

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

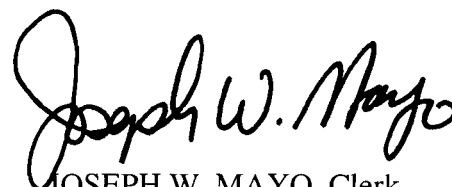
No. 1444

H.P. 1029

House of Representatives, April 27, 1995

**An Act to Strengthen the Governmental Ethics and Campaign Reports
and Finances Laws.**

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


JOSEPH W. MAYO, Clerk

Presented by Representative WHITCOMB of Waldo.

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

2 **Sec. 1. 21-A MRSA §1014, sub-§4**, as amended by PL 1991, c.
4 839, §10, is further amended to read:

6 **4. Enforcement.** An expenditure, communication or broadcast
8 made within 10 days before the election to which it relates that
10 results in a violation of this section may result in a civil
12 forfeiture of no more than \$200. An expenditure, communication
14 or broadcast made more than 10 days before the election that
16 results in a violation of this section may result in a civil
 forfeiture of no more than \$100 if the violation is not corrected
 within 10 days after the candidate or other person who committed
 the violation receives notification of the violation from the
 commission. Enforcement and collection procedures must be in
 accordance with section ~~1020~~ 1020-A.

18 **Sec. 2. 21-A MRSA §1017, sub-§7-A** is enacted to read:

20 **7-A. Reporting exemption.** A candidate is exempt from
22 reporting as provided by this subsection.

24 A. A candidate may, at the time the candidate registers
26 under section 1013-A, notify the commission that the
28 candidate and the candidate's agents, if any, will not
30 personally accept contributions, make expenditures or incur
32 obligations associated with that candidate's candidacy.
34 Such a notification must be sworn and notarized. A
36 candidate who provides this notice to the commission is not
 required to appoint a treasurer and is not subject to the
 filing requirements of this section if the statement is
 true. A candidate who does not provide this notice is
 subject to the filing requirements of this subchapter. A
 candidate who files a late notification statement is subject
 to the penalty prescribed in section 1020-A, subsection 1.

38 B. The notice provided to the commission under paragraph A
40 may be revoked. Prior to revocation, the candidate must
42 appoint a treasurer. The candidate may not accept
44 contributions, make expenditures or incur obligations before
46 the appointment of a treasurer and the filing of a
48 revocation notice are accomplished. A revocation notice
50 must be in the form of an amended registration, which must
 be filed with the commission no later than 10 days after the
 appointment of a treasurer. The candidate and the
 candidate's treasurer, as of the date the revocation notice
 is filed with the commission, may accept contributions, make
 expenditures and incur obligations associated with the
 candidate's candidacy. Any candidate who fails to file a
 timely revocation notice is subject to the penalties

2 prescribed in section 1020-A, subsection 3, up to a maximum
3 of \$5,000. Lateness is calculated from the day a
4 contribution is received, an expenditure is made or an
5 obligation is incurred, whichever is earliest.

6 **Sec. 3. 21-A MRSA §1017-A, sub-§5,** as enacted by PL 1991, c.
7 839, §23 and affected by §33, is amended to read:

8 **5. Penalties.** A party committee is subject to the
9 penalties in section ~~1020~~ 1020-A, subsection 2 3, except that the
10 commission may waive the penalties until January 1994.

11 **Sec. 4. 21-A MRSA §1020,** as amended by PL 1991, c. 839, §§24
12 and 25, is repealed.

13 **Sec. 5. 21-A MRSA §1020-A** is enacted to read:

14 **§1020-A. Failure to file on time**

15 **1. Registration.** A candidate that fails to register the
16 name of a candidate, treasurer or political committee with the
17 commission within the time allowed by section 1013-A, subsection
18 1 must be assessed a forfeiture of \$10. The commission shall
19 determine whether a registration satisfies the requirements for
20 timely filing under section 1013-A, subsection 1.

21 **2. Campaign finance reports.** A campaign finance report is
22 not timely filed unless a properly signed copy of the report,
23 substantially conforming to the disclosure requirements of this
24 subchapter, is received by the commission before 5 p.m. on the
25 date it is due. Except for the requirement in subsection 6, the
26 commission shall determine whether a report satisfies the
27 requirements for timely filing. The commission may waive the
28 penalty in whole or in part if the commission determines the
29 failure to file a timely report was due to mitigating
30 circumstances. For purposes of this section, "mitigating
31 circumstances" means:

32 A. A valid personal emergency such as a personal illness or
33 death in the immediate family;

34 B. An error by the commission staff; or

35 C. Failure to receive notice of the filing deadline.

36 **3. Basis for penalties.** The penalty for late filing of a
37 report required under this subchapter is a percentage of the
38 total contributions or expenditures for the filing period,
39 whichever is greater, multiplied by the number of calendar days
40 late, as follows:

- 2 A. For the first violation, 1%;
4 B. For the 2nd violation, 3%; and
6 C. For the 3rd and subsequent violations, 5%.

8 Any penalty of less than \$5 is waived.

10 Violations accumulate on reports with filing deadlines in a
12 2-year period that begins on January 1st of each even-numbered
14 year. Waiver of a penalty does not nullify the finding of a
16 violation.

18 A report required to be filed under this subchapter that is sent
20 by certified or registered United States mail and postmarked at
22 least 2 days before the deadline is not subject to penalty.

24 A registration or report may be provisionally filed by
26 transmission of a facsimile copy of the duly executed report to
28 the commission, as long as an original of the same report is
30 received by the commission within 5 calendar days thereafter.

32 4. Maximum penalties. Penalties assessed under this
34 subchapter may not exceed:

36 A. Five thousand dollars for reports required under section
38 1017, subsection 2, paragraphs B, C, D or E; section 1017,
40 subsection 3-A, paragraphs B, C or D; section 1017,
42 subsection 4; section 1017, subsection 5-A, paragraph B; and
44 section 1019;

46 B. Five thousand dollars for state party committee reports
48 required under section 1017-A, subsection 4, paragraphs A
50 and C and section 1018, subsection 2;

C. One thousand dollars for reports required pursuant to
 section 1017, subsection 2, paragraphs A and F; section
 1017, subsection 3-A, paragraphs A and E; and state party
 committee reports required to be filed under section 1017-A,
 subsection 4, paragraph B; or

D. Except as provided in subsections 1 and 2, \$500 for
 reports required under section 1017-A, subsection 4,
 paragraphs A, B and C and section 1018, subsection 2, except
 as provided in paragraph B.

5. Request for a commission determination. Within 3 days
 following the filing deadline, a notice must be forwarded to a
 candidate and treasurer whose registration or campaign finance

report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 3 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. A request for determination must be made within 14 calendar days of receipt of the commission's notice. The 14-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

6. Final notice of penalty. After a commission meeting, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate, treasurer and the Secretary of State.

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 3 and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission and to the Secretary of State.

7. Failure to file report. A candidate or treasurer who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime.

8. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

9. Enforcement. The Secretary of State has the initial responsibility for collecting the full amount of any penalty within 30 days after receiving notice of the penalty from the commission. The Secretary of State has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after receiving notice of the penalty, the Secretary of State shall report to the Attorney General the name of the person who has failed to pay the full amount of a

penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

Sec. 6. 21-A MRSA §1055, 3rd ¶, as amended by PL 1989, c. 504, §§26 and 31, is further amended to read:

An expenditure, communication or broadcast which results in a violation of this section may result in a civil penalty of no more than \$100. Enforcement and collection procedures shall be in accordance with section ~~1062~~ 1062-A.

Sec. 7. 21-A MRSA §1062, as amended by PL 1991, c. 839, §32, is repealed.

Sec. 8. 21-A MRSA §1062-A is enacted to read:

§1062-A. Failure to file on time

1. Registration. A political action committee required to register under section 1053 that fails to do so in accordance with section 1053 or that fails to provide the information required by the commission for registration may be assessed a forfeiture of \$250.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except for the requirements of subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid personal emergency of the committee treasurer, such as a personal illness or death in the immediate family; or

B. An error by the commission staff.

3. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- 2 A. For the first violation, 1%;
4 B. For the 2nd violation, 3%; and
6 C. For the 3rd and subsequent violations, 5%.

8 Any penalty of less than \$5 is waived.

10 Violations accumulate on reports with filing deadlines in a
12 one-year period that begins on January 1st of each calendar
14 year. Waiver of a penalty does not nullify the finding of a
 violation.

16 A report required to be filed under this subchapter that is sent
18 by certified or registered United States mail and postmarked at
 least 2 days before the deadline is not subject to penalty.

20 A required report may be provisionally filed by transmission of a
22 facsimile copy of the duly executed report to the commission, as
 long as an original of the same report is received by the
 commission within 5 calendar days thereafter.

24 4. Maximum penalties. The maximum penalties under this
26 subchapter are \$10,000 for reports required under section 1059,
 subsection 2, paragraphs B, C and E and \$1,000 for reports
 required under section 1059, subsection 2, paragraph A.

28 5. Request for a commission determination. Within 3 days
30 following the filing deadline, a notice must be forwarded to the
32 principal officer and treasurer of the political action committee
34 whose report is not received by 5 p.m. on the deadline date,
36 informing them of the basis for calculating penalties under
38 subsection 3 and providing them with an opportunity to request a
40 commission determination. The notice must be sent by certified
42 United States mail. A request for determination must be made
44 within 14 calendar days of receipt of the commission's notice.
46 The 14-day period during which a determination may be requested
 begins on the day a recipient signs for the certified mail notice
 of the proposed penalty. If the certified letter is refused or
 left unclaimed at the post office, the 14-day period begins on
 the day the post office indicates it has given first notice of a
 certified letter. A principal officer or treasurer requesting a
 determination may either appear in person or designate a
 representative to appear on the principal officer's or
 treasurer's behalf or submit a notarized written explanation of
 the mitigating circumstances for consideration by the commission.

48 6. Final notice of penalty. After a commission meeting,
50 notice of the final determination of the commission and the

penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer, treasurer of the political action committee and the Secretary of State.

If no determination is requested, the commission staff shall calculate the penalty based on the provision of subsection 3 and shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission and to the Secretary of State.

7. List of late-filing candidates. The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1), section 1059, subsection 2, paragraph C or D or section 1059, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

8. Failure to file. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime.

9. Enforcement. The Secretary of State has the initial responsibility for collecting the full amount of any penalty within 30 days after receiving notice of that penalty from the commission. The Secretary of State has all necessary powers to carry out this responsibility. Failure to pay the full amount of a penalty levied under this subchapter is a civil violation by the officer or officers of the political action committee whose campaign activities are required by this subchapter to be reported. Thirty days after receiving notice of penalty, the Secretary of State shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

Sec. 9. 30-A MRSA §2502, sub-§1, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

1. Reports by candidates. Title 21-A, sections 1001 to 1020 ~~1020-A~~ do not apply to a candidate for municipal office in a town. A candidate for municipal office of a city with a population of 10,000 or more is governed by Title 21-A, sections 1001 to 1020 ~~1020-A~~, except that notices of appointment of a treasurer and campaign reports must be filed with the municipal clerk instead of the Secretary of State.

2 A. Notwithstanding Title 17-A, section 4-A, a candidate who
3 fails to file a notice or report, as required by this
4 section, is guilty of a Class E crime and ~~shall~~ must be
5 punished by a fine of \$5 for every day the candidate is in
6 default or by imprisonment for not more than 30 days, or
7 both.

8
9
10 **STATEMENT OF FACT**

11 This bill changes the penalties for reporting violations by
12 candidates and political action committees by establishing
13 separate, higher penalties for specific violations of the
14 campaign reports law.