

Frequently Asked Questions

House Bill 1451 implements the transparency requirements of Section 1 of Article XIV of the North Dakota Constitution by revealing the true source of money used for political advertisements and other election spending. It requires transparency and prevents political donors from concealing their election spending by requiring recordkeeping and reporting of the ultimate and true source of expenditures of more than \$200 on election activities. These requirements provide transparency without restricting anyone's ability to spend money to criticize or support a candidate or ballot measure.

1. What new information would HB 1451 provide North Dakota voters?

- The bill requires that public campaign finance reports include more detailed information about the true source of money used for political spending. This information must trace money used for expenditures from the original source of the money to the spender who directly pays for the expenditure.
- The bill also requires a person or group that sponsors a political ad to include the names of its top three donors in the disclaimer on the face of the ad. Currently, political ad disclaimers are only required to identify the name of the group that sponsors the ad, which can leave voters in the dark about the true source of money behind the ad.

2. What is the basic structure of HB 1451?

- Any person or group that uses more than \$200 of money received from someone else to pay for an expenditure must create and maintain "tracing records." Tracing records keep track of how money has been passed along to the person or group making the expenditure, defined in the bill as a "covered person."
- The requirement to create and maintain tracing records does not apply to candidate committees or political party committees because those committees are already subject to comprehensive reporting requirements. Nor are tracing records required when expenditures are made by individuals using their own money or by businesses using their own profits – in these circumstances, the individual or business making the expenditure *is* the ultimate and true source of the expenditure.
- When a covered person receives contributions from others and spends more than \$200 of that money on expenditures, the covered person must create tracing records and begin filing reports with the Secretary of State. The reports must disclose, among other things, contributions of more than \$200 used by the covered person for expenditures, including contributions and transfers among intermediaries.
- The goal of the bill is to effectively implement Article XIV's transparency mandate by requiring transparency about all contributions and transfers of more than \$200 of funds that are ultimately used for expenditures. By requiring disclosure of each contribution and transfer of more than \$200, the bill prevents efforts to evade Article XIV's transparency mandate by breaking up a large political contribution into smaller contributions and routing those smaller contributions through different intermediaries.

3. Are contributors entitled to notice that their donations to a covered person may be disclosed?

- Yes. The bill requires a covered person who uses money contributed or transferred from others for expenditures to notify its contributors that their donations may be used for political spending

and that information about contributors may be required to be publicly reported. Contributors must also be provided an opportunity to opt out of having their contribution used for expenditures and if they opt out, their contributions are exempt from the bill's transparency requirements.

4. What if a covered person decides to make expenditures with contributed funds but failed to include the required notice when it solicited the contributions?

- A covered person may provide the required notice in connection with a fundraising appeal *or at a later time*. If the notice described above (see question 3) was not provided when the covered person initially solicited the money, the covered person may still use the funds for expenditures, but it must first provide notice that the contribution will be used for expenditures and provide the contributor 21 days to opt out of having their contribution used for expenditures.

5. What must a business do if it wants to contribute its profits to a covered person?

- If a business contributes its own profits to a covered person, and those funds, in turn, are used for expenditures, the covered person must disclose tracing records regarding the business's contribution, and the covered person may also be required to identify the business as a top-three donor on disclaimers, depending upon the size of the business's contribution. As explained above (see question 2) a business is not required to create or disclose tracing records when it uses its own profits directly for expenditures or makes a contribution to a covered person.

6. What if an individual wants to give \$100,000 to a covered person?

- If an individual uses her own personal funds (e.g., income from salary or investments) to make a contribution to a covered person and does not opt the contribution out of being used for expenditures, the individual's contribution must be reported by the covered person, and the individual may be required to be identified as a top-three donor. No tracing records would be required to identify the underlying sources of the individual's personal funds.

7. How does HB 1451's tracing requirement work?

If money is passed from one organization to another – once, twice, or many times – before a covered person uses the money to pay for a political ad or other expenditure, the requirements of the bill ensure that these contributions or transfers can be traced back to the ultimate and true source of the funds.

Soliciting funds for expenditures

For example, consider the hypothetical nonprofit group North Dakotans for Marijuana Legalization (NDML). NDML supports ballot measures that would legalize marijuana sales in North Dakota and decides to buy a variety of ads to advocate for passage of those ballot measures. To raise money, NDML emails solicitations for contributions to support its cause. When a prospective contributor clicks on the link to donate online, she is asked to provide all the required information regarding the origin of the funds and is notified that her contribution may be used to make expenditures (and that her information may be subject to constitutional and statutory transparency requirements). The donation page includes the option to check a box to opt the donation out of being used for expenditures.

The bill ensures that the ultimate and true source of funds used for expenditures can be traced when funds are transferred through intermediaries

(See attached *Graphic A: Tracing the Ultimate and True Source*)

Suppose Las Vegas resident Mark Johnson is looking to expand his marijuana dispensary business and he receives an email solicitation from NDML. Viewing expanded marijuana legalization as a good business opportunity, Mark decides to contribute \$50,000 of his own money to NDML, but he doesn't want to be identified as the source of the contribution. In an effort conceal his identity as the out-of-state source of the contribution to NDML and to minimize attention to its large size, Mark sets up five LLCs and adopts

local-sounding names for each of them. Mark transfers \$10,000 of his personal funds to each of the LLCs, which, in turn, contribute the total amount transferred from Mark to NDML without opting the contributions out of being used for expenditures.

In this scenario, NDML would be required to trace each of the LLC's contributions back to Mark and disclose Mark as the ultimate and true source of funds it used for its expenditures. If Mark's funds were transferred through one or more additional LLCs or other intermediaries before ultimately being used by NDML, the bill would require tracing of the funds through those intermediaries as well. The bill requires that the LLCs disclose to NDML that Mark was the ultimate and true source of the funds they contributed, so that NDML can report that information as required under the bill. Once NDML requests this information, the LLCs would have 10 days to complete the disclosure.

Failing to identify the ultimate and true source of funds spent for an expenditure could result in a reporting violation

See attached *Graphic B: Reporting Violations*

Suppose one of the LLCs transfers the \$5,000 of the funds it received from Mark to a nonprofit, North Dakotans for Weed (NDFW), and NDFW, in turn, contributes the \$5,000 it received from the LLC to NDML. Suppose further that NDFW identifies the LLC as the source of its contribution, but is unable to trace the funds back to their ultimate and true source (Mark). If NDML nevertheless uses the funds for its expenditures without identifying Mark as the ultimate and true source, it would be committing a reporting violation. And if Mark intentionally structured his transactions to conceal his identity, his violation could be a criminal misdemeanor.

Contributors must be provided an opportunity to opt their contribution out of being used for expenditures

See attached *Graphic C: Opting Out*

Suppose Mark is at a business luncheon in Bismarck when he meets a fundraiser for NDML, who solicits Mark to contribute another \$10,000 of his personal funds to NDML. Mark follows the same steps described above, transferring his funds to one or more LLCs. But the NDML fundraiser neglected to provide Mark or any of the intermediaries with the required notice that the contribution would be used for expenditures, or that it could be opted out of that use. In this situation, NDML must provide each LLC written notice that it has 21 days to opt the funds out of political spending. Contributions that are opted out are not subject to tracing.

Only contributions in excess of \$200 are subject to the tracing requirement

See attached *Graphic D: Smaller Donations*

Suppose Mark's friend, Mary Olafson, also wants to support NDML. Mary contributes \$300, and when she tells her friends about her contribution, four of them each decide to contribute \$200 to NDML.

Under the bill, NDML's tracing records must identify Mary because her contribution exceeded the \$200 threshold for ultimate and true source reporting. Mary's friends' donations are below the threshold and, thus, are not reportable.

7. HB 1451 requires that a covered person identify their top three donors in political ads – how are the top three donors determined?

- To identify the top three donors, the covered person will first identify the three donors who contributed the most original funds to it during the election cycle, even if those funds came through intermediaries. Only donors who gave aggregate contributions of more than \$200 would be required to be named as a top donor in a disclaimer.

- A covered person is generally only required to name top donors from the current election cycle, but there's one important exception: If a contributor's aggregate contributions to the covered person constituted more than half of the covered person's traceable funds at the start of the election cycle, then those contributions are treated as if they had been made in the current election cycle. This exception prevents a contributor from contributing the majority of a group's election funds just before an election cycle begins in an attempt to evade transparency.
- If no original source contributes over \$200, but one or more intermediaries transferred more than \$200 in traceable funds to the covered person during the election cycle, then those intermediaries will be treated as ultimate and true sources of funds for purposes of the required disclaimer.

GRAPHIC A: Tracing the Ultimate and True Source

MARK JOHNSON

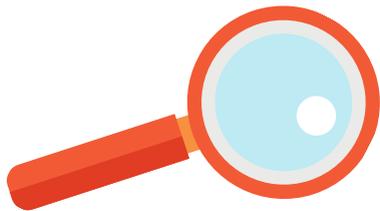
Mark Johnson is a Las Vegas resident looking to expand his marijuana dispensary business.



NDML

Each LLC contributes the \$10,000 to NDML.

Seeing potential in North Dakota, Mark sets up 5 LLCs to funnel money to a group supporting a North Dakota ballot measure to legalize marijuana. He transfers \$10,000 to each LLC.



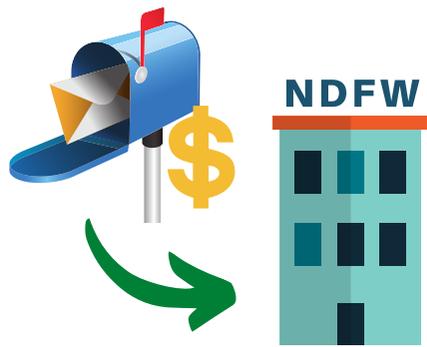
Under the bill, North Dakota voters will know the true source of money spent to influence North Dakota elections.

The LLCs have 10 days from the date they receive notice from NDML to disclose the source of their contributions.



NDML wants to spend the \$50,000 from the LLCs on ads promoting the ballot measure to legalize marijuana. Before it can, NDML must identify the ultimate and true source of the money.

GRAPHIC B: Reporting Violations



One of Mark's LLCs transfers \$5,000 to North Dakotans for Weed (NDFW), which NDFW contributes to NDML.



NDML

NDML wants to use the money to advocate for passage of the marijuana legalization measure. It notifies NDFW and asks for the ultimate and true source of its contribution.



If NDML uses the money on its election advocacy without identifying and disclosing the ultimate and true source (Mark), it will be violating its reporting obligations.

GRAPHIC C: Opting Out



NDML

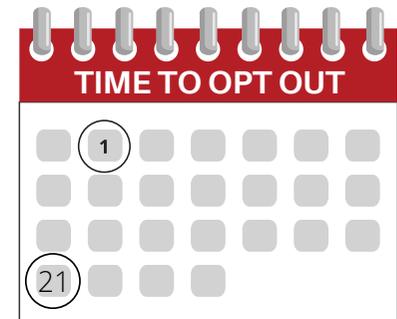
NDML solicits Mark for another \$10,000 contribution. He agrees, but contributes the money through the LLCs he established.



NDML's solicitation failed to inform donors that their money would be used for political spending and of their right to opt out of that spending.

NOTICE

Donation may be used for political expenditures
Right to opt-out

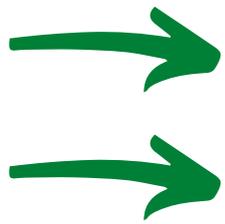


NDML must provide each donor **written notice** of NDML's intent to use the money for expenditures and that the donor has 21 days to opt out of that spending. Donors who opt out are not subject to disclosure.

GRAPHIC D: Smaller Donations



Mary Olafson also wants to support North Dakota's marijuana legalization measure. She decides to contribute to NDML and tells her friends, who decide to contribute too.



NDML

Mary contributes \$300 and each of her friends contribute \$200.



PAID FOR BY:

Mary

NDML

When NDML reports its spending, it must disclose Mary's donation, but her friends' donations are not reportable because they do not exceed \$200.