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HOUSE BILL NO. 5

Offered January 10, 2018

Prefiled November 20, 2017

A BILL to amend and reenact § 24.2-948.4 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 9.3 of Title 24.2 a section numbered 24.2-948.5, relating to campaign finance; prohibited personal use; penalty.

Patrons—Simon and Cole; Senator: Vogel

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-948.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 9.3 of Title 24.2 a section numbered 24.2-948.5 as follows:

§ 24.2-948.4. Final report requirement; disbursement of surplus funds.

A. A final report shall be filed by every campaign committee which sets forth (i) all receipts and disbursements not previously reported, (ii) an accounting of the retirement of all debts, and (iii) the disposition of all surplus funds as provided in subsection D. The final report shall include a termination statement, signed by the candidate, that all reporting for the campaign committee is complete and final. Once a campaign committee's final report has been filed, no further report relating to that election shall be required.

B. A final report shall be required when (i) a candidate no longer seeks election to the same office in a successive election, (ii) a candidate seeks election to a different office, or (iii) the candidate is deceased.

C. If the candidate is deceased, the final report shall be filed and signed by the treasurer. If the candidate was serving as his own treasurer, his executor shall file and sign the final report. Any excess contributed funds shall be disposed of pursuant to the provisions of subsection D.

D. Amounts received by a candidate or his campaign committee as contributions that are in excess of the amount necessary to defray his campaign expenditures may be disposed of only by one or any combination of the following: (i) transferring the excess for use in a succeeding election or to retire the deficit in a preceding election; (ii) returning the excess to a contributor in an amount not to exceed the contributor's original contribution; (iii) donating the excess to any organization described in § 170(c) of the Internal Revenue Code; (iv) contributing the excess to one or more candidates or to any political committee that has filed a statement of organization pursuant to this chapter; (v) contributing the excess to any political party committee; and (vi) defraying any ordinary, nonreimbursed expense related to his elective office. ~~It shall be unlawful for any person to convert any contributed moneys, securities, or like intangible personal property to his personal use or to the use of a member of the candidate's "immediate family" as that term is defined in § 30-101.~~

§ 24.2-948.5. Prohibited personal use; penalty.

A. For the purposes of this section, "covered person" means any candidate or member of the candidate's immediate family as that term is defined in § 30-101 or an intimate partner of the candidate or a member of the candidate's immediate family.

B. It is unlawful for any person to convert any contributed moneys, securities, or like intangible personal property to the personal use of any covered person if (i) such use yields a grossly disproportionate and unreasonable benefit to the recipient or candidate relative to the benefit realized by the candidate's campaign or public office, (ii) the fair market value of converted property grossly exceeds the benefit realized by the candidate's campaign or public office, (iii) a reasonable and prudent person would not ordinarily authorize such expenditure as beneficial to the campaign, and (iv) such use is made with a knowing, willing, reckless, or negligent disregard for the financial interests of the campaign.

C. Reimbursements paid to a covered person in accordance with § 24.2-947.2 shall not be considered an unlawful conversion under this section when the amount paid accurately reflects the expense incurred by the covered good or service in acquiring goods or services at arm's length from a third party for the use of the campaign.

D. The dual use of office space, equipment, vehicles, or other things of value belonging to a covered person is not a violation under this section if reimbursements paid reflect the proportionally allocated value for those things utilized in a dual capacity where such allocations are reasonable, do not tend to enrich a covered person in transactions occurring above market value, and utilize a method accepted by

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the Internal Revenue Service for the allocation of expenses between a business and a natural person or more than one business.

E. It is unlawful for any person to knowingly or willingly employ one or more intermediaries for the purposes of circumventing any prohibition on any direct conversion of a thing of value under this section.

F. Any person may file a written complaint with the State Board alleging a violation of this section.

G. Upon receipt of a credible, written complaint, the State Board shall notify the subject of the complaint and forward to him a copy of the complaint. The subject of the complaint shall have 30 days to provide to the State Board documentation or other evidence that the use of campaign funds was permissible under this section. If the State Board determines, after reviewing any response made by the subject of the complaint, that the use of campaign funds was impermissible under this section, it shall call a public hearing with at least 14 days' public notice. The subject of the complaint shall have the right to postpone the hearing if it is scheduled (i) within the 30 days immediately preceding an election in which the candidate is running for office, (ii) on a day for which any member of the General Assembly is called into session or any other formal proceeding of either chamber, or (iii) on a day for which any elected member of any public body is called to attend a regularly scheduled meeting of such body.

H. At the public hearing, the State Board shall determine whether to find a willful and knowing violation of this section. Such a finding shall require a unanimous vote by the State Board. A person found by the State Board to have willfully and knowingly violated this section shall repay to the campaign committee the amount unlawfully converted to the use of the covered person. The State Board may also assess an additional civil penalty, in an amount not to exceed the value of the amount unlawfully converted in violation of this section. The determination to assess such a civil penalty shall be made at the public hearing and shall require a unanimous vote by the State Board. Any civil penalties collected under this section shall be payable to the State Treasurer for deposit to the general fund. The procedure to enforce the civil penalties provided in this section shall be as stated in § 24.2-946.3.

I. A person found by the State Board to have violated the provisions of this section shall have a right to seek review of such finding in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act in the Circuit Court of the City of Richmond.

J. The State Board may, by unanimous vote, declare a complaint to be factually meritless when, viewing the facts offered in the complaint in the light most favorable to the complaining party, it finds no credible allegation of a violation of this section. Any complaint that is declared factually meritless shall not be heard within the 60 days immediately preceding an election in which the accused candidate is running for office and shall be excluded from public disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) for that 60-day period if the State Board finds that disclosure during this time would be against the public interest and would tend to call into question the integrity of the electoral process or expose the electoral process to manipulation by those seeking electoral advantage through the manufacture of factually meritless allegations.