

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

ROFS

Date: 4-4-12

(Filing No. S-524)

MINORITY

VETERANS AND LEGAL AFFAIRS

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to S.P. 624, L.D. 1806, Bill, "An Act To Promote Transparency in Government"

Amend the bill by striking out all of sections 2 to 6 and inserting the following:

Sec. 2. 1 MRSA §1012, sub-§7, as corrected by RR 2001, c. 1, §6, is amended to read:

7. Income. "Income" means economic gain to a person from any source, including, but not limited to, compensation for services, including fees, commissions and payments in kind; gross income derived from business; gains gross income derived from dealings in property, rents and royalties; gross income from investments including interest, capital gains and dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of distributions from a partnership income or limited liability company; gross income from an interest in an estate or trust; prizes; and grants, but does not include gifts or honoraria. Income received in kind includes, but is not limited to, the transfer of property and options to buy or lease, and stock certificates. "Income" does not include: alimony and separate maintenance payments, child support payments or campaign contributions accepted for state or federal office or funds or other property held in trust for another, including but not limited to money to be spent on behalf of a client for payment of a licensing or filing fee.

A. Alimony and separate maintenance payments; or

B. Campaign contributions recorded and reported as required by Title 21-A, chapter 13.

Sec. 3. 1 MRSA §1012, sub-§7-A is enacted to read:

7-A. Managerial employee. "Managerial employee" means an employee of an organization whose position requires substantial control over the organization's decision making, business operations, financial management or contracting and procurement activities. For the purposes of this subsection, financial management does not include tasks that are considered clerical in nature.

COMMITTEE AMENDMENT

R.O.F.S

1           **Sec. 4. 1 MRSA §1012, sub-§8**, as amended by PL 2009, c. 208, §4, is further  
2 amended to read:

3           **8. Relative.** "Relative" means an individual who is related to the Legislator or the  
4 Legislator's spouse or the Legislator's domestic partner as father, mother, son, daughter,  
5 brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband,  
6 wife, domestic partner, grandfather, grandmother, grandson, granddaughter,  
7 father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,  
8 stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half  
9 sister, and includes the fiance or fiancée of the Legislator.

10           **Sec. 5. 1 MRSA §1012, sub-§8-A** is enacted to read:

11           **8-A. Reportable liability.** "Reportable liability" means any unsecured loan of  
12 \$3,000 or more received from a person who is not a relative. "Reportable liability" does  
13 not include:

14           A. A credit card liability;

15           B. An educational loan made or guaranteed by a governmental entity, educational  
16 institution or nonprofit organization; or

17           C. A loan made from a state or federally regulated financial institution for business  
18 purposes.

19           **Sec. 6. 1 MRSA §1016-A**, as amended by PL 2007, c. 704, §1, is repealed.

20           **Sec. 7. 1 MRSA §1016-B**, as amended by PL 1991, c. 331, §1, is repealed.

21           **Sec. 8. 1 MRSA §1016-C**, as amended by PL 2011, c. 471, §4, is further amended  
22 to read:

23           **§1016-C. Reports by legislative candidates**

24           A candidate, as defined in Title 21-A, section 1, subsection 5, for the Legislature who  
25 is not required to file a report under section ~~1016-A, 1016-B or 1016-E~~ 1016-G shall file  
26 a report containing the same information required of Legislators under ~~sections 1016-A,~~  
27 ~~1016-B and 1016-E~~ section 1016-G no later than 5 p.m. on the first Monday in August  
28 preceding the general election unless the candidate withdraws from the election in  
29 accordance with Title 21-A, section 374-A by that date.

30           **Sec. 9. 1 MRSA §1016-E**, as enacted by PL 2007, c. 704, §2, is repealed.

31           **Sec. 10. 1 MRSA §1016-F**, as enacted by PL 2007, c. 704, §3, is repealed.

32           **Sec. 11. 1 MRSA §1016-G** is enacted to read:

33           **§1016-G. Disclosure of specific sources of income, interests and reportable liabilities**

34           Each Legislator shall annually file with the commission a statement identifying the  
35 sources of income received, positions held and reportable liabilities incurred during the  
36 preceding calendar year by the Legislator or members of the Legislator's immediate  
37 family. A Legislator who has completed service in the Legislature shall file the statement  
38 within 45 days of the Legislator's last day of service to disclose the sources of income in  
39 the Legislator's final calendar year of service.

1            **1. Content of statement.** The name and, where applicable, the job title of the  
2 individual earning or receiving the income must be disclosed, unless otherwise noted.  
3 Each source of income must be identified by name, address and principal type of  
4 economic or business activity. If disclosure of this type is prohibited by statute, rule or an  
5 established code of professional ethics, it is sufficient for the Legislator to specify the  
6 principal type of economic or business activity from which the income is derived.

7            The statement must identify:

8            A. If the Legislator is an employee of another person, firm, corporation, association  
9 or organization that has provided the Legislator with compensation of \$2,000 or  
10 more, the name and address of the employer. The Legislator shall identify the title  
11 and position held by the Legislator;

12            B. If the Legislator is self-employed, the name and address of the Legislator's  
13 business and each source of income derived from self-employment that represents  
14 more than 10% of the Legislator's gross income from self-employment or \$2,000,  
15 whichever is greater;

16            C. Each source of income of \$2,000 or more the Legislator derived from providing  
17 services as an attorney, the major areas of law practiced by the Legislator and, if  
18 associated with a law firm, the major areas of practice of the firm;

19            D. Each source of income of \$2,000 or more received by the Legislator;

20            E. The specific source of each gift received by the Legislator;

21            F. Each source of income of \$2,000 or more received by any member of the  
22 immediate family of the Legislator, except that the Legislator is not required to  
23 identify the names of dependent children. If the member of the Legislator's  
24 immediate family received income of \$2,000 or more in compensation, the Legislator  
25 shall identify the source of the compensation, the type of the economic activity and  
26 the title of the position held by the immediate family member;

27            G. Each source of honoraria of \$2,000 or more that the Legislator accepted;

28            H. Each executive branch agency before which the Legislator or any immediate  
29 family member has represented or assisted others for compensation;

30            I. Each state governmental agency, board or commission to which the Legislator, a  
31 member of the Legislator's immediate family or an associated organization has sold,  
32 rented or leased goods or services with a value of \$10,000 or more during the  
33 preceding calendar year and a description of the goods or services sold, rented or  
34 leased;

35            J. Any offices, trusteeships, directorships or positions of any nature, whether  
36 compensated or uncompensated, held by the Legislator or a member of the  
37 Legislator's immediate family with any for-profit or nonprofit firm, corporation,  
38 association, limited liability company, partnership or business; and

39            K. All reportable liabilities incurred by the Legislator or a member of the Legislator's  
40 immediate family during the reporting period.

41            **2. Time for filing.** The following provisions govern the time for filing statements.

**R.O.F.S**

1       A. Each Legislator shall file with the commission by 5:00 p.m. on February 15th of  
2       each year on the form provided by the commission a statement of the sources of  
3       income, interests and reportable liabilities for the preceding calendar year required by  
4       subsection 1. Prior to the end of the first week in January of each year, the  
5       commission shall deliver a form to each Senator and member of the House of  
6       Representatives.

7       B. A Legislator shall file an updated statement concerning the current calendar year  
8       if the income, reportable liabilities or positions of the Legislator substantially change  
9       from those disclosed in the Legislator's most recent statement. Substantial changes  
10       include, but are not limited to, a new employer that has paid the Legislator \$2,000 or  
11       more during the current year, another source that has provided the Legislator with  
12       income that totals \$2,000 or more during the current year or the acceptance of a new  
13       position with a for-profit or nonprofit firm that is reportable under subsection 1,  
14       paragraph J. The Legislator shall file the updated statement within 30 days of the  
15       substantial change in income, reportable liabilities or positions.

16       **3. Penalties.** Penalties for violations of this section are as follows.

17       A. Failing to file a statement within 15 days of having been notified by the  
18       commission is a civil violation for which a fine of not more than \$100 may be  
19       adjudged. A statement is not considered filed unless it substantially conforms to the  
20       requirements of this subchapter and is properly signed. The commission shall  
21       determine whether a statement substantially conforms to the requirements of this  
22       subchapter.

23       B. The intentional filing of a false statement is a Class E crime. If the commission  
24       concludes that it appears that a Legislator has willfully filed a false statement, it shall  
25       refer its findings of fact to the Attorney General. If the commission determines that a  
26       Legislator has willfully failed to file a statement required by this subchapter or has  
27       willfully filed a false statement, the Legislator is presumed to have a conflict of  
28       interest on every question and must be precluded or subject to penalty as provided in  
29       section 1015.

30       **4. Rules, procedures and forms.** The commission may adopt or amend rules to  
31       specify the reportable categories or types and the procedures and forms for reporting and  
32       to administer this section. Rules adopted pursuant to this subsection are routine technical  
33       rules as defined in Title 5, chapter 375, subchapter 2-A.

34       **5. Public record.** Statements filed under this section are public records. The  
35       commission shall publish on a publicly accessible website the completed forms of  
36       Legislators filed under this section.

37       **Sec. 12.** 1 MRSA §1017-A, as amended by PL 2007, c. 704, §4, is repealed.

38       **Sec. 13.** 1 MRSA §1018, as amended by PL 2001, c. 75, §2, is repealed.

39       **Sec. 14.** 1 MRSA §1019, as amended by PL 2011, c. 471, §5, is repealed.'

40       Amend the bill by striking out all of sections 9 to 11 and inserting the following:

41       'Sec. 9. 5 MRSA §19, sub-§1, ¶H, as enacted by PL 1989, c. 561, §14, is  
42       amended to read:

# COMMITTEE AMENDMENT

1 H. "Income" means economic gain to a person from any source, including, but not  
 2 limited to, compensation for services, including fees, commissions and payments  
 3 in-kind; gross income derived from business; gains gross income derived from  
 4 dealings in property, rents and royalties; gross income from investments including  
 5 interest, capital gains and dividends; annuities; income from life insurance and  
 6 endowment contracts; pensions; income from discharge of indebtedness; distributive  
 7 share of distributions from a partnership income or limited liability company; gross  
 8 income from an interest in an estate or trust; prizes; and grants, but does not include  
 9 gifts or honoraria. Income received in-kind includes, but is not limited to, the transfer  
 10 of property and options to buy or lease and stock certificates. "Income" does not  
 11 include alimony and separate maintenance payments, child support payments or  
 12 campaign contributions accepted for state or federal office or funds or other property  
 13 held in trust for another, including but not limited to fees paid in advance or money to  
 14 be spent on behalf of a client for payment of a licensing or filing fee.

15 **Sec. 10. 5 MRSA §19, sub-§1, ¶H-1** is enacted to read:

16 H-1. "Managerial employee" means an employee of an organization whose position  
 17 requires substantial control over the organization's decision making, business  
 18 operations, financial management or contracting and procurement activities. For the  
 19 purposes of this subsection, financial management does not include tasks that are  
 20 considered clerical in nature.

21 **Sec. 11. 5 MRSA §19, sub-§2**, as amended by PL 2009, c. 524, §2, is repealed  
 22 and the following enacted in its place:

23 **2. Content of statement.** Each executive employee shall annually file with the  
 24 Commission on Governmental Ethics and Election Practices a statement identifying the  
 25 sources of income received, positions held and reportable liabilities incurred during the  
 26 preceding calendar year by the executive employee or members of the executive  
 27 employee's immediate family. The name and, where applicable, the job title of the  
 28 individual earning or receiving the income must be disclosed, unless otherwise noted.  
 29 Each source of income must be identified by name, address and principal type of  
 30 economic or business activity. If disclosure of this type is prohibited by statute, rule or an  
 31 established code of professional ethics, it is sufficient for the executive employee to  
 32 specify the principal type of economic or business activity from which the income is  
 33 derived.

34 The statement must identify:

35 A. If the executive employee is an employee of another person, firm, corporation,  
 36 association or organization that has provided the executive employee with  
 37 compensation of \$2,000 or more, the name and address of the employer;

38 B. If the executive employee is self-employed, the name and address of the executive  
 39 employee's business and each source of income derived from self-employment that  
 40 represents more than 10% of the employee's gross income from self-employment or  
 41 \$2,000, whichever is greater;

42 H. Each source of income of \$2,000 or more the executive employee derived from  
 43 providing services as an attorney, the major areas of law practiced by the executive  
 44 employee and, if associated with a law firm, the major areas of practice of the firm;

1 I. Each additional source of income of \$2,000 or more received by the executive  
2 employee;

3 J. The specific source of each gift received by the executive employee;

4 K. Each source of income of \$2,000 or more received by any member of the  
5 immediate family of the executive employee, except that the employee is not required  
6 to identify the names of dependent children. If the member of the executive  
7 employee's immediate family received income of \$2,000 or more in compensation,  
8 the executive employee shall identify the source of the compensation, the type of the  
9 economic activity and the title of the position held by the immediate family member;

10 L. Each source of honoraria of \$2,000 or more that the executive employee accepted;

11 M. Each executive branch agency before which the executive employee or a member  
12 of the employee's immediate family has represented or assisted others for  
13 compensation;

14 N. Each state governmental agency, board or commission to which the executive  
15 employee, a member of the employee's immediate family or an associated  
16 organization has sold, rented or leased goods or services with a value of \$10,000 or  
17 more during the preceding calendar year and a description of the goods or services  
18 sold, rented or leased;

19 O. Any offices, trusteeships, directorships or positions of any nature, whether  
20 compensated or uncompensated, held by the executive employee or a member of the  
21 employee's immediate family with any for-profit or nonprofit firm, corporation,  
22 association, limited liability company, partnership or business. For the purposes of  
23 this paragraph, service as a clerk of a corporation or as a registered agent authorized  
24 to receive service of any process, notice or other demand for a business entity is not  
25 considered a position with the corporation or business entity; and

26 P. All reportable liabilities incurred by the executive employee or members of the  
27 employee's immediate family during the reporting period.

28 **Sec. 12. 5 MRSA §19, sub-§3, ¶B**, as amended by PL 2001, c. 75, §3, is further  
29 amended to read:

30 B. Each executive employee shall file the annual report ~~prior to the close of the 2nd~~  
31 ~~week in April by 5:00 p.m. on April 15th of each year,~~ unless that employee has filed  
32 an initial or updating report during the preceding 30 days; ~~except that, if an elected or~~  
33 ~~appointed executive employee or~~ has already filed a report for the preceding calendar  
34 year pursuant to paragraph A, ~~a report does not need to be filed.~~

35 **Sec. 13. 5 MRSA §19, sub-§3, ¶C**, as enacted by PL 1979, c. 734, §2, is repealed  
36 and the following enacted in its place:

37 C. An executive employee shall file an updated statement concerning the current  
38 calendar year if the income, reportable liabilities or positions of the executive  
39 employee substantially change from those disclosed in the employee's most recent  
40 statement. Substantial changes include, but are not limited to, a new employer that  
41 has paid the executive employee \$2,000 or more during the current year, another  
42 source that has provided the employee with income that totals \$2,000 or more during

**ROFS**

1 the current year or the acceptance of a new position with a for-profit or nonprofit firm  
2 that is reportable under subsection 2, paragraph O. The executive employee shall file  
3 the updated statement within 30 days of the substantial change in income, reportable  
4 liabilities or positions.'

5 Amend the bill by adding after section 12 the following:

6 'Sec. 13. 5 MRSA §19, sub-§4, as amended by PL 2007, c. 704, §7, is repealed  
7 and the following enacted in its place:

8 **4. Penalties.** Penalties for violation of this section are as follows.

9 A. Failing to file a statement within 15 days of having been notified by the  
10 Commission on Governmental Ethics and Election Practices is a civil violation for  
11 which a fine of not more than \$100 may be adjudged. A statement is not considered  
12 filed unless it substantially conforms to the requirements of Title 1, chapter 25,  
13 subchapter 2 and is properly signed. The commission shall determine whether a  
14 statement substantially conforms to such requirements.

15 B. The intentional filing of a false statement is a Class E crime. If the Commission  
16 on Governmental Ethics and Election Practices concludes that it appears that an  
17 executive employee has willfully filed a false statement, it shall refer its findings of  
18 fact to the Attorney General.

19 **Sec. 14. 5 MRSA §19, sub-§7,** as amended by PL 2011, c. 389, §1, is repealed.'

20 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
21 section number to read consecutively.

22 **SUMMARY**

23 This amendment is the minority report of the committee and amends the laws  
24 governing disclosure reports required of Legislators and certain executive branch  
25 employees. It amends the bill by clarifying the definition of "income" as it applies to  
26 reporting and disclosures by Legislators and executive employees. The amendment  
27 changes the definition of "managerial employee," which is used in the bill's definition of  
28 "associated organization." The amendment reorganizes the provisions in current law that  
29 require disclosure reports by Legislators and executive employees so that the provisions  
30 are consistent. Current law requires a Legislator or executive employee to disclose when  
31 the Legislator or executive employee or the Legislator's or executive employee's  
32 immediate family sold goods or services to an executive branch agency valued at \$1,000  
33 or more. The amendment clarifies that this disclosure applies to any state agency, board  
34 or commission and requires disclosure if a Legislator or an executive employee, a  
35 member of a Legislator's or executive employee's immediate family or an associated  
36 organization sold, rented or leased goods or services valued at \$10,000 or more. This  
37 amendment also provides further information on what is meant by a substantial change as  
38 it applies to the requirement that a Legislator or executive employee file a report within  
39 30 days if there is a substantial change in income, position or reportable liabilities since  
40 the last disclosure form.