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HOUSE BILL NO. 1214

Offered January 24, 2000

A *BILL to amend and reenact §§ 57-59 and 59.1-9.10 of the Code of Virginia, relating to the Solicitation of Contributions Act; enforcement.*

Patron—Cantor

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:**1. That §§ 57-59 and 59.1-9.10 of the Code of Virginia are amended and reenacted as follows:**

§ 57-59. Enforcement of chapter; penalties.

A. Any person who willfully and knowingly violates or causes to be violated any provision of this chapter, or who willfully and knowingly gives false or incorrect information to the Commissioner in filing statements or reports required by this chapter, whether such report or statement is verified or not, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not less than \$100 and not more than \$1,000 or by confinement in jail for not more than six months, or both, and for the second and any subsequent offense by a fine of not less than \$500 and not more than \$2,500 or by confinement in jail for not more than one year, or both.

B. Whenever the Commissioner has reasonable cause to believe that a violation of this chapter may have occurred, the Commissioner, upon his own motion or upon complaint of any person, may investigate any charitable or civic organization, professional fund-raising counsel or professional solicitor to determine whether such charitable or civic organization, professional fund-raising counsel or professional solicitor has violated the provisions of this chapter. In the conduct of such investigation, the Commissioner may:

1. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter to be investigated.

2. Administer oaths or affirmations and, upon his motion or upon request of any party, subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangibles and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

Any proceedings or hearings by the Commissioner under this chapter, where witnesses are subpoenaed and their attendance is required for evidence to be taken or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

Upon failure to obey a subpoena and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order imposing punishment for contempt of the subpoena or compelling compliance.

C. *Whenever the Attorney General has reasonable cause to believe that any person has operated, is operating or is about to operate in violation of the provisions this chapter, the Attorney General may issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this subsection.*

~~C.D.~~ Whenever the Attorney General, or any attorney for the Commonwealth or the attorney for any city, county or town has reason to believe that any charitable or civic organization, professional fund-raising counsel or professional solicitor has operated, is operating or is about to operate in violation of the provisions of this chapter, the Attorney General, attorney for the Commonwealth or the attorney for any city, county or town, in addition to all other actions authorized by law, may bring an action in the name of the Commonwealth against such charitable or civic organization, professional fund-raising counsel or professional solicitor, or their officers, directors, or other agents to enjoin the continuation of such violation, solicitation or collection, or the engaging therein, or the conducting of any acts in furtherance thereof and for such other relief as the court deems appropriate.

~~D. E.~~ In any action brought under subsection ~~C~~ of ~~this section~~~~D~~, the court may also award to the Commonwealth a civil penalty of not more than \$5,000 per violation, to be paid to the Literary Fund, reasonable expenses incurred by the state or local agency in investigating and preparing the case, not to exceed \$250 per violation, and attorney's fees. Such expenses and attorney's fees shall be paid into the general fund of the Commonwealth or of the county, city, or town which such attorney represented.

§ 59.1-9.10. Investigation by Attorney General of suspected violations; civil investigative demand to witnesses; access to business records, etc.

(a) A. Whenever it shall appear to the Attorney General, either upon complaint or otherwise, that any

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60 person has engaged in, or is engaging in, or is about to engage in any act or practice prohibited by this
61 chapter, the Attorney General may in his discretion either require or permit such person to file with him
62 a statement in writing or otherwise, under oath, as to all facts and circumstances concerning the subject
63 matter. The Attorney General may also require such other data and information as he may deem relevant
64 to the subject matter of an investigation of a possible violation of this chapter and may make such
65 special and independent investigations as he may deem necessary in connection with such matter.

66 ~~(b)~~ B. In connection with any such investigation, the Attorney General, or his designee, is
67 empowered to issue a civil investigative demand to witnesses by which he may (i) compel the
68 attendance of such witnesses; (ii) examine such witnesses under oath before himself or a court of record;
69 (iii) subject to subsection ~~(e)~~ of this section C, require the production of any books or papers that he
70 deems relevant or material to the inquiry; and (iv) issue written interrogatories to be answered by the
71 witness served or, if the witness served is a public or private corporation or a partnership or association
72 or governmental agency, by any officer or agent, who shall furnish such information as is available to
73 the witness. The above investigative powers shall not abate or terminate by reason of any action or
74 proceeding brought by the Attorney General under this chapter. When documentary material is
75 demanded by a civil investigative demand, said demand shall not: (1) contain any requirement that
76 would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this
77 Commonwealth; or (2) require the disclosure of any documentary material that would be privileged, or
78 production of which for any other reason would not be required by a subpoena duces tecum issued by a
79 court of ~~this~~the Commonwealth.

80 ~~(c)~~ C. Where the information requested pursuant to a civil investigative demand may be derived or
81 ascertained from the business records of the party upon whom the interrogatory has been served or from
82 an examination, audit or inspection of such business records, or from a compilation, abstract or summary
83 based therein, and the burden of deriving or ascertaining the answer is substantially the same for the
84 Attorney General as for the party from whom such information is requested, it is sufficient for that party
85 to specify the records from which the answer may be derived or ascertained and to afford the Attorney
86 General, or other individuals properly designated by the Attorney General, reasonable opportunity to
87 examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.
88 Further, the Attorney General is hereby authorized, and may so elect, to require the production pursuant
89 to this section, of documentary material before or after the taking of any testimony of the person
90 summoned pursuant to a civil investigative demand, in which event, said documentary matter shall be
91 made available for inspection and copying during normal business hours at the principal place of
92 business of the person served, or at such other time and place, as may be agreed upon by the person
93 served and the Attorney General.

94 ~~(d)~~ D. Any civil investigative demand issued by the Attorney General shall contain the following
95 information:

96 ~~(1)~~ 1. The statute and section hereof, the alleged violation of which is under investigation and the
97 subject matter of the investigation;

98 ~~(2)~~ 2. The date and place at which time the person is required to appear to produce documentary
99 material in his possession, custody or control in the office of the Attorney General located in Richmond,
100 Virginia. Such date shall not be less than twenty days from the date of the civil investigative demand.

101 ~~(3)~~ 3. Where documentary material is required to be produced, the same shall be described by class
102 so as to clearly indicate the material demanded.

103 ~~(e)~~ E. Service of civil investigative demand of the Attorney General as provided herein may be made
104 by:

105 ~~(1)~~ 1. Delivery of a duly executed copy thereof to the person served, or if a person is not a natural
106 person, to the principal place of business of the person to be served, or

107 ~~(2)~~ 2. Mailing by certified mail, return receipt requested, a duly executed copy thereof addressed to
108 the person to be served at his principal place of business in ~~this~~the Commonwealth, or if said person has
109 no place of business in ~~this~~the Commonwealth, to his principal office.

110 ~~(f)~~ F. Within twenty days after the service of any such demand upon any person or enterprise, or at
111 any time before the return date specified in the demand, whichever period is shorter, such party may
112 file, in the Circuit Court of the City of Richmond and serve upon the Attorney General a petition for an
113 order of such court modifying or setting aside such demand. The time allowed for compliance with the
114 demand in whole or in part as deemed proper and ordered by the court shall not run during the
115 pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner
116 relies in seeking such relief, and may be based upon any failure of such demand to comply with the
117 provisions of this chapter or upon any constitutional or other legal right or privilege of such party. The
118 provisions of this subsection shall be the exclusive means for a witness summoned pursuant to a civil
119 investigative demand under this section to challenge a civil investigative demand issued pursuant to
120 subsection ~~(b)~~B.

121 ~~(g)~~ G. The examination of all witnesses under this section shall be conducted by the Attorney

General, or his designee, before an officer authorized to administer oaths in this Commonwealth. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

~~(H)~~ *H.* Any person required to testify or to submit documentary evidence shall be entitled, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person and of his own testimony as stenographically reported or, in the case of depositions, as reduced to writing by or under the direction of a person taking the deposition. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter of right, otherwise participate in the investigation.

~~(I)~~ *I.* All persons served with a civil investigative demand by the Attorney General under this chapter, other than any person or persons whose conduct or practices are being investigated or any officer, director or person in the employ of such person under investigation, shall be paid the same fees and mileage as paid witnesses in the courts of this Commonwealth. No person shall be excused from attending such inquiry pursuant to the mandate of a civil investigative demand, or from producing a paper or from being examined or required to answer questions on the ground of failure to tender or pay a witness fee or mileage unless demand therefor is made at the time testimony is about to be taken and as a condition precedent to offering such production or testimony and unless payment thereof is not thereupon made.

~~(J)~~ *J.* Any natural person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience of a civil investigative demand or lawful request of the Attorney General or those properly authorized by the Attorney General, pursuant to this section, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than \$5,000, or by imprisonment in jail for not more than one year, or both such fine and imprisonment.

Any natural person who commits perjury or false swearing or contempt in answering, or failing to answer, or in producing evidence or failing to do so in accordance with a civil investigative demand or lawful request by the Attorney General, pursuant to this section, shall be guilty of a misdemeanor and upon conviction therefor by a court of competent jurisdiction shall be punished by a fine of not more than \$5,000, or by imprisonment in jail for not more than one year, or both such fine and imprisonment.

~~(K)~~ *K.* In any investigation brought by the Attorney General pursuant to this chapter, no individual shall be excused from attending, testifying or producing documentary material, objects or intangible things in obedience to a civil investigative demand or under order of the court on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty, but no testimony or other information compelled either by the Attorney General or under order of the court, or any information directly or indirectly derived from such testimony or other information, may be used against the individual or witness in any criminal case. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing evidence or failing to do so in accordance with the order of the Attorney General or the court. If an individual refuses to testify or produce evidence after being granted immunity from prosecution and after being ordered to testify or produce evidence as aforesaid, he may be adjudged in civil contempt by a court of competent jurisdiction and committed to the county jail until such time as he purges himself of contempt by testifying, producing evidence or presenting a written statement as ordered. The foregoing shall not prevent the Attorney General from instituting other appropriate contempt proceedings against any person who violates any of the above provisions.

~~(L)~~ *L.* It shall be the duty of all public officials, both state and local, their deputies, assistants, clerks, subordinates or employees, and all other persons to render and furnish to the Attorney General, his deputy or other designated representative, when so requested, all information and assistance in their possession or within their power. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any such person other than the Attorney General the name of any witness examined or any other information obtained upon such inquiry, except as so directed by the Attorney General, shall be guilty of a misdemeanor and subject to the sanctions prescribed in subsection ~~(J)~~ *J.* Such inquiry may upon written authorization of the Attorney General be made public.

~~(M)~~ *M.* The Attorney General may promulgate rules and regulations to implement and carry out the provisions of this section.

~~(N)~~ *N.* It shall be the duty of the Attorney General, or his designees, to maintain the secrecy of all evidence, testimony, documents or other results of such investigations. Violation of this subsection shall be a misdemeanor. Nothing herein contained shall be construed to prevent ~~the~~ *(i) the* disclosure of any such investigative evidence by the Attorney General in his discretion to any federal or state law-enforcement authority that has restrictions governing confidentiality similar to those contained in this subsection *or (ii) the presentation and disclosure of any such investigative evidence by the Attorney General, in his discretion, in any action or proceeding brought by the Attorney General under this*

