

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

No. 1271

H.P. 942

House of Representatives, April 15, 1993

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**An Act to Create the Tax-exempt Organization Sunshine Act of 1993.**

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Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative KERR of Old Orchard Beach.  
Cosponsored by Representatives: CARON of Biddeford, DiPIETRO of South Portland,  
PLOURDE of Biddeford, SULLIVAN of Bangor.

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

4 Sec. 1. 3 MRSA c. 16 is enacted to read:

6 CHAPTER 16

8 TAX-EXEMPT ORGANIZATION SUNSHINE ACT OF 1993

10 §331. Short title

12 This chapter may be known and cited as the "Tax-exempt  
Organization Sunshine Act of 1993."

14 §332. Definitions

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

18 1. Influencing legislative, executive or judicial branch  
action. "Influencing legislative, executive or judicial branch  
action" means an attempt to influence legislative, executive or  
judicial branch action:

24 A. Indirectly by attempting to affect the opinions of the  
general public or a segment of the general public; and

26 B. Directly through communication with an elected or  
appointed public official or a public employee.

30 2. Lobbying expenditure. "Lobbying expenditure" means an  
expenditure by a Section 501(c)(3) organization for the purpose  
of influencing legislative, executive or judicial branch action  
or for the purpose of influencing an election, initiative or  
referendum.

36 3. Local representative. "Local representative" means:

38 A. An individual who functions as an officer of any  
chapter, branch or affiliate of a section 501(c)(3)  
organization; or

42 B. In the absence of a chapter, branch or affiliate, an  
individual who is appointed to receive service of process  
for a Section 501(c)(3) organization, not organized,  
incorporated or having its principal place of business in  
this State and that conducts fundraising within this State.

48 4. Organization manager. "Organization manager" means an  
officer, director or trustee of a Section 501(c)(3) organization  
or an individual having powers or responsibilities similar to

2 those of officers, directors or trustees of a Section 501(c)(3)  
3 organization. "Organization manager" also means any other  
4 officer, director, trustee or employee of the organization having  
5 authority or responsibility with respect to a lobbying  
6 expenditure. An organization manager may also be a local  
7 representative.

8 5. Person. "Person" means an individual, firm,  
9 partnership, corporation, association or other organization.

10 6. Section 501(c)(3) organization. "Section 501(c)(3)  
11 organization" means any organization exempt from federal income  
12 taxation under the United State Internal Revenue Code, Sections  
13 501(a) and 501(c)(3).

14 §333. Public disclosure requirements

15 1. Registration and reporting. A Section 501(c)(3)  
16 organization shall register and report as provided by this  
17 section.

18 A. A Section 501(c)(3) organization shall register as  
19 follows:

20 (1) A Section 501(c)(3) organization organized,  
21 incorporated or having its principal place of business  
22 in this State shall file with the Secretary of State a  
23 current registration statement, as described in  
24 subparagraph (2), on a form that has been approved by  
25 the Secretary of State. A Section 501(c)(3)  
26 organization may not solicit contributions within or  
27 without this State unless the organization has filed  
28 this registration statement;

29 (2) A Section 501(c)(3) organization organized,  
30 incorporated or having its principal place of business  
31 outside the State shall file a current registration  
32 statement on a form that has been approved by the  
33 Secretary of State if the organization raises funds or  
34 has funds solicited on its behalf in this State; or

35 (3) Each chapter, branch or affiliate of a Section  
36 501(c)(3) organization located or doing business in  
37 this State shall file a separate registration  
38 statement; except that a parent organization may file a  
39 consolidated registration statement for its chapters,  
40 branches or affiliates located or doing business in  
41 this State.

2 A Section 501(c)(3) organization that solicits funds without  
4 a current registration statement approved by the Secretary  
6 of State is subject to a civil penalty of not less than  
8 \$10,000 and not more than \$100,000.

10 B. The registration statement must include the following  
12 information:

14 (1) The names and addresses of the Section 501(c)(3)  
16 organization and any chapter, branch or affiliate  
18 located or doing business in this State or the name and  
20 address of the local representative, if there is no  
22 chapter, branch or affiliate located or doing business  
24 in this State;

26 (2) The names and addresses of the Section 501(c)(3)  
28 organization's officers, principal salaried executive  
30 staff officers and any other persons who have  
32 responsibility for making expenditures on behalf of the  
34 organization in this State and having custody over the  
36 organization's financial records;

38 (3) The purpose for which the Section 501(c)(3)  
40 organization was created and a copy of its current  
42 articles of incorporation or other governing  
44 instruments;

46 (4) A copy of the Section 501(c)(3) organization's  
48 application for tax-exempt status under Section 501(c)  
of the Internal Revenue Code together with a copy of  
any papers submitted in support of that application and  
any letter or other document issued by the Internal  
Revenue Service with respect to that application;

(5) A copy of the Section 501(c)(3) organization's  
most recent federal income tax return;

(6) In addition to the return described in  
subparagraph 5, the Section 501(c)(3) organization must  
submit upon registration, and annually thereafter, such  
detailed information for the preceding tax year with  
respect to direct or indirect transfers to, and other  
direct or indirect transactions and relationships with,  
other organizations, except for transactions and  
relationships reported pursuant to paragraph C  
described in Section 501(c) or Section 527 of the  
Internal Revenue Code as the Secretary of State may  
require; and

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(7) Any other information required by the Secretary of State.

C. An annual report must be filed by a Section 501(c)(3) organization in accordance with this paragraph.

(1) An annual report must be filed with the Secretary of State within 6 months of the close of the Section 501(c)(3) organization's fiscal year. The report must contain any changes to the registration statement and to any previous annual reports on file with the Secretary of State and shall include a copy of the organization's most recent federal income tax return.

(2) The annual report shall include a financial statement that lists, at a minimum, the following expense items:

(a) The compensation, including current and deferred compensation, of each organization manager, including principal executive officers of the organization's national office and any chapter, branch or affiliate located or doing business in the State, including salaries, bonuses, expense accounts and any other noncash benefits or perquisites provided by the organization to its managers in whatever form;

(b) The costs incurred by each executive officer for the tax year in travel on behalf of the Section 501(c)(3) organization, in addition to a list of each travel itinerary and purpose of each trip;

(c) The amount and percentage of gross receipts of contributions received by the Section 501(c)(3) organization, including each chapter, branch or affiliate located or doing business in this State, allocated to the costs of fundraising activities for the preceding tax year; and

(d) The amount and percentage of total revenue incurred by the Section 501(c)(3) organization, including each chapter, branch or affiliate located or doing business in this State, for lobbying expenditures, wherever incurred, for the preceding tax year.

2                   (3) Failure to provide timely annual reports results  
3                   in the automatic revocation of the Section 501(c)(3)  
4                   organization's registration in this State.

6                   D. In addition to the registration and reporting  
7                   requirements prescribed by this section, each Section  
8                   501(c)(3) organization that requests or receives a state  
9                   contract or any grant, loan or a cooperative agreement from  
10                   the State shall file with the agency and with the Secretary  
11                   of State upon entering into or receiving such contract,  
12                   grant, loan or agreement and annually thereafter a  
13                   disclosure form itemizing each lobbying expenditure that  
14                   would be prohibited under section 335, subsection 2 if paid  
15                   for with appropriated funds. An agency may not award or  
16                   continue any such contract, grant, loan, or agreement in the  
17                   absence of such a disclosure.

18                   E. Section 501(c)(3) organizations are not required to  
19                   disclose donor or contributor identities under this section  
20                   or any other provision of this chapter.

22                   2. Public disclosure. The Secretary of State shall make  
23                   all registration documents, as well as the Section 501(c)(3)  
24                   organization's 3 most recent federal income tax returns available  
25                   for inspection by any individual during regular business hours.

26                   3. Registration fee. Each Section 501(c)(3) organization  
27                   or chapter, branch or affiliate of an organization that files a  
28                   separate registration statement shall pay an annual registration  
29                   fee of \$250.

32                   4. Responsibility for compliance. A Section 501(c)(3)  
33                   organization is responsible for establishing the following  
34                   procedures for compliance.

36                   A. A Section 501(c)(3) organization not organized,  
37                   incorporated or having its principal place of business in  
38                   this State may not solicit funds in this State unless the  
39                   organization appoints a local representative to receive  
40                   service of process and to ensure compliance with the  
41                   requirements of this chapter.

42                   B. The local representative and organization managers are  
43                   personally responsible for timely filing of the registration  
44                   statement and other required reports. The registration  
45                   statement and annual reports must be accompanied by a signed  
46                   affidavit attesting to the veracity of the registration  
47                   statement or annual report and any supporting documentation.

2 5. Noncompliance. In the event of noncompliance with this  
3 section:

4 A. The Secretary of State may make a written demand on any  
5 Section 501(c)(3) organization, organization manager or  
6 local representative subject to the requirements of this  
7 section specifying a date by which the registration must be  
8 filed or the information furnished. If any person fails to  
9 comply with any demand on or before the date specified in  
10 the demand, the Secretary of State shall impose on the  
11 person failing to comply a forfeiture of \$100 for each day  
12 after the expiration of the time specified in such demand  
13 during which the failure continues.

14 **§334. Disclosure upon solicitations**

15 Any written solicitation of funds by a Section 501(c)(3)  
16 organization to residents of this State must include:

17 1. Identification information. The name of the Section  
18 501(c)(3) organization and the address and telephone number where  
19 requests for a copy of the organization's current financial  
20 statement and most recent federal income tax return may be  
21 directed; and

22 2. Availability of information. A notice stating that  
23 documents and information filed under this chapter may be  
24 obtained from the Secretary of State.

25 **§335. Limitation on lobbying expenditures by Section 501(c)(3)**  
26 **organizations**

27 1. Limitation on expenditures using solicited funds. A  
28 Section 501(c)(3) organization shall solicit contributions only  
29 for the charitable purpose expressed in the solicitation for  
30 contributions or the registration statement of the organization  
31 and shall expend contributions exclusively in a manner that is  
32 substantially consistent with that purpose. Noncompliance with  
33 this subsection results in the following.

34 A. There is imposed on all funds solicited in this State by  
35 a Section 501(c)(3) organization an excise tax equal to 50%  
36 of the gross amount received in contributions collected  
37 within the State or from residents of the State for the  
38 preceding tax year for any organization that makes lobbying  
39 expenditures in this State in violation of this subsection.

40 B. If an organization manager knowingly agrees to the  
41 making of any lobbying expenditure in violation of this  
42 subsection, a tax is imposed on the organization manager  
43 equal to 100% of the expenditure. The Section 501(c)(3)  
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2           organization may not pay the tax on behalf of the  
3           organization manager or indemnify the organization manager  
4           for the expenditure in any manner. An organization that  
5           violates this paragraph is liable for a civil penalty of not  
6           less than \$10,000 and not more than \$100,000, and the  
7           Secretary of State shall suspend such organization's  
8           registration in this State for one year from the date the  
9           civil penalty is imposed.

10           2. Limitation on expenditures using state funds. A Section  
11           501(c)(3) organization that enters into or receives a contract,  
12           grant, loan or cooperative agreement with or from the State may  
13           not make any lobbying expenditures using any appropriated funds.  
14           A person who makes an expenditure prohibited by this subsection  
15           is subject to a civil penalty of no less than \$10,000 and no more  
16           than \$100,000 for each such violation and is barred from  
17           receiving any state contract, grant, loan or a cooperative  
18           agreement for a period of 5 years from the date of the  
19           expenditure, the date that the expenditure was discovered or the  
20           date of any final judgment applicable to subsection 1, paragraph  
21           B, whichever is later.

22           §336. Enforcement

23           1. Procedures. The following provisions apply to  
24           enforcement of this chapter.

25           A. The Secretary of State shall review each Section  
26           501(c)(3) organization's annual filings under this chapter  
27           and conduct periodic audits of the organization in order to  
28           determine compliance with this chapter. If the Secretary of  
29           State determines that a lobbying expenditure has been made  
30           in violation of the requirements of this chapter, or that  
31           the organization has failed to provide timely and accurate  
32           annual reports and other information as required by section  
33           333, the Secretary of State shall assess the penalties, fees  
34           or excise taxes owed pursuant to this chapter.

35           B. The Secretary of State shall assess the penalties,  
36           including debarment, that are prescribed in this chapter  
37           following notice and an opportunity for an administrative  
38           hearing.

39           C. The Secretary of State has the power to subpoena any and  
40           all records of Section 501(c)(3) organizations soliciting  
41           donations from residents of this State for the purpose of  
42           determining compliance with the requirements of this chapter.

43           D. A person against whom an excise tax or other penalty is  
44           assessed under this chapter has a right of appeal to the  
45           Secretary of State.

2 Superior Court. The Secretary of State's action may be  
4 overturned only if the person demonstrates that the  
6 Secretary of State's action was arbitrary and capricious or  
8 an abuse of discretion.

10 E. A person may file a complaint alleging violations of  
12 this chapter with the Secretary of State. If the Secretary  
14 of State fails to take action on the complaint within 90  
16 days, the person may bring a cause of action seeking civil  
18 penalties and other appropriate relief against any person  
20 for violation of this chapter. The complainant is entitled  
22 to 1/2 of any civil penalty assessed in addition to  
24 reasonable attorney fees.

26 F. If more than one person is liable for penalties or  
28 excise taxes for a violation of this chapter, all such  
persons are jointly and severally liable.

2. Rules. The Secretary of State shall adopt rules to  
enforce this chapter within 180 days from the date of enactment.

## STATEMENT OF FACT

This bill requires public disclosure of expenditures and lobbying activities by charitable organizations in order to help citizens make informed decisions on donations and in order to ensure that such donations are not misused for noncharitable purposes.