

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION

2
3 ONE HUNDRED AND ELEVENTH LEGISLATURE

4
5 Legislative Document

No. 1049

6
7 H.P. 809

House of Representatives, March 4, 1983

8 On Motion of Representative Nadeau of Lewiston, referred to the
9 Committee on Election Laws. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Reeves of Pittston.

Cosponsors: Representative Nadeau of Lewiston and Senator Pearson of
11 Penobscot.

12 STATE OF MAINE

13
14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE

16
17 AN ACT to Provide for the Settlement of
18 Disputes Concerning Political Advertising
19 during Political Campaigns.
20

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

23 Sec. 1. 21 MRSA §1394, as amended by PL 1979, c.
24 638, §1, is repealed and the following enacted in its
25 place:

26 §1394. Publication or distribution of political
27 statements

28 1. Identification of source of political state-
29 ment. Whenever any person makes an expenditure for
30 the purpose of financing communications expressly
31 advocating the election or defeat of a clearly
32 identified candidate through broadcasting stations,
33 newspapers, magazines, outdoor advertising facili-

1 ties, direct mails and other similar types of general
2 public political advertising and through flyers,
3 handbills, bumper stickers and other nonperiodical
4 publications, that communication, if authorized by a
5 candidate, a candidate's authorized political commit-
6 tee or their agents, shall clearly and conspicuously
7 state that the communication has been so authorized
8 and shall clearly state the name and address of the
9 person who made or financed the expenditure for the
10 communication.

11 If the communication is not authorized by a candi-
12 date, a candidate's authorized political committee or
13 their agents, the communication shall clearly and
14 conspicuously state that the communication is not
15 authorized by any candidate, and state the name and
16 address of the person who made or financed the
17 expenditure for the communication.

18 No person operating a broadcasting station within
19 this State may broadcast any such communication with-
20 out an oral or written visual announcement of the
21 name of the person who made or financed the expendi-
22 ture for the communication.

23 2. False publication relating to candidate.

24 A. No person may cause to be written, printed,
25 published, posted or circulated any letter, cir-
26 cular, bill, placard, poster or other publi-
27 cation, or cause any advertisement to be placed
28 in a publication, or singly or with others pay
29 for any advertisement, with knowledge or with
30 reckless disregard that the letter, circular,
31 bill, placard, poster, publication or advertise-
32 ment contains a false statement of material fact
33 relating to any candidate or political committee.

34 B. A candidate who knows of and consents to a
35 publication or advertisement prohibited by this
36 section with knowledge or with reckless disregard
37 that it contains a false statement of material
38 fact violates this section regardless of whether
39 the candidate has participated in the publication
40 or advertisement.

1 C. There is a rebuttable presumption that a candi-
2 didate knows of and consents to any publication
3 or advertisement prohibited by this subsection
4 caused by a political committee over which the
5 candidate exercises any direction or control.

6 D. Any candidate or political committee aggrieved
7 by a violation of this subsection shall have a
8 right of action against the person alleged to
9 have committed the violation. The aggrieved party
10 may file the action in the Superior Court for the
11 county in which the defendent resides or, if the
12 defendent is a nonresident of the State, in the
13 Superior Court for any county in which the publi-
14 cation occurred. To prevail in the action, the
15 plaintiff must show by clear and convincing evi-
16 dence that the defendant violated paragraph A.

17 E. A plaintiff who prevails in an action provided
18 by paragraph D shall recover punitive damages and
19 also may recover general damages if any have been
20 suffered. Proof of general damages is not re-
21 quired for recovery of punitive damages. Any pre-
22 vailing party may be awarded reasonable attorney
23 fees at trial and on appeal.

24 F. A political committee has standing to bring an
25 action provided by paragraph D as plaintiff in
26 its own name, if its purpose as evidenced by its
27 preelection activities, solicitations and publi-
28 cations has been injured by the violation and if
29 it has fully complied with this chapter. A polit-
30 ical committee may not be sued as defendant in
31 such an action. A recovery made by a political
32 committee which prevails in an action under this
33 section shall be distributed pro rata among the
34 persons making contributions to the committee.

35 G. If a judgment is rendered in an action under
36 this subsection against a defendant who has been
37 nominated to public office or elected to a public
38 office other than Senator or Representative, the
39 defendant shall be deprived of the nomination or
40 election and the nomination or office shall be
41 declared vacant.

1 H. An action under this subsection must be filed
2 not later than the 30th day after the election
3 relating to which a publication or advertisement
4 in violation of this subsection was made. Pro-
5 ceedings on a complaint filed under this subsec-
6 tion shall have precedence over all other busi-
7 ness on the court docket. The courts shall pro-
8 ceed in a manner which insures that:

9 (1) Judgment on a complaint which is filed
10 at least 2 weeks before the election is
11 rendered within 10 working days;

12 (2) Judgment on a complaint filed after the
13 election which relates to a primary election
14 is rendered before the 30th day before the
15 general election; and

16 (3) Judgment on a complaint filed after the
17 election which relates to an election to an
18 office is rendered before the term of that
19 office begins.

20 Sec. 2. 21 MRSA §1416, as amended by PL 1979, c.
21 638, §2, is repealed and the following enacted in its
22 place:

23 §1416. Publication or distribution of statements

24 1. Identification of source of statement. When-
25 ever any person makes an expenditure for the purpose
26 of financing communications expressly advocating the
27 initiation, promotion or defeat of a question through
28 broadcasting stations, newspapers, magazines, outdoor
29 advertising facilities, direct mails and other simi-
30 lar types of general public political advertising and
31 through flyers, handbills, bumper stickers and other
32 nonperiodical publications, that communication shall
33 clearly and conspicuously state the name and address
34 of the person who made or financed the expenditure
35 for the communication.

36 No person operating a broadcasting station within
37 this State may broadcast any such communication with-
38 out an oral or visual announcement of the name of the
39 person who made or financed the expenditure for the
40 communication.

1 2. False publication relating to ballot question.

2 A. No person may cause to be written, printed,
3 published, posted or circulated any letter, cir-
4 cular, bill, placard, poster or other publi-
5 cation, or cause any advertisement to be placed
6 in a publication, or singly or with others pay
7 for any advertisement, with knowledge or with
8 reckless disregard that the letter, circular,
9 bill, placard, poster, publication or advertise-
10 ment contains a false statement of material fact
11 relating to any ballot question.

12 B. There is a rebuttable presumption that a com-
13 mittee formed with respect to a campaign knows of
14 and consents to any publication or advertisement
15 concerning that campaign prohibited by this sub-
16 section caused by an officer, employee or agent
17 of the committee.

18 C. Any committee formed with respect to a cam-
19 paign or other person aggrieved by a violation of
20 this subsection shall have a right of action
21 against the person alleged to have committed the
22 violation. The aggrieved party may file the ac-
23 tion in the Superior Court for the county in
24 which the defendent resides or, if the defendent
25 is a nonresident of the State, in the Superior
26 Court for any county in which the publication
27 occurred. To prevail in the action, the plaintiff
28 must show by clear and convincing evidence that
29 the defendant violated paragraph A.

30 D. A plaintiff who prevails in an action provided
31 by paragraph C shall recover punitive damages and
32 also may recover general damages if any have been
33 suffered. Proof of general damages is not re-
34 quired for recovery of punitive damages. Any pre-
35 vailing party may be awarded reasonable attorney
36 fees at trial and on appeal.

37 E. A committee formed with respect to a campaign
38 has standing to bring an action provided by para-
39 graph C as plaintiff in its own name, if its pur-
40 pose as evidenced by its preelection activities,
41 solicitations and publications has been injured
42 by the violation and if it has fully complied

1 with this chapter. A recovery made by a committee
2 formed with respect to a campaign which prevails
3 in an action under this section shall be distrib-
4 uted pro rata among the persons making contribu-
5 tions to the committee.

6 F. An action under this subsection must be filed
7 not later than 2 weeks before the election relat-
8 ing to which a publication or advertisement in
9 violation of this section was made. Proceedings
10 on a complaint filed under this subsection shall
11 have precedence over all other business on the
12 court docket. The court shall render judgment
13 within 10 working days.

14 STATEMENT OF FACT

15 This bill prohibits political candidates and com-
16 mittees from publishing or circulating false polit-
17 ical advertising, establishes a remedy for persons
18 who are harmed by this advertising and sets up a
19 court procedure for settlement of disputes concerning
20 this advertising in a timely manner. The bill applies
21 to elections to political office, both primary and
22 general, and to elections for consideration of
23 initiatives, referendum and bond issues.

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