

HOUSE BILL 1201

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By: **Delegates Ebersole, Carr, Hill, Kelly, Lam, Lierman, Luedtke, Moon, and Platt**
Introduced and read first time: February 12, 2016
Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Campaign Finance – Coordinated Expenditures**

3 FOR the purpose of prohibiting a person from making a coordinated expenditure in excess
4 of certain limits or making a donation to a person for the purpose of furthering a
5 coordinated expenditure in excess of certain limits; prohibiting a candidate or
6 political party from being the beneficiary of a coordinated expenditure in excess of
7 certain limits; providing that a person may not be considered to have made a
8 coordinated expenditure solely on certain grounds; providing that a person that
9 makes a disbursement to promote the success of a candidate or political party at an
10 election is presumed to have made a coordinated expenditure under certain
11 circumstances; providing that a person may rebut the presumption that the person
12 made a coordinated expenditure by obtaining a declaratory ruling from the State
13 Board of Elections; providing that a person, candidate, or political party that willfully
14 and knowingly violates this Act is guilty of a misdemeanor and on conviction is
15 subject to certain fines; authorizing the State Board to investigate a potential
16 violation of this Act in a certain manner; authorizing the State Board to impose a
17 certain civil penalty for an unintentional violation of this Act or refer a suspected
18 willful and knowing violation of this Act to the State Prosecutor; requiring a fine or
19 penalty under this Act to be paid by certain persons and distributed to the Fair
20 Campaign Financing Fund; authorizing the State Board to adopt regulations to
21 implement this Act; altering certain definitions; defining certain terms; and
22 generally relating to coordinated expenditures.

23 BY repealing and reenacting, with amendments,
24 Article – Election Law
25 Section 1–101(o) and (bb)
26 Annotated Code of Maryland
27 (2010 Replacement Volume and 2015 Supplement)

28 BY adding to
29 Article – Election Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 13–248
2 Annotated Code of Maryland
3 (2010 Replacement Volume and 2015 Supplement)

4 BY repealing and reenacting, without amendments,
5 Article – Election Law
6 Section 13–306(a)(6)
7 Annotated Code of Maryland
8 (2010 Replacement Volume and 2015 Supplement)

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

11 **Article – Election Law**

12 1–101.

13 (o) (1) “Contribution” means the gift or transfer, or promise of gift or transfer,
14 of money or other thing of value to a campaign finance entity to promote or assist in the
15 promotion of the success or defeat of a candidate, political party, or question.

16 (2) “Contribution” includes:

17 (i) proceeds from the sale of tickets to a campaign fund–raising
18 event; **[and] OR**

19 (ii) **[a disbursement or deposit of money or a gift, a subscription, an**
20 **advance, or anything of value that is made by a person in coordination with, or at the**
21 **request or suggestion of, a candidate or a campaign finance entity of a candidate] A**
22 **COORDINATED EXPENDITURE AS DEFINED IN § 13–248 OF THIS ARTICLE.**

23 (bb) (1) “Independent expenditure” means **[an expenditure] A DISBURSEMENT**
24 **by a person expressly advocating the success or defeat of a clearly identified candidate or**
25 **ballot issue if the [expenditure] DISBURSEMENT is not made in coordination,**
26 **COOPERATION, CONSULTATION, OR CONCERT** with, or at the request or suggestion of,
27 a candidate, a campaign finance entity of a candidate, an agent of a candidate, or a ballot
28 issue committee.

29 (2) For purposes of this subsection, “clearly identified” means:

30 (i) the name of the candidate appears;

31 (ii) a photograph or drawing of the candidate appears; or

32 (iii) the identity of the candidate or ballot issue is apparent by
33 unambiguous reference.

1 13-248.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) (I) "CANDIDATE" HAS THE MEANING STATED IN § 1-101 OF
5 THIS ARTICLE.

6 (II) FOR PURPOSES OF THIS SECTION, "CANDIDATE" INCLUDES
7 A CANDIDATE, AN AUTHORIZED CANDIDATE CAMPAIGN COMMITTEE, OR AGENTS OF
8 A CANDIDATE OR AN AUTHORIZED CANDIDATE CAMPAIGN COMMITTEE.

9 (3) (I) "COORDINATED EXPENDITURE" MEANS A DISBURSEMENT
10 OR AN ACTION TO CAUSE A DISBURSEMENT THAT:

11 1. PROMOTES THE SUCCESS OF A CANDIDATE OR A
12 POLITICAL PARTY AT AN ELECTION; AND

13 2. IS MADE IN COOPERATION, CONSULTATION, OR
14 CONCERT WITH, OR AT THE REQUEST OR SUGGESTION OF, THE CANDIDATE OR
15 POLITICAL PARTY THAT IS THE BENEFICIARY OF THE DISBURSEMENT.

16 (II) "COORDINATED EXPENDITURE" INCLUDES:

17 1. A DISBURSEMENT FOR ANY COMMUNICATION THAT
18 REPUBLISHES OR DISSEMINATES, IN WHOLE OR IN PART, A VIDEO, PHOTOGRAPH,
19 AUDIO FOOTAGE, WRITTEN GRAPHIC, OR OTHER FORM OF CAMPAIGN MATERIAL
20 PREPARED BY THE CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF
21 THE DISBURSEMENT; OR

22 2. EXPENSES FOR CAMPAIGN ACTIVITIES THAT ARE PAID
23 ON BEHALF OF OR FOR THE BENEFIT OF THE CANDIDATE OR POLITICAL PARTY THAT
24 IS THE BENEFICIARY OF THE DISBURSEMENT IN ACCORDANCE WITH AN
25 UNDERSTANDING BETWEEN THE PERSON PAYING THE EXPENSES AND THE
26 CANDIDATE OR POLITICAL PARTY.

27 (III) "COORDINATED EXPENDITURE" DOES NOT INCLUDE A
28 DISBURSEMENT FOR ANY COMMUNICATION THAT IS NOT A PUBLIC
29 COMMUNICATION.

1 **(4) “COORDINATED SPENDER” MEANS A PERSON THAT MAKES A**
2 **DISBURSEMENT TO PROMOTE THE SUCCESS OF A CANDIDATE OR POLITICAL PARTY**
3 **AT AN ELECTION AND FOR WHICH ONE OF THE FOLLOWING APPLIES:**

4 **(I) DURING THE ELECTION CYCLE, THE PERSON WAS DIRECTLY**
5 **OR INDIRECTLY FORMED OR ESTABLISHED BY OR AT THE REQUEST OR SUGGESTION**
6 **OF, OR WITH THE ENCOURAGEMENT OF, THE CANDIDATE OR POLITICAL PARTY THAT**
7 **IS THE BENEFICIARY OF THE DISBURSEMENT, INCLUDING DURING THE TIME**
8 **BEFORE THE INDIVIDUAL BECAME A CANDIDATE;**

9 **(II) THE CANDIDATE OR POLITICAL PARTY THAT IS THE**
10 **BENEFICIARY OF THE DISBURSEMENT SOLICITS CONTRIBUTIONS, APPEARS AT**
11 **FUND-RAISING EVENTS, OR ENGAGES IN OTHER FUND-RAISING ACTIVITY ON THE**
12 **PERSON’S BEHALF DURING THE ELECTION CYCLE, INCLUDING PROVIDING THE**
13 **PERSON WITH THE NAMES OF POTENTIAL DONORS OR OTHER LISTS TO BE USED BY**
14 **THE PERSON TO ENGAGE IN FUND-RAISING ACTIVITY, REGARDLESS OF WHETHER**
15 **THE PERSON PAYS FAIR MARKET VALUE FOR THE NAMES OR LISTS;**

16 **(III) THE PERSON IS ESTABLISHED, DIRECTED, CONTROLLED,**
17 **MANAGED, OR ADVISED ON STRATEGY BY THE CANDIDATE OR POLITICAL PARTY**
18 **THAT IS THE BENEFICIARY OF THE DISBURSEMENT OR BY ANY OTHER PERSON THAT,**
19 **DURING THE ELECTION CYCLE, HAS BEEN EMPLOYED OR RETAINED AS A STRATEGIC**
20 **POLITICAL, CAMPAIGN, MEDIA, OR FUND-RAISING ADVISOR OR CONSULTANT FOR**
21 **THE CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF THE**
22 **DISBURSEMENT OR ANY OTHER ENTITY DIRECTLY OR INDIRECTLY CONTROLLED OR**
23 **MANAGED BY THE CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF**
24 **THE DISBURSEMENT;**

25 **(IV) THE PERSON HAS RETAINED THE PROFESSIONAL SERVICES**
26 **OF A VENDOR THAT, DURING THE ELECTION CYCLE, HAS PROVIDED OR IS**
27 **PROVIDING PROFESSIONAL SERVICES TO THE CANDIDATE OR POLITICAL PARTY**
28 **THAT IS THE BENEFICIARY OF THE DISBURSEMENT UNLESS THE VENDOR HAS USED**
29 **A FIREWALL; OR**

30 **(V) THE PERSON IS ESTABLISHED, FINANCED, DIRECTED, OR**
31 **MANAGED BY A MEMBER OF THE IMMEDIATE FAMILY OF THE CANDIDATE WHO IS THE**
32 **BENEFICIARY OF THE DISBURSEMENT, OR THE PERSON OR AN AGENT OF THE**
33 **PERSON HAS HAD SUBSTANTIVE DISCUSSIONS ABOUT THE CANDIDATE’S CAMPAIGN**
34 **WITH A MEMBER OF THE IMMEDIATE FAMILY OF THE CANDIDATE WHO IS THE**
35 **BENEFICIARY OF THE DISBURSEMENT DURING THE ELECTION CYCLE.**

36 **(5) “DISBURSEMENT” INCLUDES A DEPOSIT OF MONEY OR A GIFT, A**
37 **SUBSCRIPTION, AN ADVANCE, OR OTHER THING OF VALUE.**

1 **(6) “DONATION” MEANS A GIFT OR TRANSFER, OR PROMISE OF GIFT**
2 **OR TRANSFER, OF MONEY OR OTHER THING OF VALUE TO A PERSON.**

3 **(7) “IMMEDIATE FAMILY” HAS THE MEANING STATED IN § 9004(E) OF**
4 **THE INTERNAL REVENUE CODE OF 1986.**

5 **(8) (I) “PERSON” INCLUDES AN INDIVIDUAL, A PARTNERSHIP, A**
6 **POLITICAL COMMITTEE, AN ASSOCIATION, A CORPORATION, A LABOR**
7 **ORGANIZATION, OR ANY OTHER ORGANIZATION OR GROUP OF PERSONS.**

8 **(II) “PERSON” DOES NOT INCLUDE A POLITICAL COMMITTEE**
9 **THAT EXCLUSIVELY ACCEPTS CONTRIBUTIONS THAT ARE SUBJECT TO THE LIMITS**
10 **UNDER § 13–226 OF THIS SUBTITLE.**

11 **(9) (I) “POLITICAL PARTY” HAS THE MEANING STATED IN § 1–101**
12 **OF THIS ARTICLE.**

13 **(II) FOR PURPOSES OF THIS SECTION, “POLITICAL PARTY”**
14 **INCLUDES A POLITICAL PARTY, A CENTRAL COMMITTEE, A LEGISLATIVE PARTY**
15 **CAUCUS COMMITTEE, OR AGENTS OF A POLITICAL PARTY, CENTRAL COMMITTEE, OR**
16 **LEGISLATIVE PARTY CAUCUS COMMITTEE.**

17 **(10) (I) “PROFESSIONAL SERVICES” MEANS ANY PAID SERVICES IN**
18 **SUPPORT OF A POLITICAL CAMPAIGN, INCLUDING ADVERTISING, MESSAGE,**
19 **STRATEGY, POLICY, POLLING, COMMUNICATIONS DEVELOPMENT, ALLOCATION OF**
20 **CAMPAIGN RESOURCES, FUND–RAISING, OR CAMPAIGN OPERATIONS.**

21 **(II) “PROFESSIONAL SERVICES” DOES NOT INCLUDE**
22 **ACCOUNTING, LEGAL, PRINT, OR MAIL SERVICES.**

23 **(11) “PUBLIC COMMUNICATION” HAS THE MEANING STATED IN §**
24 **13–306 OF THIS TITLE.**

25 **(B) (1) A PERSON MAY NOT:**

26 **(I) MAKE A COORDINATED EXPENDITURE IN EXCESS OF THE**
27 **LIMITS ESTABLISHED UNDER § 13–226 OF THIS SUBTITLE; OR**

28 **(II) MAKE A DONATION TO A PERSON FOR THE PURPOSE OF**
29 **FURTHERING A COORDINATED EXPENDITURE IN EXCESS OF THE LIMITS UNDER §**
30 **13–226 OF THIS SUBTITLE.**

1 **(2) A CANDIDATE OR POLITICAL PARTY MAY NOT BE THE**
2 **BENEFICIARY OF A COORDINATED EXPENDITURE IN EXCESS OF THE LIMITS UNDER**
3 **§ 13-226 OF THIS SUBTITLE.**

4 **(C) A PERSON MAY NOT BE CONSIDERED TO HAVE MADE A COORDINATED**
5 **EXPENDITURE SOLELY ON THE GROUNDS THAT THE PERSON OR THE PERSON'S**
6 **AGENT ENGAGED IN DISCUSSIONS WITH A CANDIDATE REGARDING A POSITION ON A**
7 **LEGISLATIVE OR POLICY MATTER, PROVIDED THAT THERE IS NO COMMUNICATION**
8 **BETWEEN THE PERSON AND THE CANDIDATE REGARDING THE CANDIDATE'S**
9 **CAMPAIGN ADVERTISING, MESSAGE, STRATEGY, POLLING, ALLOCATION OF**
10 **CAMPAIGN RESOURCES, FUND-RAISING, OR OTHER CAMPAIGN ACTIVITIES.**

11 **(D) A PERSON THAT MAKES A DISBURSEMENT TO PROMOTE THE SUCCESS**
12 **OF A CANDIDATE OR POLITICAL PARTY AT AN ELECTION IS PRESUMED TO HAVE**
13 **MADE A COORDINATED EXPENDITURE IF:**

14 **(1) THE PERSON IS A COORDINATED SPENDER WITH RESPECT TO THE**
15 **CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF THE**
16 **DISBURSEMENT; OR**

17 **(2) (I) DURING THE 12-MONTH PERIOD PRECEDING THE**
18 **DISBURSEMENT, THE PERSON WAS A RESPONSIBLE OFFICER OF A POLITICAL**
19 **COMMITTEE AFFILIATED WITH THE CANDIDATE WHO IS THE BENEFICIARY OF THE**
20 **DISBURSEMENT OR THE CENTRAL COMMITTEE OR LEGISLATIVE PARTY CAUCUS**
21 **COMMITTEE OF THE POLITICAL PARTY THAT IS THE BENEFICIARY OF THE**
22 **DISBURSEMENT; AND**

23 **(II) THE PERSON HAS NOT ESTABLISHED A FIREWALL TO**
24 **RESTRICT THE SHARING OF STRATEGIC CAMPAIGN INFORMATION BETWEEN**
25 **INDIVIDUALS WHO ARE EMPLOYED BY OR WHO ARE AGENTS OF THE PERSON AND**
26 **THE CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF THE**
27 **DISBURSEMENT.**

28 **(E) A PERSON MAY REBUT THE PRESUMPTION UNDER SUBSECTION (D) OF**
29 **THIS SECTION BY PRESENTING SUFFICIENT CONTRARY EVIDENCE AND OBTAINING A**
30 **DECLARATORY RULING FROM THE STATE BOARD BEFORE MAKING A**
31 **DISBURSEMENT TO PROMOTE THE SUCCESS OF A CANDIDATE OR POLITICAL PARTY**
32 **AT AN ELECTION.**

33 **(F) (1) A PERSON THAT WILLFULLY AND KNOWINGLY VIOLATES THIS**
34 **SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE**
35 **NOT EXCEEDING:**

1 **(I) 300% OF THE AMOUNT BY WHICH THE COORDINATED**
2 **EXPENDITURE MADE BY THE PERSON EXCEEDED THE APPLICABLE CONTRIBUTION**
3 **LIMIT UNDER § 13-226 OF THIS SUBTITLE; OR**

4 **(II) 300% OF THE AMOUNT OF THE DONATION MADE TO A**
5 **PERSON FOR THE PURPOSE OF FURTHERING A COORDINATED EXPENDITURE IN**
6 **EXCESS OF THE LIMITS PRESCRIBED UNDER § 13-226 OF THIS SUBTITLE.**

7 **(2) A CANDIDATE OR POLITICAL PARTY THAT WILLFULLY AND**
8 **KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON**
9 **CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING 300% OF THE AMOUNT BY**
10 **WHICH THE COORDINATED EXPENDITURE OF WHICH THE CANDIDATE OR POLITICAL**
11 **PARTY WAS THE BENEFICIARY EXCEEDED THE APPLICABLE CONTRIBUTION LIMIT**
12 **UNDER § 13-226 OF THIS SUBTITLE.**

13 **(G) (1) THE STATE BOARD MAY INVESTIGATE A POTENTIAL VIOLATION**
14 **OF THIS SECTION.**

15 **(2) THE STATE BOARD SHALL:**

16 **(I) NOTIFY A PERSON, CANDIDATE, OR POLITICAL PARTY THAT**
17 **IS SUBJECT TO AN INVESTIGATION UNDER THIS SUBSECTION OF THE**
18 **CIRCUMSTANCES THAT GAVE RISE TO THE INVESTIGATION; AND**

19 **(II) PROVIDE THE PERSON, CANDIDATE, OR POLITICAL PARTY**
20 **AMPLE OPPORTUNITY TO BE HEARD AT A PUBLIC MEETING OF THE STATE BOARD.**

21 **(3) AT THE CONCLUSION OF THE INVESTIGATION AND FOLLOWING**
22 **THE HEARING UNDER PARAGRAPH (2)(II) OF THIS SECTION, THE STATE BOARD**
23 **SHALL ISSUE A PUBLIC REPORT OF ITS FINDINGS AND MAY:**

24 **(I) IMPOSE A CIVIL PENALTY AS PROVIDED IN PARAGRAPH (4)**
25 **OF THIS SUBSECTION IF THE STATE BOARD DETERMINES THAT A PERSON,**
26 **CANDIDATE, OR POLITICAL PARTY HAS UNINTENTIONALLY VIOLATED THIS SECTION;**
27 **OR**

28 **(II) REFER THE MATTER FOR FURTHER INVESTIGATION BY THE**
29 **STATE PROSECUTOR IF THE STATE BOARD HAS REASONABLE CAUSE TO BELIEVE**
30 **THAT A PERSON, CANDIDATE, OR POLITICAL PARTY HAS WILLFULLY AND**
31 **KNOWINGLY VIOLATED THIS SECTION.**

32 **(4) A CIVIL PENALTY UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION:**

1 **(I) SHALL BE ASSESSED IN THE MANNER SPECIFIED IN §**
2 **13-604.1 OF THIS TITLE; AND**

3 **(II) MAY NOT EXCEED:**

4 **1. 100% OF THE AMOUNT BY WHICH THE COORDINATED**
5 **EXPENDITURE MADE BY THE PERSON EXCEEDED THE APPLICABLE CONTRIBUTION**
6 **LIMIT UNDER § 13-226 OF THIS SUBTITLE;**

7 **2. 100% OF THE AMOUNT OF THE DONATION MADE TO A**
8 **PERSON FOR THE PURPOSE OF FURTHERING A COORDINATED EXPENDITURE IN**
9 **EXCESS OF THE LIMITS PRESCRIBED UNDER § 13-226 OF THIS SUBTITLE; OR**

10 **3. 100% OF THE AMOUNT BY WHICH THE COORDINATED**
11 **EXPENDITURE OF WHICH THE CANDIDATE OR POLITICAL PARTY WAS THE**
12 **BENEFICIARY EXCEEDED THE APPLICABLE CONTRIBUTION LIMIT UNDER § 13-226**
13 **OF THIS SUBTITLE.**

14 **(H) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A**
15 **FINE OR PENALTY IMPOSED UNDER THIS SECTION SHALL BE PAID BY THE PERSON**
16 **THAT COMMITTED THE VIOLATION OR BY A POLITICAL COMMITTEE OF THE**
17 **CANDIDATE OR POLITICAL PARTY THAT COMMITTED THE VIOLATION.**

18 **(2) A FINE OR PENALTY UNDER THIS SECTION IS THE JOINT AND**
19 **SEVERAL LIABILITY OF THE CANDIDATE OR A DIRECTOR, A MANAGER, AN OFFICER,**
20 **OR ANY OTHER INDIVIDUAL EXERCISING DIRECTION OR CONTROL OVER THE**
21 **ACTIVITIES OF THE PERSON, AUTHORIZED CANDIDATE CAMPAIGN COMMITTEE, OR**
22 **POLITICAL PARTY IF THE PENALTY IS NOT PAID BY THE PERSON OR BY A POLITICAL**
23 **COMMITTEE OF THE CANDIDATE OR POLITICAL PARTY BEFORE THE EXPIRATION OF**
24 **THE 1-YEAR PERIOD THAT BEGINS ON THE LATER OF:**

25 **(I) THE DATE THE FINE OR PENALTY WAS IMPOSED; OR**

26 **(II) THE DATE OF THE FINAL JUDGMENT FOLLOWING ANY**
27 **JUDICIAL REVIEW OF THE IMPOSITION OF THE FINE OR PENALTY.**

28 **(I) A FINE OR PENALTY IMPOSED UNDER THIS SECTION SHALL BE**
29 **DISTRIBUTED TO THE FAIR CAMPAIGN FINANCING FUND ESTABLISHED UNDER §**
30 **15-103 OF THIS ARTICLE.**

31 **(J) THE STATE BOARD MAY ADOPT REGULATIONS AS NECESSARY TO**
32 **IMPLEMENT THIS SECTION.**

1 13-306.

2 (a) (6) (i) "Public communication" means a communication by means of
3 any broadcast television or radio communication, cable television communication, satellite
4 television or radio communication, newspaper, magazine, outdoor advertising facility, mass
5 mailing, e-mail blast, text blast, or telephone bank to the general public, or any other form
6 of general public political advertising.

7 (ii) "Public communication" does not include:

8 1. a news story, a commentary, or an editorial disseminated
9 by a broadcasting station, including a cable television operator, programmer, or producer,
10 satellite television or radio provider, Web site, newspaper, magazine, or other periodical
11 publication, including any Internet or electronic publication, that is not controlled by a
12 candidate or political party;

13 2. an internal membership communication by a business or
14 other entity to its stockholders or members and executive and administrative personnel
15 and their immediate families, or by a membership entity, as defined under § 13-243 of this
16 title, to its members, executive and administrative personnel and their immediate families;
17 or

18 3. a candidate debate or forum.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2016.