

HOUSE BILL 1025

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9lr2831
CF SB 123

By: **Delegate Mosby**

Introduced and read first time: February 8, 2019

Assigned to: Ways and Means

Committee Report: Favorable

House action: Adopted

Read second time: March 11, 2019

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 authorizing a certain circuit court to compel compliance with a subpoena under
13 certain circumstances; and generally relating to investigations of prohibited
14 coordinated expenditures and donations.

15 BY repealing and reenacting, with amendments,
16 Article – Election Law
17 Section 13–249
18 Annotated Code of Maryland
19 (2017 Replacement Volume and 2018 Supplement)

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

22 **Article – Election Law**

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.



1 13-249.

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

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

4 (ii) For purposes of this section, “candidate” includes a candidate, an
5 authorized candidate campaign committee, a slate committee, and agents of a candidate,
6 an authorized candidate campaign committee, or a slate committee.

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

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

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

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

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

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

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

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

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

33 (6) “Disbursement” includes a deposit of money or a gift, a subscription, an

1 advance, or other thing of value.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (c) A person may not be considered to have made a coordinated expenditure solely
31 on the grounds that the person or the person’s agent engaged in discussions or
32 communications with a candidate regarding a position on a legislative or policy matter,
33 provided that there is no communication between the person and the candidate regarding

1 the candidate's campaign advertising, message, strategy, polling, allocation of campaign
2 resources, fund-raising, or other campaign activities.

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

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

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

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

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

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

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

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

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

30 (ii) 300% of the amount of the donation made to a person for the
31 purpose of furthering a coordinated expenditure in excess of the limits prescribed under §
32 13-226 of this subtitle.

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

1 subtitle.

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

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

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

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

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

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

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

21 **[(3)] (4)** At the conclusion of the investigation and following the hearing
22 under paragraph (2)(ii) of this subsection, the State Board shall issue a public report of its
23 findings and may:

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

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

30 **[(4)] (5)** A civil penalty under paragraph **[(3)(i)] (4)(I)** of this subsection:

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

1 (ii) may not exceed:

2 1. 100% of the amount by which the coordinated expenditure
3 made by the person exceeded the applicable contribution limit under § 13–226 of this
4 subtitle;

5 2. 100% of the amount of the donation made to a person for
6 the purpose of furthering a coordinated expenditure in excess of the limits prescribed under
7 § 13–226 of this subtitle; or

8 3. 100% of the amount by which the coordinated expenditure
9 of which the candidate or political party was the beneficiary exceeded the applicable
10 contribution limit under § 13–226 of this subtitle.

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

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

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

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

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

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

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

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