

# HOUSE BILL 1025

G1

(9lr2831)

## ENROLLED BILL

— Ways and Means/Education, Health, and Environmental Affairs —

Introduced by **Delegate Mosby**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

#### 2 **Election Law – Coordinated Expenditures and Donations – Investigation**

3 FOR the purpose of authorizing the State Administrator of Elections or the State  
4 Administrator’s designee, rather than the State Board of Elections, to investigate a  
5 potential violation of certain provisions of law prohibiting certain coordinated  
6 expenditures and donations; requiring the State Administrator or the State  
7 Administrator’s designee, rather than the State Board, to take certain actions in the  
8 course of a certain investigation; authorizing the State Administrator or the State  
9 Administrator’s designee, in furtherance of a certain investigation, to issue a  
10 subpoena for the attendance of a witness to testify or the production of records;  
11 requiring that a subpoena be served in accordance with the Maryland Rules;  
12 requiring the State Administrator to make a certain finding in order for a certain  
13 subpoena to be issued; requiring that a certain filing be sealed on filing; authorizing  
14 a certain circuit court to compel compliance with a subpoena under certain

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber/conference committee amendments.*



1 circumstances; and generally relating to investigations of prohibited coordinated  
2 expenditures and donations.

3 BY repealing and reenacting, with amendments,  
4 Article – Election Law  
5 Section 13–249  
6 Annotated Code of Maryland  
7 (2017 Replacement Volume and 2018 Supplement)

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

10 **Article – Election Law**

11 13–249.

12 (a) (1) In this section the following words have the meanings indicated.

13 (2) (i) “Candidate” has the meaning stated in § 1–101 of this article.

14 (ii) For purposes of this section, “candidate” includes a candidate, an  
15 authorized candidate campaign committee, a slate committee, and agents of a candidate,  
16 an authorized candidate campaign committee, or a slate committee.

17 (3) “Communication” includes social media interactions with a candidate.

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

20 1. promotes the success or defeat of a candidate or a political  
21 party at an election; and

22 2. is made in cooperation, consultation, understanding,  
23 agreement, or concert with, or at the request or suggestion of, the candidate or political  
24 party that is the beneficiary of the disbursement.

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

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

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

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

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

10 (6) "Disbursement" includes a deposit of money or a gift, a subscription, an  
11 advance, or other thing of value.

12 (7) "Donation" means a gift or transfer, or promise of gift or transfer, of  
13 money or other thing of value to a person.

14 (8) "Immediate family" has the meaning stated in § 9004(e) of the Internal  
15 Revenue Code of 1986.

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

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

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

22 (ii) For purposes of this section, "political party" includes a political  
23 party, a central committee, a legislative party caucus committee, and agents of a political  
24 party, central committee, or legislative party caucus committee.

25 (11) (i) "Professional services" means any paid services in support of a  
26 political campaign, including advertising, message, strategy, policy, polling,  
27 communications development, allocation of campaign resources, fund-raising, and  
28 campaign operations.

29 (ii) "Professional services" does not include accounting, legal, print,  
30 or mail services.

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

32 (b) (1) A person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (ii) 300% of the amount of the donation made to a person for the  
6 purpose of furthering a coordinated expenditure in excess of the limits prescribed under §  
7 13–226 of this subtitle.

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

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

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

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

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

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

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

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

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

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

5                   **[(3)] (4)**       At the conclusion of the investigation and following the hearing  
 6 under paragraph (2)(ii) of this subsection, the State Board shall issue a public report of its  
 7 findings and may:

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

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

14                   **[(4)] (5)**       A civil penalty under paragraph **[(3)(i)] (4)(I)** of this subsection:

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

17                   (ii)       may not exceed:

18                   1.       100% of the amount by which the coordinated expenditure  
 19 made by the person exceeded the applicable contribution limit under § 13–226 of this  
 20 subtitle;

21                   2.       100% of the amount of the donation made to a person for  
 22 the purpose of furthering a coordinated expenditure in excess of the limits prescribed under  
 23 § 13–226 of this subtitle; or

24                   3.       100% of the amount by which the coordinated expenditure  
 25 of which the candidate or political party was the beneficiary exceeded the applicable  
 26 contribution limit under § 13–226 of this subtitle.

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

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

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

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

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

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

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.