

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 17
Ways and Means

(Delegate Palakovich Carr)

Education, Health, and Environmental Affairs

Campaign Finance – Recurring Contributions and Donations – Requirements

This bill requires a person who solicits a recurring contribution for a political committee, or a recurring donation for an independent expenditure or electioneering communication, to receive the affirmative consent of the contributor or donor for the recurring contribution or donation. If a person violates the requirement, the State Board of Elections (SBE) is authorized to impose a civil penalty of up to \$500 for each violation. **The bill takes effect January 1, 2023.**

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing resources. Special fund (Fair Campaign Financing Fund) revenue may increase as a result of any monetary penalties imposed under the bill.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The passive action of a contributor or donor, including failing to uncheck a prechecked box authorizing a recurring contribution or donation, does not meet the requirement of affirmative consent as required under the bill.

If a contributor or donor affirmatively consents to making a recurring contribution or donation, the person soliciting the recurring contribution or donation must, in addition to

the receipt required under current law, provide a receipt to the contributor or donor for each contribution or donation that clearly and conspicuously discloses (1) the frequency of the recurring contributions or donations; (2) the duration of the recurring contributions or donations; and (3) all information needed to cancel a recurring contribution or donation. In addition, the person soliciting the recurring contribution or donation must immediately cancel the recurring contributions or donations at the request of the contributor or donor.

A political committee that obtains a contribution in violation of the bill's provisions must return the contribution to the contributor immediately after obtaining the contribution, and a person making independent expenditures or electioneering communications who obtains a donation in violation of the bill's provisions must also return the donation to the donor immediately after obtaining the donation. The amount of any contribution or donation obtained is an outstanding obligation of the political committee or person until the contribution or donation is repaid to the contributor or donor.

Under the bill, "person" includes a vendor for (1) a political committee or (2) a person making independent expenditures or electioneering communications.

Current Law:

Campaign Contribution Receipts

By the next deadline for filing a campaign finance report after receiving a contribution, a treasurer of a campaign finance entity must issue a campaign contribution receipt on the form that SBE prescribes. A campaign contribution receipt must be mailed or delivered to each person who makes one or more contributions in the cumulative amount of \$51 or more. At the request of a contributor, a treasurer must issue a campaign contribution receipt for any other contribution. In addition, a campaign contribution receipt is evidence of the contribution. The information from a campaign contribution receipt must be included in the campaign finance report filed by the treasurer.

Books and Records

The treasurer of a campaign finance entity must keep a detailed and accurate account book of all assets received, expenditures made, and obligations incurred by or on behalf of the entity. With the exception of specified contributions from the sale of a spin or chance or a raffle ticket, the account book must state, with respect to each asset received or expenditure made, (1) its amount or value; (2) the date of the receipt or expenditure; (3) the name and address of the person from whom the asset was received or to whom the expenditure was made; and (4) a description of the asset received or the purpose for which the expenditure was made.

To the extent practicable, the treasurer of a campaign finance entity must record the occupation and employer of an individual who makes contributions to the campaign finance entity in a cumulative amount of \$500 or more during an election cycle.

For each election in which a campaign finance entity participates, it generally must file campaign finance reports at various times prior to and after the primary and general elections, as well as an annual report. The reports must contain information required by SBE with respect to all contributions received and all expenditures made by or on behalf of the campaign finance entity during a reporting period, as well as the information regarding the occupations and employers of contributors required to be recorded by the treasurer.

Independent Expenditures and Electioneering Communications

Independent expenditures in general – political spending by individuals or organizations without coordination with a candidate – cannot be limited or prohibited, pursuant to the 2010 Supreme Court decision *Citizens United v. FEC*. Requirements for disclosure of independent expenditures, however, have been upheld by courts. Under Maryland’s disclosure requirements, independent expenditures are expenditures for public communications that are not made in coordination with a candidate or campaign finance entity and that expressly advocate the success or defeat of a clearly identified candidate or ballot question. Electioneering communications, on the other hand, do not expressly advocate the success or defeat of a candidate or ballot question, but refer to a clearly identified candidate or ballot question, are made within 60 days of an election, are capable of being received by a certain amount of individuals (with the amount depending on the type of communication) in the constituency where the candidate or ballot question is on the ballot, and are not made in coordination with a candidate or campaign finance entity.

Within 48 hours after a person makes aggregate independent expenditures or disbursements for electioneering communications of \$5,000 or more in an election cycle, the person must file a registration form with SBE. Within 48 hours after a day on which a person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more in an election cycle, the person must file a report with SBE providing information on the person, the expenditures or disbursements, and persons who made cumulative donations of \$6,000 or more to the person during the period covered by the report. Further, a person who files an independent expenditure or electioneering communication report must file an additional report within 48 hours after a day on which the person makes aggregate independent expenditures or disbursements for electioneering communications of \$10,000 or more following the closing date of the person’s previous report.

A person required to file an independent expenditure report or an electioneering communication report must keep detailed and accurate records of (1) all independent expenditures made by the person for campaign material that is a public communication, and disbursements for electioneering communications made by the person, and (2) all donations received by the person. The records must be preserved until two years after the end of the election cycle in which the person filed the specified report to which the records relate.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): State Board of Elections; Office of the State Prosecutor;
Department of Legislative Services

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