

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1154

S.P. 437

In Senate, April 12, 1989

Reference to the Committee on Legal Affairs suggested and ordered printed.

Joy J. O'Brien

JOY J. O'BRIEN
Secretary of the Senate

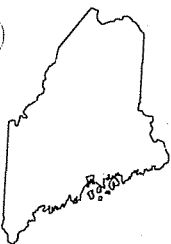
Presented by Senator CARPENTER of York.

Cosponsored by Senator BERUBE of Androscoggin, Representative CARROLL of Gray and Representative BEGLEY of Waldoboro.

STATE OF MAINE

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

An Act to Strengthen Financial Disclosure Laws and to Prohibit the Acceptance of Honoraria.



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

3 **Sec. 1. 1 MRSA §1016**, as enacted by PL 1975, c. 621, §1, is
5 repealed and the following enacted in its place:

7 **§1016. Financial disclosure by Legislators**

9 **1. Definitions.** As used in this section, unless the
11 context indicates otherwise, the following terms have the
13 following meanings.

15 **A. "Dependent child"** means, when used with respect to any
17 Legislator, any individual who is a son, daughter, stepson
19 or stepdaughter and who:

21 (1) Is unmarried and under 21 years of age and is
23 living in the household of that Legislator; or

25 (2) Is a dependent of that Legislator for purposes of
27 the state income tax laws.

29 **B. "Legislator"** means a Senator or a member of the House of
31 Representatives.

33 **C. "Personal hospitality of an individual"** means
35 hospitality extended for a nonbusiness purpose by an
37 individual, not a corporation or organization, at the
39 personal residence of that individual or the individual's
41 family or on property or facilities owned or rented by that
43 individual or the individual's family.

45 **D. "Relative"** means an individual who is related to the
47 Legislator or the Legislator's spouse as father, mother,
49 son, daughter, brother, sister, uncle, aunt, great aunt,
51 great uncle, first cousin, nephew, niece, husband, wife,
grandfather, grandmother, grandson, granddaughter,
father-in-law, mother-in-law, son-in-law, daughter-in-law,
brother-in-law, sister-in-law, stepfather, stepmother,
stepson, stepdaughter, stepbrother, stepsister, half brother
or half sister, and shall be deemed to include the fiance or
fiancee of the Legislator.

53 **E. "Reportable asset"** means any interest in a trade or
55 business or any real or personal property held for
57 investment or the production of income. "Reportable asset"
59 does not include:

61 (1) An asset which did not have a value in excess of
\$1000 at any time during the reporting period;

(2) Deposits in one or more personal savings accounts

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in a single financial institution which did not total more than \$5,000 at any time during the reporting period;

(3) Personal residences from which no income was derived during the reporting period; and

(4) Debts owed by a relative.

F. "Reportable gift" means anything of value given to a person, including the forgiveness of an obligation, unless consideration of equal or greater value is received by the donor. "Reportable gift" does not include:

(1) Gifts received from a single source during the reporting period with an aggregate value of \$300 or less;

(2) A bequest or other form of inheritance;

(3) A gift received from a relative; and

(4) A gift of personal hospitality of an individual.

G. "Reportable income" means all income from any source, including, but not limited to, compensation for services, including fees, commissions and payments of in kind; gross income derived from business; gains derived from property transactions; rents; royalties; income from investments; interest; dividends; annuities; income from life insurance or endowment contracts; pensions; discharges of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; and grants. "Reportable income" does not include:

(1) Income derived from a single source during the reporting period with an aggregate value of \$300 or less;

(2) Alimony and child support payments; and

(3) Campaign contributions duly recorded as required by law.

H. "Reportable liability" means any debt or other similar obligation. "Reportable liability" does not include:

(1) Liabilities owed to a single creditor the aggregate value of which did not exceed \$1000 at any time during the reporting period;

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(2) A debt owed to a relative;

(3) Mortgages secured by personal residences from which no income was derived during the reporting period;

(4) A loan secured by a personal motor vehicle or by household furnishings in a personal residence if the loan does not exceed the purchase price of the item;

(5) Amounts owed for alimony or child support;

(6) An educational loan made or guaranteed by a governmental entity, educational institution or nonprofit organization; and

(7) A revolving charge account, if the outstanding liability did not exceed \$5000 at the end of the reporting period.

I. "Reportable reimbursement" means any payment or other thing of value, including the direct provision of transportation, meals or lodging, received by a person, other than as a gift, to cover travel-related expenses. "Reportable reimbursement" does not include:

(1) Reimbursement received from a single source during the reporting period with an aggregate value of \$300 or less; and

(2) Reimbursement received from federal, state and local government or from an association of government officials.

J. "Reporting period" means the calendar year immediately preceding the filing of the financial disclosure statement.

K. "Spouse" means the husband or wife of the Legislator, but does not include a husband or wife:

(1) From whom the Legislator is legally separated; or

(2) Who is living apart from the Legislator and from whom the Legislator is unable to obtain the information needed to complete the financial disclosure statement.

2. Financial disclosure statement. Each Legislator shall file with the Commission on Governmental Ethics and Election Practices prior to the close of the 2nd week in February of each year a sworn and notarized financial disclosure statement containing the following information for the applicable reporting period for the Legislator and the Legislator's spouse and dependent children:

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A. For all reportable income, the type of income and the specific identity of the source. In identifying the source of earned income received by a self-employed person not doing business as a separate legal entity, it shall be sufficient to specify the principal type of economic activity from which the income is derived. In identifying the source of all other earned income, it shall be sufficient to identify the name and principal type of economic activity of the corporation, professional association, partnership, financial institution, nonprofit organization, or other entity directly providing the income to the individual;

B. For all reportable assets held at any time during the reporting period, a specific description of the asset. When an interest in a trade or business is reported, the assets of the trade or business need not be reported;

C. For all reportable liabilities owed at any time during the reporting period, the specific identity of the creditor;

D. For all reportable gifts, the specific identity of the donor. A gift given to a spouse or dependent child totally independent of the recipient's relationship to the Legislator need not be reported; and

E. For all reportable reimbursements, the specific identity of the source of the reimbursement. A reimbursement paid to a spouse or dependent child totally independent of the recipient's relationship to the Legislator need not be reported.

3. Additional disclosures. The Legislator shall make the following additional disclosures.

A. The Legislator shall include in the financial disclosure statement the names of any state agencies before which the Legislator represented or assisted others for compensation during the reporting period.

B. The Legislator shall include in the financial disclosure statement the names of any state agencies to which the Legislator or any member of the Legislator's immediate family sold goods or services during the reporting period.

C. For a Legislator or a Legislator's spouse who is an attorney or consultant, the financial disclosure statement shall include, in addition to the information required in subsection 2, the following information:

1 (1) The major areas of the person's practice and, if
2 associated with a firm, the major areas of the firm's
3 practice; and

4 (2) The specific identity of any client who accounted
5 for 20% or more of the person's earned gross income
6 during the reporting period and, if associated with a
7 firm, the specific identity of any client who accounted
8 for 20% or more of the firm's gross income during the
9 reporting period.

10 4. Delivery of financial disclosure form. The Secretary of
11 State shall, prior to the end of the first week in January in
12 each year, deliver to each Legislator the form for filing the
13 financial disclosure statement.

14 5. Penalty. Failing to meet the requirements of subsection
15 2 or 3 within 15 days of having been notified of that failure by
16 the commission is a civil violation for which a forfeiture of not
17 more than \$100 may be adjudged.

18 6. Rules. The commission may adopt or amend rules
19 necessary to carry out this section, including, but not limited
20 to, rules specifying reportable categories or types, defining
21 terms and prescribing forms and procedures for filing financial
22 disclosure statements.

23 7. Public record. Financial disclosure statements filed
24 under this section are public records.

25 Sec. 2. 1 MRSA §1017, as amended by PL 1981, c. 698, §2, is
26 repealed.

27 Sec. 3. 1 MRSA §1018, as repealed and replaced by PL 1977, c.
28 252, §4, is repealed.

29 Sec. 4. 1 MRSA §1022 is enacted to read:

30 §1022. Prohibition against acceptance of honoraria

31 1. Honorarium. For purposes of this section, "honorarium"
32 means a payment of money or anything of value to a Legislator for
33 an appearance or a speech by the Legislator. "Honorarium" does
34 not include:

35 A. Reimbursement for any actual and necessary travel
36 expenses incurred by the Legislator or an aide in connection
37 with an appearance or a speech; or

38 B. A payment for an appearance or a speech if the
39 appearance or speech is unrelated to the person's official
40 capacity or duties as a member of the Legislature.

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2 2. Prohibition. It is unlawful for a Legislator to accept
3 an honorarium.

5 3. Penalty. Any Legislator who violates this section shall
6 be subject to a civil penalty, payable to the State, not to
7 exceed twice the value of the honorarium.

9 Sec. 5. 5 MRSA §19, as amended by PL 1987, c. 784, §4, is
10 repealed and the following enacted in its place:

11 §19. Financial disclosure by executive employees

13 1. Definitions. As used in this section, unless the
14 context otherwise indicates, the following terms have the
15 following meanings.

17 A. "Appointed executive employee" means a compensated
18 member of the classified or unclassified service employed by
19 the Executive Department, who is appointed by the Governor
20 and confirmed by the Legislature, or who serves in a major
21 policy-influencing position as set forth in chapter 71,
22 except assistant attorneys general.

24 B. "Dependent child" means, when used with respect to any
25 executive employee, any individual who is a son, daughter,
26 stepson or stepdaughter and who:

28 (1) Is unmarried and under 21 years of age and is
29 living in the household of that executive employee; or

30 (2) Is a dependent of that executive employee for
31 purposes of the state income tax laws.

33 C. "Elected executive employee" means the Governor,
34 Attorney General, Secretary of State, Treasurer of State and
35 the State Auditor.

37 D. "Executive employee" means an appointed executive
38 employee or an elected executive employee.

39 E. "Personal hospitality of an individual" means
40 hospitality extended for a nonbusiness purpose by an
41 individual, not a corporation or organization, at the
42 personal residence of that individual or the individual's
43 family or on property or facilities owned or rented by that
44 individual or the individual's family.

45 F. "Relative" means an individual who is related to the
46 executive employee or the executive employee's spouse as
47 father, mother, son, daughter, brother, sister, uncle, aunt,
48 and grandchild.

1 great aunt, great uncle, first cousin, nephew, niece,
2 husband, wife, grandfather, grandmother, grandson,
3 granddaughter, father-in-law, mother-in-law, son-in-law,
4 daughter-in-law, brother-in-law, sister-in-law, stepfather,
5 stepmother, stepson, stepdaughter, stepbrother, stepsister,
6 half brother or half sister, and shall be deemed to include
7 the fiance or fiancée of the executive employee.

9 G. "Reportable asset" means any interest in a trade or
10 business or any real or personal property held for
11 investment or the production of income. "Reportable asset"
12 does not include:

13 (1) An asset which did not have a value in excess of
14 \$1000 at any time during the reporting period;

15 (2) Deposits in one or more personal savings accounts
16 in a single financial institution which did not total
17 more than \$5,000 at any time during the reporting
18 period;

19 (3) Personal residences from which no income was
20 derived during the reporting period; and

21 (4) Debts owed by a relative.

22 H. "Reportable gift" means anything of value given to a
23 person, including the forgiveness of an obligation, unless
24 consideration of equal or greater value is received by the
25 donor. "Reportable gift" does not include:

26 (1) Gifts received from a single source during the
27 reporting period with an aggregate value of \$300 or
28 less;

29 (2) A bequest or other form of inheritance;

30 (3) A gift received from a relative; and

31 (4) A gift of personal hospitality of an individual.

32 I. "Reportable income" means all income from any source,
33 including, but not limited to, compensation for services,
34 including fees, commissions and payments in kind; gross
35 income derived from business; gains derived from property
36 transactions; rents; royalties; income from investments;
37 interest; dividends; annuities; income from life insurance
38 or endowment contracts; pensions; discharges of
39 indebtedness; distributive share of partnership income;
40 income from an interest in an estate or trust; and grants.
41 "Reportable income" does not include:

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- (1) Income derived from a single source during the reporting period with an aggregate value of \$300 or less;
- (2) Alimony and child support payments; and
- (3) Campaign contributions, duly recorded as required by law.

J. "Reportable liability" means any debt or other similar obligation. "Reportable liability" does not include:

- (1) Liabilities owed to a single creditor the aggregate value of which did not exceed \$1000 at any time during the reporting period;
- (2) A debt owed to a relative;
- (3) Mortgages secured by personal residences from which no income was derived during the reporting period;
- (4) A loan secured by a personal motor vehicle or by household furnishings in a personal residence if the loan does not exceed the purchase price of the item;
- (5) Amounts owed for alimony or child support;
- (6) An educational loan made or guaranteed by a governmental entity, educational institution or nonprofit organization; and
- (7) A revolving charge account, if the outstanding liability did not exceed \$5000 at the end of the reporting period.

K. "Reportable reimbursement" means any payment or other thing of value, including the direct provision of transportation, meals or lodging, received by a person, other than as a gift, to cover travel-related expenses. "Reportable reimbursement" does not include:

- (1) Reimbursement received from a single source during the reporting period with an aggregate value of \$300 or less; and
- (2) Reimbursement received from federal, state and local government or from an association of government officials.

1 L. "Reporting period" means, for purposes of an initial
3 financial disclosure statement, the 12 months immediately
5 preceding the month the statement is filed, and for purposes
 of an annual financial disclosure statement, the calendar
 year immediately preceding the filing of the statement.

7 M. "Spouse" means the husband or wife of the executive
9 employee, but does not include a husband or wife:

11 (1) From whom the executive employee is legally
 separated; or

13 (2) Who is living apart from the executive employee
15 and from whom the executive employee is unable to
17 obtain the information needed to complete the financial
 disclosure statement.

19 2. Financial disclosure statement. Each executive employee
21 shall file with the Secretary of State, at the times specified in
23 subsection 4, a sworn and notarized financial disclosure
 statement containing the following information for the applicable
 reporting period for the executive employee and the executive
 employee's spouse and dependent children:

25 A. For all reportable income, the type of income and the
27 specific identity of the source. In identifying the source
29 of earned income received by a self-employed person not
31 doing business as a separate legal entity, it shall be
33 sufficient to specify the principal type of economic
35 activity from which the income is derived. In identifying
37 the source of all other earned income, it shall be
 sufficient to identify the name and principal type of
 economic activity of the corporation, professional
 association, partnership, financial institution, nonprofit
 organization or other entity directly providing the income
 to the individual;

39 B. For all reportable assets held at any time during the
41 reporting period, a specific description of the asset. When
 an interest in a trade or business is reported, the assets
 of the trade or business need not be reported;

43 C. For all reportable liabilities owed at any time during
45 the reporting period, the specific identity of the creditor;

47 D. For all reportable gifts, the specific identity of the
49 donor. A gift given to a spouse or dependent child totally
 independent of the recipient's relationship to the executive
 employee need not be reported; and

1 E. For all reportable reimbursements, the specific identity
2 of the source of the reimbursement. A reimbursement paid to
3 a spouse or dependent child totally independent of the
4 recipient's relationship to the executive employee need not
5 be reported.

7 3. Additional disclosure for attorneys and consultants.
8 For an executive employee or an executive employee's spouse who
9 is an attorney or consultant, the financial disclosure statement
10 shall include, in addition to the information required in
11 subsection 2, the following information:

13 A. The major areas of the person's practice and, if
14 associated with a firm, the major areas of the firm's
15 practice; and

17 B. The specific identity of any client who accounted for
18 20% or more of the person's earned gross income during the
19 reporting period and, if associated with a firm, the
20 specific identity of any client who accounted for 20% or
21 more of the firm's gross income during the reporting period.

23 4. Time for filing. Every executive employee shall file
24 financial disclosure statements as follows.

25 A. An elected executive employee shall file an initial
26 financial disclosure statement within 30 days of the
27 executive employee's election. An appointed executive
28 employee shall file an initial financial disclosure
29 statement prior to confirmation by the Legislature or, if
30 confirmation is not required, within 30 days of the
31 employee's appointment.

33 B. Every executive employee shall file an annual financial
34 disclosure statement prior to the close of the 2nd week in
35 April, unless the executive employee has filed an initial
36 financial disclosure statement within the preceding 4 months.

39 5. Penalty. Failing to meet the requirements of subsection
40 2 or 3 within 15 days of having been notified of that failure by
41 the Secretary of State is a civil violation for which a
42 forfeiture of not more than \$100 may be adjudged.

43 6. Rules. The Secretary of State may adopt or amend rules
44 necessary to carry out this section, including, but not limited
45 to, rules specifying reportable categories or types, defining
46 terms and prescribing forms and procedures for filing financial
47 disclosure statements.

49 7. Public record. Financial disclosure statements filed
50 under this section are public records.

1 Sec. 6. 5 MRSA §19-A is enacted to read:

3 §19-A. Prohibition against acceptance of honoraria

5 1. Executive employee. For purposes of this section,
7 executive employee shall have the same meaning as in section 19.

9 2. Honorarium. For purpose of this section, "honorarium"
11 means a payment of money or anything of value to an executive
13 employee for an appearance or a speech by the executive
15 employee. "Honorarium" does not include:

17 A. Reimbursement for any actual and necessary travel
19 expenses incurred by the executive employee or an aide in
21 connection with an appearance or a speech; or

23 B. A payment for an appearance or a speech if the
25 appearance or speech is unrelated to the person's official
27 capacity or duties as an executive employee.

29 3. Prohibition. It is unlawful for an executive employee
31 to accept an honorarium.

33 4. Penalty. Any executive employee who violates this
35 section shall be subject to a civil penalty, payable to the
37 State, not to exceed twice the value of the honorarium.

39 **STATEMENT OF FACT**

41 This bill strengthens Maine's financial disclosure laws and
43 establishes a prohibition against the acceptance of honoraria by
45 Legislators and executive branch officials.

47 With respect to financial disclosure, the bill extends the
income reporting requirement to the reporting of assets and
liabilities. As a result, Legislators and executive employees,
as defined by the bill, would be required to report income
exceeding \$300, assets worth more than \$1,000, liabilities
exceeding \$1,000, gifts valued at more than \$300 and
reimbursements exceeding \$300. To avoid unnecessary invasions of
privacy, the bill follows the current practice of not requiring
disclosure of actual monetary amounts or categories of monetary
amounts.

1 In contrast with current law, the bill requires
2 identification of the specific sources of income, gifts and
3 reimbursement; specific descriptions of assets; and the names of
4 creditors. Without this specific information, the disclosure may
5 not reveal the existence of a possible conflict.

7 The bill also mandates special reporting for officials who
8 are attorneys or consultants. In addition to the disclosure
9 requirements, these individuals would be required to reveal their
10 major areas of practice, as well as the identities of any clients
11 who account for 20% or more of the income received by their law
12 or consulting firms.

13 Sections 4 and 6 of the bill prohibit the acceptance of
14 honoraria by Legislators and executive branch officials.
15 Acceptance of an honorarium would be subject to a civil penalty,
16 payable to the State, with a maximum penalty of twice the value
17 of the honorarium. This prohibition is not intended to restrict,
18 or otherwise affect, Maine's broad criminal laws dealing with
19 bribery and other corrupt practices.

21