

Chapter 711

(House Bill 1025)

AN ACT concerning

Election Law – Coordinated Expenditures and Donations – Investigation

FOR the purpose of authorizing the State Administrator of Elections or the State Administrator's designee, rather than the State Board of Elections, to investigate a potential violation of certain provisions of law prohibiting certain coordinated expenditures and donations; requiring the State Administrator or the State Administrator's designee, rather than the State Board, to take certain actions in the course of a certain investigation; authorizing the State Administrator or the State Administrator's designee, in furtherance of a certain investigation, to issue a subpoena for the attendance of a witness to testify or the production of records; requiring that a subpoena be served in accordance with the Maryland Rules; requiring the State Administrator to make a certain finding in order for a certain subpoena to be issued; requiring that a certain filing be sealed on filing; authorizing a certain circuit court to compel compliance with a subpoena under certain circumstances; and generally relating to investigations of prohibited coordinated expenditures and donations.

BY repealing and reenacting, with amendments,
 Article – Election Law
 Section 13–249
 Annotated Code of Maryland
 (2017 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Election Law

13–249.

- (a) (1) In this section the following words have the meanings indicated.
- (2) (i) “Candidate” has the meaning stated in § 1–101 of this article.
- (ii) For purposes of this section, “candidate” includes a candidate, an authorized candidate campaign committee, a slate committee, and agents of a candidate, an authorized candidate campaign committee, or a slate committee.
- (3) “Communication” includes social media interactions with a candidate.

(4) (i) “Coordinated expenditure” means a disbursement or an action to cause a disbursement that:

1. promotes the success or defeat of a candidate or a political party at an election; and
2. is made in cooperation, consultation, understanding, agreement, or concert with, or at the request or suggestion of, the candidate or political party that is the beneficiary of the disbursement.

(ii) “Coordinated expenditure” includes a disbursement for any communication that republishes or disseminates, in whole or in part, a video, a photograph, audio footage, a written graphic, or any other form of campaign material prepared by the candidate or political party that is the beneficiary of the disbursement.

(iii) “Coordinated expenditure” does not include a disbursement for any communication that is not a public communication.

(5) “Coordinated spender” means a person that makes a disbursement to promote the success or defeat of a candidate or political party at an election and for which one of the following applies:

(i) during the election cycle, the person was directly or indirectly formed or established by or at the request or suggestion of, or with the encouragement of, the candidate or political party that is the beneficiary of the disbursement, including during the time before the individual became a candidate; or

(ii) during the election cycle, the person is established, financed, directed, or managed by a member of the immediate family of the candidate who is the beneficiary of the disbursement, or the person or an agent of the person has had substantive discussions about the candidate’s campaign with a member of the immediate family of the candidate who is the beneficiary of the disbursement.

(6) “Disbursement” includes a deposit of money or a gift, a subscription, an advance, or other thing of value.

(7) “Donation” means a gift or transfer, or promise of gift or transfer, of money or other thing of value to a person.

(8) “Immediate family” has the meaning stated in § 9004(e) of the Internal Revenue Code of 1986.

(9) (i) “Person” includes an individual, a partnership, a political committee, an association, a corporation, a labor organization, and any other organization or group of persons.

(ii) “Person” does not include a political committee that exclusively accepts contributions that are subject to the limits under § 13–226 of this subtitle.

(10) (i) “Political party” has the meaning stated in § 1–101 of this article.

(ii) For purposes of this section, “political party” includes a political party, a central committee, a legislative party caucus committee, and agents of a political party, central committee, or legislative party caucus committee.

(11) (i) “Professional services” means any paid services in support of a political campaign, including advertising, message, strategy, policy, polling, communications development, allocation of campaign resources, fund–raising, and campaign operations.

(ii) “Professional services” does not include accounting, legal, print, or mail services.

(12) “Public communication” has the meaning stated in § 13–306 of this title.

(b) (1) A person may not:

(i) make a coordinated expenditure in excess of the limits established under § 13–226 of this subtitle; or

(ii) make a donation to a person for the purpose of furthering a coordinated expenditure in excess of the limits under § 13–226 of this subtitle.

(2) A candidate or political party may not, directly or indirectly, be the beneficiary of a coordinated expenditure in excess of the limits under § 13–226 of this subtitle.

(c) A person may not be considered to have made a coordinated expenditure solely on the grounds that the person or the person’s agent engaged in discussions or communications with a candidate regarding a position on a legislative or policy matter, provided that there is no communication between the person and the candidate regarding the candidate’s campaign advertising, message, strategy, polling, allocation of campaign resources, fund–raising, or other campaign activities.

(d) A person that makes a disbursement to promote the success or defeat of a candidate or political party at an election is presumed to have made a coordinated expenditure if:

(1) the person is a coordinated spender with respect to the candidate or political party that is the beneficiary of the disbursement;

(2) during the 18-month period preceding the disbursement, the person employs or retains a responsible officer of a political committee affiliated with the candidate or political party that is the beneficiary of the disbursement;

(3) during the 18-month period preceding the disbursement, the person employs or retains a strategic political campaign, media, or fund-raising advisor or consultant of the candidate or political party that is the beneficiary of the disbursement; or

(4) (i) during the 18-month period preceding the disbursement, the person has retained the professional services of a vendor, an advisor, or a consultant that, during the election cycle, has provided professional services to the candidate or political party that is the beneficiary of the disbursement; and

(ii) the vendor, advisor, or consultant has not established a firewall to restrict the sharing of strategic campaign information between individuals who are employed by or who are agents of the person and the candidate or political party that is the beneficiary of the disbursement.

(e) A person may rebut the presumption under subsection (d) of this section by presenting sufficient contrary evidence and obtaining a declaratory ruling from the State Board before making a disbursement to promote the success or defeat of a candidate or political party at an election.

(f) (1) A person that willfully and knowingly violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding:

(i) 300% of the amount by which the coordinated expenditure made by the person exceeded the applicable contribution limit under § 13-226 of this subtitle; or

(ii) 300% of the amount of the donation made to a person for the purpose of furthering a coordinated expenditure in excess of the limits prescribed under § 13-226 of this subtitle.

(2) A candidate or political party that willfully and knowingly violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding 300% of the amount by which the coordinated expenditure of which the candidate or political party was the beneficiary exceeded the applicable contribution limit under § 13-226 of this subtitle.

(g) (1) The State [Board] **ADMINISTRATOR OR THE STATE ADMINISTRATOR'S DESIGNEE** may investigate a potential violation of this section.

(2) The State [Board] **ADMINISTRATOR OR THE STATE ADMINISTRATOR'S DESIGNEE** shall:

(i) notify a person, candidate, or political party that is subject to an investigation under this subsection of the circumstances that gave rise to the investigation; and

(ii) provide the person, candidate, or political party ample opportunity to be heard at a public meeting of the State Board.

(3) (I) IN FURTHERANCE OF AN INVESTIGATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE STATE ADMINISTRATOR OR THE STATE ADMINISTRATOR'S DESIGNEE MAY ISSUE A SUBPOENA FOR THE ATTENDANCE OF A WITNESS TO TESTIFY OR THE PRODUCTION OF RECORDS.

(II) A SUBPOENA ISSUED UNDER THIS PARAGRAPH SHALL BE SERVED IN ACCORDANCE WITH THE MARYLAND RULES.

(III) IN ORDER FOR A SUBPOENA TO BE ISSUED UNDER THIS PARAGRAPH, THE STATE ADMINISTRATOR SHALL MAKE A FINDING THAT THE SUBPOENA IS NECESSARY TO AND IN FURTHERANCE OF AN INVESTIGATION BEING CONDUCTED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(IV) ANY FILING SUBMITTED TO A COURT WITH RESPECT TO A SUBPOENA UNDER THIS PARAGRAPH SHALL BE SEALED ON FILING.

~~(III)~~ **(V) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER THIS PARAGRAPH, ON PETITION OF THE STATE ADMINISTRATOR, A CIRCUIT COURT OF COMPETENT JURISDICTION MAY COMPEL COMPLIANCE WITH THE SUBPOENA.**

[(3)] (4) At the conclusion of the investigation and following the hearing under paragraph (2)(ii) of this subsection, the State Board shall issue a public report of its findings and may:

(i) impose a civil penalty as provided in paragraph **[(4)] (5)** of this subsection if the State Board determines that a person, candidate, or political party has unintentionally violated this section; or

(ii) refer the matter for further investigation by the State Prosecutor if the State Board has reasonable cause to believe that a person, candidate, or political party has willfully and knowingly violated this section.

[(4)] (5) A civil penalty under paragraph **[(3)(i)] (4)(I)** of this subsection:

(i) shall be assessed in the manner specified in § 13-604.1 of this title; and

(ii) may not exceed:

1. 100% of the amount by which the coordinated expenditure made by the person exceeded the applicable contribution limit under § 13–226 of this subtitle;

2. 100% of the amount of the donation made to a person for the purpose of furthering a coordinated expenditure in excess of the limits prescribed under § 13–226 of this subtitle; or

3. 100% of the amount by which the coordinated expenditure of which the candidate or political party was the beneficiary exceeded the applicable contribution limit under § 13–226 of this subtitle.

(h) (1) Except as provided in paragraph (2) of this subsection, a fine or penalty imposed under this section shall be paid by the person that committed the violation or by a political committee of the candidate or political party that committed the violation.

(2) Subject to paragraph (3) of this subsection, a fine or penalty under this section is the joint and several liability of the candidate or a director, a manager, an officer, or any other individual exercising direction or control over the activities of the person, authorized candidate campaign committee, or political party if the penalty is not paid by the person or by a political committee of the candidate or political party before the expiration of the 1–year period that begins on the later of:

(i) the date the fine or penalty was imposed; or

(ii) the date of the final judgment following any judicial review of the imposition of the fine or penalty.

(3) A candidate may not be jointly and severally liable for a fine or penalty under this section unless a court or the State Board finds that the candidate engaged in conduct that constitutes coordination with a person under this section.

(i) A fine or penalty imposed under this section shall be distributed to the Fair Campaign Financing Fund established under § 15–103 of this article.

(j) The State Board may adopt regulations as necessary to implement this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 25, 2019.