

# HOUSE BILL 1088

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By: **Delegates Ebersole, Carr, Cullison, Hill, Hixson, Lafferty, Lam, Luedtke, McCray, S. Robinson, Tarlau, Turner, and A. Washington**

Introduced and read first time: February 13, 2015

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Election Law – Campaign Finance – Coordinated Expenditures Between**  
3 **Candidates and Outside Spending Organizations**

4 FOR the purpose of prohibiting coordinated expenditures between candidates and certain  
5 outside spending organizations under certain circumstances; specifying certain  
6 parameters, limitations, and exceptions regarding coordinated expenditures  
7 between candidates and outside spending organizations; specifying certain  
8 penalties; authorizing the State Board of Elections to impose a civil penalty for  
9 certain violations; requiring certain penalties that are imposed and collected for  
10 certain violations to be credited to the Fair Campaign Financing Fund; providing for  
11 the joint and several liability of certain persons for certain penalties under certain  
12 circumstances; defining certain terms; and generally relating to the regulation of  
13 coordinated expenditures between candidates and outside spending organizations.

14 BY repealing and reenacting, with amendments,  
15 Article – Election Law  
16 Section 1–101(o)  
17 Annotated Code of Maryland  
18 (2010 Replacement Volume and 2014 Supplement)

19 BY adding to  
20 Article – Election Law  
21 Section 13–248  
22 Annotated Code of Maryland  
23 (2010 Replacement Volume and 2014 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
25 That the Laws of Maryland read as follows:

26 **Article – Election Law**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 1–101.

2 (o) (1) “Contribution” means the gift or transfer, or promise of gift or transfer,  
3 of money or other thing of value to a campaign finance entity to promote or assist in the  
4 promotion of the success or defeat of a candidate, political party, or question.

5 (2) “Contribution” includes:

6 (i) proceeds from the sale of tickets to a campaign fund–raising  
7 event; [and]

8 (ii) a disbursement or deposit of money or a gift, a subscription, an  
9 advance, or anything of value that is made by a person in coordination with, or at the  
10 request or suggestion of, a candidate or a campaign finance entity of a candidate; **AND**

11 **(III) A PAYMENT MADE FOR A COORDINATED EXPENDITURE**  
12 **UNDER § 13–248 OF THIS ARTICLE BY:**

13 **1. A PERSON OTHER THAN A CANDIDATE;**

14 **2. ANY CAMPAIGN ACCOUNT AFFILIATED WITH A**  
15 **CANDIDATE; OR**

16 **3. A POLITICAL COMMITTEE OF A POLITICAL PARTY.**

17 **13–248.**

18 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
19 **INDICATED.**

20 **(2) “COORDINATED EXPENDITURE” MEANS:**

21 **(I) AN EXPENDITURE OR A PAYMENT FOR A COVERED**  
22 **COMMUNICATION THAT IS MADE IN COOPERATION, CONSULTATION, OR CONCERT**  
23 **WITH, OR AT THE REQUEST OR SUGGESTION OF, A CANDIDATE, ANY CAMPAIGN**  
24 **ACCOUNTS AFFILIATED WITH A POLITICAL COMMITTEE OF A POLITICAL PARTY, OR**  
25 **AGENTS OF THE CANDIDATE OR COMMITTEE; OR**

26 **(II) A PAYMENT FOR ANY COMMUNICATION THAT REPUBLISHES,**  
27 **DISSEMINATES, OR DISTRIBUTES, IN WHOLE OR IN PART, A VIDEO OR BROADCAST,**  
28 **OR A WRITTEN, GRAPHIC, OR OTHER FORM OF CAMPAIGN MATERIAL PREPARED BY**  
29 **THE CANDIDATE OR BY AGENTS OF THE CANDIDATE OR ANY CAMPAIGN ACCOUNTS**  
30 **AFFILIATED WITH THE CANDIDATE.**

1           **(3) “COORDINATED SPENDER” MEANS, WITH RESPECT TO A**  
2 **CANDIDATE OR AN AUTHORIZED COMMITTEE OF A CANDIDATE, A PERSON, OTHER**  
3 **THAN A POLITICAL COMMITTEE OF A POLITICAL PARTY, FOR WHICH ANY OF THE**  
4 **FOLLOWING APPLIES:**

5           **(I) DURING THE ELECTION CYCLE, THE PERSON WAS DIRECTLY**  
6 **OR INDIRECTLY FORMED OR ESTABLISHED BY OR AT THE REQUEST OR SUGGESTION**  
7 **OF, OR WITH THE ENCOURAGEMENT OF:**

8                   **1. THE CANDIDATE, INCLUDING DURING THE TIME**  
9 **BEFORE THE INDIVIDUAL LATER BECOMES THE CANDIDATE; OR**

10                   **2. A POLITICAL COMMITTEE AFFILIATED WITH THE**  
11 **CANDIDATE OR AGENTS OF THE CANDIDATE OR POLITICAL COMMITTEE AFFILIATED**  
12 **WITH THE CANDIDATE;**

13           **(II) THE CANDIDATE OR POLITICAL COMMITTEE AFFILIATED**  
14 **WITH THE CANDIDATE OR AGENTS OF THE CANDIDATE OR POLITICAL COMMITTEE**  
15 **AFFILIATED WITH THE CANDIDATE SOLICITS CONTRIBUTIONS, APPEARS AT**  
16 **FUNDRAISING EVENTS, OR ENGAGES IN OTHER FUNDRAISING ACTIVITY ON THE**  
17 **PERSON’S BEHALF DURING THE ELECTION CYCLE INVOLVED, INCLUDING BY**  
18 **PROVIDING THE PERSON WITH NAMES OF POTENTIAL DONORS OR OTHER LISTS TO**  
19 **BE USED BY THE PERSON ENGAGING IN FUNDRAISING ACTIVITY, REGARDLESS OF**  
20 **WHETHER THE PERSON PAYS FAIR MARKET VALUE FOR THE NAMES OR LISTS**  
21 **PROVIDED;**

22           **(III) THE PERSON IS ESTABLISHED, DIRECTED, OR MANAGED BY**  
23 **THE CANDIDATE OR COMMITTEE AFFILIATED WITH THE CANDIDATE OR BY ANY**  
24 **OTHER PERSON THAT, DURING THE ELECTION CYCLE, HAS BEEN EMPLOYED OR**  
25 **RETAINED AS A POLITICAL, CAMPAIGN, MEDIA, OR FUNDRAISING ADVISER OR**  
26 **CONSULTANT FOR THE CANDIDATE OR COMMITTEE AFFILIATED WITH THE**  
27 **CANDIDATE OR FOR ANY OTHER ENTITY DIRECTLY OR INDIRECTLY CONTROLLED OR**  
28 **MANAGED BY THE CANDIDATE OR COMMITTEE;**

29           **(IV) THE PERSON HAS RETAINED THE PROFESSIONAL SERVICES**  
30 **OF A VENDOR THAT, DURING THE 2-YEAR PERIOD ENDING ON THE DATE THAT THE**  
31 **PERSON MAKES THE PAYMENT, HAS PROVIDED, OR IS PROVIDING, PROFESSIONAL**  
32 **SERVICES RELATING TO THE CAMPAIGN TO THE CANDIDATE OR COMMITTEE**  
33 **AFFILIATED WITH THE CAMPAIGN, WITHOUT REGARD TO WHETHER THE VENDOR**  
34 **HAS USED A FIREWALL;**

1           **(V) THE PERSON IS ESTABLISHED, FINANCED, DIRECTED, OR**  
2 **MANAGED BY A MEMBER OF THE IMMEDIATE FAMILY OF THE CANDIDATE, OR THE**  
3 **PERSON OR ANY OFFICER OR AGENT OF THE PERSON HAS HAD SUBSTANTIVE**  
4 **DISCUSSIONS ABOUT THE CANDIDATE’S CAMPAIGN WITH A MEMBER OF THE**  
5 **IMMEDIATE FAMILY OF THE CANDIDATE; OR**

6           **(VI) THE PERSON DIRECTS OR CONTROLS ANY OTHER ACCOUNT**  
7 **OF THE POLITICAL PARTY THAT IS NOT REGULATED BY THIS TITLE.**

8           **(4) (I) “COORDINATION” MEANS A PAYMENT THAT IS MADE IN**  
9 **COOPERATION, CONSULTATION, OR CONCERT WITH, OR AT THE REQUEST OR**  
10 **SUGGESTION OF, A CANDIDATE, A COMMITTEE AFFILIATED WITH A CANDIDATE, A**  
11 **POLITICAL COMMITTEE OF A POLITICAL PARTY, OR AGENTS OF THE CANDIDATE OR**  
12 **COMMITTEE AFFILIATED WITH THE CANDIDATE, PROVIDED THE PAYMENT, OR A**  
13 **COMMUNICATION FOR WHICH THE PAYMENT IS MADE, IS NOT MADE ENTIRELY**  
14 **INDEPENDENTLY OF THE CANDIDATE, COMMITTEE AFFILIATED WITH THE**  
15 **CANDIDATE, OR AGENTS.**

16           **(II) “COORDINATION” INCLUDES:**

17                   **1. A COMMUNICATION MADE AT THE REQUEST OR**  
18 **SUGGESTION OF A CANDIDATE;**

19                   **2. PUBLISHING OR DISTRIBUTING CAMPAIGN MATERIAL**  
20 **PREPARED BY THE CANDIDATE; OR**

21                   **3. AN AGREEMENT BY A CANDIDATE WITH ANOTHER**  
22 **CANDIDATE OR OTHER PERSON ON THE PAYMENT OF EXPENSES.**

23           **(5) “COVERED COMMUNICATION” MEANS, WITH RESPECT TO A**  
24 **CANDIDATE OR AN AUTHORIZED COMMITTEE OF A CANDIDATE, A PUBLIC**  
25 **COMMUNICATION THAT:**

26                   **(I) 1. EXPRESSLY ADVOCATES THE ELECTION OF THE**  
27 **CANDIDATE OR THE DEFEAT OF THE CANDIDATE’S OPPONENT; OR**

28                   **2. IS RELEASED WITHIN 60 DAYS OF THE ELECTION AND**  
29 **REFERS TO THE CANDIDATE OR AN OPPONENT OF THE CANDIDATE;**

30                   **(II) PROMOTES OR SUPPORTS THE CANDIDATE, OR ATTACKS OR**  
31 **OPPOSES AN OPPONENT OF THE CANDIDATE, REGARDLESS OF WHETHER THE**  
32 **COMMUNICATION EXPRESSLY ADVOCATES THE ELECTION OR DEFEAT OF A**

1 CANDIDATE OR IS RELEASED WITHIN 60 DAYS OF THE ELECTION AND REFERS TO A  
2 CANDIDATE OR AN OPPONENT OF THE CANDIDATE; AND

3 (III) 1. REFERS TO THE CANDIDATE OR AN OPPONENT OF THE  
4 CANDIDATE BUT IS NOT DESCRIBED IN ITEMS (I) OR (II) OF THIS PARAGRAPH; AND

5 2. IS DISSEMINATED DURING THE ELECTION CYCLE.

6 (6) "IMMEDIATE FAMILY" HAS THE MEANING STATED IN SECTION  
7 9004(E) OF THE INTERNAL REVENUE CODE OF 1986.

8 (7) (I) "PROFESSIONAL SERVICES" INCLUDES ANY SERVICES IN  
9 SUPPORT OF THE CAMPAIGN ACTIVITIES OF A CANDIDATE OR POLITICAL  
10 COMMITTEE, INCLUDING ADVERTISING, MESSAGE, STRATEGY, POLICY, POLLING,  
11 COMMUNICATIONS DEVELOPMENT, ALLOCATION OF RESOURCES, FUNDRAISING,  
12 AND CAMPAIGN OPERATIONS.

13 (II) "PROFESSIONAL SERVICES" DOES NOT INCLUDE  
14 ACCOUNTING, LEGAL, PRINT, OR MAIL SERVICES.

15 (8) "PUBLIC COMMUNICATION" HAS THE MEANING STATED IN §  
16 13-306 OF THIS TITLE.

17 (B) A PAYMENT FOR A COMMUNICATION MAY NOT BE CONSIDERED A  
18 COORDINATED EXPENDITURE IF:

19 (1) THE COMMUNICATION APPEARS IN A NEWS STORY, COMMENTARY,  
20 OR EDITORIAL DISTRIBUTED THROUGH THE FACILITIES OF A BROADCASTING  
21 STATION, NEWSPAPER, MAGAZINE, OR OTHER PERIODICAL PUBLICATION, UNLESS  
22 SUCH FACILITIES ARE OWNED OR CONTROLLED BY A POLITICAL PARTY, POLITICAL  
23 COMMITTEE, OR CANDIDATE;

24 (2) THE COMMUNICATION SATISFIES THE REQUIREMENTS FOR AN  
25 INTERNAL MEMBERSHIP COMMUNICATION UNDER § 13-306(II)2 OF THIS TITLE; OR

26 (3) THE COMMUNICATION CONSTITUTES A CANDIDATE DEBATE OR  
27 FORUM CONDUCTED PURSUANT TO THE REGULATIONS OF THE SPONSORING ENTITY  
28 OR THE COMMUNICATION SOLELY PROMOTES THE DEBATE OR FORUM AND IS MADE  
29 BY OR ON BEHALF OF THE PERSON SPONSORING THE DEBATE OR FORUM.

30 (C) (1) A PAYMENT UNDER THIS SECTION MAY NOT BE CONSIDERED TO  
31 BE MADE BY A PERSON IN COOPERATION, CONSULTATION, OR CONCERT WITH, OR AT  
32 THE REQUEST OR SUGGESTION OF, A CANDIDATE OR COMMITTEE:

1           **(I) SOLELY ON THE GROUNDS THAT THE PERSON OR THE**  
2 **PERSON'S AGENT ENGAGED IN DISCUSSIONS WITH THE CANDIDATE OR COMMITTEE,**  
3 **OR WITH AGENTS OF THE CANDIDATE OR COMMITTEE, REGARDING THAT PERSON'S**  
4 **POSITION ON A LEGISLATIVE OR POLICY MATTER; AND**

5           **(II) SO LONG AS THERE IS NO COMMUNICATION BETWEEN THE**  
6 **PERSON AND THE CANDIDATE OR COMMITTEE, OR AGENTS OF THE CANDIDATE OR**  
7 **COMMITTEE, REGARDING THE CANDIDATE'S OR COMMITTEE'S CAMPAIGN**  
8 **ADVERTISING, MESSAGE, STRATEGY, POLICY, POLLING, ALLOCATION OF**  
9 **RESOURCES, FUNDRAISING, OR OTHER CAMPAIGN ACTIVITIES.**

10           **(2) A PERSON IS DEEMED TO HAVE MADE A PAYMENT IN**  
11 **COOPERATION, CONSULTATION, OR CONCERT WITH, OR AT THE REQUEST OR**  
12 **SUGGESTION OF, A CANDIDATE OR COMMITTEE IN ACCORDANCE WITH THIS SECTION**  
13 **WITHOUT REGARD TO WHETHER OR NOT THE PERSON ESTABLISHED AND USED A**  
14 **FIREWALL OR SIMILAR PROCEDURES TO RESTRICT THE SHARING OF INFORMATION**  
15 **BETWEEN INDIVIDUALS WHO ARE EMPLOYED BY OR WHO ARE SERVING AS AGENTS**  
16 **FOR THE PERSON MAKING THE PAYMENT.**

17           **(D) A PERSON THAT MAKES A PAYMENT FOR A COVERED COMMUNICATION**  
18 **IS A COORDINATED SPENDER WITH RESPECT TO THE CANDIDATE IF THE PAYMENT**  
19 **FOR THE COVERED COMMUNICATION IS MADE IN COOPERATION, CONSULTATION, OR**  
20 **CONCERT WITH THE CANDIDATE.**

21           **(E) (1) A PERSON MAY NOT WILLINGLY AND KNOWINGLY VIOLATE THIS**  
22 **SECTION BY:**

23                   **(I) MAKING A CONTRIBUTION THAT CONSISTS OF A PAYMENT**  
24 **FOR A COORDINATED EXPENDITURE IN EXCESS OF THE LIMITS PRESCRIBED UNDER**  
25 **§ 13-226 OF THIS SUBTITLE; OR**

26                   **(II) FAILING TO FILE A REPORT WITH THE STATE BOARD AS**  
27 **PRESCRIBED UNDER THIS TITLE.**

28           **(2) A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A**  
29 **MISDEMEANOR AND IS SUBJECT TO A PENALTY EQUAL TO THE GREATER OF:**

30                   **(I) IN THE CASE OF A PERSON THAT MAKES A CONTRIBUTION**  
31 **THAT CONSISTS OF A PAYMENT FOR A COORDINATED EXPENDITURE IN AN AMOUNT**  
32 **EXCEEDING THE APPLICABLE CONTRIBUTION LIMIT UNDER THIS TITLE, 300% OF**  
33 **THE AMOUNT BY WHICH THE AMOUNT OF THE PAYMENT MADE BY THE PERSON**  
34 **EXCEEDS THE APPLICABLE CONTRIBUTION LIMIT; OR**

1                   **(II) IN THE CASE OF A PERSON THAT IS PROHIBITED UNDER THIS**  
2 **SECTION FROM MAKING A CONTRIBUTION IN ANY AMOUNT, 300% OF THE AMOUNT**  
3 **OF THE PAYMENT MADE BY THE PERSON FOR THE COORDINATED EXPENDITURE.**

4                   **(3) IN ACCORDANCE WITH § 13-604.1 OF THIS TITLE, THE STATE**  
5 **BOARD MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING 10% OF THE AMOUNT OF THE**  
6 **EXPENDITURE FOR A VIOLATION OF THIS SECTION.**

7                   **(F) A DIRECTOR, A MANAGER, OR AN OFFICER OF A PERSON THAT IS**  
8 **SUBJECT TO A PENALTY UNDER SUBSECTION (E)(2)(I) OF THIS SECTION IS JOINTLY**  
9 **AND SEVERALLY LIABLE FOR ANY AMOUNT OF THE PENALTY THAT IS NOT PAID BY**  
10 **THE PERSON BEFORE THE EXPIRATION OF THE 1-YEAR PERIOD THAT BEGINS ON**  
11 **THE LATER OF:**

12                   **(1) THE DATE THE PENALTY IS IMPOSED; OR**

13                   **(2) THE DATE OF THE FINAL JUDGMENT FOLLOWING ANY JUDICIAL**  
14 **REVIEW OF THE IMPOSITION OF THE PENALTY.**

15                   **(G) ANY PENALTY IMPOSED AND COLLECTED UNDER THIS SECTION SHALL**  
16 **BE CREDITED TO THE FAIR CAMPAIGN FINANCING FUND ESTABLISHED UNDER**  
17 **TITLE 15 OF THIS ARTICLE.**

18                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2015.