

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1630

S.P. 647

In Senate, April 12, 2023

An Act Regarding Campaign Finance and Lobbying Disclosure and Enforcement of Income Source Reporting Requirements

Submitted by the Commission on Governmental Ethics and Election Practices pursuant to Joint Rule 204.

Reference to the Committee on Veterans and Legal Affairs suggested 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 HICKMAN of Kennebec.

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

2 **Sec. 1. 1 MRSA §1016-C**, as amended by PL 2021, c. 132, §1, is further amended
3 to read:

4 **§1016-C. Reports by legislative candidates**

5 A candidate, as defined in Title 21-A, section 1, subsection 5, for the Legislature who
6 is not required to file a report under section 1016-G shall file a report containing the same
7 information required of Legislators under section 1016-G no later than 5 p.m. on August
8 15th preceding the general election unless the candidate withdraws from the election in
9 accordance with Title 21-A, section 374-A by that date. A candidate shall file statements
10 electronically as is required of Legislators under section 1016-G, subsection 5. If the
11 candidate fails to file the statement by the August 15th, the commission may assess
12 penalties in accordance with section 1016-G, subsection 3.

13 **Sec. 2. 1 MRSA §1016-G, sub-§3**, as amended by PL 2019, c. 534, §5, is further
14 amended to read:

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

16 A. Failing to file a statement within 15 days of having been notified by the commission
17 is subject to a civil violation for which a fine of not more than \$100 may be adjudged
18 penalty not to exceed \$500 payable to the commission. A statement is not considered
19 filed unless it substantially conforms to the requirements of this subchapter and is
20 properly signed. The commission shall determine whether a statement substantially
21 conforms to the requirements of this subchapter.

22 B. The intentional filing of a false statement is a Class E crime. If the commission
23 concludes that it appears that a Legislator has willfully filed a false statement, it shall
24 refer its findings of fact to the Attorney General. If the commission determines that a
25 Legislator has willfully failed to file a statement required by this subchapter or has
26 willfully filed a false statement, the Legislator is presumed to have a conflict of interest
27 on every question.

28 Within 3 business days of a filing deadline, the commission shall mail a notice to a
29 Legislator or candidate who has failed to file a statement required under this subchapter. If
30 a Legislator or candidate does not file the statement within 15 days of the notice, the
31 commission shall mail a notice of a preliminary penalty of \$500 pursuant to paragraph A.
32 The Legislator or candidate may request a waiver of the penalty within 15 days of the
33 penalty notice. If no request is made, the preliminary \$500 penalty is final. If the Legislator
34 or candidate requests a waiver, the commission shall consider the request at its next meeting
35 for a determination of the final penalty, if any. The commission staff shall confirm a final
36 penalty in a written determination to the Legislator or candidate who did not file the
37 statement on time. The commission's determination may be appealed to the Superior Court
38 in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil
39 Procedure, Rule 80C. Penalties assessed pursuant to this subsection may be enforced in
40 accordance with Title 21-A, section 1004-B.

41 **Sec. 3. 3 MRSA §319, sub-§1**, as repealed and replaced by PL 2011, c. 179, §7, is
42 amended to read:

1 **1. Failure to file registration or report.** Any person who fails to file a registration
2 or report as required by this chapter ~~may be assessed a fine~~ is subject to a civil penalty,
3 payable to the commission, of \$100 for every month the person fails to register or is
4 delinquent in filing a report pursuant to section 317. If a registration or report is filed late,
5 the commission shall send a notice of the finding of violation and preliminary penalty. The
6 notice must provide the lobbyist with an opportunity to request a waiver of the preliminary
7 penalty. If a lobbyist files a report required pursuant to section 317 within 24 hours after
8 the deadline, the amount of the preliminary penalty is \$50. The preliminary penalty is
9 increased by \$50 for each successive violation during a lobbying year. The commission
10 may waive the ~~fine or~~ penalty in whole or in part if the commission determines the failure
11 to register or report was due to mitigating circumstances or the ~~fine or~~ penalty is
12 disproportionate to the level of experience of the lobbyist or the harm suffered by the public
13 from the late registration or report. For purposes of this subsection, "mitigating
14 circumstances" means:

15 A. A valid emergency determined by the commission, in the interest of the sound
16 administration of justice, to warrant the waiver of the ~~fine or~~ penalty in whole or in
17 part;

18 B. An error by the commission; or

19 C. Circumstances determined by the commission to warrant the waiver of the ~~fine or~~
20 penalty in whole or in part, based upon relevant evidence presented that a bona fide
21 effort was made to file the report in accordance with this chapter, including, but not
22 limited to, unexplained delays in Internet service.

23 **Sec. 4. 3 MRSA §320, first ¶,** as amended by PL 2015, c. 267, Pt. F, §3, is further
24 amended to read:

25 Fees collected pursuant to this chapter must be deposited into a special revenue account
26 of the commission to be used for the purposes of administering and enforcing the provisions
27 of this chapter, including the costs of obtaining, maintaining and upgrading technology to
28 facilitate disclosure of lobbying and campaign finance information to the public.
29 Notwithstanding any provision of law to the contrary, the commission may deposit
30 penalties for late filing under Title 21-A, sections 1060-A and 1062-A into the account to
31 be used exclusively on technology costs consistent with this section.

32 **Sec. 5. 21-A MRSA §1002, sub-§2,** as amended by PL 2011, c. 389, §2, is
33 repealed.

34 **Sec. 6. 21-A MRSA §1002, sub-§4,** as amended by PL 2011, c. 389, §2, is
35 repealed.

36 **Sec. 7. 21-A MRSA §1003, sub-§3-A,** as amended by PL 2019, c. 323, §3, is
37 further amended by amending the first blocked paragraph to read:

38 The commission may disclose investigative working papers or discuss them at a public
39 meeting, except for the information or records subject to a privilege against discovery or
40 use as evidence, if the information or record is ~~materially~~ relevant to a memorandum or
41 interim or final report by the commission staff or a decision by the commission concerning
42 an audit, investigation or other enforcement matter. A memorandum or report on the audit
43 or investigation prepared by staff for the commission may be disclosed at the time it is
44 submitted to the commission, as long as the subject of the audit or investigation has an

1 opportunity to review it first to identify material that the subject of the audit or investigation
2 considers privileged or confidential under some other provision of law.

3 **Sec. 8. 21-A MRSA §1004-B**, as enacted by PL 2009, c. 302, §3, is amended to
4 read:

5 **§1004-B. Enforcement of penalties assessed by the commission**

6 The commission staff shall collect the full amount of any penalty and the return of
7 Maine Clean Election Act funds required by the commission to be returned for a violation
8 of the statutes or rules administered by the commission and has all necessary powers to
9 carry out these duties. Failure to pay the full amount of any penalty assessed by the
10 commission or return of Maine Clean Election Act funds is a civil violation by the
11 candidate, treasurer, party committee, political action committee or other person. Thirty
12 days after issuing the notice of penalty or order for the return of funds, the commission
13 shall report to the Attorney General the name of any person who has failed to pay the full
14 amount of any penalty or to return Maine Clean Election Act funds unless the commission
15 has provided an extended deadline for payment. ~~The Attorney General shall enforce the~~
16 ~~violation in a civil action to collect the full outstanding amount of the penalty or order for~~
17 ~~the return of Maine Clean Election Act funds. The Attorney General shall enforce the~~
18 violation in a civil action to collect up to 3 times the outstanding amount of the penalty or
19 unreturned Maine Clean Election Act funds. This action must be brought in the Superior
20 Court for Kennebec County or the District Court, 7th District, Division of Southern
21 Kennebec.

22 **Sec. 9. 21-A MRSA §1014, sub-§5-A** is enacted to read:

23 **5-A. Text messages.** Text messages sent with the assistance of mass distribution
24 technology at a cost of more than \$100 must clearly and conspicuously state the name of
25 the person who made or financed the expenditure if:

26 A. The text message expressly advocates the election or defeat of a candidate; or

27 B. The text message contains a link to a website that expressly advocates the election
28 or defeat of a candidate.

29 **Sec. 10. 21-A MRSA §1015, sub-§3**, as amended by PL 2007, c. 443, Pt. A, §12,
30 is repealed.

31 **Sec. 11. 21-A MRSA §1019-B, sub-§1, ¶B**, as amended by PL 2021, c. 132, §7,
32 is further amended to read:

33 B. Unless the person, party committee or political action committee making the
34 expenditure demonstrates under subsection 2 that the expenditure ~~was not intended to~~
35 ~~influence~~ did not have a purpose or effect of influencing the nomination, election or
36 defeat of the candidate, is made to design, produce or disseminate a communication
37 that names or depicts a clearly identified candidate and is disseminated during the 28
38 days, including election day, before a primary election; during the 35 days, including
39 election day, before a special election; or from Labor Day to a general election day.

40 **Sec. 12. 21-A MRSA §1019-B, sub-§2**, as amended by PL 2021, c. 132, §8, is
41 further amended to read:

1 **2. Commission determination.** A person, party committee or political action
2 committee may request a determination that an expenditure that otherwise meets the
3 definition of an independent expenditure under subsection 1, paragraph B is not an
4 independent expenditure by filing a signed written statement with the commission within
5 7 days of disseminating the communication stating that the cost was not incurred with ~~the~~
6 ~~intent to influence a purpose of influencing~~ the nomination, election or defeat of a
7 candidate, supported by any additional evidence the person, party committee or political
8 action committee chooses to submit. The commission may gather any additional evidence
9 it determines relevant and material ~~and~~. The commission shall determine by a
10 preponderance of the evidence whether the cost was incurred with ~~intent to influence a~~
11 purpose of, or had the effect of, influencing the nomination, election or defeat of a
12 candidate. In order to make this determination, the commission shall consider whether the
13 language and other elements of the communication would lead a reasonable person to
14 conclude that the communication had a purpose of, or had the effect of, influencing an
15 election. The commission may consider other factors, including, but not limited to, the
16 timing of the communication or the recipients of the communication. The commission's
17 executive director shall make an initial determination on the request, which must be posted
18 on the commission's publicly accessible website. Any person may appeal the initial
19 determination, which must be considered by the commission at the next public meeting that
20 is feasible.

21 **Sec. 13. 21-A MRSA §1019-B, sub-§4, ¶B**, as amended by PL 2015, c. 350, §6,
22 is further amended to read:

23 B. A report required by this subsection must contain an itemized account of each
24 expenditure in excess of \$250 in any one candidate's election, the date and purpose of
25 each expenditure and the name of each payee or creditor. The report must state whether
26 the expenditure is in support of or in opposition to the candidate and must include,
27 under penalty of ~~perjury~~ unsworn falsification, as provided in Title 17-A, section ~~451~~
28 ~~453~~, a statement ~~under oath or affirmation~~ whether the expenditure is made in
29 cooperation, consultation or concert with, or at the request or suggestion of, the
30 candidate or an authorized committee or agent of the candidate.

31 **Sec. 14. 21-A MRSA §1019-B, sub-§4, ¶C**, as amended by PL 2013, c. 334, §16,
32 is further amended to read:

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

43 **Sec. 15. 21-A MRSA §1020-A, sub-§4-A**, as amended by IB 2015, c. 1, §7, is
44 further amended to read:

1 **4-A. Basis for penalties.** The penalty for late filing of a report required under this
2 subchapter is a percentage of the total contributions or expenditures for the filing period,
3 whichever is greater, multiplied by the number of calendar days late, as follows:

4 A. For the first violation, 2%;

5 B. For the 2nd violation, 4%; and

6 C. For the 3rd and subsequent violations, 6%.

7 Any penalty of less than \$10 \$25 is waived.

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

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

14 ~~A registration or report may be provisionally filed by transmission of a facsimile copy of~~
15 ~~the duly executed report to the commission, as long as the facsimile copy is filed by the~~
16 ~~applicable deadline and an original of the same report is received by the commission within~~
17 ~~5 calendar days thereafter.~~

18 **Sec. 16. 21-A MRS §1062-A, sub-§3**, as amended by IB 2015, c. 1, §9, is further
19 amended to read:

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

23 A. For the first violation, 2%;

24 B. For the 2nd violation, 4%; and

25 C. For the 3rd and subsequent violations, 6%.

26 Any penalty of less than \$10 \$25 is waived.

27 Violations accumulate on reports with filing deadlines in a 2-year period that begins on
28 January 1st of each even-numbered calendar year. Waiver of a penalty does not nullify the
29 finding of a violation.

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

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

36 **Sec. 17. 21-A MRS §1125, sub-§3, ¶J**, as enacted by PL 2019, c. 323, §29, is
37 amended to read:

38 J. A payment, gift or anything of value may not be given in exchange for a qualifying
39 contribution. It is a violation of this chapter for a participating candidate or an agent
40 of the participating candidate to misrepresent the purpose of soliciting qualifying

1 contributions and obtaining the contributor's signed acknowledgment or submit any
2 fraudulent contributions to the commission, as defined by the rules of the commission.

3 **Sec. 18. 21-A MRSA §1125, sub-§12-A, ¶C**, as amended by PL 2013, c. 334,
4 §34, is further amended to read:

5 C. A record proving that a vendor received payment for every expenditure in excess
6 of \$50 in the form of a cancelled check, cash receipt from the vendor or bank or credit
7 card statement identifying the vendor as the payee; ~~and~~

8 **Sec. 19. 21-A MRSA §1125, sub-§12-A, ¶E**, as amended by PL 2013, c. 334,
9 §34, is further amended to read:

10 E. A contemporaneous document such as an invoice, contract or timesheet that
11 specifies in detail the services provided by a vendor who was paid in excess of \$500
12 for the election cycle for providing campaign staff or consulting services to a
13 candidate; and

14 **Sec. 20. 21-A MRSA §1125, sub-§12-A, ¶F** is enacted to read:

15 F. If a candidate for the Legislature pays at least \$1,000 to a member of the campaign
16 staff, records for the number of hours and type of work performed by the member each
17 day. The candidate or treasurer shall submit those records to the campaign at least once
18 per month.

19 **SUMMARY**

20 This bill amends the administration of campaign finance and lobbyist disclosure laws
21 by the Commission on Governmental Ethics and Election Practices and the enforcement of
22 income reporting requirements by:

23 1. Providing for a preliminary penalty of \$500 when a legislative candidate or a
24 Legislator does not file a statement of sources of income on time, which may be waived by
25 the commission;

26 2. Increasing penalties by \$50 per report when a lobbyist repeatedly files monthly
27 reports late during a lobbying year;

28 3. Authorizing the commission to deposit penalties for late filing by political action
29 committees and ballot question committees in an existing special revenue account to pay
30 for improvements to the commission's electronic filing systems;

31 4. Eliminating authority for the commission to meet by telephone and the requirement
32 for the commission to be open during the last weekend before elections;

33 5. Amending the standard by which the commission may disclose financial or
34 campaign information in a commission decision or investigative report by staff;

35 6. Authorizing the Office of the Attorney General to collect 3 times the amount owed
36 when a court action is necessary to collect an unpaid penalty or repayment of Maine Clean
37 Election Act funds;

38 7. Requiring text messages costing more than \$100 that advocate for the election or
39 defeat of a candidate and are transmitted through mass distribution technology to disclose
40 the person that paid for the messages;

- 1 8. Directing the commission to consider the text and other objective elements of a
2 communication distributed close to an election when deciding whether the costs of the
3 communication qualify as independent expenditures;
- 4 9. Eliminating the \$25,000 limit an individual may contribute in aggregate to state
5 candidates in a calendar year;
- 6 10. Allowing a person filing an independent expenditure report to make an online
7 affirmation that the expense was not coordinated with the candidate named in the report
8 rather than submitting a statement made under oath or affirmation;
- 9 11. Authorizing the automatic waiver of penalties of less than \$25 for filing a campaign
10 finance report late;
- 11 12. Eliminating the authorization for candidates and political committees to file a
12 campaign finance report after a deadline if a faxed version is submitted before the deadline;
- 13 13. Confirming that a candidate's submission of fraudulent qualifying contributions is
14 a violation of the Maine Clean Election Act; and
- 15 14. Requiring a Maine Clean Election Act candidate to obtain and keep a record of
16 labor performed by any member of campaign staff each day the member of the campaign
17 staff is compensated more than \$1,000.