

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 371

An Act to amend and reenact §§ 24.2-929 and 24.2-930 of the Code of Virginia, relating to Campaign Finance Disclosure Act; penalties and enforcement.

[H 1664]

Approved March 21, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-929 and 24.2-930 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-929. Penalties for violations of chapter.

A. Any person who violates, or aids, abets, or participates in the violation of, this chapter shall be subject to a civil penalty not to exceed ~~\$50~~ *\$100*, unless a greater penalty is imposed as follows:

1. In the case of a failure to file or late filing of the statement of organization for a candidate required by § 24.2-904 or for a committee required by § 24.2-908, there shall be a civil penalty not to exceed \$500.

2. In the case of a violation of Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title that relates to the filing of an incomplete report due within the 120 days before or the 35 days after a November general election date, he shall be subject to a civil penalty not to exceed ~~\$300~~ *\$500*.

3. In the case of a violation of Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title, that relates to the failure to file a required report by the deadline specified in Article 4, he shall be assessed a civil penalty not to exceed \$500. In the case of a second or any subsequent such violation pertaining to one election cycle, he shall be assessed a civil penalty of ~~\$500~~ *\$1,000* for each such failure to file. The State Board shall assess the civil penalty imposed by this subdivision and shall notify the public through the Internet of the violation and identity of the violator.

4. In the case of a willful violation, he shall be guilty of a Class 1 misdemeanor.

In the case of a failure to file a required statement or report by the specified deadline, the length of the delinquency shall be a factor in determining the amount of the civil penalty assessed. The State Board shall notify the public through the Internet of any violation based on the failure to file a required report by a candidate for statewide office or the General Assembly and the identity of the violator.

Upon notice of a violation of this chapter, ~~by~~ the State Board or the general registrar or local electoral board, as appropriate, *shall within 90 days of the report deadline notify* the attorney for the Commonwealth *who* shall initiate civil proceedings to enforce the civil penalties and penalties assessed by the State Board or the local electoral board as provided herein. Any civil penalties collected pursuant to action by the State Board shall be payable to the State Treasurer for deposit to the general fund; and any civil penalties collected pursuant to action by a general registrar or local electoral board shall be payable to the treasurer of the locality for deposit to its general fund. The statute of limitations applicable to a violation of this chapter is stated in § 19.2-8. There shall be a rebuttable presumption that the violation of this chapter was willful if the violation is based on a person's failure to file a report required by this chapter and his failure to file continues for more than 60 days following his actual receipt of written notice of his failure to file sent to him by certified mail, return receipt requested, by the State Board or an electoral board. Such notice shall be sent to the most recent mailing address provided by the candidate or committee.

B. Prior to assessing a penalty pursuant to this section for the filing of an incomplete report, the Secretary of the State Board or the general registrar or secretary of the local electoral board, as appropriate, shall notify, in writing, the candidate and treasurer, or person or political committee required to file a report with that board, that a filed report has not been completed, citing the omissions from the report. No penalty shall be assessed if the information required to complete the report is filed within 10 days of the date of mailing the written notice.

C. If the information required to complete the report is not filed within the 10-day period, the Secretary of the State Board or the general registrar or secretary of the local electoral board, as appropriate, shall then assess against the candidate and treasurer, who shall be jointly and severally liable, or person or political committee required to file a report, a civil penalty not to exceed ~~\$300~~ *\$500*. The Secretary of the State Board or the general registrar or secretary of the local electoral board may grant an additional period for compliance, not to exceed two weeks, to permit the completion of a filed report for good cause shown and in response to a request filed within the 10-day period. However, no additional period shall be granted thereafter for compliance.

D. The additional periods for filing specified in subsections B and C shall apply only to the completion of a timely filed report and not to any case of a failure to file a required report by the deadline specified in this chapter. In the case of a failure to file a required report by the specified deadline, the length of the delinquency shall be a factor in determining the amount of the civil penalty

assessed. The State Board shall notify the public through the Internet of any violation based on the failure to file a required report by a candidate for statewide office or the General Assembly and the identity of the violator.

E. In the case of a failure to file the report of any large pre-election contribution required by § 24.2-919, or the late or incomplete filing of such a report, there shall be a rebuttable presumption that the violation was willful. The provisions of subsections B and C of this section shall not apply to reports required by § 24.2-919.

F. In the case of any other violation of this title that is to be enforced under this section, the electoral board for the locality in which the violation occurred, if the violation was by or on behalf of a candidate for local office or to influence a local ballot issue, or the State Board if the violation was by or on behalf of a candidate for any other office or to influence any other ballot issue, shall determine whether a violation was committed and assess the appropriate civil penalty, if any. If it appears that a criminal violation has occurred, the electoral board or State Board shall not assess a penalty but shall forward the complaint to the appropriate attorney for the Commonwealth.

G. The State Board shall determine the schedule of fines required to be followed by its staff and local electoral boards in assessing penalties under this section. No election official or staff may waive or reduce such fines, except as provided above.

§ 24.2-930. Civil penalties for late and incomplete filings for statewide campaigns.

A. In addition to the penalties provided in § 24.2-929, any candidate for Governor, Lieutenant Governor, or Attorney General, and his campaign treasurer, who fail to file any report required in § 24.2-916 in a timely manner or file an incomplete report may be assessed a civil penalty by the Secretary of the State Board pursuant to this section.

B. Prior to assessing a penalty pursuant to this section, the Secretary shall notify the candidate and treasurer in writing that a report has not been filed or that a filed report has not been completed, citing the omissions from the report. No penalty shall be assessed pursuant to this section if the report or information required to complete the report is filed within seven days of the date of mailing the written notice.

C. If the report or information required to complete the report is not filed within the seven-day period, the Secretary shall assess against the candidate and treasurer, who shall be jointly and severally liable, a civil penalty of ~~\$300~~ \$500 for each day that the violation continues on and after the eighth day following the date of mailing the written notice. The Secretary may grant an additional period for compliance, not to exceed two weeks, for good cause shown and in response to a request filed within the seven-day period. However, no additional period shall be granted for compliance with the requirement under subdivision 8 of § 24.2-916 to file a report not later than the eighth day before the election. The Secretary shall notify the public through the ~~global information system known as the~~ Internet of the violation and identity of the violator.

D. If requested by the Secretary, the attorney for the Commonwealth of the City of Richmond shall assist the Secretary in collecting the civil penalty.

E. Any candidate or treasurer aggrieved by the assessment shall have a right to the direct review of the assessment by a court of competent jurisdiction as provided in the Administrative Process Act (§ 2.2-4000 et seq.). The provisions of the Act shall not apply, however, to the assessment of civil penalties by the Secretary pursuant to this section.

F. Civil penalties collected pursuant to this section shall be payable to the State Treasurer for deposit to the general fund.