

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 789

An Act to amend and reenact §§ 24.2-922, 24.2-928, and 24.2-929 of the Code of Virginia, relating to campaign finance disclosure; reports as condition to qualify for office; penalties.

[H 1065]

Approved April 6, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-922, 24.2-928, and 24.2-929 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-922. Reports as condition to qualification for office.

A. No person shall be permitted to qualify for any office, enter upon the duties thereof, or receive any salary or emoluments therefrom until he has filed the reports required in subdivisions 3 through 9 of § 24.2-916; subdivisions 1, 2 and 3 of § 24.2-917; and subdivisions B 1 and B 3 of § 24.2-918, as applicable; and a final report if required by subsection C of § 24.2-906.1; *and has responded to and complied with a notice that additional information is required to complete a report in compliance with subsection B of § 24.2-929.* No officer authorized by the laws of the Commonwealth to issue certificates of election shall issue one to any person determined to be elected to any such office, until copies of the reports cited above have been filed as required in this article.

B. Notwithstanding the requirements of subsection A, a person who is elected to fill a vacancy at a special election held on a general election day may qualify for the office and be issued a certificate of election in advance of filing the postelection report required to be filed under subdivision 9 of § 24.2-916 in the case of a November election, or under subdivision 3 of § 24.2-917 in the case of a May election, upon the filing of a postelection report complete through the election day.

§ 24.2-928. Reporting of certain violations; penalties.

A. It shall be the duty of the State Board to report any violation of the provisions of Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title to the appropriate attorney for the Commonwealth. The State Board shall report to the attorney for the Commonwealth of the City of Richmond in the case of reporting requirements for statewide campaigns and for political committees and to the attorney for the Commonwealth of the county or city of the residence of a candidate for the General Assembly. If all the officers of a political committee are residents of one county or city as shown on the statement of organization filed by the committee pursuant to § 24.2-908, the State Board shall report violations for that political committee to the attorney for the Commonwealth of that county or city.

B. It shall be the duty of the electoral board of a county or city to report any violation of the provisions of Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title relating to the filing of reports with the electoral board to the attorney for the Commonwealth for the county or city in which the electoral board has jurisdiction.

C. In order to fulfill the duty to report violations pursuant to subsections A and B, the Board shall establish and implement a system for receiving, cataloging, and reviewing reports filed pursuant to the provisions of Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title and for verifying that reports are complete and submitted on time. As part of the system referred to in this subsection, the general registrar for each county and city, or the secretary of the electoral board in any county or city in which the electoral board chooses to perform the duties stated in this subsection, shall be required, in accordance with instructions provided by the Board, to receive, catalog, and review the reports filed with the local electoral board and to verify that the reports are complete and submitted on time. The State Board, or the general registrar or secretary of the electoral board, in accordance with the instructions of the State Board, shall notify, no later than ~~44~~ 21 days after the report due date, any person submitting an incomplete report of the need for additional information. The State Board, or the general registrar or secretary of the electoral board in accordance with the instructions of the State Board, may request additional information to correct obvious mathematical errors and to fulfill the requirements for information on the reports.

D. The State Board, and the general registrar or secretary of the electoral board in accordance with the instructions of the State Board, (i) shall assess and collect the civil penalties provided in § 24.2-929 and (ii) if unable to collect the penalty, shall report the violation to the appropriate attorney for the Commonwealth for enforcement. Each locality shall advise the State Board of penalties assessed, collected and reported to the attorney for the Commonwealth.

E. In the case of any committee that is required to file a statement of organization pursuant to § 24.2-908 but excluding campaign committees, the State Board shall be authorized to waive a penalty that has been assessed if the filer demonstrates that there exists good cause to waive the penalty.

F. No local electoral board shall be required to retain any reports longer than one year from the date

of filing the final report required by §§ 24.2-915 through 24.2-920 and 24.2-923, or any successor provision thereto, or the next general election for the office to which the report relates, whichever is later, unless a court of competent jurisdiction shall order their retention for a longer period.

§ 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 \$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, 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 \$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 \$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 *its official Internet website* of the violation and identity of the violator.

4 3. 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 *its official Internet website* 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, 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 \$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.

B. 1. In the case of a violation of this chapter that relates to the filing of an incomplete report, the violator shall be subject to a civil penalty not to exceed \$500 unless a greater penalty is imposed pursuant to this subsection. However, the civil penalty shall in no case exceed \$500 unless the total of the filer's reportable contributions or the total of the filer's reportable expenditures is \$10,000 or more.

2. 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, by certified mail, 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.

3. 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 \$500. The Secretary of the State Board or the general registrar or secretary of the local electoral board, as appropriate, shall consider the following factors in determining the civil penalty assessed: the number of omissions, the amount of money involved, and the proportion of contributions or expenditures containing omissions.

4. 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.

5. The civil penalty assessed for filing an incomplete report shall be increased by \$500 every 60 days following the date for compliance established pursuant to this subsection and until compliance is complete. If the failure to comply continues for more than 120 days following the date for compliance established pursuant to this section, there shall be a rebuttable presumption that the violation was willful, and the matter shall be forwarded to the appropriate attorney for the Commonwealth pursuant to subsections A and B of § 24.2-928.

6. The civil penalty assessed for filing any subsequent incomplete report (i) that is filed more than 20 days after notice has been given of a violation or (ii) that is filed during the 60 days prior to the election for which the person is a candidate shall be \$1,000.

7. The State Board shall notify the public through its official Internet website of a failure to file a complete report by a candidate for statewide office or the General Assembly and the identity of the violator following the date for compliance established pursuant to this subsection.

~~D~~ C. The additional periods for filing specified in ~~subsections~~ subsection 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~~ its official Internet website 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~~ D. In the case of a failure to file the report of any large pre-election contribution required by § 24.2-919 or a large contribution report required by § 24.2-919.1, or the late or incomplete filing of either such report, there shall be a rebuttable presumption that the violation was willful. The provisions of ~~subsections~~ subsection B and C of this section shall not apply to reports required by § 24.2-919, 24.2-919.1 or subsection D of § 24.2-923.

~~F~~ E. 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~~ F. 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.