; setting forth the treatment of functional equivalent of express advocacy as independent expenditures; expanding the period during which communications are treated as electioneering communications; setting forth the effective date of expanding the period during which communications are treated as electioneering communications; setting forth the disclosure requirements for corporations and certain other entities; setting forth disclaimer requirements for campaign disbursements; requiring publication and distribution of statements and solicitations; setting forth the charges for newspaper or magazine space;

1 establishing special disclaimer requirements for certain
2 communications; requiring disclosures to shareholders, member
3 and donors of information on campaign-related disbursements;
4 defining terms; setting forth exceptions; setting forth the
5 effective date of amendments; and providing that candidates
6 for federal office are generally not affected.

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

8 That §3-8-1a and §3-8-2b of the Code of West Virginia, 1931,
9 as amended, be amended and reenacted; and that said code be amended
10 by adding thereto four new sections, designated §3-8-8a, §3-8-15,
11 §3-8-16 and §3-8-17, all to read as follows:

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

13 **§3-8-1a. Definitions.**

14 As used in this article, the following terms have the
15 following definitions:

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

20 (2) "Billboard Advertisement" means a commercially available
21 outdoor advertisement, sign or similar display regularly available
22 for lease or rental to advertise a person, place or product.

23 (3) "Broadcast, cable or satellite communication" means a
24 communication that is publicly distributed by a television station,

1 radio station, cable television system or satellite system.

2 (4) "Candidate" means an individual who:

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

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

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

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

12 (5) "Candidate's committee" means a political committee
13 established with the approval of or in cooperation with a candidate
14 or a prospective candidate to explore the possibilities of seeking
15 a particular office or to support or aid his or her nomination or
16 election to an office in an election cycle. If a candidate directs
17 or influences the activities of more than one active committee in
18 a current campaign, those committees shall be considered one
19 committee for the purpose of contribution limits.

20 (6) "Clearly identified" means that the name, nickname,
21 photograph, drawing or other depiction of the candidate appears or
22 the identity of the candidate is otherwise apparent through an
23 unambiguous reference, such as "the Governor", "your Senator" or
24 "the incumbent" or through an unambiguous reference to his or her

1 status as a candidate, such as "the Democratic candidate for
2 Governor" or "the Republican candidate for Supreme Court of
3 Appeals".

4 (7) "Contribution" means a gift, subscription, loan,
5 assessment, payment for services, dues, advance, donation, pledge,
6 contract, agreement, forbearance or promise of money or other
7 tangible thing of value, whether conditional or legally
8 enforceable, or a transfer of money or other tangible thing of
9 value to a person, made for the purpose of influencing the
10 nomination, election or defeat of a candidate. An offer or tender
11 of a contribution is not a contribution if expressly and
12 unconditionally rejected or returned. A contribution does not
13 include volunteer personal services provided without compensation:
14 *Provided*, That a nonmonetary contribution is to be considered at
15 fair market value for reporting requirements and contribution
16 limitations.

17 (8) "Corporate political action committee" means a political
18 action committee that is a separate segregated fund of a
19 corporation that may only accept contributions from its restricted
20 group as outlined by the rules of the State Election Commission.

21 (9) "Direct costs of purchasing, producing or disseminating
22 electioneering communications" means:

23 (A) Costs charged by a vendor, including, but not limited to,
24 studio rental time, compensation of staff and employees, costs of

1 video or audio recording media and talent, material and printing
2 costs and postage; or

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

7 (10) "Disclosure date" means either of the following:

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

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

18 (11) "Election" means any primary, general or special election
19 conducted under the provisions of this code or under the charter of
20 any municipality at which the voters nominate or elect candidates
21 for public office. For purposes of this article, each primary,
22 general, special or local election constitutes a separate election.
23 This definition is not intended to modify or abrogate the
24 definition of the term "nomination" as used in this article.

1 (12) (A) "Electioneering communication" means any paid
2 communication made by broadcast, cable or satellite signal, mass
3 mailing, telephone bank, billboard advertisement or published in
4 any newspaper, magazine or other periodical that:

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

9 (ii) Is publicly disseminated within:

10 (I) ~~Thirty~~ Ninety days before a primary election at which the
11 nomination for office sought by the candidate is to be determined;
12 or

13 (II) ~~Sixty~~ One hundred twenty days before a general or special
14 election at which the office sought by the candidate is to be
15 filled; and

16 (iii) Is targeted to the relevant electorate. ~~Provided, That~~
17 ~~for purposes of the general election of 2008 the amendments to this~~
18 ~~article are effective October 1, 2008.~~

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

20 (i) A news story, commentary or editorial disseminated through
21 the facilities of any broadcast, cable or satellite television or
22 radio station, newspaper, magazine or other periodical publication
23 not owned or controlled by a political party, political committee
24 or candidate: *Provided, That* a news story disseminated through a

1 medium owned or controlled by a political party, political
2 committee or candidate is nevertheless exempt if the news is:

3 (I) A bona fide news account communicated in a publication of
4 general circulation or through a licensed broadcasting facility;
5 and

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

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

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

24 (iv) A communication paid for by any organization operating

1 under Section 501(c)(3) of the Internal Revenue Code of 1986;

2 (v) A communication made while the Legislature is in session
3 which, incidental to promoting or opposing a specific piece of
4 legislation pending before the Legislature, urges the audience to
5 communicate with a member or members of the Legislature concerning
6 that piece of legislation;

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

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

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

22 (C) The amendments made to this subdivision during the 2014
23 Regular Legislative Session shall apply with respect to
24 communications made on or after July 1, 2014, except that no

1 communication which is made prior to that date shall be treated as
2 an electioneering communication under this subdivision unless the
3 communication would be treated as an electioneering communication
4 under this subdivision if the amendment did not apply.

5 (13) "Expressly advocating" means any communication that:

6 (A) Uses phrases such as "vote for the Governor", "reelect
7 your Senator", "support the Democratic nominee for Supreme Court",
8 "cast your ballot for the Republican challenger for House of
9 Delegates", "Smith for House", "Bob Smith in '04", "vote Pro-Life"
10 or "vote Pro-Choice" accompanied by a listing of clearly identified
11 candidates described as Pro-Life or Pro-Choice, "vote against Old
12 Hickory", "defeat" accompanied by a picture of one or more
13 candidates, "reject the incumbent";

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

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

21 (14) "Financial agent" means any individual acting for and by
22 himself or herself, or any two or more individuals acting together
23 or cooperating in a financial way to aid or take part in the
24 nomination or election of any candidate for public office, or to

1 aid or promote the success or defeat of any political party at any
2 election.

3 (15) "Fund-raising event" means an event such as a dinner,
4 reception, testimonial, cocktail party, auction or similar affair
5 through which contributions are solicited or received by such means
6 as the purchase of a ticket, payment of an attendance fee or by the
7 purchase of goods or services.

8 (16) "Independent expenditure" means an expenditure by a
9 person:

10 (A) ~~Expressly advocating the election or defeat of a clearly~~
11 ~~identified candidate; and~~ That, when taken as a whole, expressly
12 advocates the election or defeat of a clearly identified candidate,
13 or is the functional equivalent of express advocacy because it can
14 be interpreted by a reasonable person only as advocating the
15 election or defeat of a candidate, taking into account whether the
16 communication involved mentions a candidacy, a political party, or
17 a challenger to a candidate, or takes a position on a candidate's
18 character, qualifications, or fitness for office; and

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

23 Supporting or opposing the election of a clearly identified
24 candidate includes supporting or opposing the candidates of a

1 political party. An expenditure which does not meet the criteria
2 for an independent expenditure is considered a contribution.

3 (17) "Mass mailing" means a mailing by United States mail,
4 facsimile or electronic mail of more than five hundred pieces of
5 mail matter of an identical or substantially similar nature within
6 any thirty-day period. For purposes of this subdivision,
7 "substantially similar" includes communications that contain
8 substantially the same template or language, but vary in
9 nonmaterial respects such as communications customized by the
10 recipient's name, occupation or geographic location.

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

18 (19) "Name" means the full first name, middle name or initial,
19 if any, and full legal last name of an individual and the full name
20 of any association, corporation, committee or other organization of
21 individuals, making the identity of any person who makes a
22 contribution apparent by unambiguous reference.

23 (20) "Person" means an individual, corporation, partnership,
24 committee, association and any other organization or group of

1 individuals.

2 (21) "Political action committee" means a committee organized
3 by one or more persons for the purpose of supporting or opposing
4 the nomination or election of one or more candidates. The
5 following are types of political action committees:

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

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

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

12 (22) "Political committee" means any candidate committee,
13 political action committee or political party committee.

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

19 (24) "Political party committee" means a committee established
20 by a political party or political party caucus for the purposes of
21 engaging in the influencing of the election, nomination or defeat
22 of a candidate in any election.

23 (25) "Political purposes" means supporting or opposing the
24 nomination, election or defeat of one or more candidates or the

1 passage or defeat of a ballot issue, supporting the retirement of
2 the debt of a candidate or political committee or the
3 administration or activities of an established political party or
4 an organization which has declared itself a political party and
5 determining the advisability of becoming a candidate under the
6 precandidacy financing provisions of this chapter.

7 (26) "Public communication" means a communication by means of
8 any broadcast, cable, or satellite communication, newspaper,
9 magazine, outdoor advertising facility, mass mailing, or telephone
10 bank to the general public, or any other form of general public
11 political advertising.

12 ~~(26)~~ (27) "Targeted to the relevant electorate" means a
13 communication which refers to a clearly identified candidate for
14 statewide office or the Legislature and which can be received by
15 one hundred forty thousand or more individuals in the state in the
16 case of a candidacy for statewide office, eight thousand two
17 hundred twenty or more individuals in the district in the case of
18 a candidacy for the State Senate and two thousand four hundred ten
19 or more individuals in the district in the case of a candidacy for
20 the House of Delegates.

21 ~~(27)~~ (28) "Telephone bank" means telephone calls that are
22 targeted to the relevant electorate, other than telephone calls
23 made by volunteer workers, regardless of whether paid professionals
24 designed the telephone bank system, developed calling instructions

1 or trained volunteers.

2 ~~(28)~~ (29) "Two-year election cycle" means the twenty-four
3 month period that begins the day after a general election and ends
4 on the day of the subsequent general election.

5 ~~(29)~~ (30) "Unaffiliated political action committee" means a
6 political action committee that is not affiliated with a
7 corporation or a membership organization.

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

9 (a) Every person who has spent:

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

13 (2) A total of \$1,000 or more on or after the fifteenth day
14 but more than twelve hours before the day of any election for the
15 direct costs of purchasing, producing or disseminating
16 electioneering communications during any calendar year shall,
17 within twenty-four hours of each disclosure date, file with the
18 Secretary of State a statement which contains all of the
19 information listed in subsection (b) of this section.

20 (b) (1) The name of the person making the expenditure, the name
21 of any person sharing or exercising direction or control over the
22 activities of the person making the expenditure and the name of the
23 custodian of the books and accounts of the person making the
24 expenditure;

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

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

8 (4) The elections to which the electioneering communications
9 pertain, the names, if known, of the candidates referred to or to
10 be referred to therein, whether the electioneering communication is
11 intended to support or oppose the identified candidates and the
12 amount of the total expenditure reported in subdivision (3) of this
13 subsection spent to support or oppose each of the identified
14 candidates; and

15 (5) The names and addresses of any contributors who
16 contributed a total of more than \$1,000 between the first day of
17 the preceding calendar year and the disclosure date and whose
18 contributions were used to pay for electioneering communications.

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

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

24 (2) If the contributor is a political action committee, the

1 name and address the political action committee registered with the
2 State Election Commission;

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

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

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

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

15 (2) Any individual who makes contributions totaling \$250 or
16 more between the first day of the preceding calendar year and the
17 disclosure date for the purpose of funding the direct costs of
18 purchasing, producing or disseminating electioneering
19 communications shall, at the time the contribution is made, provide
20 the name of his or her occupation and of his or her current
21 employer, if any, or, if the individual is self-employed, the name
22 of his or her business, if any, to the recipient of the
23 contribution.

24 (e) In each electioneering communication, a statement shall

1 appear or be presented in a clear and conspicuous manner that:

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

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

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

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

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

21 (i) If any person, including, but not limited to, a political
22 organization (as defined in Section 527(e)(1) of the Internal
23 Revenue Code of 1986) makes, or contracts to make, any expenditure
24 for electioneering communications which is coordinated with and

1 made with the cooperation, consent or prior knowledge of a
2 candidate, candidate's committee or agent of a candidate, the
3 expenditure shall be treated as a contribution and expenditure by
4 the candidate. If the expenditure is coordinated with and made
5 with the cooperation or consent of a state or local political party
6 or committee, agent or official of that party, the expenditure
7 shall be treated as a contribution to and expenditure by the
8 candidate's party.

9 (j) This section does not apply to candidates for federal
10 office. This section is not intended to restrict or to expand any
11 limitations on, obligations of or prohibitions against any
12 candidate, committee, agent, contributor or contribution contained
13 in any other provision of this chapter.

14 (k) Except as provided in subsection (b), section eight-a of
15 this article, any requirement to report under this section shall be
16 in addition to any other reporting requirement under this article.

17 **§3-8-8a. Disclosure requirements for corporations and certain**
18 **other entities.**

19 (a) Disclosure statement. --

20 (1) Any corporation that makes campaign-related disbursements
21 aggregating more than \$10,000 in a calendar year shall, not later
22 than twenty-four hours after each disclosure date, file a statement
23 with the Secretary of State that contains the information described
24 in subdivision (2) of this subsection:

1 (A) In the case of the first statement filed under this
2 subsection, for the period beginning on the first day of the
3 preceding calendar year and ending on the first such disclosure
4 date; and

5 (B) In the case of any subsequent statement filed under this
6 subsection, for the period beginning on the previous disclosure
7 date and ending on such disclosure date.

8 (2) Information described. The information to be included in
9 the statement required by subsection is as follows:

10 (A) The name of the covered organization and the principal
11 place of business of that organization.

12 (B) The amount of each campaign-related disbursement made by
13 that organization during the period covered by the statement of
14 more than \$1,000.

15 (C) In the case of a campaign-related disbursement that is not
16 a covered transfer, the election to which the campaign-related
17 disbursement pertains and if the disbursement is made for a public
18 communication, the name of any candidate identified in that
19 communication and whether that communication is in support of or in
20 opposition to that candidate.

21 (D) A certification by the chief executive officer or the head
22 of the covered organization that the campaign-related disbursement
23 is not made in cooperation, consultation, or concert with or at the
24 request or suggestion of a candidate, authorized committee, or

1 agent of a candidate, political party, or agent of a political
2 party.

3 (E) If the covered organization makes campaign-related
4 disbursements exclusively using funds in a segregated bank account
5 consisting of funds that were contributed, donated, transferred, or
6 paid directly to that account by persons other than the covered
7 organization that controls the account, for each contribution,
8 donation, transfer, payment of dues, or other payment to the
9 account:

10 (i) The name and address of each person who made that
11 contribution, donation, transfer, payment of dues, or other payment
12 during the period covered by the statement;

13 (ii) The date and amount of that contribution, donation,
14 transfer, payment of dues, or other payment; and

15 (iii) The aggregate amount of all those contributions,
16 donations, transfers, payments of dues, and other payments made by
17 the person during the period beginning on the first day of the
18 preceding calendar year and ending on the disclosure date; but only
19 if that contribution, donation, transfer, payment of dues, or other
20 payment was made by a person who made contributions, donations,
21 transfers, payments of dues, or payments to the account in an
22 aggregate amount of \$10,000 or more during the period beginning on
23 the first day of the preceding calendar year and ending on the
24 disclosure date.

1 (F) Subject to subdivision (4) of this subsection, if the
2 covered organization makes campaign-related disbursements using
3 funds other than funds in a segregated bank account described in
4 paragraph (E) of this subdivision, for each contribution, donation,
5 transfer, or payment of dues to the covered organization:

6 (i) The name and address of each person who made that
7 contribution, donation, transfer, or payment of dues during the
8 period covered by the statement;

9 (ii) The date and amount of that contribution, donation,
10 transfer, or payment of dues; and

11 (iii) The aggregate amount of all those contributions,
12 donations, transfers, and payments of dues made by the person
13 during the period beginning on the first day of the preceding
14 calendar year and ending on the disclosure date; but only if that
15 contribution, donation, transfer, or payment of dues was made by a
16 person who made contributions, donations, transfers, or payments of
17 dues to the covered organization in an aggregate amount of \$10,000
18 or more during the period beginning on the first day of the
19 preceding calendar year and ending on the disclosure date.

20 (3) Exceptions.

21 (A) Amounts received in ordinary course of business. The
22 requirement to include in a statement filed under subdivision (1)
23 the information described in subdivision (2) of this subsection
24 does not apply to amounts received by the covered organization in

1 the ordinary course of any trade or business conducted by the
2 covered organization or in the form of investments in the covered
3 organization.

4 (B) Donor restriction on use of funds. The requirement to
5 include in a statement submitted under subdivision (1) of this
6 subsection the information described in paragraph (F), subdivision
7 (2) of this subsection does not apply if:

8 (i) The person described in that subdivision prohibited, in
9 writing, the use of the contribution, donation, transfer, payment
10 of dues, or other payment made by that person for campaign-related
11 disbursements; and

12 (ii) The covered organization agreed to follow the prohibition
13 and deposited the contribution, donation, transfer, payment of
14 dues, or other payment in an account which is segregated from any
15 account used to make campaign-related disbursements.

16 (4) Disclosure date.

17 (A) General. Except as provided in paragraph (B) of this
18 subdivision, the term "disclosure date" means:

19 (i) The first date during any calendar year by which a person
20 has made campaign-related disbursements aggregating more than
21 \$10,000; and

22 (ii) Each date following the date described in subparagraph
23 (i) during that calendar year by which a person has made
24 campaign-related disbursements aggregating more than \$10,000.

1 (B) Disclosure date for certain transfers. In the case of a
2 statement filed with respect to a campaign-related disbursement
3 which is a covered transfer described in paragraph (E), subdivision
4 (1), subsection (f) of this section, the term "disclosure date"
5 means the date on which the covered organization making that
6 transfer knew or should have known that the recipient of that
7 transfer made campaign-related disbursements in an aggregate amount
8 of \$50,000 or more during the two-year period beginning on the date
9 of the transfer.

10 (b) Coordination with other provisions. --

11 (1) Other reports filed with the commission. Information
12 included in a statement filed under this section may be excluded
13 from statements and reports filed pursuant to any other reporting
14 provisions of this article.

15 (2) Treatment as separate segregated fund. A segregated bank
16 account referred to in paragraph (E), subdivision (2), subsection
17 (a) of this section, may be treated as a separate segregated fund
18 for purposes of Section 527(f)(3) of the Internal Revenue Code of
19 1986.

20 (c) Filing. -- Statements required to be filed under
21 subsection (a) shall be subject to the requirements of subsection
22 (h) of section two of this article to the same extent and in the
23 same manner as if those reports had been required under section two
24 of this article.

1 (d) Campaign-related disbursement defined. -- In this section,
2 the term "campaign-related disbursement" means a disbursement by a
3 covered organization for any of the following:

4 (1) An independent expenditure consisting of a public
5 communication, as defined in section two of this article;

6 (2) An electioneering communication, as defined in section two
7 of this article; or

8 (3) A covered transfer.

9 (e) Covered organization defined. -- In this section, the term
10 "covered organization" means any of the following:

11 (1) A corporation, other than an organization described in
12 Section 501(c)(3) of the Internal Revenue Code of 1986.

13 (2) An organization described in Section 501(c) of that code
14 and exempt from taxation under Section 501(a) of that code, other
15 than an organization described in Section 501(c)(3) of that code.

16 (3) Any political organization under Section 527 of the
17 Internal Revenue Code of 1986, other than a political committee
18 under this article, except as provided in subdivision (4) of this
19 subsection.

20 (4) A political committee with an account established for the
21 purpose of accepting donations or contributions that do not comply
22 with the contribution limits or source prohibitions under this
23 article, but only with respect to the accounts established for that
24 purpose.

1 (f) Covered transfer defined. --

2 (1) General. In this section, the term "covered transfer"
3 means any transfer or payment of funds by a covered organization to
4 another person if the covered organization:

5 (A) Designates, requests, or suggests that the amounts be used
6 for:

7 (i) Campaign-related disbursements, other than covered
8 transfers; or

9 (ii) Making a transfer to another person for the purpose of
10 making or paying for that campaign-related disbursements;

11 (B) Made that transfer or payment in response to a
12 solicitation or other request for a donation or payment for:

13 (i) The making of or paying for campaign-related disbursements
14 (other than covered transfers); or

15 (ii) Making a transfer to another person for the purpose of
16 making or paying for those campaign-related disbursements;

17 (C) Engaged in discussions with the recipient of the transfer
18 or payment regarding:

19 (i) The making of or paying for campaign-related
20 disbursements, other than covered transfers; or

21 (ii) Donating or transferring any amount of that transfer or
22 payment to another person for the purpose of making or paying for
23 those campaign-related disbursements;

24 (D) Made campaign-related disbursements (other than a covered

1 transfer) in an aggregate amount of \$50,000 or more during the two-
2 year period ending on the date of the transfer or payment, or knew
3 or had reason to know that the person receiving the transfer or
4 payment made those disbursements in that an aggregate amount during
5 that two-year period; or

6 (E) Knew or had reason to know that the person receiving the
7 transfer or payment would make campaign-related disbursements in an
8 aggregate amount of \$50,000 or more during the two-year period
9 beginning on the date of the transfer or payment.

10 (2) Exclusions. The term "covered transfer" does not include
11 any of the following:

12 (A) A disbursement made by a covered organization in the
13 ordinary course of any trade or business conducted by the covered
14 organization or in the form of investments made by the covered
15 organization.

16 (B) A disbursement made by a covered organization if:

17 (i) The covered organization prohibited, in writing, the use
18 of that disbursement for campaign-related disbursements; and

19 (ii) The recipient of the disbursement agreed to follow the
20 prohibition and deposited the disbursement in an account which is
21 segregated from any account used to make campaign-related
22 disbursements.

23 (3) Exception for certain transfers among affiliates.

24 (A) Exception for certain transfers among affiliates. The

1 term "covered transfer" does not include an amount transferred by
2 one covered organization to another covered organization which is
3 treated as a transfer between affiliates under paragraph (B) of
4 this subdivision if the aggregate amount transferred during the
5 year by that covered organization to that same covered organization
6 is equal to or less than \$50,000.

7 (B) Description of transfers between affiliates. A transfer
8 of amounts from one covered organization to another covered
9 organization shall be treated as a transfer between affiliates if:

10 (i) One of the organizations is an affiliate of the other
11 organization; or

12 (ii) Each of the organizations is an affiliate of the same
13 organization; except that the transfer shall not be treated as a
14 transfer between affiliates if one of the organizations is
15 established for the purpose of making campaign-related
16 disbursements.

17 (C) Determination of affiliate status. For purposes of
18 paragraph (B) of this subdivision, a covered organization is an
19 affiliate of another covered organization if:

20 (i) The governing instrument of the organization requires it
21 to be bound by decisions of the other organization;

22 (ii) The governing board of the organization includes persons
23 who are specifically designated representatives of the other
24 organization or are members of the governing board, officers, or

1 paid executive staff members of the other organization, or whose
2 service on the governing board is contingent upon the approval of
3 the other organization; or

4 (iii) The organization is chartered by the other organization.

5 (D) Coverage of transfers to affiliated Section 501(c)(3)
6 organizations. This subdivision applies with respect to an amount
7 transferred by a covered organization to an organization described
8 in paragraph (3) of Section 501(c) of the Internal Revenue Code of
9 1986 and exempt from tax under Section 501(a) of that code in the
10 same manner as this paragraph applies to an amount transferred by
11 a covered organization to another covered organization.

12 **§3-8-15. Publication and distribution of statements and**
13 **solicitations; charge for newspaper or magazine**
14 **space.**

15 (a) Whenever a political committee makes a disbursement for
16 the purpose of financing any communication through any broadcasting
17 station, newspaper, magazine, outdoor advertising facility,
18 mailing, or any other type of general public political advertising,
19 or whenever any person makes a disbursement for a campaign-related
20 disbursement, or solicits any contribution through any broadcasting
21 station, newspaper, magazine, outdoor advertising facility,
22 mailing, or any other type of general public political advertising
23 or makes a disbursement for an electioneering communication, that
24 communication:

1 (1) If paid for and authorized by a candidate, an authorized
2 political committee of a candidate, or its agents, shall clearly
3 state that the communication has been paid for by that authorized
4 political committee;

5 (2) If paid for by other persons but authorized by a
6 candidate, an authorized political committee of a candidate, or its
7 agents, shall clearly state that the communication is paid for by
8 those other persons and authorized by that authorized political
9 committee; or

10 (3) If not authorized by a candidate, an authorized political
11 committee of a candidate, or its agents, shall clearly state the
12 name and permanent street address, telephone number or World Wide
13 Web address of the person who paid for the communication and state
14 that the communication is not authorized by any candidate or
15 candidate's committee.

16 (b) No person who sells space in a newspaper or magazine to a
17 candidate or to the agent of a candidate, for use in connection
18 with that candidate's campaign, may charge any amount for that
19 space which exceeds the amount charged for comparable use of that
20 space for other purposes.

21 (c) Specification. -- Any printed communication described in
22 subsection (a) of this section shall:

23 (1) Be of sufficient type size to be clearly readable by the
24 recipient of the communication;

1 (2) Be contained in a printed box set apart from the other
2 contents of the communication; and

3 (3) Be printed with a reasonable degree of color contrast
4 between the background and the printed statement.

5 (d) Additional requirements. --

6 (1) Communications by candidates or authorized persons.

7 (A) By radio. Any communication described in subdivision (1)
8 or (2), subsection (a) of this section which is transmitted through
9 radio shall include, in addition to the requirements of that
10 subdivision, an audio statement by the candidate that identifies
11 the candidate and states that the candidate has approved the
12 communication.

13 (B) By television. Any communication described in subdivision
14 (1) or (2), subsection (a) of this section which is transmitted
15 through television shall include, in addition to the requirements
16 of that subdivision, a statement that identifies the candidate and
17 states that the candidate has approved the communication. Such
18 statement:

19 (i) Shall be conveyed by:

20 (I) An unobscured, full-screen view of the candidate making
21 the statement; or

22 (II) The candidate in voice-over, accompanied by a clearly
23 identifiable photographic or similar image of the candidate; and

24 (ii) Shall also appear in writing at the end of the

1 communication in a clearly readable manner with a reasonable degree
2 of color contrast between the background and the printed statement,
3 for a period of at least four seconds.

4 (2) Communications by Certain Political Committees. Any
5 communication described in subdivision (3), subsection (a) of this
6 section which , except to the extent provided in the last sentence
7 of this subdivision, is paid for by a political committee
8 (including a political committee of a political party) and which is
9 transmitted through radio or television shall include, in addition
10 to the requirements of that paragraph, in a clearly spoken manner,
11 the following audio statement: "_____ is responsible for the
12 content of this advertising." The foregoing blank shall be filled
13 in with the name of the political committee paying for the
14 communication and the name of any connected organization of the
15 payor. If transmitted through television, the statement shall be
16 conveyed by an unobscured, full-screen view of a representative of
17 the political committee making the statement, or by a
18 representative of that political committee or other person in
19 voice-over, and shall also appear in a clearly readable manner with
20 a reasonable degree of color contrast between the background and
21 the printed statement, for a period of at least four seconds. This
22 subdivision does not apply to a communication paid for, in whole or
23 in part, with a payment which is treated as a campaign-related
24 disbursement under section eight-a and with respect to which a

1 covered organization files a statement under that section.

2 (e) Communications by others. --

3 (1) General. Any communication described in subdivision (3),
4 subsection (a) of this section which is transmitted through radio
5 or television, other than a communication to which subdivision (2),
6 subsection (d) of this section applies, shall include, in addition
7 to the requirements of that subdivision, the following:

8 (A) The individual disclosure statement described in paragraph
9 (A), subdivision (2) of this subsection if the person paying for
10 the communication is an individual, or the organizational
11 disclosure statement described in paragraph (B), subdivision (2) of
12 this subsection if the person paying for the communication is not
13 an individual).

14 (B) If the communication is transmitted through television and
15 is paid for, in whole or in part, with a payment which is treated
16 as a campaign-related disbursement under section eight-a of this
17 article the top five contributors list, if applicable, unless, on
18 the basis of criteria established in rules promulgated by the
19 Secretary of State, the communication is of such short duration
20 that including the top five contributors list in the communication
21 would constitute a hardship to the person paying for the
22 communication by requiring a disproportionate amount of the content
23 of the communication to consist of the top five contributors list.

24 (C) If the communication is transmitted through radio and is

1 paid for, in whole or in part, with a payment which is treated as
 2 a campaign-related disbursement under section eight-a of this
 3 section the top two contributors list, if applicable, unless, on
 4 the basis of criteria established in rules promulgated by the
 5 secretary, the communication is of such short duration that
 6 including the top two contributors list in the communication would
 7 constitute a hardship to the person paying for the communication by
 8 requiring a disproportionate amount of the content of the
 9 communication to consist of the top two contributors list.

10 (2) Disclosure statements described.

11 (A) Individual disclosure statements. The individual
 12 disclosure statement described in this paragraph is the following:
 13 "I am _____, and I approve this message." The
 14 foregoing blank filled in with the name of the applicable
 15 individual.

16 (B) Organizational disclosure statements. The organizational
 17 disclosure statement described in this paragraph is the following:
 18 "I am _____, the _____ of _____, and
 19 _____ approves this message.", with:

20 (i) The first blank to be filled in with the name of the
 21 applicable individual;

22 (ii) The second blank to be filled in with the title of the
 23 applicable individual; and

24 (iii) The third and fourth blanks each to be filled in with

1 the name of the organization or other person paying for the
2 communication.

3 (3) Method of conveyance of statement.

4 (A) Communications transmitted through radio. In the case of
5 a communication to which this subsection applies which is
6 transmitted through radio, the disclosure statements required under
7 subdivision (1) shall be made by audio by the applicable individual
8 in a clearly spoken manner.

9 (B) Communications transmitted through television. In the case
10 of a communication to which this subsection applies which is
11 transmitted through television, the information required under
12 subdivision (1) of this subsection:

13 (i) Shall appear in writing at the end of the communication or
14 in a crawl along the bottom of the communication in a clearly
15 readable manner, with a reasonable degree of color contrast between
16 the background and the printed statement, for a period of at least
17 six seconds; and

18 (ii) Shall also be conveyed by an unobscured, full-screen view
19 of the applicable individual or by the applicable individual making
20 the statement in voice-over accompanied by a clearly identifiable
21 photograph or similar image of the individual, except in the case
22 of a top five contributors list.

23 (4) Definitions. In this subsection:

24 (A) "Applicable individual" means, with respect to a

1 communication to which this subsection applies:

2 (i) If the communication is paid for by an individual, the
3 individual involved;

4 (ii) If the communication is paid for by a corporation, the
5 chief executive officer of the corporation (or, if the corporation
6 does not have a chief executive officer, the highest ranking
7 official of the corporation); and

8 (iii) If the communication is paid for by any other person,
9 the highest ranking official of that person.

10 (B) "Campaign-related disbursement" and "covered organization"
11 have the meanings given them in section eight-a of this article.

12 (C) "Top five contributors list" means, with respect to a
13 communication paid for, in whole or in part, with a payment which
14 is treated as a campaign related disbursement under section
15 eight-a, a list of the five persons who provided the largest
16 payments of any type in an aggregate amount equal to or exceeding
17 \$10,000 which are required under subsection (a), section eight-a of
18 this article to be included in the reports filed by a covered
19 organization with respect to that communication during the twelve
20 month period ending on the date of the disbursement and the amount
21 of the payments each such person provided. If two or more people
22 provided the fifth largest of those payments, the covered
23 organization involved shall select one of those persons to be
24 included on the top five contributors list.

1 (D) "Top two contributors list" means, with respect to a
2 communication paid for, in whole or in part, with a payment which
3 is treated as a campaign related disbursement under section eight-a
4 of this article a list of the persons who provided the largest and
5 the second largest payments of any type in an aggregate amount
6 equal to or exceeding \$10,000 which are required under subsection
7 (a) of that section to be included in the reports filed by a
8 covered organization with respect to that communication during the
9 twelve month period ending on the date of the disbursement and the
10 amount of the payments each such person provided. If two or more
11 persons provided the second largest of those payments, the covered
12 organization involved shall select one of those persons to be
13 included on the top two contributors list.

14 **§3-8-16. Disclosures by covered organizations to shareholders,**
15 **members, and donors of information on**
16 **campaign-related disbursements.**

17 (a) Information on campaign-related disbursements to be
18 included in periodic reports. -- A covered organization which
19 submits regular, periodic reports to its shareholders, members, or
20 donors on its finances or activities shall include in each such
21 report, in a clear and conspicuous manner, the information included
22 in the statements filed by the organization under section eight-a
23 with respect to the campaign-related disbursements made by the

1 organization during the period covered by the report.

2 (b) *Hyperlink to Information Included in Reports Filed with*
3 *Commission.* --

4 (1) Required posting of hyperlink. If a covered organization
5 maintains an Internet site, the organization shall post on the
6 Internet site a hyperlink from its homepage to the location on the
7 Internet site of the Secretary of State which contains the
8 information included in the statements filed by the organization
9 under section eight-a with respect to campaign-related
10 disbursements.

11 (2) Deadline; duration of posting. The covered organization
12 shall post the hyperlink described in subdivision (1) not later
13 than twenty-four hours after the Secretary of State posts the
14 information described in that paragraph on the Internet site of the
15 Secretary of State, and shall ensure that the hyperlink remains on
16 the Internet site of the covered organization until the expiration
17 of the one year period which begins on the date of the election
18 with respect to which the campaign-related disbursements are made.

19 (c) *Definitions.* -- The terms "campaign-related disbursement"
20 and "covered organization" have the meanings given those terms in
21 section eight-a of this article.

22 **§3-8-17. Effective date of amendments made during the 2014 Regular**
23 **Legislative Session; application to candidates for**

1 **federal office.**

2 The amendments to this article made during the 2014 Regular
3 Legislative Session become effective on July 1, 2014. However, the
4 amendments and this article do not, in general, apply to candidates
5 for federal office.

NOTE: The purpose of this bill concerns the disclosure of information on campaign contributions and spending. The bill sets forth reporting and disclosure requirements. The bill sets forth the treatment of functional equivalent of express advocacy as independent expenditures. The bill expands the period during which communications are treated as electioneering communications. The bill sets forth the effective date of expands the period during which communications are treated as electioneering communications. The bill sets forth the disclosure requirements for corporations and certain other entities. The bill sets forth disclaimer requirements for campaign disbursements. The bill requires publication and distribution of statements and solicitations. The bill sets forth the charges for newspaper or magazine space. The bill establishes special disclaimer requirements for certain communications. The bill requires disclosures to shareholders, member and donors of information on campaign-related disbursements. The bill defines terms. The bill sets forth exceptions. The bill sets forth the effective date of amendments. The bill provides that candidates for federal office are generally not affected.

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

§3-8-8a, §3-8-15, §3-8-16 and §3-8-17 are new; therefore, they have been completely underscored.