

H. B. 2089

(By Delegates Manchin, Longstreth and Caputo)

[Introduced January 16, 2015; referred to the

Committee on the Judiciary.]

10 A BILL to amend and reenact §3-8-1a and §3-8-2b of the Code of West Virginia, 1931, as amended;
11 and to amend said code by adding thereto four new sections, designated §3-8-8a, §3-8-15,
12 §3-8-16 and §3-8-17, all relating to the disclosure of information on campaign contributions
13 and spending; setting forth reporting and disclosure requirements; setting forth the treatment
14 of functional equivalent of express advocacy as independent expenditures; expanding the
15 period during which communications are treated as electioneering communications; setting
16 forth the effective date of expanding the period during which communications are treated as
17 electioneering communications; setting forth the disclosure requirements for corporations
18 and certain other entities; setting forth disclaimer requirements for campaign disbursements;
19 requiring publication and distribution of statements and solicitations; setting forth the
20 charges for newspaper or magazine space; establishing special disclaimer requirements for
21 certain communications; requiring disclosures to shareholders, member and donors of
22 information on campaign-related disbursements; defining terms; setting forth exceptions;

1 setting forth the effective date of amendments; and providing that candidates for federal
2 office are generally not affected.

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

4 That §3-8-1a and §3-8-2b of the Code of West Virginia, 1931, as amended, be amended and
5 reenacted; and that said code be amended by adding thereto four new sections, designated §3-8-8a,
6 §3-8-15, §3-8-16 and §3-8-17, all to read as follows:

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

8 **§3-8-1a. Definitions.**

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

10 (1) “Ballot issue” means a constitutional amendment, special levy, bond issue, local option
11 referendum, municipal charter or revision, an increase or decrease of corporate limits or any other
12 question that is placed before the voters for a binding decision.

13 (2) “Billboard Advertisement” means a commercially available outdoor advertisement, sign
14 or similar display regularly available for lease or rental to advertise a person, place or product.

15 (3) “Broadcast, cable or satellite communication” means a communication that is publicly
16 distributed by a television station, radio station, cable television system or satellite system.

17 (4) “Candidate” means an individual who:

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

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

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

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

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

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

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

1 (8) “Corporate political action committee” means a political action committee that is a
2 separate segregated fund of a corporation that may only accept contributions from its restricted group
3 as outlined by the rules of the State Election Commission.

4 (9) “Direct costs of purchasing, producing or disseminating electioneering communications”
5 means:

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

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

12 (10) “Disclosure date” means either of the following:

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

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

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

1 definition of the term “nomination” as used in this article.

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

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

7 (ii) Is publicly disseminated within:

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

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

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

14 (B) “Electioneering communication” does not include:

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

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

22 (II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage

1 to all opposing candidates in the circulation, viewing or listening area;

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

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

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

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

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

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

1 or

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

6 (C) The amendments made to this subdivision during the 2015 Regular Legislative Session
7 shall apply with respect to communications made on or after July 1, 2015, except that no
8 communication which is made prior to that date shall be treated as an electioneering communication
9 under this subdivision unless the communication would be treated as an electioneering
10 communication under this subdivision if the amendment did not apply.

11 (13) “Expressly advocating” means any communication that:

12 (A) Uses phrases such as “vote for the Governor”, “reelect your Senator”, “support the
13 Democratic nominee for Supreme Court”, “cast your ballot for the Republican challenger for House
14 of Delegates”, “Smith for House”, “Bob Smith in ‘04”, “vote Pro-Life” or “vote Pro-Choice”
15 accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote
16 against Old Hickory”, “defeat” accompanied by a picture of one or more candidates, “reject the
17 incumbent”;

18 (B) Communications of campaign slogans or individual words, that can have no other
19 reasonable meaning than to urge the election or defeat of one or more clearly identified candidates,
20 such as posters, bumper stickers, advertisements, etc., which say “Smith’s the One”, “Jones ‘06”,
21 “Baker”, etc; or

22 (C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against

1 a specific candidate.

2 (14) “Financial agent” means any individual acting for and by himself or herself, or any two
3 or more individuals acting together or cooperating in a financial way to aid or take part in the
4 nomination or election of any candidate for public office, or to aid or promote the success or defeat
5 of any political party at any election.

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

9 (16) “Independent expenditure” means an expenditure by a person:

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

16 (B) That is not made in concert or cooperation with or at the request or suggestion of such
17 candidate, his or her agents, the candidate’s authorized political committee or a political party
18 committee or its agents.

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

22 (17) “Mass mailing” means a mailing by United States mail, facsimile or electronic mail of

1 more than five hundred pieces of mail matter of an identical or substantially similar nature within
2 any thirty-day period. For purposes of this subdivision, “substantially similar” includes
3 communications that contain substantially the same template or language, but vary in nonmaterial
4 respects such as communications customized by the recipient's name, occupation or geographic
5 location.

6 (18) “Membership organization” means a group that grants bona fide rights and privileges,
7 such as the right to vote, to elect officers or directors and the ability to hold office, to its members
8 and which uses a majority of its membership dues for purposes other than political purposes.
9 “Membership organization” does not include organizations that grant membership upon receiving
10 a contribution.

11 (19) “Name” means the full first name, middle name or initial, if any, and full legal last name
12 of an individual and the full name of any association, corporation, committee or other organization
13 of individuals, making the identity of any person who makes a contribution apparent by
14 unambiguous reference.

15 (20) “Person” means an individual, corporation, partnership, committee, association and any
16 other organization or group of individuals.

17 (21) “Political action committee” means a committee organized by one or more persons for
18 the purpose of supporting or opposing the nomination or election of one or more candidates. The
19 following are types of political action committees:

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

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

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

3 (22) “Political committee” means any candidate committee, political action committee or
4 political party committee.

5 (23) “Political party” means a political party as that term is defined by section eight, article
6 one of this chapter or any committee established, financed, maintained or controlled by the party,
7 including any subsidiary, branch or local unit thereof and including national or regional affiliates of
8 the party.

9 (24) “Political party committee” means a committee established by a political party or
10 political party caucus for the purposes of engaging in the influencing of the election, nomination or
11 defeat of a candidate in any election.

12 (25) “Political purposes” means supporting or opposing the nomination, election or defeat
13 of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the
14 debt of a candidate or political committee or the administration or activities of an established
15 political party or an organization which has declared itself a political party and determining the
16 advisability of becoming a candidate under the precandidacy financing provisions of this chapter.

17 (26) “Public communication” means a communication by means of any broadcast, cable, or
18 satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or
19 telephone bank to the general public, or any other form of general public political advertising.

20 ~~(26)~~ (27) “Targeted to the relevant electorate” means a communication which refers to a
21 clearly identified candidate for statewide office or the Legislature and which can be received by one
22 hundred forty thousand or more individuals in the state in the case of a candidacy for statewide

1 office, eight thousand two hundred twenty or more individuals in the district in the case of a
 2 candidacy for the State Senate and two thousand four hundred ten or more individuals in the district
 3 in the case of a candidacy for the House of Delegates.

4 ~~(27)~~ (28) “Telephone bank” means telephone calls that are targeted to the relevant electorate,
 5 other than telephone calls made by volunteer workers, regardless of whether paid professionals
 6 designed the telephone bank system, developed calling instructions or trained volunteers.

7 ~~(28)~~ (29) “Two-year election cycle” means the twenty-four month period that begins the day
 8 after a general election and ends on the day of the subsequent general election.

9 ~~(29)~~ (30) “Unaffiliated political action committee” means a political action committee that
 10 is not affiliated with a corporation or a membership organization.

11 **§3-8-2b. Disclosure of electioneering communication.**

12 (a) Every person who has spent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (i) If any person, including, but not limited to, a political organization (as defined in Section
7 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure for
8 electioneering communications which is coordinated with and made with the cooperation, consent
9 or prior knowledge of a candidate, candidate's committee or agent of a candidate, the expenditure
10 shall be treated as a contribution and expenditure by the candidate. If the expenditure is coordinated
11 with and made with the cooperation or consent of a state or local political party or committee, agent
12 or official of that party, the expenditure shall be treated as a contribution to and expenditure by the
13 candidate's party.

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

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

19 **§3-8-8a. Disclosure requirements for corporations and certain other entities.**

20 (a) Disclosure statement. --

21 (1) Any corporation that makes campaign-related disbursements aggregating more than
22 \$10,000 in a calendar year shall, not later than twenty-four hours after each disclosure date, file a

1 statement with the Secretary of State that contains the information described in subdivision (2) of
2 this subsection:

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

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

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

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

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

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

17 (D) A certification by the chief executive officer or the head of the covered organization that
18 the campaign-related disbursement is not made in cooperation, consultation, or concert with or at
19 the request or suggestion of a candidate, authorized committee, or agent of a candidate, political
20 party, or agent of a political party.

21 (E) If the covered organization makes campaign-related disbursements exclusively using
22 funds in a segregated bank account consisting of funds that were contributed, donated, transferred,

1 or paid directly to that account by persons other than the covered organization that controls the
2 account, for each contribution, donation, transfer, payment of dues, or other payment to the account:

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

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

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

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

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

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

21 (iii) The aggregate amount of all those contributions, donations, transfers, and payments of
22 dues made by the person during the period beginning on the first day of the preceding calendar year

1 and ending on the disclosure date; but only if that contribution, donation, transfer, or payment of
2 dues was made by a person who made contributions, donations, transfers, or payments of dues to the
3 covered organization in an aggregate amount of \$10,000 or more during the period beginning on the
4 first day of the preceding calendar year and ending on the disclosure date.

5 (3) Exceptions.

6 (A) Amounts received in ordinary course of business. The requirement to include in a
7 statement filed under subdivision (1) of this subsection the information described in subdivision (2)
8 of this subsection does not apply to amounts received by the covered organization in the ordinary
9 course of any trade or business conducted by the covered organization or in the form of investments
10 in the covered organization.

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

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

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

20 (4) Disclosure date.

21 (A) General. Except as provided in paragraph (B) of this subdivision, the term “disclosure
22 date” means:

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

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

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

11 (b) Coordination with other provisions. --

12 (1) Other reports filed with the commission. Information included in a statement filed under
13 this section may be excluded 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 account referred to in
16 paragraph (E), subdivision (2), subsection (a) of this section, may be treated as a separate segregated
17 fund for purposes of Section 527(f)(3) of the Internal Revenue Code of 1986.

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

21 (d) Campaign-related disbursement defined. — In this section, the term “campaign-related
22 disbursement” means a disbursement by a covered organization for any of the following:

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

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

4 (3) A covered transfer.

5 (e) Covered organization defined. — In this section, the term “covered organization” means
6 any of the following:

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

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

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

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

16 (f) Covered transfer defined. --

17 (1) General. In this section, the term “covered transfer” means any transfer or payment of
18 funds by a covered organization to another person if the covered organization:

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

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

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

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

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

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

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

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

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

12 (D) Made campaign-related disbursements (other than a covered transfer) in an aggregate
13 amount of \$50,000 or more during the two- year period ending on the date of the transfer or payment,
14 or knew or had reason to know that the person receiving the transfer or payment made those
15 disbursements in that an aggregate amount during that two-year period; or

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

19 (2) Exclusions. The term “covered transfer” does not include any of the following:

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

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

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

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

7 (3) Exception for certain transfers among affiliates.

8 (A) Exception for certain transfers among affiliates. The term “covered transfer” does not
9 include an amount transferred by one covered organization to another covered organization which
10 is treated as a transfer between affiliates under paragraph (B) of this subdivision if the aggregate
11 amount transferred during the year by that covered organization to that same covered organization
12 is equal to or less than \$50,000.

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

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

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

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

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

1 (ii) The governing board of the organization includes persons who are specifically designated
2 representatives of the other organization or are members of the governing board, officers, or paid
3 executive staff members of the other organization, or whose service on the governing board is
4 contingent upon the approval of the other organization; or

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

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

11 **§3-8-15. Publication and distribution of statements and solicitations; charge for newspaper**
12 **or magazine space.**

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

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

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

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

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

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

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

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

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

17 (d) Additional requirements. --

18 (1) Communications by candidates or authorized persons.

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

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

5 (i) Shall be conveyed by:

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

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

9 (ii) Shall also appear in writing at the end of the communication in a clearly readable manner
10 with a reasonable degree of color contrast between the background and the printed statement, for a
11 period of at least four seconds.

12 (2) Communications by Certain Political Committees. Any communication described in
13 subdivision (3), subsection (a) of this section which, except to the extent provided in the last
14 sentence of this subdivision, is paid for by a political committee (including a political committee of
15 a political party) and which is transmitted through radio or television shall include, in addition to the
16 requirements of that paragraph, in a clearly spoken manner, the following audio statement: “
17 is responsible for the content of this advertising.” The foregoing blank shall be filled in with the
18 name of the political committee paying for the communication and the name of any connected
19 organization of the payor. If transmitted through television, the statement shall be conveyed by an
20 unobscured, full-screen view of a representative of the political committee making the statement, or
21 by a representative of that political committee or other person in voice-over, and shall also appear
22 in a clearly readable manner with a reasonable degree of color contrast between the background and

1 the printed statement, for a period of at least four seconds. This subdivision does not apply to a
2 communication paid for, in whole or in part, with a payment which is treated as a campaign-related
3 disbursement under section eight-a of this article and with respect to which a covered organization
4 files a statement under that section.

5 (e) Communications by others. --

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

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

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

21 (C) If the communication is transmitted through radio and is paid for, in whole or in part,
22 with a payment which is treated as a campaign-related disbursement under section eight-a of this

1 article the top two contributors list, if applicable, unless, on the basis of criteria established in rules
2 promulgated by the secretary, the communication is of such short duration that including the top two
3 contributors list in the communication would constitute a hardship to the person paying for the
4 communication by requiring a disproportionate amount of the content of the communication to
5 consist of the top two contributors list.

6 (2) Disclosure statements described.

7 (A) Individual disclosure statements. The individual disclosure statement described in this
8 paragraph is the following:

9 “I am _____, and I approve this message.” The foregoing blank filled in
10 with the name of the applicable individual.

11 (B) Organizational disclosure statements. The organizational disclosure statement described
12 in this paragraph is the following: “I am _____, the _____ of _____, and
13 _____ approves this message.”, with:

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

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

16 (iii) The third and fourth blanks each to be filled in with the name of the organization or other
17 person paying for the communication.

18 (3) Method of conveyance of statement.

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

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

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

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

11 (4) Definitions. In this subsection:

12 (A) “Applicable individual” means, with respect to a communication to which this subsection
13 applies:

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

15 (ii) If the communication is paid for by a corporation, the chief executive officer of the
16 corporation (or, if the corporation does not have a chief executive officer, the highest ranking official
17 of the corporation); and

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

20 (B) “Campaign-related disbursement” and “covered organization” have the meanings given
21 them in section eight-a of this article.

22 (C) “Top five contributors list” means, with respect to a communication paid for, in whole

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

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

18 **§3-8-16. Disclosures by covered organizations to shareholders, members, and donors of**
19 **information on campaign-related disbursements.**

20 (a) *Information on campaign-related disbursements to be included in periodic reports. —*
21 A covered organization which submits regular, periodic reports to its shareholders, members, or
22 donors on its finances or activities shall include in each such report, in a clear and conspicuous

1 manner, the information included in the statements filed by the organization under section eight-a
 2 of this article with respect to the campaign-related disbursements made by the organization during
 3 the period covered by the report.

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

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

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

16 (c) *Definitions.* -- The terms “campaign-related disbursement” and “covered organization”
 17 have the meanings given those terms in section eight-a of this article.

18 **§3-8-17. Effective date of amendments made during the 2015 Regular Legislative Session;**
 19 **application to candidates for federal office.**

20 The amendments to this article made during the 2015 Regular Legislative Session become
 21 effective on July 1, 2015. However, the amendments and this article do not, in general, apply to
 22 candidates 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.