

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 745

An Act to amend and reenact §§ 24.2-910.1 and 24.2-929 of the Code of Virginia, relating to the Campaign Finance Disclosure Act, referendum committees; civil penalties.

[S 996]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-910.1 and 24.2-929 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-910.1. Referendum committees advocating passage or defeat of a referendum; disclosure.

A. The Commonwealth has the obligation to promote an informed and knowledgeable electorate in referenda elections. The electorate will be better able to judge the implications of its vote in referenda if it has knowledge of the committees that make substantial expenditures to advocate the passage or defeat of a referendum.

B. The provisions of this section shall be applicable to any referendum committee. For the purposes of this section a referendum committee means any person, group of persons, or committee that makes expenditures in a calendar year in excess of (i) \$10,000 to advocate the passage or defeat of a statewide referendum, (ii) \$5,000 to advocate the passage or defeat of a referendum being held in two or more counties and cities, and (iii) \$1,000 to advocate the passage or defeat of a referendum held in a single county or city.

C. A referendum committee shall file (i) a statement of organization pursuant to § 24.2-908 within 10 days after its organization or, if later, within 10 days after the date on which it has information that causes the committee to anticipate it will make expenditures in excess of the pertinent amount stated in subsection B and (ii) annually thereafter by January 15 until a final report is filed. The statement of organization shall include the information required in subdivisions 1, 3, 4, 5, 7, 9, 10, 11, and 12 of subsection A of § 24.2-908.

D. A referendum committee that is subject to the provisions of this section shall maintain a separate account for the receipt and disbursement of funds expended to advocate the passage or defeat of a referendum. It shall file the disclosure reports required by § 24.2-914.

E. A referendum committee that is subject to the provisions of this section shall (i) file the disclosure reports required by § 24.2-914 in accordance with the schedule set out in § 24.2-916 if it advocates the passage or defeat of a referendum held on a November general election date; (ii) file its disclosure reports in accordance with the schedule set out in § 24.2-917 if it advocates the passage or defeat of a referendum held on a May general election date; or (iii) file its disclosure reports in accordance with the schedule set out in § 24.2-918 if it advocates the passage or defeat of a referendum held on a date other than a November or May general election date.

F. A referendum committee may either (i) file a final report within six months after the referendum is held or (ii) continue as a political committee more than six months after the referendum is held, provided that the committee submits an amended statement of organization to the State Board redesignating the committee as a political committee and complies with the requirements for political committees in Articles 3 (§ 24.2-908 et seq.) and 4 (§ 24.2-914 et seq.) of this chapter including the reporting schedule set forth in § 24.2-923.

G. The provisions of Chapter 9.2 (§ 24.2-941 et seq.) of this title shall not be applicable to advertisements sponsored by political committees that are subject to the provisions of this section.

§ 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, 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, ~~or for a committee required by subsection F of § 24.2-910.1~~, 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.

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 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, the attorney for the Commonwealth 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. 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.