

HOUSE BILL 898

G1
HB 1201/16 – W&M

7lr2251

By: **Delegates Ebersole, Lafferty, Lam, Lierman, Luedtke, McCray, Moon, Morales, Platt, Reznik, Tarlau, Turner, A. Washington, and M. Washington**

Introduced and read first time: February 6, 2017

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Campaign Finance – Coordinated Expenditures**

3 FOR the purpose of prohibiting a person from making a coordinated expenditure in excess
4 of certain limits or making a donation to a person for the purpose of furthering a
5 coordinated expenditure in excess of certain limits; prohibiting a candidate or
6 political party from being the beneficiary of a coordinated expenditure in excess of
7 certain limits; providing that a person may not be considered to have made a
8 coordinated expenditure solely on certain grounds; providing that a person that
9 makes a disbursement to promote the success or defeat of a candidate or political
10 party at an election is presumed to have made a coordinated expenditure under
11 certain circumstances; providing that a person may rebut the presumption that the
12 person made a coordinated expenditure by obtaining a declaratory ruling from the
13 State Board of Elections; providing that a person, candidate, or political party that
14 willfully and knowingly violates this Act is guilty of a misdemeanor and on conviction
15 is subject to certain fines; authorizing the State Board to investigate a potential
16 violation of this Act in a certain manner; authorizing the State Board to impose a
17 certain civil penalty for an unintentional violation of this Act or refer a suspected
18 willful and knowing violation of this Act to the State Prosecutor; requiring a fine or
19 penalty under this Act to be paid by certain persons and distributed to the Fair
20 Campaign Financing Fund; authorizing the State Board to adopt regulations to
21 implement this Act; altering certain definitions; defining certain terms; making a
22 clarifying change; and generally relating to coordinated expenditures.

23 BY repealing and reenacting, with amendments,
24 Article – Election Law
25 Section 1–101(o) and (bb) and 13–604.1(d)
26 Annotated Code of Maryland
27 (2010 Replacement Volume and 2016 Supplement)

28 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Election Law
Section 13–249
Annotated Code of Maryland
(2010 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article – Election Law
Section 13–306(a)(6)
Annotated Code of Maryland
(2010 Replacement Volume and 2016 Supplement)

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

Article – Election Law

1–101.

(o) (1) “Contribution” means the gift or transfer, or promise of gift or transfer, of money or other thing of value to a campaign finance entity to promote or assist in the promotion of the success or defeat of a candidate, political party, question, or prospective question.

(2) “Contribution” includes:

(i) proceeds from the sale of tickets to a campaign fund–raising event; and

(ii) [a disbursement or deposit of money or a gift, a subscription, an advance, or anything of value that is made by a person in coordination with, or at the request or suggestion of, a candidate or a campaign finance entity of a candidate] **A COORDINATED EXPENDITURE AS DEFINED IN § 13–249 OF THIS ARTICLE.**

(bb) (1) “Independent expenditure” means [an expenditure] **A DISBURSEMENT** by a person expressly advocating the success or defeat of a clearly identified candidate or ballot issue if the [expenditure] **DISBURSEMENT** is not made in coordination, **COOPERATION, CONSULTATION, UNDERSTANDING, AGREEMENT, OR CONCERT** with, or at the request or suggestion of, a candidate, a campaign finance entity of a candidate, an agent of a candidate, or a ballot issue committee.

(2) For purposes of this subsection, “clearly identified” means:

(i) the name of the candidate appears;

(ii) a photograph or drawing of the candidate appears; or

(iii) the identity of the candidate or ballot issue is apparent by unambiguous reference.

13-249.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "CANDIDATE" HAS THE MEANING STATED IN § 1-101 OF THIS ARTICLE.

(II) FOR PURPOSES OF THIS SECTION, "CANDIDATE" INCLUDES A CANDIDATE, AN AUTHORIZED CANDIDATE CAMPAIGN COMMITTEE, A SLATE COMMITTEE, AND AGENTS OF A CANDIDATE, AN AUTHORIZED CANDIDATE CAMPAIGN COMMITTEE, OR A SLATE COMMITTEE.

(3) "COMMUNICATION" INCLUDES SOCIAL MEDIA INTERACTIONS WITH A CANDIDATE.

(4) (I) "COORDINATED EXPENDITURE" MEANS A DISBURSEMENT OR AN ACTION TO CAUSE A DISBURSEMENT THAT:

1. PROMOTES THE SUCCESS OR DEFEAT OF A CANDIDATE OR A POLITICAL PARTY AT AN ELECTION; AND

2. IS MADE IN COOPERATION, CONSULTATION, UNDERSTANDING, AGREEMENT, OR CONCERT WITH, OR AT THE REQUEST OR SUGGESTION OF, THE CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF THE DISBURSEMENT.

(II) "COORDINATED EXPENDITURE" INCLUDES A DISBURSEMENT FOR ANY COMMUNICATION THAT REPUBLISHES OR DISSEMINATES, IN WHOLE OR IN PART, A VIDEO, A PHOTOGRAPH, AUDIO FOOTAGE, A WRITTEN GRAPHIC, OR ANY OTHER FORM OF CAMPAIGN MATERIAL PREPARED BY THE CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF THE DISBURSEMENT.

(III) "COORDINATED EXPENDITURE" DOES NOT INCLUDE A DISBURSEMENT FOR ANY COMMUNICATION THAT IS NOT A PUBLIC COMMUNICATION.

(5) "COORDINATED SPENDER" MEANS A PERSON THAT MAKES A DISBURSEMENT TO PROMOTE THE SUCCESS OR DEFEAT OF A CANDIDATE OR

1 POLITICAL PARTY AT AN ELECTION AND FOR WHICH ONE OF THE FOLLOWING
2 APPLIES:

3 (I) DURING THE ELECTION CYCLE, THE PERSON WAS DIRECTLY
4 OR INDIRECTLY FORMED OR ESTABLISHED BY OR AT THE REQUEST OR SUGGESTION
5 OF, OR WITH THE ENCOURAGEMENT OF, THE CANDIDATE OR POLITICAL PARTY THAT
6 IS THE BENEFICIARY OF THE DISBURSEMENT, INCLUDING DURING THE TIME
7 BEFORE THE INDIVIDUAL BECAME A CANDIDATE; OR

8 (II) DURING THE ELECTION CYCLE, THE PERSON IS
9 ESTABLISHED, FINANCED, DIRECTED, OR MANAGED BY A MEMBER OF THE
10 IMMEDIATE FAMILY OF THE CANDIDATE WHO IS THE BENEFICIARY OF THE
11 DISBURSEMENT, OR THE PERSON OR AN AGENT OF THE PERSON HAS HAD
12 SUBSTANTIVE DISCUSSIONS ABOUT THE CANDIDATE'S CAMPAIGN WITH A MEMBER
13 OF THE IMMEDIATE FAMILY OF THE CANDIDATE WHO IS THE BENEFICIARY OF THE
14 DISBURSEMENT.

15 (6) "DISBURSEMENT" INCLUDES A DEPOSIT OF MONEY OR A GIFT, A
16 SUBSCRIPTION, AN ADVANCE, OR OTHER THING OF VALUE.

17 (7) "DONATION" MEANS A GIFT OR TRANSFER, OR PROMISE OF GIFT
18 OR TRANSFER, OF MONEY OR OTHER THING OF VALUE TO A PERSON.

19 (8) "IMMEDIATE FAMILY" HAS THE MEANING STATED IN § 9004(E) OF
20 THE INTERNAL REVENUE CODE OF 1986.

21 (9) (I) "PERSON" INCLUDES AN INDIVIDUAL, A PARTNERSHIP, A
22 POLITICAL COMMITTEE, AN ASSOCIATION, A CORPORATION, A LABOR
23 ORGANIZATION, AND ANY OTHER ORGANIZATION OR GROUP OF PERSONS.

24 (II) "PERSON" DOES NOT INCLUDE A POLITICAL COMMITTEE
25 THAT EXCLUSIVELY ACCEPTS CONTRIBUTIONS THAT ARE SUBJECT TO THE LIMITS
26 UNDER § 13-226 OF THIS SUBTITLE.

27 (10) (I) "POLITICAL PARTY" HAS THE MEANING STATED IN § 1-101
28 OF THIS ARTICLE.

29 (II) FOR PURPOSES OF THIS SECTION, "POLITICAL PARTY"
30 INCLUDES A POLITICAL PARTY, A CENTRAL COMMITTEE, A LEGISLATIVE PARTY
31 CAUCUS COMMITTEE, AND AGENTS OF A POLITICAL PARTY, CENTRAL COMMITTEE,
32 OR LEGISLATIVE PARTY CAUCUS COMMITTEE.

(11) (I) "PROFESSIONAL SERVICES" MEANS ANY PAID SERVICES IN SUPPORT OF A POLITICAL CAMPAIGN, INCLUDING ADVERTISING, MESSAGE, STRATEGY, POLICY, POLLING, COMMUNICATIONS DEVELOPMENT, ALLOCATION OF CAMPAIGN RESOURCES, FUND-RAISING, AND CAMPAIGN OPERATIONS.

(II) "PROFESSIONAL SERVICES" DOES NOT INCLUDE ACCOUNTING, LEGAL, PRINT, OR MAIL SERVICES.

(12) "PUBLIC COMMUNICATION" HAS THE MEANING STATED IN § 13-306 OF THIS TITLE.

(B) (1) A PERSON MAY NOT:

(I) MAKE A COORDINATED EXPENDITURE IN EXCESS OF THE LIMITS ESTABLISHED UNDER § 13-226 OF THIS SUBTITLE; OR

(II) MAKE A DONATION TO A PERSON FOR THE PURPOSE OF FURTHERING A COORDINATED EXPENDITURE IN EXCESS OF THE LIMITS UNDER § 13-226 OF THIS SUBTITLE.

(2) A CANDIDATE OR POLITICAL PARTY MAY NOT, DIRECTLY OR INDIRECTLY, BE THE BENEFICIARY OF A COORDINATED EXPENDITURE IN EXCESS OF THE LIMITS UNDER § 13-226 OF THIS SUBTITLE.

(C) A PERSON MAY NOT BE CONSIDERED TO HAVE MADE A COORDINATED EXPENDITURE SOLELY ON THE GROUNDS THAT THE PERSON OR THE PERSON'S AGENT ENGAGED IN DISCUSSIONS OR COMMUNICATIONS WITH A CANDIDATE REGARDING A POSITION ON A LEGISLATIVE OR POLICY MATTER, PROVIDED THAT THERE IS NO COMMUNICATION BETWEEN THE PERSON AND THE CANDIDATE REGARDING THE CANDIDATE'S CAMPAIGN ADVERTISING, MESSAGE, STRATEGY, POLLING, ALLOCATION OF CAMPAIGN RESOURCES, FUND-RAISING, OR OTHER CAMPAIGN ACTIVITIES.

(D) A PERSON THAT MAKES A DISBURSEMENT TO PROMOTE THE SUCCESS OR DEFEAT OF A CANDIDATE OR POLITICAL PARTY AT AN ELECTION IS PRESUMED TO HAVE MADE A COORDINATED EXPENDITURE IF:

(1) THE PERSON IS A COORDINATED SPENDER WITH RESPECT TO THE CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF THE DISBURSEMENT;

(2) DURING THE 18-MONTH PERIOD PRECEDING THE DISBURSEMENT, THE PERSON EMPLOYS OR RETAINS A RESPONSIBLE OFFICER OF A

POLITICAL COMMITTEE AFFILIATED WITH THE CANDIDATE OR POLITICAL PARTY
THAT IS THE BENEFICIARY OF THE DISBURSEMENT;

(3) DURING THE 18-MONTH PERIOD PRECEDING THE
DISBURSEMENT, THE PERSON EMPLOYS OR RETAINS A STRATEGIC POLITICAL
CAMPAIGN, MEDIA, OR FUND-RAISING ADVISOR OR CONSULTANT OF THE
CANDIDATE OR POLITICAL PARTY THAT IS THE BENEFICIARY OF THE
DISBURSEMENT; OR

(4) (I) DURING THE 18-MONTH PERIOD PRECEDING THE
DISBURSEMENT, THE PERSON HAS RETAINED THE PROFESSIONAL SERVICES OF A
VENDOR, AN ADVISOR, OR A CONSULTANT THAT, DURING THE ELECTION CYCLE, HAS
PROVIDED PROFESSIONAL SERVICES TO THE CANDIDATE OR POLITICAL PARTY
THAT IS THE BENEFICIARY OF THE DISBURSEMENT; AND

(II) THE VENDOR, ADVISOR, OR CONSULTANT HAS NOT
ESTABLISHED A FIREWALL TO RESTRICT THE SHARING OF STRATEGIC CAMPAIGN
INFORMATION BETWEEN INDIVIDUALS WHO ARE EMPLOYED BY OR WHO ARE AGENTS
OF THE PERSON AND THE CANDIDATE OR POLITICAL PARTY THAT IS THE
BENEFICIARY OF THE DISBURSEMENT.

(E) A PERSON MAY REBUT THE PRESUMPTION UNDER SUBSECTION (D) OF
THIS SECTION BY PRESENTING SUFFICIENT CONTRARY EVIDENCE AND OBTAINING A
DECLARATORY RULING FROM THE STATE BOARD BEFORE MAKING A
DISBURSEMENT TO PROMOTE THE SUCCESS OR DEFEAT OF A CANDIDATE OR
POLITICAL PARTY AT AN ELECTION.

(F) (1) A PERSON THAT WILLFULLY AND KNOWINGLY VIOLATES THIS
SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE
NOT EXCEEDING:

(I) 300% OF THE AMOUNT BY WHICH THE COORDINATED
EXPENDITURE MADE BY THE PERSON EXCEEDED THE APPLICABLE CONTRIBUTION
LIMIT UNDER § 13-226 OF THIS SUBTITLE; OR

(II) 300% OF THE AMOUNT OF THE DONATION MADE TO A
PERSON FOR THE PURPOSE OF FURTHERING A COORDINATED EXPENDITURE IN
EXCESS OF THE LIMITS PRESCRIBED UNDER § 13-226 OF THIS SUBTITLE.

(2) A CANDIDATE OR POLITICAL PARTY THAT WILLFULLY AND
KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING 300% OF THE AMOUNT BY
WHICH THE COORDINATED EXPENDITURE OF WHICH THE CANDIDATE OR POLITICAL

PARTY WAS THE BENEFICIARY EXCEEDED THE APPLICABLE CONTRIBUTION LIMIT UNDER § 13-226 OF THIS SUBTITLE.

(G) (1) THE STATE BOARD MAY INVESTIGATE A POTENTIAL VIOLATION OF THIS SECTION.

(2) THE STATE BOARD SHALL:

(I) NOTIFY A PERSON, CANDIDATE, OR POLITICAL PARTY THAT IS SUBJECT TO AN INVESTIGATION UNDER THIS SUBSECTION OF THE CIRCUMSTANCES THAT GAVE RISE TO THE INVESTIGATION; AND

(II) PROVIDE THE PERSON, CANDIDATE, OR POLITICAL PARTY AMPLE OPPORTUNITY TO BE HEARD AT A PUBLIC MEETING OF THE STATE BOARD.

(3) AT THE CONCLUSION OF THE INVESTIGATION AND FOLLOWING THE HEARING UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION, THE STATE BOARD SHALL ISSUE A PUBLIC REPORT OF ITS FINDINGS AND MAY:

(I) IMPOSE A CIVIL PENALTY AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION IF THE STATE BOARD DETERMINES THAT A PERSON, CANDIDATE, OR POLITICAL PARTY HAS UNINTENTIONALLY VIOLATED THIS SECTION; OR

(II) REFER THE MATTER FOR FURTHER INVESTIGATION BY THE STATE PROSECUTOR IF THE STATE BOARD HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON, CANDIDATE, OR POLITICAL PARTY HAS WILLFULLY AND KNOWINGLY VIOLATED THIS SECTION.

(4) A CIVIL PENALTY UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION:

(I) SHALL BE ASSESSED IN THE MANNER SPECIFIED IN § 13-604.1 OF THIS TITLE; AND

(II) MAY NOT EXCEED:

1. 100% OF THE AMOUNT BY WHICH THE COORDINATED EXPENDITURE MADE BY THE PERSON EXCEEDED THE APPLICABLE CONTRIBUTION LIMIT UNDER § 13-226 OF THIS SUBTITLE;

2. 100% OF THE AMOUNT OF THE DONATION MADE TO A PERSON FOR THE PURPOSE OF FURTHERING A COORDINATED EXPENDITURE IN EXCESS OF THE LIMITS PRESCRIBED UNDER § 13-226 OF THIS SUBTITLE; OR

1 **3. 100% OF THE AMOUNT BY WHICH THE COORDINATED**
2 **EXPENDITURE OF WHICH THE CANDIDATE OR POLITICAL PARTY WAS THE**
3 **BENEFICIARY EXCEEDED THE APPLICABLE CONTRIBUTION LIMIT UNDER § 13-226**
4 **OF THIS SUBTITLE.**

5 **(H) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A**
6 **FINE OR PENALTY IMPOSED UNDER THIS SECTION SHALL BE PAID BY THE PERSON**
7 **THAT COMMITTED THE VIOLATION OR BY A POLITICAL COMMITTEE OF THE**
8 **CANDIDATE OR POLITICAL PARTY THAT COMMITTED THE VIOLATION.**

9 **(2) A FINE OR PENALTY UNDER THIS SECTION IS THE JOINT AND**
10 **SEVERAL LIABILITY OF THE CANDIDATE OR A DIRECTOR, A MANAGER, AN OFFICER,**
11 **OR ANY OTHER INDIVIDUAL EXERCISING DIRECTION OR CONTROL OVER THE**
12 **ACTIVITIES OF THE PERSON, AUTHORIZED CANDIDATE CAMPAIGN COMMITTEE, OR**
13 **POLITICAL PARTY IF THE PENALTY IS NOT PAID BY THE PERSON OR BY A POLITICAL**
14 **COMMITTEE OF THE CANDIDATE OR POLITICAL PARTY BEFORE THE EXPIRATION OF**
15 **THE 1-YEAR PERIOD THAT BEGINS ON THE LATER OF:**

16 **(I) THE DATE THE FINE OR PENALTY WAS IMPOSED; OR**

17 **(II) THE DATE OF THE FINAL JUDGMENT FOLLOWING ANY**
18 **JUDICIAL REVIEW OF THE IMPOSITION OF THE FINE OR PENALTY.**

19 **(I) A FINE OR PENALTY IMPOSED UNDER THIS SECTION SHALL BE**
20 **DISTRIBUTED TO THE FAIR CAMPAIGN FINANCING FUND ESTABLISHED UNDER §**
21 **15-103 OF THIS ARTICLE.**

22 **(J) THE STATE BOARD MAY ADOPT REGULATIONS AS NECESSARY TO**
23 **IMPLEMENT THIS SECTION.**

24 13-306.

25 **(a) (6) (i) “Public communication” means a communication by means of**
26 **any broadcast television or radio communication, cable television communication, satellite**
27 **television or radio communication, newspaper, magazine, outdoor advertising facility, mass**
28 **mailing, e-mail blast, text blast, or telephone bank to the general public, or any other form**
29 **of general public political advertising.**

30 **(ii) “Public communication” does not include:**

31 1. a news story, a commentary, or an editorial disseminated
32 by a broadcasting station, including a cable television operator, programmer, or producer,
33 satellite television or radio provider, Web site, newspaper, magazine, or other periodical

1 publication, including any Internet or electronic publication, that is not controlled by a
2 candidate or political party;

3 2. an internal membership communication by a business or
4 other entity to its stockholders or members and executive and administrative personnel
5 and their immediate families, or by a membership entity, as defined under § 13–243 of this
6 title, to its members, executive and administrative personnel and their immediate families;
7 or

8 3. a candidate debate or forum.

9 13–604.1.

10 (d) (1) Except as **OTHERWISE PROVIDED IN THIS TITLE OR AS** provided in
11 paragraph (2) of this subsection, the amount of a civil penalty imposed under this section
12 may not exceed \$500 for each violation.

13 (2) As to a violation of § 13–235 of this title, the campaign finance entity
14 that receives a contribution as a result of a violation shall:

15 (i) refund the contribution to the contributor; and

16 (ii) pay a civil penalty that equals \$1,000 plus the amount of the
17 contribution, unless the State Board at its discretion assesses a lesser penalty for good
18 cause.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2017.