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SENATE BILL NO. 268

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Privileges and Elections
on February 10, 2004)

(Patron Prior to Substitute—Senator Potts)

A BILL to amend and reenact §§ 24.2-901, 24.2-914, and 24.2-929 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-919.1 relating to campaign finance disclosure; definitions, disclosure reports, and certain in-kind contributions and independent expenditures; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-901, 24.2-914, and 24.2-929 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-919.1, as follows:

§ 24.2-901. Definitions.

A. As used in this chapter, unless the context requires a different meaning:

"Campaign committee" means the committee designated by a candidate to receive all contributions and make all expenditures for him or on his behalf in connection with his nomination or election.

"Contribution" means money and services of any amount, and any other thing of value over \$100, given, advanced, promised, loaned, or in any other way provided to a candidate, campaign committee, political committee, inaugural committee, or person for the purpose of influencing the outcome of an election or defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General. "Contribution" includes money, services, or things of value in any way provided by a candidate to his own campaign and the payment by the candidate of any primary filing fee.

"Expenditure" means money and services of any amount, and any other thing of value over \$100, paid, promised, loaned, provided, or in any other way disbursed by any candidate, campaign committee, political committee, inaugural committee, or person for the purpose of influencing the outcome of an election or defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General.

"Inaugural committee" means any committee which anticipates receiving contributions or making expenditures, from other than publicly appropriated funds, for the inauguration of the Governor, Lieutenant Governor, or Attorney General and related activities.

"Independent expenditure" means an expenditure made by any person or political committee which is not made to, controlled by, coordinated with, or made upon consultation with a candidate, his campaign committee, or an agent of the candidate or his campaign committee.

"In-kind contribution" means the donation of goods, services, property, or anything else of value, other than money, that is offered for free or less than the usual and normal charge. The basis for arriving at the dollar value of an in-kind donation is as follows: new items are valued at retail value; used items are valued at fair market value; and services rendered are valued at the actual cost of service per hour.

"Person" means any individual or corporation, partnership, business, labor organization, membership organization, association, cooperative, or other like entity.

"Political action committee" means any organization, other than a campaign committee or political party committee, established or maintained in whole or in part to receive and expend contributions for political purposes.

"Political committee" means any state political party committee, congressional district political party committee, county or city political party committee for a county or city with a population of more than 100,000, organized political party group of elected officials, political action committee, other committee, person or group of persons which receives contributions or makes expenditures for the purpose of influencing the outcome of any election. The term shall not include: (i) a campaign committee; (ii) a political party committee exempted pursuant to § 24.2-911; or (iii) a person who receives no contributions from any source and whose only expenditures are made solely from his own funds and are either contributions made by him which are reportable by the recipient pursuant to Article 4 (§ 24.2-914 et seq.) of this chapter or independent expenditures which are reportable by him to the extent required by subsection B of § 24.2-910 or § 24.2-919.1, or a combination of such reportable contributions and independent expenditures.

B. For the purpose of applying the filing and reporting requirements of Article 3 (§ 24.2-908 et seq.) and Article 4 of this chapter, the terms "person," "political action committee," and "political committee" shall not include an organization holding tax-exempt status under § 501 (c) (3) of the United States Internal Revenue Code which, in providing information to voters, does not advocate or endorse the election or defeat of a particular candidate, group of candidates, or the candidates of a particular

60 political party.

61 § 24.2-914. Information to be included on report of contributions and expenditures.

62 A. The report required by this chapter shall be filed on a form prescribed by the State Board and
63 shall include all contributions and expenditures. All completed forms shall be submitted in typed,
64 printed, or legibly hand printed format or as provided in § 24.2-914.1. Except as provided by § 24.2-910
65 for certain political committees, reports required by this chapter shall be received by the State Board,
66 local electoral board, or both, by the deadline for filing the report. The State Board shall provide
67 instructions to filers for delivery of reports within the time periods prescribed by law. The State Board
68 shall provide instructions for candidates who seek election for successive terms in the same office for
69 the filing of reports within each appropriate election cycle for the office and for the aggregation of
70 contributions and expenditures within each election cycle. Solely for the purpose of filing reports
71 pursuant to this section, an incumbent with any activity to report in a new election cycle shall be
72 presumed to be a candidate for reelection in the succeeding election. Persons submitting the forms shall
73 do so subject to felony penalties for making false statements pursuant to § 24.2-1016.

74 B. The report of receipts shall include:

75 1. The total number of contributors, each of whom has contributed an aggregate of \$100 or less,
76 including cash and in-kind contributions, as of the date of the report, and the total amount of
77 contributions from all such contributors;

78 2. For each contributor who has contributed an aggregate of more than \$100, including cash and
79 in-kind contributions, as of the date of the report, the name of the contributor, listed alphabetically, the
80 address of the contributor, the amount of the contribution included in the schedule of receipts, the
81 aggregate amount of contributions from the contributor to date, and the date of the last contribution. For
82 each such individual contributor, the occupation of the contributor, the name of his employer or
83 principal business, and the locality where employed or where his business is located. For each such
84 contributor, other than an individual, the place of business and principal business activity of the
85 contributor. For each such contributor other than an individual, it shall be sufficient to list the address of
86 the contributor one time on the report of receipts.

87 C. The report of disbursements shall include all expenditures and give:

- 88 1. The name and address of the person paid;
89 2. A brief description of the purpose of the expenditure;
90 3. The name of the person contracting for or arranging the expenditure;
91 4. The amount of the expenditure; and
92 5. The date of the expenditure.

93 The report of disbursements shall itemize any expenditure made by credit card payment.

94 D. *The report of disbursements shall include a schedule for reporting in-kind contributions. The*
95 *schedule shall include:*

96 1. *The name and address of each candidate or political committee that received an in-kind*
97 *contribution;*

98 2. *A brief description of the purpose of the contribution, including the name of each candidate*
99 *supported or opposed;*

100 3. *The name of the person contracting for or arranging the contribution;*

101 4. *The value of the in-kind contribution attributable to each candidate or political committee and the*
102 *amount of funds expended if different from the value;*

103 5. *The date that the in-kind contribution was provided or first disseminated, mailed, broadcast, or*
104 *published; and*

105 6. *The name, address, and occupation or business of the person or persons that received payment for*
106 *providing goods or services in connection with the in-kind contribution.*

107 *For the purposes of this section, "advertisement" means any message appearing in the print media,*
108 *on television, or on radio and shall be deemed an advertisement for purposes of Chapter 9.2*
109 *(§ 24.2-941 et seq.) of this title. The terms "print media," "television," and "radio" shall be defined as*
110 *stated in § 24.2-942.*

111 E. Each report for a candidate shall list separately those receipts and expenditures reported to the
112 candidate or his treasurer by any person, political committee, or political party committee pursuant to
113 § 24.2-907 and shall set forth in each instance the source of the information reported.

114 EF. The report shall list separately all loans and, for each loan, shall give:

- 115 1. The date the loan was made;
116 2. The name and address of the person making the loan and any person who is a co-borrower,
117 guarantor, or endorser of the loan;
118 3. The amount of the loan;
119 4. The date and amount of any repayment of the loan; and
120 5. For any loan or part of a loan that is forgiven by the lender, the amount forgiven listed as both a
121 contribution and loan repayment.

§ 24.2-919.1. Large in-kind contributions or independent expenditures made or received prior to an election; disclosure requirements.

A. The provisions of this section shall be applicable:

1. To any person, candidate committee, or political committee that makes an in-kind contribution (i) to any candidate, campaign committee, or political committee in the 30 days before a primary or special election or in the 60 days before a general election, (ii) with an aggregate value attributable to any candidate or political committee greater than \$5,000 in a statewide election or \$2,500 in any other election, and (iii) for the purpose of paying for any advertisement referring to a clearly identified candidate by name, description, or other reference and which is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate;

2. To any person, campaign committee, or political committee that makes independent expenditures (i) in the 30 days before a primary or special election or in the 60 days before a general election, (ii) with an aggregate value attributable to any candidate or political committee greater than \$5,000 in a statewide election or \$2,500 in any other election, and (iii) for the purpose of paying for any advertisement referring to a clearly identified candidate by name, description, or other reference and which is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate; and

3. To a candidate who receives an in-kind contribution from a person, campaign committee, or political committee subject to subdivision A 1 of this section.

B. For the purposes of this section, "advertisement" means any message appearing in the print media, on television, or on radio and shall be deemed an advertisement for purposes of Chapter 9.2 (§ 24.2-941 et seq.) of this title. The terms "print media," "television," and "radio" shall be defined as stated in § 24.2-942.

C. In addition to any other applicable filing and reporting requirements pursuant to this chapter, any person, campaign committee, political committee, or candidate who makes or receives in-kind contributions or makes independent expenditures in the 30 days before a primary or special election or 60 days before a general election and who is subject to the provisions of this section shall report the in-kind contribution or independent expenditure as required by this section. The report shall be filed in writing as provided in § 24.2-914 or electronically pursuant to § 24.2-914.1 by the end of the next business day after the day on which the advertisement related to the contribution or expenditure was first disseminated, mailed, broadcast, or published. Additional reports shall be required for each subsequent aggregate total in excess of the thresholds stated in subsection A. In-kind contributions and independent expenditures reported pursuant to this section shall be included in the next periodic report required pursuant to this chapter.

D. In-kind contributions and independent expenditures subject to this section shall be reported on a form prescribed by the State Board. The form shall include:

1. The name and address of the person, campaign committee, or political committee that made the in-kind contribution or independent expenditure; or, in the case of a form filed by a candidate who received the in-kind contribution, the name of the candidate;

2. A brief description of the purpose of the contribution or expenditure including the name of each candidate supported or opposed;

3. The name of the person contracting for or arranging any advertisement related to the contribution or expenditure;

4. The value of the contribution or expenditure and the amount of funds expended if different from the value;

5. The date that any advertisement related to the contribution or expenditure was first disseminated, mailed, broadcast, or published; and

6. The name, address, and occupation or business of the person or persons that received payment for providing goods or services in connection with the in-kind contribution.

E. A political committee subject to the provisions of this section shall also be subject to the provisions of §§ 24.2-908, 24.2-910, and 24.2-914.

F. For an in-kind contribution to a candidate of an advertisement subject to Chapter 9.2 (§ 24.2-941 et seq.) of this title, the advertisement shall include the visual legend stating "Authorized by [name of candidate], candidate for [name of office]."

§ 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 fifty dollars, unless a greater penalty is imposed as follows:

1. 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.

2. In the case of a violation of Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title, that relates to

183 the failure to file a required report by the deadline specified in Article 4, he shall be assessed a civil
184 penalty not to exceed \$500. In the case of a second or any subsequent such violation pertaining to one
185 election cycle, he shall be assessed a civil penalty of \$500 for each such failure to file. The State Board
186 shall assess the civil penalty imposed by this subdivision and shall notify the public through the global
187 information system known as the Internet of the violation and identity of the violator.

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

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

194 Upon notice of a violation of this chapter by the State Board or the general registrar or local
195 electoral board, as appropriate, the attorney for the Commonwealth shall initiate civil proceedings to
196 enforce the civil penalties provided herein. Any civil penalties collected pursuant to action by the State
197 Board shall be payable to the State Treasurer for deposit to the general fund; and any civil penalties
198 collected pursuant to action by a general registrar or local electoral board shall be payable to the
199 treasurer of the locality for deposit to its general fund. The statute of limitations applicable to a violation
200 of this chapter is stated in § 19.2-8. There shall be a rebuttable presumption that the violation of this
201 chapter was willful if the violation is based on a person's failure to file a report required by this chapter
202 and his failure to file continues for more than 60 days following his actual receipt of written notice of
203 his failure to file sent to him by certified mail, return receipt requested, by the State Board or an
204 electoral board.

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

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

219 D. The additional periods for filing specified in subsections B and C shall apply only to the
220 completion of a timely filed report and not to any case of a failure to file a required report by the
221 deadline specified in this chapter. In the case of a failure to file a required report by the specified
222 deadline, the length of the delinquency shall be a factor in determining the amount of the civil penalty
223 assessed. The State Board shall notify the public through the global information system known as the
224 Internet of any violation based on the failure to file a required report by a candidate for statewide office
225 or the General Assembly and the identity of the violator.

226 E. In the case of a failure to file the report of any large preelection contribution required by
227 § 24.2-919, or the late or incomplete filing of such a report, there shall be a rebuttable presumption that
228 the violation was willful. The provisions of subsections B and C of this section shall not apply to
229 reports required by § 24.2-919.

230 *F. In the case of a violation of § 24.2-919.1 for a failure to file or the late filing of the required*
231 *report for in-kind contributions or independent expenditures by the deadline stated in § 24.2-919.1, the*
232 *candidate, person, campaign committee, or political committee shall be assessed a civil penalty not to*
233 *exceed \$2,500 for a first violation. In the case of any subsequent violation pertaining to the same*
234 *election cycle, the candidate, person, campaign committee, or political committee shall be assessed a*
235 *civil penalty not to exceed \$5,000 for each subsequent violation. In the case of a violation of*
236 *§ 24.2-919.1, there shall be a rebuttable presumption that the violation was willful. The provisions of*
237 *subsections B and C of this section shall not apply to reports required by § 24.2-919.1.*