

Calendar No. 446

112TH CONGRESS
2^D SESSION

S. 3369

To amend the Federal Election Campaign Act of 1971 to provide for additional disclosure requirements for corporations, labor organizations, Super PACs and other entities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 10, 2012

Mr. WHITEHOUSE (for himself, Mr. UDALL of New Mexico, Mr. FRANKEN, Mr. SCHUMER, Mr. NELSON of Florida, Mr. BENNET, Mr. MERKLEY, Mrs. SHAHEEN, Mr. BROWN of Ohio, Mr. LEAHY, Mr. BINGAMAN, Ms. LANDRIEU, Ms. MIKULSKI, Mr. MENENDEZ, Mrs. HAGAN, Mr. UDALL of Colorado, Ms. STABENOW, Mr. LEVIN, Mr. HARKIN, Mr. COONS, Mr. KOHL, Mr. CONRAD, Mr. INOUE, Mr. SANDERS, Mr. REED, Mrs. MCCASKILL, Mr. BLUMENTHAL, and Mrs. GILLIBRAND) introduced the following bill; which was read the first time

JULY 11, 2012

Read the second time and placed on the calendar

A BILL

To amend the Federal Election Campaign Act of 1971 to provide for additional disclosure requirements for corporations, labor organizations, Super PACs and other entities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Democracy Is
3 Strengthened by Casting Light On Spending in Elections
4 Act of 2012” or the “DISCLOSE Act of 2012”.

5 **SEC. 2. CAMPAIGN DISBURSEMENT REPORTING.**

6 (a) INFORMATION REQUIRED TO BE REPORTED.—

7 (1) TREATMENT OF FUNCTIONAL EQUIVALENT
8 OF EXPRESS ADVOCACY AS INDEPENDENT EXPENDI-
9 TURE.—Subparagraph (A) of section 301(17) of the
10 Federal Election Campaign Act of 1971 (2 U.S.C.
11 431(17)) is amended to read as follows:

12 “(A) that expressly advocates the election
13 or defeat of a clearly identified candidate, or is
14 the functional equivalent of express advocacy
15 because, when taken as a whole, it can be inter-
16 preted by a reasonable person only as advo-
17 cating the election or defeat of a candidate, tak-
18 ing into account whether the communication in-
19 volved mentions a candidacy, a political party,
20 or a challenger to a candidate, or takes a posi-
21 tion on a candidate’s character, qualifications,
22 or fitness for office; and”.

23 (2) EXPANSION OF PERIOD DURING WHICH
24 COMMUNICATIONS ARE TREATED AS ELECTION-
25 EERING COMMUNICATIONS.—Section 304(f)(3)(A)(i)
26 of such Act (2 U.S.C. 434(f)(3)(A)(i)) is amended—

1 (A) by redesignating subclause (III) as
2 subclause (IV); and

3 (B) by striking subclause (II) and insert-
4 ing the following:

5 “(II) in the case of a communica-
6 tion which refers to a candidate for an
7 office other than the President or Vice
8 President, is made during the period
9 beginning on January 1 of the cal-
10 endar year in which a general or run-
11 off election is held and ending on the
12 date of the general or runoff election
13 (or in the case of a special election,
14 during the period beginning on the
15 date on which the announcement with
16 respect to such election is made and
17 ending on the date of the special elec-
18 tion);

19 “(III) in the case of a commu-
20 nication which refers to a candidate
21 for the office of President or Vice
22 President, is made in any State dur-
23 ing the period beginning 120 days be-
24 fore the first primary election, caucus,
25 or preference election held for the se-

1 lection of delegates to a national
2 nominating convention of a political
3 party is held in any State (or, if no
4 such election or caucus is held in any
5 State, the first convention or caucus
6 of a political party which has the au-
7 thority to nominate a candidate for
8 the office of President or Vice Presi-
9 dent) and ending on the date of the
10 general election; and”.

11 (3) EFFECTIVE DATE; TRANSITION FOR ELEC-
12 TIONEERING COMMUNICATIONS MADE PRIOR TO EN-
13 ACTMENT.—The amendment made by paragraph (2)
14 shall apply with respect to communications made on
15 or after January 1, 2013, except that no commu-
16 nication which is made prior to such date shall be
17 treated as an electioneering communication under
18 subclause (II) or (III) of section 304(f)(3)(A)(i) of
19 the Federal Election Campaign Act of 1971 (as
20 amended by paragraph (2)) unless the communica-
21 tion would be treated as an electioneering commu-
22 nication under such section if the amendment made
23 by paragraph (2) did not apply.

1 (b) DISCLOSURE REQUIREMENTS FOR CORPORA-
2 TIONS, LABOR ORGANIZATIONS, AND CERTAIN OTHER
3 ENTITIES.—

4 (1) IN GENERAL.—Section 324 of the Federal
5 Election Campaign Act of 1971 (2 U.S.C. 441k) is
6 amended to read as follows:

7 **“SEC. 324. DISCLOSURE OF CAMPAIGN-RELATED DISBURSE-**
8 **MENTS BY COVERED ORGANIZATIONS.**

9 “(a) DISCLOSURE STATEMENT.—

10 “(1) IN GENERAL.—Any covered organization
11 that makes campaign-related disbursements aggre-
12 gating more than \$10,000 in an election reporting
13 cycle shall, not later than 24 hours after each disclo-
14 sure date, file a statement with the Commission
15 made under penalty of perjury that contains the in-
16 formation described in paragraph (2)—

17 “(A) in the case of the first statement filed
18 under this subsection, for the period beginning
19 on the first day of the election reporting cycle
20 and ending on the first such disclosure date;
21 and

22 “(B) in the case of any subsequent state-
23 ment filed under this subsection, for the period
24 beginning on the previous disclosure date and
25 ending on such disclosure date.

1 “(2) INFORMATION DESCRIBED.—The informa-
2 tion described in this paragraph is as follows:

3 “(A) The name of the covered organization
4 and the principal place of business of such or-
5 ganization.

6 “(B) The amount of each campaign-related
7 disbursement made by such organization during
8 the period covered by the statement of more
9 than \$1,000, and the name and address of the
10 person to whom the disbursement was made.

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

19 “(D) A certification by the chief executive
20 officer or person who is the head of the covered
21 organization that the campaign-related dis-
22 bursement is not made in cooperation, consulta-
23 tion, or concert with or at the request or sug-
24 gestion of a candidate, authorized committee, or

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

3 “(E) If the covered organization makes
4 campaign-related disbursements using exclu-
5 sively funds in a segregated bank account con-
6 sisting of funds that were paid directly to such
7 account by persons other than the covered orga-
8 nization that controls the account, for each
9 such payment to the account—

10 “(i) the name and address of each
11 person who made such payment during the
12 period covered by the statement;

13 “(ii) the date and amount of such
14 payment; and

15 “(iii) the aggregate amount of all such
16 payments made by the person during the
17 period beginning on the first day of the
18 election reporting cycle and ending on the
19 disclosure date;

20 but only if such payment was made by a person
21 who made payments to the account in an aggre-
22 gate amount of \$10,000 or more during the pe-
23 riod beginning on the first day of the election
24 reporting cycle and ending on the disclosure
25 date.

1 “(F) If the covered organization makes
2 campaign-related disbursements using funds
3 other than funds in a segregated bank account
4 described in subparagraph (E), for each pay-
5 ment to the covered organization—

6 “(i) the name and address of each
7 person who made such payment during the
8 period covered by the statement;

9 “(ii) the date and amount of such
10 payment; and

11 “(iii) the aggregate amount of all such
12 payments made by the person during the
13 period beginning on the first day of the
14 election reporting cycle and ending on the
15 disclosure date;

16 but only if such payment was made by a person
17 who made payments to the covered organization
18 in an aggregate amount of \$10,000 or more
19 during the period beginning on the first day of
20 the election reporting cycle and ending on the
21 disclosure date.

22 “(G) Such other information as required in
23 rules established by the Commission to promote
24 the purposes of this section.

25 “(3) EXCEPTIONS.—

1 “(A) AMOUNTS RECEIVED IN ORDINARY
2 COURSE OF BUSINESS.—The requirement to in-
3 clude in a statement filed under paragraph (1)
4 the information described in paragraph (2)
5 shall not apply to amounts received by the cov-
6 ered organization in commercial transactions in
7 the ordinary course of any trade or business
8 conducted by the covered organization or in the
9 form of investments (other than investments by
10 the principal shareholder in a limited liability
11 corporation) in the covered organization.

12 “(B) DONOR RESTRICTION ON USE OF
13 FUNDS.—The requirement to include in a state-
14 ment submitted under paragraph (1) the infor-
15 mation described in subparagraph (F) of para-
16 graph (2) shall not apply if—

17 “(i) the person described in such sub-
18 paragraph prohibited, in writing, the use of
19 the payment made by such person for cam-
20 paign-related disbursements; and

21 “(ii) the covered organization agreed
22 to follow the prohibition and deposited the
23 payment in an account which is segregated
24 from any account used to make campaign-
25 related disbursements.

1 “(C) AMOUNTS RECEIVED FROM AFFILI-
2 ATES.—The requirement to include in a state-
3 ment submitted under paragraph (1) the infor-
4 mation described in subparagraph (F) of para-
5 graph (2) shall not apply to any amount which
6 is described in subsection (f)(3)(A)(i).

7 “(4) OTHER DEFINITIONS.—For purposes of
8 this section:

9 “(A) DISCLOSURE DATE.—The term ‘dis-
10 closure date’ means—

11 “(i) the first date during any election
12 reporting cycle by which a person has
13 made campaign-related disbursements ag-
14 gregating more than \$10,000; and

15 “(ii) any other date during such elec-
16 tion reporting cycle by which a person has
17 made campaign-related disbursements ag-
18 gregating more than \$10,000 since the
19 most recent disclosure date for such elec-
20 tion reporting cycle.

21 “(B) ELECTION REPORTING CYCLE.—The
22 term ‘election reporting cycle’ means the 2-year
23 period beginning on the date of the most recent
24 general election for Federal office.

1 “(C) PAYMENT.—The term ‘payment’ in-
2 cludes any contribution, donation, transfer, pay-
3 ment of dues, or other payment.

4 “(b) COORDINATION WITH OTHER PROVISIONS.—

5 “(1) OTHER REPORTS FILED WITH THE COM-
6 MISSION.—Information included in a statement filed
7 under this section may be excluded from statements
8 and reports filed under section 304.

9 “(2) TREATMENT AS SEPARATE SEGREGATED
10 FUND.—A segregated bank account referred to in
11 subsection (a)(2)(E) may be treated as a separate
12 segregated fund for purposes of section 527(f)(3) of
13 the Internal Revenue Code of 1986.

14 “(c) FILING.—Statements required to be filed under
15 subsection (a) shall be subject to the requirements of sec-
16 tion 304(d) to the same extent and in the same manner
17 as if such reports had been required under subsection (e)
18 or (g) of section 304.

19 “(d) CAMPAIGN-RELATED DISBURSEMENT DE-
20 FINED.—In this section, the term ‘campaign-related dis-
21 bursement’ means a disbursement by a covered organiza-
22 tion for any of the following:

23 “(1) An independent expenditure consisting of a
24 public communication.

1 “(2) An electioneering communication, as de-
2 fined in section 304(f)(3).

3 “(3) A covered transfer.

4 “(e) COVERED ORGANIZATION DEFINED.—In this
5 section, the term ‘covered organization’ means any of the
6 following:

7 “(1) A corporation (other than an organization
8 described in section 501(c)(3) of the Internal Rev-
9 enue Code of 1986).

10 “(2) An organization described in section
11 501(c) of such Code and exempt from taxation
12 under section 501(a) of such Code (other than an
13 organization described in section 501(c)(3) of such
14 Code).

15 “(3) A labor organization (as defined in section
16 316(b)).

17 “(4) Any political organization under section
18 527 of the Internal Revenue Code of 1986, other
19 than a political committee under this Act.

20 “(f) COVERED TRANSFER DEFINED.—

21 “(1) IN GENERAL.—In this section, the term
22 ‘covered transfer’ means any transfer or payment of
23 funds by a covered organization to another person if
24 the covered organization—

1 “(A) designates, requests, or suggests that
2 the amounts be used for—

3 “(i) campaign-related disbursements
4 (other than covered transfers); or

5 “(ii) making a transfer to another
6 person for the purpose of making or pay-
7 ing for such campaign-related disburse-
8 ments;

9 “(B) made such transfer or payment in re-
10 sponse to a solicitation or other request for a
11 donation or payment for—

12 “(i) the making of or paying for cam-
13 paign-related disbursements (other than
14 covered transfers); or

15 “(ii) making a transfer to another
16 person for the purpose of making or pay-
17 ing for such campaign-related disburse-
18 ments;

19 “(C) engaged in discussions with the re-
20 cipient of the transfer or payment regarding—

21 “(i) the making of or paying for cam-
22 paign-related disbursements (other than
23 covered transfers); or

24 “(ii) donating or transferring any
25 amount of such transfer or payment to an-

1 other person for the purpose of making or
2 paying for such campaign-related disburse-
3 ments;

4 “(D) made campaign-related disburse-
5 ments (other than a covered transfer) in an ag-
6 gregate amount of \$50,000 or more during the
7 2-year period ending on the date of the transfer
8 or payment, or knew or had reason to know
9 that the person receiving the transfer or pay-
10 ment made such disbursements in such an ag-
11 gregate amount during that 2-year period; or

12 “(E) knew or had reason to know that the
13 person receiving the transfer or payment would
14 make campaign-related disbursements in an ag-
15 gregate amount of \$50,000 or more during the
16 2-year period beginning on the date of the
17 transfer or payment.

18 “(2) EXCLUSIONS.—The term ‘covered transfer’
19 does not include any of the following:

20 “(A) A disbursement made by a covered
21 organization in a commercial transaction in the
22 ordinary course of any trade or business con-
23 ducted by the covered organization or in the
24 form of investments made by the covered orga-
25 nization.

1 “(B) A disbursement made by a covered
2 organization if—

3 “(i) the covered organization prohib-
4 ited, in writing, the use of such disburse-
5 ment for campaign-related disbursements;
6 and

7 “(ii) the recipient of the disbursement
8 agreed to follow the prohibition and depos-
9 ited the disbursement in an account which
10 is segregated from any account used to
11 make campaign-related disbursements.

12 “(3) EXCEPTION FOR CERTAIN TRANSFERS
13 AMONG AFFILIATES.—

14 “(A) EXCEPTION FOR CERTAIN TRANS-
15 FERS AMONG AFFILIATES.—

16 “(i) IN GENERAL.—The term ‘covered
17 transfer’ does not include an amount
18 transferred by one covered organization to
19 another covered organization if such trans-
20 fer—

21 “(I) is not made directly into a
22 separate segregated bank account de-
23 scribed in subsection (a)(2)(E), and

1 “(II) is treated as a transfer be-
2 tween affiliates under subparagraph
3 (B).

4 “(ii) SPECIAL RULE.—If the aggre-
5 gate amount of transfers described in
6 clause (i) exceeds \$50,000 in any election
7 reporting cycle—

8 “(I) the covered organization
9 which makes such transfers shall pro-
10 vide to the covered organization re-
11 ceiving such transfers the information
12 required under subsection (a)(2)(F)
13 (applied by substituting ‘the period
14 beginning on the first day of the elec-
15 tion reporting cycle and ending on the
16 date of the most recent transfer de-
17 scribed in subsection (f)(3)(A)(i)’ for
18 ‘the period covered by the statement’
19 in clause (i) thereof); and

20 “(II) the covered organization re-
21 ceiving such transfers shall report the
22 information described in subclause (I)
23 on any statement filed under sub-
24 section (a)(1) as if any contribution,
25 donation, or transfer to which such

1 information relates was made directly
2 to the covered organization receiving
3 the transfer.

4 “(B) DESCRIPTION OF TRANSFERS BE-
5 TWEEN AFFILIATES.—A transfer of amounts
6 from one covered organization to another cov-
7 ered organization shall be treated as a transfer
8 between affiliates if—

9 “(i) one of the organizations is an af-
10 filiate of the other organization; or

11 “(ii) each of the organizations is an
12 affiliate of the same organization;

13 except that the transfer shall not be treated as
14 a transfer between affiliates if one of the orga-
15 nizations is established for the purpose of mak-
16 ing campaign-related disbursements.

17 “(C) DETERMINATION OF AFFILIATE STA-
18 TUS.—For purposes of this paragraph, the fol-
19 lowing organizations shall be considered to be
20 affiliated with each other:

21 “(i) A membership organization, in-
22 cluding a trade or professional association,
23 and the related State and local entities of
24 that organization.

1 “(ii) A national or international labor
2 organization and its State or local unions,
3 or an organization of national or inter-
4 national unions and its State and local en-
5 tities.

6 “(iii) A corporation and its wholly
7 owned subsidiaries.

8 “(D) COVERAGE OF TRANSFERS TO AF-
9 FILATED SECTION 501(c)(3) ORGANIZA-
10 TIONS.—This paragraph shall apply with re-
11 spect to an amount transferred by a covered or-
12 ganization to an organization described in para-
13 graph (3) of section 501(c) of the Internal Rev-
14 enue Code of 1986 and exempt from tax under
15 section 501(a) of such Code in the same man-
16 ner as this paragraph applies to an amount
17 transferred by a covered organization to an-
18 other covered organization.”.

19 (2) CONFORMING AMENDMENT.—Section
20 304(f)(6) of such Act (2 U.S.C. 434) is amended by
21 striking “Any requirement” and inserting “Except
22 as provided in section 324(b), any requirement”.

1 **SEC. 3. APPLICATION OF DISCLOSURE RULES TO SUPER**
2 **PACS.**

3 (a) IN GENERAL.—Subsection (e) of section 324 of
4 the Federal Election Campaign Act of 1971 (2 U.S.C.
5 441k), as amended by section 2, is amended by adding
6 at the end the following new paragraph:

7 “(5) A political committee with an account that
8 accepts donations or contributions that do not com-
9 ply with the contribution limits or source prohibi-
10 tions under this Act, but only with respect to such
11 accounts.”.

12 (b) CONFORMING AMENDMENT.—Paragraph (4) of
13 section 324(e) of such Act (2 U.S.C. 441k), as amended
14 by section 2, is amended by inserting “(except as provided
15 in paragraph (5))” before the period at the end.

16 **SEC. 4. SEVERABILITY.**

17 If any provision of this Act or amendment made by
18 this Act, or the application of a provision or amendment
19 to any person or circumstance, is held to be unconstitu-
20 tional, the remainder of this Act and amendments made
21 by this Act, and the application of the provisions and
22 amendment to any person or circumstance, shall not be
23 affected by the holding.

24 **SEC. 5. EFFECTIVE DATE.**

25 Except as provided in section 2(a)(3), the amend-
26 ments made by this Act shall apply with respects to dis-

1 bursements made on or after January 1, 2013, and shall
2 take effect without regard to whether or not the Federal
3 Election Commission has promulgated regulations to carry
4 out such amendments.

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