

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 526

S.P. 211

In Senate, February 24, 2021

**An Act To Require an Affidavit for Every Independent Expenditure
Influencing an Election and To Penalize the Use of Mistruths**

Received by the Secretary of the Senate on February 22, 2021. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator STEWART of Aroostook.
Cosponsored by Senators: FARRIN of Somerset, POULIOT of Kennebec, TIMBERLAKE of
Androscoggin, Representative: KINNEY of Knox.

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

2 **Sec. 1. 21-A MRSA §1004-A, sub-§6** is enacted to read:

3 **6. False statements regarding a candidate financed by independent expenditures.**

4 Notwithstanding section 1004, subsection 2, a person that makes a false statement in a
5 statement required by section 1019-B, subsection 4, paragraph D or that, with actual malice,
6 makes an independent expenditure to design, produce or disseminate a communication that
7 contains a false statement regarding any candidate in violation of the prohibition in section
8 1019-B, subsection 6 may be assessed a penalty not to exceed \$5,000.

9 **Sec. 2. 21-A MRSA §1004-A, 2nd ¶**, as amended by PL 2009, c. 302, §1, is further
10 amended to read:

11 When the commission has reason to believe that a violation has occurred, the
12 commission shall provide written notice to the candidate, party committee, political action
13 committee, committee treasurer or other respondent and shall afford them an opportunity
14 to appear before the commission before assessing any penalty. In determining any penalty
15 under subsections 3, 4 ~~and~~ 5 and 6, the commission shall consider, among other things, the
16 level of intent to mislead, the penalty necessary to deter similar misconduct in the future
17 and the harm suffered by the public from the incorrect disclosure. A final determination by
18 the commission may be appealed to the Superior Court in accordance with Title 5, chapter
19 375, subchapter 7 and the Maine Rules of Civil Procedure Rule 80C.

20 **Sec. 3. 21-A MRSA §1019-B, sub-§1**, as amended by PL 2019, c. 323, §15, is
21 further amended to read:

22 **1. Independent expenditures; definition.** For the purposes of this section, an
23 "independent expenditure" is any expenditure made by a person that is not made in
24 cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a
25 candidate's political committee or an agent of either and that:

26 A. ~~Is any expenditure made by a person, party committee or political action committee,~~
27 ~~other than by contribution to a candidate or a candidate's authorized political~~
28 ~~committee, for to design, produce or disseminate any communication that expressly~~
29 ~~advocates the election or defeat of a clearly identified candidate; and or~~

30 B. ~~Is presumed to be any expenditure~~ Unless the person making the expenditure
31 demonstrates under subsection 2 that the expenditure was not intended to influence the
32 nomination, election or defeat of the candidate, is made to design, produce or
33 disseminate a communication that names or depicts a clearly identified candidate and
34 is disseminated during the 28 days, including election day, before a primary election;
35 during the 35 days, including election day, before a special election; or from Labor Day
36 to a general election day.

37 **Sec. 4. 21-A MRSA §1019-B, sub-§2**, as amended by PL 2019, c. 323, §16, is
38 further amended to read:

39 **2. Rebutting presumption Commission determination.** A person ~~presumed under~~
40 ~~this section to have made an independent expenditure may rebut the presumption request a~~
41 ~~determination that an expenditure that otherwise meets the definition of an independent~~
42 ~~expenditure under subsection 1, paragraph B is not an independent expenditure by filing a~~
43 ~~signed written statement with the commission within 48 hours of disseminating the~~

1 communication stating that the cost was not incurred with the intent to influence the
2 nomination, election or defeat of a candidate, supported by any additional evidence the
3 person chooses to submit. The commission may gather any additional evidence it ~~deems~~
4 determines relevant and material and shall determine by a preponderance of the evidence
5 whether the cost was incurred with intent to influence the nomination, election or defeat of
6 a candidate.

7 **Sec. 5. 21-A MRSA §1019-B, sub-§4**, as amended by PL 2019, c. 323, §17, is
8 further amended to read:

9 **4. Report required; content; rules.** A person, ~~party committee or political action~~
10 ~~committee~~ that makes any independent expenditure in excess of \$250 during any one
11 candidate's election shall file a report with the commission in accordance with this
12 subsection. In the case of a municipal election, the report required by this subsection must
13 also be filed with the municipal clerk.

14 A. A report required by this subsection must be filed ~~with the commission~~ according
15 to a reporting schedule that the commission shall establish by rule that takes into
16 consideration existing campaign finance reporting requirements. Rules adopted
17 pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375,
18 subchapter 2-A.

19 B. A report required by this subsection must contain an itemized account of each
20 expenditure in excess of \$250 in any one candidate's election, the date and purpose of
21 each expenditure and the name of each payee or creditor. The report must state whether
22 the expenditure is in support of or in opposition to the clearly identified candidate and
23 must include, under penalty of perjury, as provided in Title 17-A, section 451, a written,
24 signed statement under oath or affirmation ~~whether that~~ was not
25 made in cooperation, consultation or concert with, or at the request or suggestion of,
26 the any candidate or an authorized committee or agent of ~~the any~~ candidate.

27 C. A report required by this subsection must be on a form prescribed and prepared by
28 the commission. A person filing this report may use additional pages if necessary, but
29 the pages must be the same size as the pages of the form. The commission may adopt
30 procedures requiring the electronic filing of an independent expenditure report, as long
31 as the commission receives the ~~statement~~ original signed statements made under oath
32 or affirmation set out in ~~paragraph~~ paragraphs B and D by the filing deadline and the
33 commission adopts an exception to the electronic filing requirement for persons who
34 lack access to the required technology or the technological ability to file reports
35 electronically. The commission may adopt procedures allowing for the signed
36 ~~statement~~ statements required by paragraphs B and D to be provisionally filed by
37 facsimile or electronic mail, as long as the report is not considered complete ~~without~~
38 the filing of and timely filed for purposes of section 1020-A unless the original signed
39 statement statements are received by the deadline established in paragraph A.

40 D. A report required by this subsection must include a written, signed statement under
41 oath or affirmation that the communication financed by the independent expenditure
42 does not contain a false statement made with actual malice regarding any candidate.
43 Notwithstanding section 1004, subsection 2, a person that makes a false statement in a
44 statement required by this paragraph is subject to the penalty provided in section
45 1004-A, subsection 6.

