

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1365

S. P. 483

In Senate, March 18, 1981

Referred to the Committee on Election Laws. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

Cosponsors: Representative Rolde of York, Senator Conley of Cumberland and Representative Hobbins of Saco.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Revise Governmental Ethics and Election Practices.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 21 MRSA § 1398, first ¶, as last amended by PL 1979, c. 479, §§ 4 and 5, is further amended by adding at the end a new sentence to read:

The commission shall, within 7 days after complaint from any person, determine whether or not a report required to be filed under this chapter is late.

Sec. 2. 21 MRSA § 1398, 2nd ¶, first sentence, as repealed and replaced by PL 1977, c. 575, § 14, is amended to read:

The commission, upon within 7 days after determining that a report is late, shall notify the Secretary of State of such lateness.

Sec. 3. 21 MRSA § 1398, as amended by PL 1979, c. 479, §§ 4 and 5, is further amended by adding at the end a new paragraph to read:

If the Attorney General fails to enforce such violation within 15 days after receiving notice of the lateness of the report from the Secretary of State, any private person may enforce that violation in a civil action to collect the full amount outstanding of the penalty. Such action shall be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of

Southern Kennebec, and, if that private person is successful in collecting all or a part of the full amount outstanding of the penalty, he shall be awarded by the court 1/2 of the amount collected, plus attorneys' fees and costs. The other 1/2 of the amount collected shall be paid over to the Treasurer of State.

Sec. 4. 21 MRSA c. 36-A is enacted to read:

CHAPTER 36-A

DETERMINATION OF FACTUAL MISSTATEMENTS IN CERTAIN CAMPAIGN COMMUNICATIONS

§ 1431. Hearing on factual misstatements in campaign communications

1. **Definition.** As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

A. "Opponent" includes not only the complainant's opponent, but also that opponent's authorized political committee, the authorized agent of the opponent or committee and any person who makes an expenditure of \$50 or more for the purpose of financing a communication under section 1394 which expressly advocates the defeat of the complainant or the election of his opponent.

2. **Hearing.** The Superior Court of Kennebec County, within 5 days of receiving a complaint filed by a candidate for state office that his opponent has expended \$50 or more for the purpose of financing a communication expressly advocating the defeat of the complainant, or the election of someone other than the complainant to the office for which the complainant is running, and that this communication contains a statement of the complainant's publicly expressed views or previous record which is false, shall hold a hearing on whether or not the statement is false. The parties to the hearing shall be the complainant and his opponent, each of whom shall be permitted to present evidence. The burden of proof shall be on the complainant to show the falsity of the statement and the standard of proof shall be that of a probability.

3. **Findings.** The court shall, within 3 days after the conclusion of the hearing held under subsection 2, issue a finding of fact on whether or not the statement complained of is false. This finding shall be issued publicly.

4. **Costs and attorney's fees.** Each party to the hearing held under subsection 2 shall bear his own costs and attorney's fees.

STATEMENT OF FACT

The 1980 elections made the public aware of the prevalence of very negative campaign tactics, including the failure to register campaign committees, the solicitation of funds under the guise of fictitious committees and the use of misstatements and false information from campaign literature. The Commission on Governmental Ethics and Election Practices has not been given adequate

authorization by the Legislature to deal effectively and swiftly with these unethical and unfair campaign tactics. Maine voters and the democratic process depend on fair and ethical election practices to ensure the highest standard elected officials.

This bill provides important safeguards for the election process through a mechanism designed to ensure a timely resolution to questions of unethical campaign practices.