

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4527

FISCAL
NOTE

BY DELEGATES MANCHIN, SKINNER, CAPUTO,

LONGSTRETH, FLUHARTY AND LYNCH

[Introduced February 12, 2016; referred to the
committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §3-8-1a, §3-8-2, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7, §3-8-8, §3-8-9
2 and §3-8-12 of the Code of West Virginia, 1931, as amended; and to further amend said
3 code by adding thereto two new sections, designated §3-8-5c and §3-8-8a, all relating
4 generally to the regulation and control of elections; modifying and adding definitions;
5 modifying what committees qualify for a federal reporting exemption; modifying reporting
6 requirements for independent expenditures; clarifying scope of reporting obligations by
7 committee treasurers; requiring certain contributions be reported to State Election
8 Commission within forty-eight hours of their receipt; requiring financial statements for
9 candidates for State Senate, House of Delegates, circuit judge and family court judge to
10 be filed electronically with the Secretary of State; permitting certain financial statements
11 to be filed by mail, in person or by facsimile or other electronic means; establishing a
12 processing fee for financial statements not filed electronically; requiring Secretary of State
13 to maintain an online searchable database; setting contribution limits to state party
14 executive committee, or subsidiary thereof, or state party legislative caucus committee;
15 prohibiting contributions by foreign nationals; directing Secretary of State to publish an
16 online list of late filing violators; prohibiting contributions to candidates or candidate
17 committees by corporations or membership organizations; clarifying and modifying
18 disclosure requirements for covered organizations; identifying additional lawful election
19 expenses; identifying additional lawful expenditures for excess campaign funds; creating
20 criminal offenses and setting penalties; and setting requirements for disclosures on certain
21 communications.

Be it enacted by the Legislature of West Virginia:

1 That §3-8-1a, §3-8-2, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7, §3-8-8, §3-8-9 and §3-8-12 of the
2 Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be
3 amended by adding thereto two new sections, designated §3-8-5c and §3-8-8a, all to read as
4 follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**§3-8-1a. Definitions.**

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

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

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

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

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

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

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

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

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

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

24 (6) "Clearly identified" means that the name, nickname, photograph, drawing or other
25 depiction of the candidate appears or the identity of the candidate is otherwise apparent through
26 an unambiguous reference, such as "the Governor", "your Senator" or "the incumbent" or through
27 an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate
28 for Governor" or "the Republican candidate for ~~Supreme Court of Appeals~~ House of Delegates".

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

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

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

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

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

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

49 (A) The first date during any calendar year on which any electioneering communication is

50 disseminated after the person paying for the communication has spent a total of \$5,000 or more
51 for the direct costs of purchasing, producing or disseminating electioneering communications; or

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

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

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

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

66 (ii) Is publicly disseminated within;

67 (I) Thirty days before a primary election at which the nomination for office sought by the
68 candidate is to be determined;

69 (II) Sixty days before a general or special election at which the office sought by the
70 candidate is to be filled.

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

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

74 (i) A news story, commentary or editorial disseminated through the facilities of any
75 broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical

76 publication not owned or controlled by a political party, political committee or candidate: *Provided,*
77 That a news story disseminated through a medium owned or controlled by a political party, political
78 committee or candidate is nevertheless exempt if the news is:

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

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

83 (ii) Activity by a candidate committee, party executive committee or caucus committee, or
84 a political action committee that is required to be reported to the State Election Commission or
85 the Secretary of State as an expenditure pursuant to section five of this article or the rules of the
86 State Election Commission or the Secretary of State promulgated pursuant to such provision:
87 *Provided,* That independent expenditures by a party executive committee or caucus committee
88 or a political action committee required to be reported pursuant to subsection (b), section two of
89 this article are not exempt from the reporting requirements of this section;

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

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

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

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

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

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

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

111 (A) Uses phrases such as "vote for the Governor", "reelect your Senator", "support the
112 ~~Democratic nominee~~ incumbent candidate for Supreme Court", "cast your ballot for the
113 Republican challenger for House of Delegates", "Smith for House", "Bob Smith in '04", "vote
114 Prolife" or "vote Prochoice" accompanied by a listing of clearly identified candidates described as
115 Prolife or Prochoice, "vote against Old Hickory", "defeat" accompanied by a picture of one or more
116 candidates, "reject the incumbent";

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

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

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

127 (15) "Fund-raising event" means an event such as a dinner, reception, testimonial, cocktail

128 party, auction or similar affair through which contributions are solicited or received by such means
129 as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

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

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

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

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

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

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

149 (19) "Membership organization political action committee" means a political action
150 committee that is a separate segregated fund of a membership organization that may only accept
151 contributions from its restricted group as outlined by the rules of the State Election Commission.

152 ~~(19)~~ (20) "Name" means the full first name, middle name or initial, if any, and full legal
153 last name of an individual and the full name of any association, corporation, committee or other

154 organization of individuals, making the identity of any person who makes a contribution apparent
155 by unambiguous reference.

156 ~~(20)~~ (21) "Person" means an individual, corporation, partnership, committee, association
157 and any other organization or group of individuals.

158 ~~(24)~~ (22) "Political action committee" means a committee organized by one or more
159 persons for the purpose of supporting or opposing the nomination or election of one or more
160 candidates. The following are types of political action committees:

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

163 (B) A membership organization political action committee, as that term is defined by
164 subdivision ~~(48)~~ (19) of this section;

165 (C) An unaffiliated political action committee, as that term is defined by subdivision ~~(29)~~
166 (30) of this section.

167 ~~(22)~~ (23) "Political committee" means any candidate committee, political action committee
168 or political party committee, as defined in subdivisions (5), (22), (25) or (26) of this section.

169 ~~(23)~~ (24) "Political party" means a political party as that term is defined by section eight,
170 article one of this chapter or any committee established, financed, maintained or controlled by the
171 party, including any subsidiary, branch or local unit thereof and including national or regional
172 affiliates of the party.

173 (25) "Political party caucus" means the committees that are established by the Republican
174 and Democrat caucuses of both the West Virginia House of Delegates and the West Virginia State
175 Senate, or by any other political party recognized by the State of West Virginia.

176 ~~(24)~~ (26) "Political party committee" means a committee established by a political party or
177 political party caucus for the purposes of engaging in the influencing of the election, nomination
178 or defeat of a candidate in any election.

179 ~~(25)~~ (27) "Political purposes" means supporting or opposing the nomination, election or

180 defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the
 181 retirement of the debt of a candidate or political committee or the administration or activities of an
 182 established political party or an organization which has declared itself a political party and
 183 determining the advisability of becoming a candidate under the precandidacy financing provisions
 184 of this chapter.

185 ~~(26)~~ (28) "Targeted to the relevant electorate" means a communication which refers to a
 186 clearly identified candidate for statewide office or the Legislature and which can be received by
 187 one hundred forty thousand or more individuals in the state in the case of a candidacy for
 188 statewide office, eight thousand two hundred twenty or more individuals in the district in the case
 189 of a candidacy for the State Senate and two thousand four hundred ten or more individuals in the
 190 district in the case of a candidacy for the House of Delegates.

191 ~~(27)~~ (29) "Telephone bank" means telephone calls that are targeted to the relevant
 192 electorate, other than telephone calls made by volunteer workers, regardless of whether paid
 193 professionals designed the telephone bank system, developed calling instructions or trained
 194 volunteers.

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

197 ~~(29)~~ (30) "Unaffiliated political action committee" means a political action committee that
 198 is not affiliated with a corporation or a membership organization.

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

1 (a) Except for: (1) Candidates for party committeeman and committeewoman; ~~and~~ (2)
 2 federal committees required to file under the provisions of 2 U.S.C. §434; and (3) candidates for
 3 delegate to a national convention, all candidates for nomination or election and all persons
 4 supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for
 5 a period of six months records of receipts and expenditures which are made for political purposes:

6 Provided, That any federal committee that makes state level independent expenditures or
7 engages in state level electioneering communications is not exempt from the record keeping and
8 reporting provisions of this article. All of the receipts and expenditures are subject to regulation
9 by the provisions of this article. Verified financial statements of the records and expenditures shall
10 be made and filed as public records by all candidates and by their financial agents,
11 representatives or any person acting for and on behalf of any candidate and by the treasurers of
12 all political party committees.

13 (b) ~~(4)~~ In addition to any other reporting required by the provisions of this chapter, any
14 person who makes independent expenditures in an aggregate amount or value in excess of
15 \$1,000 during a calendar year shall file a disclosure statement, on a form prescribed by the
16 Secretary of State, that contains all of the requirements set forth in section eight-a of this article.
17 following information:

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

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

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

26 (D) ~~The elections to which the independent expenditure pertain, the names, if known, of~~
27 ~~the candidates referred to or to be referred to therein, whether the expenditure is intended to~~
28 ~~support or oppose the identified candidates and the amount of the total expenditure reported~~
29 ~~pursuant to paragraph (C) of this subdivision spent to support or oppose each of the identified~~
30 ~~candidates;~~

31 (E) ~~The name and address of any person who contributed a total of more than \$250~~

32 ~~between the first day of the preceding calendar year, and the disclosure date, and whose~~
33 ~~contributions were made for the purpose of furthering the expenditure.~~

34 ~~(F) With regard to the contributors required to be listed pursuant to paragraph (E) of this~~
35 ~~subdivision, the statement shall also include:~~

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

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

39 ~~(iii) If the contributor is an individual, the name and address of the individual, his or her~~
40 ~~occupation, the name and address of the individual's current employer, if any, or, if the individual~~
41 ~~is self-employed, the name and address of the individual's business, if any;~~

42 ~~(iv) A description of the contribution, if other than money; and~~

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

44 ~~(G)(1) A certification that such independent expenditure was not made in cooperation,~~
45 ~~consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized~~
46 ~~committee or agent of such candidate.~~

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

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

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

58 ~~candidate, committee supporting or opposing a candidate on the ballot in more than one county,~~
59 ~~or any municipal candidate on a municipal election ballot, after the fifteenth day, but more than~~
60 ~~twelve hours, before the date of an election, shall file a report on a form prescribed by the~~
61 ~~Secretary of State, describing the expenditures within twenty-four hours: *Provided*, That a person~~
62 ~~making expenditures in the amount of \$1,000 or more for any statewide or legislative candidate~~
63 ~~on or after the fifteenth day but more than twelve hours before the day of any election shall report~~
64 ~~such expenditures in accordance with section two b of this article and shall not file an additional~~
65 ~~report as provided herein.~~

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

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

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

80 ~~(e) (c) Any communication paid for by an independent expenditure must include a clear~~
81 ~~and conspicuous public notice that:~~

82 ~~(1) Clearly states that the communication is not authorized by the candidate or the~~
83 ~~candidate's committee; and~~

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

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

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

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

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

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

107 ~~(i)~~ (g) This section does not apply to candidates for federal office.

108 ~~(j)~~ (h) The Secretary of State may promulgate emergency and legislative rules, in
109 accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for

110 the administration of this section.

§3-8-5. Detailed accounts and verified financial statements required.

1 (a) Every candidate, treasurer, person and association of persons, organization of any
2 kind, including every membership organization or corporation, directly, or by an independent
3 expenditure, supporting a political committee established pursuant to paragraph (C), subdivision
4 (1), subsection (b), section eight of this article or engaging in other activities permitted by this
5 section and also including the treasurer or equivalent officer of the association or organization,
6 expressly advocating the election or defeat of a clearly identified candidate for state, district,
7 county or municipal office, and the treasurer of every political committee shall keep detailed
8 accounts of every sum of money or other thing of value received by him or her, including all loans
9 of money or things of value and of all expenditures and disbursements made, liabilities incurred,
10 by the candidate, financial agent, person, association or organization or committee, for political
11 purposes, or by any of the officers or members of the committee, or any person acting under its
12 authority or on its behalf.

13 (b) Every ~~person or association of persons~~ candidate or political committee required to
14 keep detailed accounts under this section shall file with the officers hereinafter prescribed a
15 detailed itemized sworn statement:

16 (1) Of all financial transactions, whenever the total exceeds \$500, which have taken place
17 before the last Saturday in March, to be filed within six days thereafter and annually whenever
18 the total of all financial transactions ~~relating to an election~~ for each candidate or political committee
19 exceeds \$500;

20 (2) Of all financial transactions which have taken place before the ~~fifteenth~~ tenth day
21 preceding each primary or other election and subsequent to the previous statement, if any, to be
22 filed within four business days after the ~~fifteenth~~ tenth day;

23 (3) Of all financial transactions which have taken place before the thirteenth day after each
24 primary or other election and subsequent to the previous statement, if any, to be filed within twenty

25 business days after the thirteenth day; and

26 (4) Of all financial transactions, whenever the total exceeds \$500 or whenever any loans
27 are outstanding, which have taken place before the forty-third day preceding the general election
28 day, to be filed within four business days after the forty-third day.

29 (c) Every person who announces as a write-in candidate for any elective office and his or
30 her financial agent or election organization of any kind shall comply with all of the requirements
31 of this section after public announcement of the person's candidacy has been made.

32 (d) For purposes of this section, the term "financial transactions" includes all political
33 contributions or loans received and all repayments of loans or expenditures made ~~to promote the~~
34 ~~candidacy of any person~~ by any candidate or ~~any organization advocating or opposing the~~
35 ~~nomination, election or defeat of any candidate to be voted on~~ political committee.

36 (e) Candidates for the office of conservation district supervisor elected pursuant to the
37 provisions of article twenty-one-a, chapter nineteen of this code are required to file only the reports
38 required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after
39 the primary election. ~~Provided, That during the election in the year 2008, the statements required~~
40 ~~by this subsection shall be filed immediately prior to and after the general election~~

§3-8-5a. Information required in financial statement.

1 (a) Each financial statement required by the provisions of this article, other than a
2 disclosure of electioneering communications pursuant to section two-b of this article, shall contain
3 only the following information:

4 (1) The name, residence and mailing address and telephone number of each candidate,
5 financial agent, treasurer or person and the name, address and telephone number of each
6 association, organization or committee filing a financial statement.

7 (2) The balance of cash and any other sum of money on hand at the beginning and the
8 end of the period covered by the financial statement.

9 (3) The name of any person making a contribution and the amount of the contribution. If

10 the total contributions of any one person in any one election cycle amount to more than \$250, the
11 residence and mailing address of the contributor and, if the contributor is an individual, his or her
12 major business affiliation and occupation shall also be reported. A contribution totaling more than
13 \$50 of currency of the United States or currency of any foreign country by any one contributor is
14 prohibited and a violation of section five-d of this article. The statement on which contributions are
15 required to be reported by this subdivision may not distinguish between contributions made by
16 individuals and contributions made by partnerships, firms, associations, committees,
17 organizations or groups.

18 (4) The total amount of contributions received during the period covered by the financial
19 statement.

20 (5) The name, residence and mailing address of any individual or the name and mailing
21 address of each lending institution making a loan or of the spouse cosigning a loan, as
22 appropriate, the amount of any loan received, the date and terms of the loan, including the interest
23 and repayment schedule, and a copy of the loan agreement.

24 (6) The name, residence and mailing address of any individual or the name and mailing
25 address of each partnership, firm, association, committee, organization or group having
26 previously made or cosigned a loan for which payment is made or a balance is outstanding at the
27 end of the period, together with the amount of repayment on the loan made during the period and
28 the balance at the end of the period.

29 (7) The total outstanding balance of all loans at the end of the period.

30 (8) The name, residence and mailing address of any person to whom each expenditure
31 was made or liability incurred, including expenditures made on behalf of a candidate or political
32 committee that otherwise are not made directly by the candidate or political committee, together
33 with the amount and purpose of each expenditure or liability incurred and the date of each
34 transaction.

35 (9) The total expenditure for the nomination, election or defeat of a candidate or any

36 person supporting, aiding or opposing the nomination, election or defeat of any candidate in
37 whose behalf an expenditure was made or a contribution was given for the primary or other
38 election.

39 (10) The total amount of expenditures made during the period covered by the financial
40 statement.

41 (b) Any unexpended balance at the time of making the financial statements herein
42 provided for shall be properly accounted for in that financial statement and shall appear as a
43 beginning balance in the next financial statement.

44 (c) Each financial statement required by this section shall contain a separate section
45 setting forth the following information for each fund-raising event held during the period covered
46 by the financial statement:

47 (1) The type of event, date held and address and name, if any, of the place where the
48 event was held.

49 (2) All of the information required by subdivision (3), subsection (a) of this section.

50 (3) The total of all moneys received at the fund-raising event.

51 (4) The expenditures incident to the fund-raising event.

52 (5) The net receipts of the fund-raising event.

53 (d) When any lump sum payment is made to any advertising agency or other disbursing
54 person who does not file a report of detailed accounts and verified financial statements as required
55 in this section, such lump sum expenditures shall be accounted for in the same manner as
56 provided for herein.

57 (e) Any contribution or expenditure made by or on behalf of a candidate for public office,
58 to any other candidate or committee for a candidate for any public office in the same election shall
59 be accounted for in accordance with the provisions of this section.

60 (f) No person may make any contribution except from his, her or its own funds, unless
61 such person discloses in writing to the person required to report under this section the name,

62 residence, mailing address, major business affiliation and occupation of the person which
63 furnished the funds to the contributor. All such disclosures shall be included in the statement
64 required by this section.

65 (g) Any firm, association, committee or fund permitted by section eight of this article to be
66 a political committee shall disclose on the financial statement its corporate or other affiliation.

67 (h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously
68 or by one person through an agent, relative or other person so as to conceal the identity of the
69 source of the contribution or in any other manner so as to effect concealment of the contributor's
70 identity.

71 (i) No person may accept any contribution for the purpose of influencing the nomination,
72 election or defeat of a candidate ~~or for the passage or defeat of any ballot issue~~ unless the identity
73 of the donor and the amount of the contribution is known and reported.

74 (j) When any person receives an anonymous contribution which cannot be returned
75 because the donor cannot be identified, that contribution shall be donated to the General Revenue
76 Fund of the state. Any anonymous contribution shall be recorded as such on the candidate's
77 financial statement, but may not be expended for election expenses. At the time of filing, the
78 financial statement shall include a statement of distribution of anonymous contributions, which
79 total amount shall equal the total of all anonymous contributions received during the period.

80 (k) Any membership organization which raises funds for political purposes by payroll
81 deduction, assessing them as part of its membership dues or as a separate assessment, may
82 report the amount raised as follows:

83 (1) If the portion of dues or assessments designated for political purposes equals \$25 or
84 less per member over the course of a calendar year, the total amount raised for political purposes
85 through membership dues or assessments during the period is reported by showing the amount
86 required to be paid by each member and the number of members.

87 (2) If the total payroll deduction for political purposes of each participating member equals

88 \$25 or less over the course of a calendar or fiscal year, as specified by the organization, the
89 organization shall report the total amount received for political purposes through payroll
90 deductions during the reporting period and, to the maximum extent possible, the amount of each
91 yearly payroll deduction contribution level and the number of members contributing at each such
92 specified level. The membership organization shall maintain records of the name and yearly
93 payroll deduction amounts of each participating member.

94 (3) If any member contributes to the membership organization through individual voluntary
95 contributions by means other than payroll deduction, membership dues, or assessments as
96 provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this
97 section shall apply. Funds raised for political purposes must be segregated from the funds for
98 other purposes and listed in its report.

99 (l) Notwithstanding the provisions of section five of this article or of the provisions of this
100 section to the contrary, an alternative reporting procedure may be followed by a political party
101 committee in filing financial reports for fund-raising events if the total profit does not exceed \$5,000
102 per year. A political party committee may report gross receipts for the sale of food, beverages,
103 services, novelty items, raffle tickets or memorabilia, except that any receipt of more than \$50
104 from an individual or organization shall be reported as a contribution. A political party committee
105 using this alternative method of reporting shall report:

106 ~~(i)~~ (1) The name of the committee;

107 ~~(ii)~~ (2) The type of fund-raising activity undertaken;

108 ~~(iii)~~ (3) The location where the activity occurred;

109 ~~(iv)~~ (4) The date of the fundraiser;

110 ~~(v)~~ (5) The name of any individual who contributed more than \$50 worth of items to be
111 sold;

112 ~~(vi)~~ (6) The name and amount received from any person or organization purchasing more
113 than \$50 worth of food, beverages, services, novelty items, raffle tickets or memorabilia;

- 114 ~~(vii)~~ (7) The gross receipts of the fundraiser; and
 115 ~~(viii)~~ (8) The date, amount, purpose and name and address of each person or organization
 116 from whom items with a fair market value of more than \$50 were purchased for resale.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

1 (a) The financial statements provided ~~for~~ in this article shall be filed, by or on behalf of
 2 candidates, with:

3 (1) The Secretary of State for legislative offices, circuit judge, family court judge and for
 4 statewide and other offices to be nominated or elected by the voters of a political division greater
 5 than a county;

6 (2) The clerk of the county commission by candidates for offices to be nominated or
 7 elected by the voters of a single county or a political division within a single county, except for
 8 legislative offices, circuit judge and family court judge; or

9 (3) The proper municipal officer by candidates for office to be nominated or elected to
 10 municipal office.

11 (b) ~~The statements may be filed by mail, in person, or by facsimile or other electronic~~
 12 ~~means of transmission: *Provided*, That the~~ Financial statements filed by or on behalf of candidates
 13 for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of
 14 Agriculture, State Senate, House of Delegates, and Supreme Court of Appeals, circuit judge and
 15 family court judge shall be filed electronically by the means of an Internet program to be
 16 established by the Secretary of State. Candidates for House of Delegates, State Senate, circuit
 17 judge and family court judge may file financial statements in person or by facsimile or other
 18 electronic means of submission until the total amount of contributions received by the candidate
 19 exceeds \$10,000 for the election cycle. The Secretary of State shall charge a \$25 processing fee
 20 for any financial statements that are not filed electronically.

21 (c) Committees required to report electronically may apply to the State Election
 22 Commission for an exemption from mandatory electronic filing in the case of hardship. An

23 exemption may be granted at the discretion of the State Election Commission.

24 (d) Candidates for all other offices than those identified in subsection (b) of this section
 25 may file statements by mail, in person or by facsimile or other electronic means of transmission.

26 For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be
 27 the date of the postmark of the United States Postal Service, and in the case of hand delivery or
 28 delivery by facsimile or other electronic means of transmission, the date delivered to the office of
 29 the Secretary of State or to the office of the clerk of the county commission, in accordance with
 30 the provisions of subsection (a) of this section, during regular business hours of such office.

31 (e) The sworn financial statements required to be filed by this section with the Secretary
 32 of State shall be posted on the Internet by the Secretary of State within ten business days from
 33 the date the financial statement was filed.

34 (f) The Secretary of State shall maintain an online searchable database accessible to the
 35 public on the Secretary of State's website. The database shall include the ability to search
 36 contribution and expenditure data submitted by the candidates and political action committees.
 37 Information capable of search shall include, but not be limited to, a contributor's first name, last
 38 name, city, state, occupation, employer, contribution amount, date, expenditure payee, city, state,
 39 purpose and amount.

§3-8-5c. Prohibition against contributions by foreign nationals.

1 (a) Prohibition against contributions by foreign nationals. --

2 (1) It is unlawful for:

3 (A) A foreign national, directly or indirectly, to make:

4 (i) A contribution or donation of money or other thing of value, or to make an express or
 5 implied promise to make a contribution or donation, in connection with a state or local election;

6 (ii) A contribution or donation to a committee of a political party; or

7 (iii) A political expenditure, independent expenditure or disbursement for an electioneering
 8 communication, as those terms are defined in this article; or

9 (B) A person to solicit, accept or receive a contribution or donation described in
10 subparagraph (i) or (ii), paragraph (A) of this subdivision.

11 (2) As used in this section, the term "foreign national" means:

12 (A) A foreign principal, as such term is defined in 22 U. S. C. § 611(b), which includes:

13 (i) A government of a foreign country;

14 (ii) A foreign political party;

15 (iii) A person outside of the United States, unless it is established that such person;

16 (I) Is an individual and a citizen of the United States; or

17 (II) That such person is not an individual and is organized under or created by the laws of
18 the United States or of any state or other place subject to the jurisdiction of the United States and
19 has its principal place of business within the United States.

20 (iv) A partnership, association, corporation, organization or other combination of persons
21 organized under the laws of or having its principal place of business in a foreign country.

22 (B) An individual who is not a citizen of the United States or a national of the United States,
23 as defined in 8 U. S. C. §1101(a)(22), and who is not lawfully admitted for permanent residence,
24 as defined by 8 U. S. C. §1101(a)(20).

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

1 (a) Any person, candidate, financial agent or treasurer of a political party committee who
2 fails to file a sworn, itemized statement required by this article within the time limitations specified
3 in this article or who willfully files a grossly incomplete or grossly inaccurate statement is guilty of
4 a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 or confined in jail
5 for not more than one year, or both fined and confined. Sixty days after any primary or other
6 election, the Secretary of State, county clerk or municipal recorder, as the case may be, shall give
7 notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly
8 inaccurate statement by any person, candidate, financial agent or treasurer of a political party

9 committee and forward copies of any grossly incomplete or grossly inaccurate statement to the
10 prosecuting attorney of the county where the person, candidate, financial agent or treasurer
11 resides, is located or has its principal place of business.

12 (b) (1) Any ~~person~~, candidate, ~~financial agent~~ or treasurer of a political party committee
13 who fails to file a sworn, itemized statement as required in this article or who files a grossly
14 incomplete or grossly inaccurate statement ~~may~~ shall be assessed a civil penalty by the Secretary
15 of State of ~~\$25~~ \$10 a day for each day after the due date the statement is delinquent, grossly
16 incomplete or grossly inaccurate. Sixty days after any primary or other election, the county clerk
17 shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of
18 any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent
19 or treasurer of a political party committee and forward copies of such delinquent, incomplete or
20 inaccurate statements to the Secretary of State.

21 (2) A civil penalty assessed pursuant to this section shall be payable to the State of West
22 Virginia and is collectable as authorized by law for the collection of debts.

23 (3) The Secretary of State may negotiate and enter into settlement agreements for the
24 payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or
25 inaccurate statement.

26 (4) The Secretary of State shall publish online a list of all late filing violators for each
27 deadline in an election cycle. This list shall be maintained and be publicly available online to
28 include late activity for the previous five years to the current year.

29 ~~(4)~~ (5) The Secretary of State and county clerk may review and audit any sworn statement
30 required to be filed pursuant to this article. The State Election Commission shall propose
31 legislative rules for promulgation, in accordance with chapter twenty-nine-a of this code, to
32 establish procedures for the assessment of civil penalties as provided in this section.

33 (c) (1) Any candidate, whether nominated by primary election or appointed by executive
34 committee or executive committee chair, who has failed to file any sworn statement as required

35 by this article, relating to the immediately preceding primary election for any office by the eighty-
36 fourth day before the general election, is disqualified and may not have his or her name appear
37 on the general election ballot. The provisions of subsection (d), section five-b of this article
38 notwithstanding, any sworn statement filed after the deadline required by section five of this article
39 must be received in the office indicated by subsection (a), section five-b of this article by the close
40 of business on the eighty-fourth day before the general election.

41 (2) It is unlawful to issue a commission or certificate of election, or to administer the oath
42 of office, to any person elected to any public office who has failed to file any sworn statement
43 required by this article and no person may enter upon the duties of his or her office until he or she
44 has filed such statement, nor may he or she receive any salary or emolument for any period prior
45 to the filing of the statement.

46 (3) The vacancy on the ballot created by the disqualification in this subsection is subject
47 to section nineteen, article five, chapter three of this code.

48 (d) As used in this section, "grossly" means substantive and material, and specifically
49 includes false or misleading representations and acts of omissions.

50 (e) The Secretary of State shall provide by rule protocols for written notice via certified
51 mail, return receipt requested, to the person, candidate, financial agent or treasurer of a political
52 party committee that is not in compliance with the requirements of this section. With respect to a
53 violation of subsection (c) of this section, the notice shall be provided sixty days after any primary
54 or other election.

**§3-8-8. Corporation and membership organization contributions forbidden; exceptions;
penalties; promulgation of rules; additional powers of State Election Commission.**

1 (a) An officer, agent or person acting on behalf of any membership organization or any
2 corporation, whether incorporated under the laws of this or any other state or of a foreign country,
3 may not pay, give, lend or authorize to be paid, any money or other thing of value belonging to
4 the corporation to any candidate or candidate's campaign for nomination or election to any

5 statewide office or any other elective office in the state or any of its subdivisions.

6 (b) A person may not solicit or receive any payment, contribution or other thing from any
7 membership organization or any corporation or from any officer, agent or other person acting on
8 behalf of the membership organization or corporation to any candidate or candidate's campaign
9 for nomination or election to any statewide office or any other elective office in the state or any of
10 its subdivisions.

11 (c)(1) The provisions of this section do not prohibit a membership organization or
12 corporation from soliciting, through any officer, agent or person acting on behalf of the
13 membership organization or corporation, contributions to a separate segregated fund to be used
14 for political purposes. Any separate segregated fund is considered a political action committee for
15 the purpose of this article and is subject to all reporting requirements applicable to political action
16 committees;

17 (2) It is unlawful for:

18 (A) A membership organization corporation or separate segregated fund to make a
19 primary or other election contribution or expenditure by using money or anything of value secured:

20 (i) By physical force, job discrimination or financial reprisal: (ii) by the threat of force, job
21 discrimination or financial reprisal; or (iii) as a condition of employment;

22 (B) Any person soliciting a membership organization member, stockholder or executive or
23 administrative personnel and members of their families for a contribution to a membership
24 organization corporation or separate segregated fund to fail to inform the person solicited of the
25 political purposes of the separate segregated fund at the time of the solicitation;

26 (C) Any person soliciting any other person for a contribution to a membership organization,
27 corporation or separate segregated fund to fail to inform the person solicited at the time of the
28 solicitation of his or her right to refuse to contribute without any reprisal;

29 (D) A separate segregated fund established by a membership organization or corporation:

30 (i) To solicit contributions to the fund from any person other than the membership organization's

31 members or the corporation's stockholders ~~and~~ their families and ~~its~~ their executive or
32 administrative personnel and their families; or (ii) to contribute any membership organization or
33 corporate funds;

34 (E) A separate segregated fund established by a membership organization or corporation
35 to receive contributions to the fund from any person other than the membership organization's
36 members or corporation's stockholders and their immediate families and ~~its~~ their executive or
37 administrative personnel and their immediate families;

38 (F) A membership organization or corporation to engage in job discrimination or to
39 discriminate in job promotion or transfer because of a member's or an employee's failure to make
40 a contribution to the membership organization or corporation or a separate segregated fund;

41 (G) A separate segregated fund to make any contribution, directly or indirectly, in excess
42 of \$1,000 in connection with or on behalf of any campaign for nomination or election to any
43 elective office in the state or any of its subdivisions, or in connection with or on behalf of any
44 committee or other organization or person engaged in furthering, advancing, supporting or aiding
45 the nomination or election of any candidate for any such office;

46 (H) A membership organization or corporation to pay, give or lend or to authorize payment,
47 giving or lending of any moneys or other things of value belonging to the membership organization
48 or corporation to a separate segregated fund for the purpose of making a contribution to a
49 candidate or a candidate's committee. This provision does not prohibit a separate segregated
50 fund from using the property, real or personal, facilities and equipment of a membership
51 organization or corporation solely to establish, administer and solicit contributions to the fund,
52 subject to the rules of the State Election Commission as provided in subsection (d) of this section:
53 *Provided, That any such membership organization or corporation shall also permit any group of*
54 *its employees represented by a bona fide political action committee to use the real property of the*
55 membership organization or corporation solely to establish, administer and solicit contributions to
56 the fund of the political action committee, subject to the rules of the State Election Commission

57 promulgated in accordance with said subsection.

58 (3) For the purposes of this section, the term “executive or administrative personnel”
59 means individuals employed by a membership organization or corporation who are paid on a
60 salary rather than hourly basis and who have policy-making, managerial, professional or
61 supervisory responsibilities.

62 (d) Any person, membership organization or corporation violating any provision of this
63 section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
64 \$10,000. A membership organization or corporation may not reimburse any person the amount
65 of any fine imposed pursuant to this section.

66 (e) To ensure uniform administration and application of the provisions of this section and
67 of those of the Federal Election Campaign Act Amendments of 1976 relating to membership
68 organization and corporate contributions, the State Election Commission shall propose rules for
69 legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of
70 this code to implement the provisions of this section consistent, insofar as practicable, with the
71 rules and regulations promulgated by the Federal Election Commission to carry out similar or
72 identical provisions of 2 U.S.C. §441b.

73 (f) In addition to the powers and duties set forth in article one-a of this chapter, the State
74 Election Commission has the following powers and duties:

75 (1) To investigate, upon complaint or on its own initiative, any alleged violations or
76 irregularities of this article.

77 (2) To administer oaths and affirmations, issue subpoenas for the attendance of
78 witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and
79 all other evidence necessary to any investigation.

80 (3) To involve the aid of any circuit court in the execution of its subpoena power.

81 (4) To report any alleged violations of this article to the appropriate prosecuting attorney
82 having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged

83 violations, together with all evidence relating thereto, no later than the next term of court after
84 receiving the report.

85 (g) The Attorney General shall, when requested, provide legal and investigative assistance
86 to the State Election Commission.

87 (h) Any investigation, either upon complaint or initiative, shall be conducted in an executive
88 session of the State Election Commission and shall remain undisclosed except upon an
89 indictment by a grand jury.

90 (i) Any person who discloses the fact of any complaint, investigation or report or any part
91 thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof,
92 shall be fined not less than \$1,000, nor more than \$5,000, and shall be confined in jail not less
93 than six months nor more than one year.

94 ~~(j) The amendments to this section enacted during the second extraordinary session of~~
95 ~~2008 are intended to conform to the existing proscription to Constitutionally permissible limits and~~
96 ~~not to create a new offense or offenses.~~

97 ~~(k) The effective date of the amendments to this section enacted during the second~~
98 ~~extraordinary legislative session of 2008 is October 1, 2008.~~

§3-8-8a. Disclosure requirements for covered organizations.

1 (a) Disclosure statement. --

2 (1) Any covered organization that makes political disbursements aggregating more than
3 \$1,000 in a calendar year shall, not later than forty-eight hours after the \$1,000 threshold is met,
4 file a statement with the Secretary of State that contains the information described in subdivision
5 (2) of this subsection. Subsequent reports shall be filed within forty-eight hours of each additional
6 campaign-related political expenditure aggregating more than \$1,000:

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

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

11 (2) The information to be included in the statement required by this subsection is as
12 follows:

13 (A) The name of the covered organization and the principal place of business of that
14 organization.

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

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

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

25 (E) If the covered organization makes campaign-related disbursements exclusively using
26 funds in a segregated bank account consisting of funds that were contributed, donated,
27 transferred or paid directly to that account by persons other than the covered organization that
28 controls the account, for each contribution, donation, transfer, payment of dues or other payment
29 to the account:

30 (i) The name and address of each person who made that contribution, donation, transfer,
31 payment of dues or other payment of more than \$250 during the period covered by the statement;

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

34 (iii) The aggregate amount of all those contributions, donations, transfers, payments of
35 dues and other payments made by the person during the period beginning on the first day of the
36 preceding calendar year and ending on the disclosure date.

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

41 (i) The name and address of each person who made that contribution, donation, transfer
42 or payment of dues of more than \$250 during the period covered by the statement;

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

44 (iii) The aggregate amount of all those contributions, donations, transfers and payments
45 of dues made by the person during the period beginning on the first day of the preceding calendar
46 year and ending on the disclosure date.

47 (3) Exceptions. --

48 (A) The requirement to include in a statement filed under subdivision (1) of this subsection
49 the information described in subdivision (1) of this subsection does not apply to amounts received
50 by the covered organization in the ordinary course of any trade or business conducted by the
51 covered organization or in the form of investments in the covered organization.

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

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

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

61 (4) Disclosure date. --

62 (A) Except as provided in paragraph (B) of this subdivision, the term “disclosure date”
63 means:

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

66 (ii) Each date following the date described in subparagraph (i) of this paragraph during
67 that calendar year by which a person has made campaign-related disbursements aggregating
68 more than \$1,000.

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

75 (b) Coordination with other provisions. -- A segregated bank account referred to in
76 paragraph (E), subdivision (2), subsection (a) of this section may be treated as a separate
77 segregated fund for purposes of section 527(f)(3) of the Internal Revenue Code of 1986.

78 (c) Filing. -- Statements required to be filed under subsection (a) of this section are subject
79 to the requirements of subsection (h), section two of this article to the same extent and in the
80 same manner as if those reports had been required under said section.

81 (d) Campaign-related disbursement defined. -- As used in this section, the term
82 “campaign-related disbursement” means a disbursement by a covered organization for any of the
83 following:

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

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

87 (3) A covered transfer.

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

90 (1) A membership organization, corporation and any other legal entity, including, but not
91 limited to, a limited liability company, limited liability partnership, cooperative, estate, trust,
92 partnership or other legal entity authorized to exist by the laws of this state, another state or the
93 federal government;

94 (2) An organization described in section 501(c) of the Internal Revenue Code of 1986;

95 (3) Any political organization under section 527 of the Internal Revenue Code of 1986,
96 other than a political committee under this article, except as provided in subdivision (4) of this
97 subsection; or

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

101 (f) Covered transfer defined. --

102 (1) General. -- In this section, the term "covered transfer" means any transfer or payment
103 of funds by a covered organization to another person.

104 (A) If the covered organization designates, requests or suggests that the amounts be used
105 for:

106 (i) Campaign-related disbursements; or

107 (ii) Making a transfer to another person for the purpose of making or paying for that
108 campaign-related disbursements.

109 (B) If the covered organization made that transfer or payment in response to a solicitation
110 or other request for a donation or payment for:

111 (i) The making of or paying for campaign-related disbursements; or

112 (ii) Making a transfer to another person for the purpose of making or paying for those
113 campaign-related disbursements.

114 (C) If the covered organization engaged in discussions with the recipient of the transfer or
115 payment regarding:

116 (i) The making of or paying for campaign-related disbursements; or

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

119 (D) (i) If the covered organization made campaign-related disbursements in an aggregate
120 amount of \$10,000 or more during the two- year period ending on the date of the transfer or
121 payment; or

122 (ii) The person receiving the transfer or payment made campaign related disbursements
123 in an aggregate amount of \$10,000 during the two-year period. In making the determination of
124 whether the \$10,000 threshold on campaign related disbursements set forth in the subsection has
125 been met, the amount of the transfer at issue shall be included to the extent the proposed transfer
126 is not excluded by the provisions of subsection (f)(2).

127 (E) If the person receiving the transfer or payment has made campaign-related
128 disbursements in an aggregate amount of \$10,000 or more during the two-year period beginning
129 on the date of the transfer or payment at the time of the transfer, it shall so notify the donor at the
130 time of the transfer. If the person receiving the transfer has not met the aggregate \$10,000
131 threshold at the time of the transfer, but subsequently reaches the threshold, the transfer shall be
132 considered a covered transfer on the date that the threshold is met, and the person receiving the
133 transfer shall so notify the donor. In making the determination of whether the \$10,000 threshold
134 on campaign related disbursements set forth in this subsection has been met the amount of the

135 transfer at issue shall be included to the extent the proposed transfer is not excluded from the
136 provisions of subsection (f)(2).

137 (F) Any person receiving the transfer or payment who, within the two-year period
138 beginning on the date of the transfer or payment, thereafter makes a transfer otherwise
139 constituting a covered transfer under the provisions of this subsection shall notify all donors
140 providing transfers of the subsequent transfer. No recipient of a transfer or payment may make a
141 subsequent transfer or payment of any funds excluded from the provisions of subsection
142 paragraph (B), subdivision (2), subsection (f) of this section.

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

144 (A) A disbursement made by a covered organization in the ordinary course of any trade
145 or business conducted by the covered organization or in the form of investments made by the
146 covered organization.

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

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

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

153 (3) *Exception for certain transfers among affiliates.* --

154 (A) The term “covered transfer” does not include an amount transferred by one covered
155 organization to another covered organization which is treated as a transfer between affiliates
156 under paragraph (B) of this subdivision if the aggregate amount transferred during the year by
157 that covered organization to that same covered organization is equal to or less than \$50,000.

158 (B) A transfer of amounts from one covered organization to another covered organization
159 shall be treated as a transfer between affiliates if:

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

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

164 (C) For purposes of paragraph (B) of this subdivision, a covered organization is an affiliate
165 of another covered organization if:

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

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

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

173 (D) This subdivision applies with respect to an amount transferred by a covered
174 organization to an organization described in paragraph (3), section 501(c) of the Internal Revenue
175 Code of 1986 in the same manner as this paragraph applies to an amount transferred by a
176 covered organization to another covered organization.

177 (g) Any person who makes a contribution for the purpose of funding an independent
178 expenditure under this section shall, at the time the contribution is made, provide his or her name,
179 address, occupation, his or her current employer if any, or if the individual is self-employed, the
180 name of his or her business, if any, to the recipient of the contribution.

181 (h) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-
182 by-candidate basis, all independent expenditures separately, made by, or on behalf of, or for, or
183 against each candidate, as reported under this subsection, and periodically publish such indices
184 on a timely preelection basis.

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

188 (j) (1) Any person who is required to file a statement under this section may file the
 189 statement by facsimile device or electronic mail, in accordance with such rules as the Secretary
 190 of State may promulgate.

191 (k) The Secretary of State shall make any document filed electronically pursuant to this
 192 subsection accessible to the public on the Internet not later than twenty-four hours after the
 193 document is received by the secretary.

194 (l) The Secretary of State may promulgate emergency and legislative rules, in accordance
 195 with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the
 196 administration of this section. In promulgating a rule under this subsection, the secretary shall
 197 provide methods, other than requiring a signature on the document being filed, for verifying the
 198 documents covered by the rule. Any document verified under any of the methods shall be treated
 199 for all purposes, including penalties for perjury, in the same manner as a document verified by
 200 signature.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

1 (a) No financial agent or treasurer of a political committee shall pay, give or lend, either
 2 directly or indirectly, any money or other thing of value for any election expenses, except for the
 3 following purposes:

4 (1) For rent, maintenance, office equipment and other furnishing of offices to be used as
 5 political headquarters and for the payment of necessary ~~clerks, stenographers, typists, janitors~~
 6 ~~and messengers~~ employees actually employed therein;

7 (2) In the case of a candidate who does not maintain a headquarters, for reasonable office

8 expenses, including, but not limited to, filing cabinets and other office equipment and furnishings,
9 computers, computer hardware and software, scanners, typewriters, calculators, audio visual
10 equipment, the rental of the use of the same, or for the payment for the shared use of same with
11 the candidate's business and for the payment of necessary ~~clerks, stenographers and typists~~
12 employees actually employed;

13 (3) For printing and distributing books, pamphlets, circulars and other printed matter and
14 radio and television broadcasting and painting, printing and posting signs, banners and other
15 advertisements, including contributions to charitable, educational or cultural events, for the
16 promotion of the candidate, or the candidate's name; ~~or an issue on the ballot~~;

17 (4) For renting and decorating halls for public meetings and political conventions, for
18 advertising public meetings and for the payment of traveling expenses of speakers and musicians
19 at such meetings;

20 (5) For the necessary traveling and hotel expenses of candidates, political agents and
21 committees and for stationery, postage, telegrams, telephone, express, freight and public
22 messenger service;

23 (6) For preparing, circulating and filing petitions for nomination of candidates;

24 (7) For examining the lists of registered voters, securing copies thereof, investigating the
25 right to vote of the persons listed therein and conducting proceedings to prevent unlawful
26 registration or voting;

27 (8) For conveying voters to and from the polls;

28 (9) For securing publication in newspapers and by radio and television broadcasting of
29 documents, articles, speeches, arguments and any information relating to any political issue,
30 candidate or question or proposition submitted to a vote;

31 (10) For conducting public opinion poll or polls. For the purpose of this section, the phrase
32 "conducting of public opinion poll or polls" shall mean and be limited to the gathering, collection,
33 collation and evaluation of information reflecting public opinion, needs and preferences as to any

34 candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed
35 or intentionally conducted in a manner calculated to advocate the election or defeat of any
36 candidate or group of candidates or calculated to influence any person or persons so polled to
37 vote for or against any candidate, group of candidates, proposition or other matter to be voted on
38 by the public at any election: *Provided*, That nothing herein shall prevent the use of the results of
39 any such poll or polls to further, promote or enhance the election of any candidate or group of
40 candidates or the approval or defeat of any proposition or other matter to be voted on by the public
41 at any election;

42 (11) For payment for food and drink for campaign-related purposes and for entertaining of
43 campaign volunteers;

44 (12) For payment for legal and accounting services rendered to a candidate or candidate
45 committee if the services are solely related to the candidacy or campaign;

46 (13) For the payment of any fees associated with the campaign, except that a candidate
47 may not pay any fines assessed against the candidate or the candidate's committee pursuant to
48 this article;

49 ~~(14)~~ (14) For legitimate advertising agency services, including commissions, in connection
50 with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7),
51 (9) and (10) of this subsection;

52 ~~(15)~~ (15) For the purchase of memorials, flowers or citations by political party executive
53 committees or political action committees representing a political party;

54 ~~(16)~~ (16) For the purchase of nominal noncash expressions of appreciation following the
55 close of the polls of an election or within thirty days thereafter;

56 ~~(17)~~ (17) For the payment of dues or subscriptions to any national, state or local committee
57 of any political party;

58 (18) For transfers to any national, state or local committee of any political party when that
 59 committee is acting in the role of a vendor: *Provided*, That no such transfer may involve any
 60 coordination between the candidate and the political party committee;

61 ~~(15)~~ (19) For contributions to a county party executive committee, state party executive
 62 committee or a state party legislative caucus political committee; and

63 ~~(16)~~ (20) For contributions to a candidate committee: *Provided*, That a candidate
 64 committee may not contribute to another candidate committee except as otherwise provided by
 65 section ten of this article.

66 (b) A political action committee may not contribute to another political action committee or
 67 receive contributions from another political action committee: *Provided*, That a political action
 68 committee may receive contributions from its national affiliate, if any.

69 (c) Every liability incurred and payment made shall be for the fair market value of the
 70 services rendered.

71 (d) Every advertising agency subject to the provisions of this article shall file, in the manner
 72 and form required by section five-a of this article, the financial statements required by section five
 73 of this article at the times required therein and include therein, in itemized detail, all receipts from
 74 and expenditures made on behalf of a candidate, financial agent or treasurer of a political party
 75 committee.

76 (e) Any candidate may designate a financial agent by a writing duly subscribed by ~~him~~ the
 77 candidate which shall be in such form and filed in accordance with the provisions of section four
 78 of this article.

**§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising;
 solicitation of contributions; intimidation and coercion of employees; promise of
 employment or other benefits; limitations on contributions; public contractors;
 penalty.**

1 (a) A person may not publish, issue or circulate, or cause to be published, issued or

2 circulated, any anonymous letter, circular, placard, radio or television advertisement or other
3 publication supporting or aiding the election or defeat of a clearly identified candidate.

4 (b) An owner, publisher, editor or employee of a newspaper or other periodical may not
5 insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which
6 tends to influence the voting at any election, unless directly designating it as a paid advertisement
7 and stating the name of the person authorizing its publication and the candidate in whose behalf
8 it is published.

9 (c) A person may not, in any room or building occupied for the discharge of official duties
10 by any officer or employee of the state or a political subdivision of the state, solicit orally or by
11 written communication delivered within the room or building, or in any other manner, any
12 contribution of money or other thing of value for any party or political purpose, from any
13 postmaster or any other officer or employee of the federal government, or officer or employee of
14 the state, or a political subdivision of the state. An officer, agent, clerk or employee of the federal
15 government, or of this state, or any political subdivision of the state, who may have charge or
16 control of any building, office or room, occupied for any official purpose, may not knowingly permit
17 any person to enter any building, office or room, occupied for any official purpose for the purpose
18 of soliciting or receiving any political assessments from, or delivering or giving written solicitations
19 for, or any notice of, any political assessments to, any officer or employee of the state, or a political
20 subdivision of the state.

21 (d) Except as provided in section eight of this article, a person entering into any contract
22 with the state or its subdivisions, or any department or agency of the state, either for rendition of
23 personal services or furnishing any material, supplies or equipment or selling any land or building
24 to the state, or its subdivisions, or any department or agency of the state, if payment for the
25 performance of the contract or payment for the material, supplies, equipment, land or building is
26 to be made, in whole or in part, from public funds may not, during the period of negotiation for or
27 performance under the contract or furnishing of materials, supplies, equipment, land or buildings,

28 directly or indirectly, make any contribution to any political party, committee or candidate for public
29 office or to any person for political purposes or use; nor may any person or firm solicit any
30 contributions for any purpose during any period.

31 (e) A person may not, directly or indirectly, promise any employment, position, work,
32 compensation or other benefit provided for, or made possible, in whole or in part, by act of the
33 Legislature, to any person as consideration, favor or reward for any political activity for the support
34 of or opposition to any candidate, or any political party in any election.

35 (f) Except as provided in section eight of this article, a person may not, directly or indirectly,
36 make any contribution in excess of the value of \$1,000 in connection with any campaign for
37 nomination or election to or on behalf of any statewide office, in connection with any other
38 campaign for nomination or election to or on behalf of any other elective office in the state or any
39 of its subdivisions, or in connection with or on behalf of any person engaged in furthering,
40 advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

41 (g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code
42 of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its
43 existence and of the purposes for which it was formed. ~~During the two-year election cycle, a~~
44 ~~political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986)~~
45 ~~may not accept contributions totaling more than \$1,000 from any one person prior to the primary~~
46 ~~election and contributions totaling more than \$1,000 from any one person after the primary and~~
47 ~~before the general election.~~

48 ~~(h) It is unlawful for any person to create, establish or organize more than one political~~
49 ~~organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent~~
50 ~~to avoid or evade the contribution limitations contained in subsection (g) of this section.~~

51 ~~(i)~~ (h) Notwithstanding the provisions of subsection (f) of this section to the contrary, a
52 person may not, directly or indirectly, make contributions to a state party executive committee or
53 state party legislative caucus committee which, in the aggregate, exceed the value of \$1,000 in

54 any calendar year.

55 ~~(j)~~ (i) The limitations on contributions contained in this section do not apply to transfers
56 between and among a state party executive committee or a state party's legislative caucus
57 political committee from national committees of the same political party: *Provided*, That transfers
58 permitted by this subsection may not exceed \$50,000 in the aggregate in any calendar year to
59 any state party executive committee or state party legislative caucus political committee:
60 *Provided, however*, That the moneys transferred may only be used for voter registration and get-
61 out-the-vote activities of the state committees.

62 ~~(k)~~ (j) A person may not solicit any contribution, other than contributions to a campaign for
63 or against a county or local government ballot issue, from any nonelective salaried employee of
64 the state government or of any of its subdivisions: *Provided*, That in no event may any person
65 acting in a supervisory role solicit a person who is a subordinate employee for any contribution.
66 A person may not coerce or intimidate any nonelective salaried employee into making a
67 contribution. A person may not coerce or intimidate any nonsalaried employee of the state
68 government or any of its subdivisions into engaging in any form of political activity. The provisions
69 of this subsection may not be construed to prevent any employee from making a contribution or
70 from engaging in political activity voluntarily without coercion, intimidation or solicitation.

71 ~~(l)~~ (k) A person may not solicit a contribution from any other person without informing the
72 other person at the time of the solicitation of the amount of any commission, remuneration or other
73 compensation that the solicitor or any other person will receive or expect to receive as a direct
74 result of the contribution being successfully collected. Nothing in this subsection may be
75 construed to apply to solicitations of contributions made by any person serving as an unpaid
76 volunteer.

77 ~~(m)~~ (l) A person may not place any letter, circular, flyer, advertisement, election
78 paraphernalia, solicitation material or other printed or published item tending to influence voting
79 at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside

80 receptacle by the business or entity owning the receptacle; and (2) contains a written
81 acknowledgment of the approval. This subdivision does not apply to any printed material
82 contained in a newspaper or periodical published or distributed by the owner of the receptacle.
83 The term "roadside receptacle" means any container placed by a newspaper or periodical
84 business or entity to facilitate home or personal delivery of a designated newspaper or periodical
85 to its customers.

86 ~~(n)~~ (m) Any person violating any provision of this section is guilty of a misdemeanor and,
87 upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than
88 one year, or, both fined and confined.

89 ~~(o)~~ (n) The provisions of subsection (k) of this section, permitting contributions to a
90 campaign for or against a county or local government ballot issue shall become operable on and
91 after January 1, 2005.

92 ~~(p) The limitations on contributions established by subsection (g) of this section do not~~
93 ~~apply to contributions made for the purpose of supporting or opposing a ballot issue, including a~~
94 ~~Constitutional amendment~~

NOTE: The purpose of this bill is to set forth reporting and disclosure requirements relating to election campaign contributions and spending.

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