

SENATE BILL 123

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9lr0119

By: **Senator Pinsky**

Introduced and read first time: January 17, 2019

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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**

23 13–249.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) For purposes of this section, “candidate” includes a candidate, an
2 authorized candidate campaign committee, a slate committee, and agents of a candidate,
3 an authorized candidate campaign committee, or a slate committee.

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

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

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

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

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

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

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

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

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

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

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

34 (8) “Immediate family” has the meaning stated in § 9004(e) of the Internal

1 Revenue Code of 1986.

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

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

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

8 (ii) For purposes of this section, "political party" includes a political
9 party, a central committee, a legislative party caucus committee, and agents of a political
10 party, central committee, or legislative party caucus committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) 300% of the amount of the donation made to a person for the
26 purpose of furthering a coordinated expenditure in excess of the limits prescribed under §
27 13-226 of this subtitle.

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

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

35 (2) The State [Board] ADMINISTRATOR OR THE STATE

1 **ADMINISTRATOR'S DESIGNEE** shall:

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

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

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

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

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

17 **[(3)] (4)** At the conclusion of the investigation and following the hearing
18 under paragraph (2)(ii) of this subsection, the State Board shall issue a public report of its
19 findings and may:

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

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

26 **[(4)] (5)** A civil penalty under paragraph **[(3)(i)] (4)(I)** of this subsection:

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

29 (ii) may not exceed:

30 1. 100% of the amount by which the coordinated expenditure
31 made by the person exceeded the applicable contribution limit under § 13-226 of this
32 subtitle;

