

SENATE BILL 123

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9lr0119
CF HB 1025

By: **Senator Pinsky**

Introduced and read first time: January 17, 2019

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable

Senate action: Adopted with floor amendments

Read second time: February 18, 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 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
15 circumstances; and generally relating to investigations of prohibited coordinated
16 expenditures and donations.

17 BY repealing and reenacting, with amendments,
18 Article – Election Law
19 Section 13–249
20 Annotated Code of Maryland
21 (2017 Replacement Volume and 2018 Supplement)

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

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 **Article – Election Law**

2 13–249.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) A person may not be considered to have made a coordinated expenditure solely
32 on the grounds that the person or the person’s agent engaged in discussions or

1 communications with a candidate regarding a position on a legislative or policy matter,
2 provided that there is no communication between the person and the candidate regarding
3 the candidate's campaign advertising, message, strategy, polling, allocation of campaign
4 resources, fund-raising, or other campaign activities.

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

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

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

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

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

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

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

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

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

32 (ii) 300% of the amount of the donation made to a person for the
33 purpose of furthering a coordinated expenditure in excess of the limits prescribed under §
34 13-226 of this subtitle.

35 (2) A candidate or political party that willfully and knowingly violates this
36 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding 300%

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

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

6 (2) The State [Board] ADMINISTRATOR OR THE STATE
7 ADMINISTRATOR’S DESIGNEE shall:

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

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

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

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

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

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

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

29 [(3)] (4) At the conclusion of the investigation and following the hearing
30 under paragraph (2)(ii) of this subsection, the State Board shall issue a public report of its
31 findings and may:

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

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

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

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

7 (ii) may not exceed:

8 1. 100% of the amount by which the coordinated expenditure
9 made by the person exceeded the applicable contribution limit under § 13–226 of this
10 subtitle;

11 2. 100% of the amount of the donation made to a person for
12 the purpose of furthering a coordinated expenditure in excess of the limits prescribed under
13 § 13–226 of this subtitle; or

14 3. 100% of the amount by which the coordinated expenditure
15 of which the candidate or political party was the beneficiary exceeded the applicable
16 contribution limit under § 13–226 of this subtitle.

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

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.