

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 276

BY SENATORS BALDWIN AND MARONEY

[Introduced January 11, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-8-1a, §3-8-2, §3-8-5d, and §3-8-15 of the Code of West Virginia,
 2 1931, as amended, all relating to the regulation and control of elections; prohibiting a
 3 foreign national from contributing to candidates in West Virginia; defining “foreign
 4 national”; offenses for violation of campaign financial disclosure laws; and prohibiting
 5 fundraising for candidates for legislative office during the regular session of the Legislature
 6 after July 1, 2019.

Be it enacted by the Legislature of West Virginia:

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 §3-5-7 of this code or a municipal
 11 charter;

12 (B) Has filed a declaration of candidacy under §3-5-23;

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

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

17 (5) “Candidate’s committee” means a political committee established with the approval of

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

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

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

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

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

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

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

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

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

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

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

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

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

65 (ii) Is publicly disseminated within:

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

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

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

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

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

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

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

82 (ii) Activity by a candidate committee, party executive committee or caucus committee, or
83 a political action committee that is required to be reported to the State Election Commission or
84 the Secretary of State as an expenditure pursuant to §3-8-5 of this code or the rules of the State
85 Election Commission or the Secretary of State promulgated pursuant to ~~such~~ that provision:
86 *Provided*, That independent expenditures by a party executive committee or caucus committee
87 or a political action committee required to be reported pursuant to §3-8-2 (b) of this code are not
88 exempt from the reporting requirements of this section;

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

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

94 (v) A communication made while the Legislature is in session which, incidental to
95 promoting or opposing a specific piece of legislation pending before the Legislature, urges the

96 audience to communicate with a member or members of the Legislature concerning that piece of
97 legislation;

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

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

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

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

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

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

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

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

126 (15) "Foreign national" means a person who is not a citizen of the United States.

127 ~~(15)~~ (16) "Fund-raising event" means an event such as a dinner, reception, testimonial,
128 cocktail party, auction or similar affair through which contributions are solicited or received by
129 such means as the purchase of a ticket, payment of an attendance fee or by the purchase of
130 goods or services.

131 ~~(16)~~ (17) "Independent expenditure" means an expenditure by a person:

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

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

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

139 ~~(17)~~ (18) "Mass mailing" means a mailing by United States mail, facsimile or electronic
140 mail of more than five hundred pieces of mail matter of an identical or substantially similar nature
141 within any 30-day period. For purposes of this subdivision, "substantially similar" includes
142 communications that contain substantially the same template or language, but vary in nonmaterial
143 respects such as communications customized by the recipient's name, occupation or geographic
144 location.

145 ~~(18)~~ (19) "Membership organization" means a group that grants bona fide rights and
146 privileges, such as the right to vote, to elect officers or directors and the ability to hold office, to
147 its members and which uses a majority of its membership dues for purposes other than political

148 purposes. "Membership organization" does not include organizations that grant membership upon
149 receiving a contribution.

150 ~~(19)~~ (20) "Name" means the full first name, middle name or initial, if any, and full legal last
151 name of an individual and the full name of any association, corporation, committee or other
152 organization of individuals, making the identity of any person who makes a contribution apparent
153 by unambiguous reference.

154 ~~(20)~~ (21) "Person" means an individual, corporation, partnership, committee, association
155 and any other organization or group of individuals.

156 ~~(24)~~ (22) "Political action committee" means a committee organized by one or more
157 persons for the purpose of supporting or opposing the nomination or election of one or more
158 candidates. The following are types of political action committees:

159 (A) A corporate political action committee, as that term is defined by §3-8-1a (8) of this
160 code;

161 (B) A membership organization, as that term is defined by §3-8-1a (18) of this code;

162 (C) An unaffiliated political action committee, as that term is defined by §3-8-1a (30) of this
163 code.

164 ~~(22)~~ (23) "Political committee" means any candidate committee, political action committee
165 or political party committee.

166 ~~(23)~~ (24) "Political party" means a political party as that term is defined by §3-1-8 of this
167 code or any committee established, financed, maintained or controlled by the party, including any
168 subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

169 ~~(24)~~ (25) "Political party committee" means a committee established by a political party or
170 political party caucus for the purposes of engaging in the influencing of the election, nomination
171 or defeat of a candidate in any election.

172 ~~(25)~~ (26) "Political purposes" means supporting or opposing the nomination, election or
173 defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the

174 retirement of the debt of a candidate or political committee or the administration or activities of an
175 established political party or an organization which has declared itself a political party and
176 determining the advisability of becoming a candidate under the precandidacy financing provisions
177 of this chapter.

178 ~~(26)~~ (27) "Targeted to the relevant electorate" means a communication which refers to a
179 clearly identified candidate for statewide office or the Legislature and which can be received by
180 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or
181 more individuals in the district in the case of a candidacy for the State Senate and 2,410 or more
182 individuals in the district in the case of a candidacy for the House of Delegates.

183 ~~(27)~~ (28) "Telephone bank" means telephone calls that are targeted to the relevant
184 electorate, other than telephone calls made by volunteer workers, regardless of whether paid
185 professionals designed the telephone bank system, developed calling instructions or trained
186 volunteers.

187 ~~(28)~~ (29) "Two-year election cycle" means the 24 month period that begins the day after a
188 general election and ends on the day of the subsequent general election.

189 ~~(29)~~ (30) "Unaffiliated political action committee" means a political action committee that is
190 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, all candidates for
3 nomination or election and all persons supporting, aiding or opposing the nomination, election or
4 defeat of any candidate shall keep for a period of six months records of receipts and expenditures
5 which are made for political purposes. All of the receipts and expenditures are subject to
6 regulation by the provisions of this article. Verified financial statements of the records and
7 expenditures shall be made and filed as public records by all candidates and by their financial

8 agents, representatives or any person acting for and on behalf of any candidate and by the
9 treasurers of all political party committees.

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

14 (A) The name of: (i) The person making the expenditure; (ii) the name of any person
15 sharing or exercising direction or control over the activities of the person making the expenditure;
16 and (iii) the name of the custodian of the books and accounts of the person making the
17 expenditure;

18 (B) If the person making the expenditure is not an individual, the principal place of business
19 of the partnership, corporation, committee, association, organization or group which made the
20 expenditure;

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

23 (D) The elections to which the independent expenditure pertain, the names, if known, of
24 the candidates referred to or to be referred to therein, whether the expenditure is intended to
25 support or oppose the identified candidates and the amount of the total expenditure reported
26 pursuant to §3-8-2(b)(1)(C) of this code spent to support or oppose each of the identified
27 candidates;

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

31 (F) With regard to the contributors required to be listed pursuant to §3-8-2(b)(1)(C)(E) of
32 this code, the statement shall also include:

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

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

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

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

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

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

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

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

52 (c) (1) A person, including a political committee, who makes or contracts to make
53 independent expenditures aggregating \$1,000 or more for any statewide, legislative or
54 multicounty judicial candidate or \$500 or more for any county office, single-county judicial
55 candidate, committee supporting or opposing a candidate on the ballot in more than one county,
56 or any municipal candidate on a municipal election ballot, after the 15th day, but more than 12
57 hours, before the date of an election, shall file a report on a form prescribed by the Secretary of
58 State, describing the expenditures within 24-four hours: *Provided*, That a person making
59 expenditures in the amount of \$1,000 or more for any statewide or legislative candidate on or

60 after the 15th day but more than 12 hours before the day of any election shall report ~~such~~ the
61 expenditures in accordance with §3-8-2b of this code and ~~shall~~ may not file an additional report
62 as provided herein.

63 (2) Any person who files a report under subdivision (1) of this subsection, shall file an
64 additional report within 24 hours after each time the person makes or contracts to make
65 independent expenditures aggregating an additional \$500 with respect to the same election, for
66 any county office, single-county judicial candidate, committee supporting or opposing a candidate
67 on the ballot in more than one county, or any municipal candidate on a municipal election ballot,
68 as that to which the initial report relates.

69 (d) (1) A person, including a political committee, who makes or contracts to make
70 independent expenditures aggregating \$10,000 or more at any time up to and including the 15th
71 day before the date of an election shall file a report on a form prescribed by the Secretary of State,
72 describing the expenditures within 48 hours.

73 (2) A person who files a report under §3-8-2(d)(1) of this code, ~~the person~~ shall file an
74 additional report within 48 hours after each time the person makes or contracts to make
75 independent expenditures aggregating an additional \$10,000 with respect to the same election
76 as that to which the initial report relates.

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

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

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

85 (f) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing,

86 producing or disseminating electioneering communications during any calendar year shall
87 maintain all financial records and receipts related to ~~such~~ the expenditure for a period of six
88 months following the filing of a disclosure pursuant to §3-8-2 (a) of this code and, upon request,
89 shall make such records and receipts available to the Secretary of State or county clerk for the
90 purpose of an audit as provided in §3-8-7 of this code.

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

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

97 (2) Any person who is required to file a statement under this section who fails to timely file
98 the statement shall be fined \$75, and the name of the person, including a political committee,
99 candidate, financial agent or treasurer of a political committee shall be published in a local
100 newspaper as a Class I legal advertisement as provided in §59-3-2 of this code.

101 ~~(2)-(3)~~ (3) The Secretary of State shall make any document filed electronically pursuant to this
102 subsection accessible to the public on the Internet not later than 24 hours after the document is
103 received by the secretary.

104 ~~(3)~~ (4) In promulgating a rule under §3-8-2(h) of this code, the secretary shall provide
105 methods, other than requiring a signature on the document being filed, for verifying the documents
106 covered by the rule. Any document verified under any of the methods shall be treated for all
107 purposes, including penalties for perjury, in the same manner as a document verified by signature.

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

109 (j) The Secretary of State may promulgate emergency and legislative rules, in accordance
110 with ~~the provisions of chapter twenty-nine-a~~ §29A-3-1 *et seq.* of this code, to establish guidelines
111 for the administration of this section.

§3-8-5d. Offenses and penalties.

112 (a) Any person who makes or receives a contribution of currency of the United States or
113 currency of any foreign country of more than \$50 in value is guilty of a misdemeanor and, upon
114 conviction, shall be fined a sum equal to three times the amount of the contribution.

115 (b) Notwithstanding any provision of §8-9-24 of this code to the contrary, a criminal
116 prosecution or civil action for a violation of this article may be commenced within five years after
117 the violation occurred.

118 (c) Notwithstanding any other provision of this code, it is unlawful for a person who is a
119 foreign national, as defined in §3-8-1a of this code, to contribute to any candidate.

120 ~~(e)~~ (d) No person required to report under this article shall may be found in violation of this
121 article if any person, firm, association or committee making a contribution has provided false
122 information to ~~such~~ that person: *Provided*, That any person, firm, association or committee who
123 provides false information to a person required to report under this article is guilty of a
124 misdemeanor and, subject to the penalties provided in §3-9-23 of this code.

§3-8-15. Disclosure of contributions during legislative session.

1 (a) In addition to other reporting required under this article, any member, or any candidate
2 committee for a member of the Legislature who is a candidate for legislative office, who has a
3 fund-raising event while the Legislature is in session, shall disclose the existence of the event and
4 the receipt of all contributions, including the source and amounts, within five business days after
5 the fund-raising event.

6 (b) The reporting requirements under this section also apply to former candidates or
7 candidate committees for legislative office who are still holding any legislative office and who use
8 a fund-raising event to retire or pay-off debt of a campaign account while the Legislature is in
9 session.

10 (c) The reporting requirements of this section do not relieve a candidate or candidate's
11 committee from reporting contributions received and disclosed in conformity with this section from

12 reporting them as required by the regular reporting requirements as contained in section five of
13 this article.

14 (d) The Secretary of State shall prepare a form for disclosure of these contributions and
15 publish the information on the Secretary of State's website within 48 hours of the Secretary of
16 State receiving the completed form: *Provided*, That as an alternative, the Secretary of State is
17 authorized to establish a means for electronic filing and disclosure.

18 (e) Pursuant to §29A-3-1 *et seq.* of this code, the Secretary of State may propose rules
19 and emergency rules for legislative approval relating to procedures and policies consistent with
20 this section.

21 (f) The provisions of this section shall expire on July 1, 2019. After that date, fund raising
22 for a candidate for legislative office during the regular session of the Legislature is prohibited.

NOTE: The purpose of this bill is to amend provisions of the regulation and control of elections. The bill defines "foreign national" and prohibits a foreign national from contributing to candidates in West Virginia. The bill provides an additional monetary penalty for violation of campaign financial disclosure laws, including publishing the names of persons who fail to make timely filings. The bill prohibits fund raising for candidates for legislative office during the regular session of the Legislature after July 1, 2019.

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