

HOUSE BILL 241

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6lr2201
CF SB 408

By: **Delegates Rosenberg and A. Washington**

Introduced and read first time: January 25, 2016

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 23, 2016

CHAPTER _____

1 AN ACT concerning

2 **Election Law – State Elected Officials – Campaign Fund–Raising During**
3 **General Assembly Session – Civil Penalty**

4 FOR the purpose of clarifying that certain persons are prohibited from soliciting a
5 contribution during the General Assembly session; authorizing the State Board of
6 Elections to impose a civil penalty for a violation by a campaign finance entity of the
7 prohibition on fund–raising during the General Assembly session; authorizing the
8 State Board to impose a lesser civil penalty than prescribed by law for certain
9 violations under certain circumstances; repealing provisions of law that authorized
10 the State Board, represented by the State Prosecutor, to institute a civil action in a
11 circuit court against a campaign finance entity for a violation of the prohibition on
12 fund–raising during the General Assembly session; and generally relating to
13 campaign fund–raising during the General Assembly session and civil penalties.

14 BY repealing and reenacting, with amendments,
15 Article – Election Law
16 Section 13–235 and 13–604.1
17 Annotated Code of Maryland
18 (2010 Replacement Volume and 2015 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
20 That the Laws of Maryland read as follows:

21 **Article – Election Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 13-235.

2 (a) This section applies to the following officials:

3 (1) the Governor;

4 (2) the Lieutenant Governor;

5 (3) the Attorney General;

6 (4) the Comptroller; and

7 (5) a member of the General Assembly.

8 (b) Except as provided in subsection (c), (d), or (e) of this section, during a regular
9 session of the General Assembly an official described in subsection (a) of this section, or a
10 person acting on behalf of the official, may not, as to a candidate for federal, State, or local
11 office, or a campaign finance entity of the candidate or any other campaign finance entity
12 organized under this title and operated in coordination with a candidate:

13 (1) receive a contribution;

14 (2) conduct a fund-raising event;

15 (3) solicit ~~or sell a ticket to a fund-raising event~~ **A CONTRIBUTION**; or

16 (4) deposit or use any contribution of money that was not deposited prior
17 to the session.

18 (c) An official described in subsection (a) of this section, or a person acting on
19 behalf of the official, is not subject to this section when engaged in activities solely related
20 to the official's election to an elective federal or local office for which the official is a filed
21 candidate.

22 (d) Under the Public Financing Act, a gubernatorial ticket, during the year of the
23 election only, may accept eligible private contributions and any disbursement of funds by
24 the State Board that is based on the eligible private contributions.

25 (e) An official described in subsection (a) of this section, or a person acting on
26 behalf of the official, may deposit a contribution during the legislative session if the
27 contribution was made electronically before the start of the session.

28 (f) (1) As to a violation of this section, the campaign finance entity of the
29 official in violation is liable for a civil penalty as provided in [this subsection] ~~§ 13-604~~ §
30 **13-604.1 OF THIS TITLE.**

1 [(2) The State Board, represented by the State Prosecutor, may institute a
2 civil action in the circuit court for any county seeking the civil penalty provided in this
3 subsection.

4 (3) A campaign finance entity that receives a contribution as a result of the
5 violation shall:

6 (i) refund the contribution to the contributor; and

7 (ii) pay a civil penalty that equals the sum of \$1,000 plus the amount
8 of the contribution.]

9 **[(4)] (2)** A civil penalty imposed under this subsection shall be distributed
10 to the Fair Campaign Financing Fund established under § 15–103 of this article.

11 13–604.1.

12 (a) In this section, “person” includes a political committee.

13 (b) The State Board may impose a civil penalty in accordance with this section for
14 the following violations:

15 (1) making a disbursement in a manner not authorized in § 13–218(b)(2),
16 (c), and (d) of this title;

17 (2) failure to maintain a campaign bank account as required in § 13–220(a)
18 of this title;

19 (3) making a disbursement by a method not authorized in § 13–220(d) of
20 this title;

21 (4) failure to maintain detailed and accurate account books and records as
22 required in § 13–221 of this title;

23 **(5) FUND–RAISING DURING THE GENERAL ASSEMBLY SESSION IN A**
24 **MANNER NOT AUTHORIZED IN § 13–235 OF THIS TITLE;**

25 **[(5)] (6)** failure to report all contributions received and expenditures
26 made as required in § 13–304(b) of this title;

27 **[(6)] (7)** failure to include an authority line on campaign material as
28 required in § 13–401 of this title; or

29 **[(7)] (8)** failure to retain a copy of campaign material as required in §
30 13–403 of this title.

(c) A civil penalty imposed under this section for a violation specified in subsection (b) of this section is in addition to any other sanction provided by law.

(d) **(1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE** amount of a civil penalty imposed under this section may not exceed \$500 for each violation.

(2) AS TO A VIOLATION OF § 13-235 OF THIS TITLE, THE CAMPAIGN FINANCE ENTITY THAT RECEIVES A CONTRIBUTION AS A RESULT OF A VIOLATION SHALL:

(I) REFUND THE CONTRIBUTION TO THE CONTRIBUTOR; AND

(II) PAY A CIVIL PENALTY THAT EQUALS \$1,000 PLUS THE AMOUNT OF THE CONTRIBUTION, UNLESS THE STATE BOARD AT ITS DISCRETION ASSESSES A LESSER PENALTY FOR GOOD CAUSE.

(e) The civil penalty is payable to the State Board by the person charged in a citation within 20 calendar days after service of the citation.

(f) (1) Subject to paragraphs (2) and (3) of this subsection, a civil penalty imposed under this section shall be paid by the campaign finance entity.

(2) If the campaign finance entity has insufficient funds with which to pay the full amount of the civil penalty in a timely manner, after the campaign account of the finance entity is exhausted the balance of the civil penalty is the joint and several liability of the responsible officers.

(3) If a violation is committed by a person not acting on behalf of, or at the request or suggestion of, a candidate or a campaign finance entity, the civil penalty shall be paid by the person who committed the violation.

(g) The State Board may issue a citation to any person the State Board believes is committing or has committed a violation specified in subsection (b) of this section.

(h) The citation shall be served on the defendant in accordance with the Maryland Rules.

(i) The citation shall contain:

(1) the certification by the State Board attesting to the truth of the matter set forth in the citation;

(2) the name and address of the person charged;

(3) the nature, time, and place of the violation;

(4) the manner in which the violation occurred;

(5) the amount of the penalty assessed;

(6) the manner, time, and location to pay the penalty;

(7) a statement that the person receiving the citation has a right to trial in the District Court; and

(8) the effect of failing to pay the assessed fine or of failing to demand a trial within the prescribed time.

(j) (1) A person charged in a citation may elect to stand trial for the violation by notifying the State Board in writing of the person's intent to stand trial.

(2) The written notice shall be given at least 5 days before the date of payment as set forth in the citation.

(k) (1) On receipt of the written notice of intent to stand trial, the State Board shall forward to the State Prosecutor a copy of the citation and the written notice.

(2) The State Prosecutor shall forward to the District Court having venue a copy of the citation and the written notice.

(3) On receipt of the citation and the written notice:

(i) the State Prosecutor shall assume responsibility for prosecuting the violation; and

(ii) the District Court shall schedule the case for trial, notify the defendant of the trial date, and summon the defendant to appear.

(l) (1) If a person charged in a citation fails to pay the penalty by the date of payment set forth in the citation and fails to deliver to the State Board the written notice of intent to stand trial, the person is liable for the assessed penalty.

(2) The State Prosecutor, on behalf of the State Board, may double the penalty to an amount not to exceed \$1,000 and request adjudication of the case through the District Court by filing a demand for judgment on affidavit.

(m) The defendant's failure to respond to the summons of the District Court shall result in the entry of judgment against the defendant in favor of the State Board in the amount set forth in the citation if a proper demand for judgment on affidavit has been made.

(n) If a person is found by the District Court to have committed a violation:

(1) (i) the District Court shall order the person to pay the penalty set forth in the citation and may double the amount of the penalty to an amount not to exceed \$1,000;

(ii) the penalty imposed shall constitute a judgment in favor of the State Board; and

(iii) if the penalty remains unpaid for 30 days following the date of its entry, the judgment shall be enforceable in the same manner and to the same extent as other civil judgments for money unless the court has suspended or deferred payment of the penalty as provided in item (2) of this subsection;

(2) the District Court may suspend or defer the payment of any penalty under conditions that the court sets;

(3) the defendant shall be liable for the costs of the proceedings in the District Court; and

(4) the District Court may order the person to abate the violation.

(o) If a defendant fails to pay any penalty or cost imposed by the District Court without good cause, the District Court may punish the failure as contempt of court.

(p) Adjudication of a violation under this section:

(1) is not a criminal conviction; and

(2) does not impose any of the civil disabilities that arise from a criminal conviction.

(q) In a District Court proceeding relating to a violation under this section:

(1) the State Prosecutor has the burden to prove that the defendant has committed the violation by clear and convincing evidence;

(2) the District Court shall apply the evidentiary standards as provided by law or rule for the trial of civil causes;

(3) the District Court shall ensure that the defendant has received a copy of the charges against the defendant and that the defendant understands those charges;

(4) the defendant may cross-examine all witnesses who appear against the defendant, produce evidence or witnesses in the defendant's own behalf, or testify in the defendant's own behalf;

1 (5) the defendant shall be entitled to be represented by counsel of the
2 defendant's own selection and at the defendant's own expense;

3 (6) the defendant may enter a plea of guilty or not guilty of the violation as
4 charged; and

5 (7) the verdict of the District Court shall be guilty of a violation or not
6 guilty of a violation, or the District Court may, before rendering judgment, place the
7 defendant on probation.

8 (r) The State Board shall consider the following in determining the amount of a
9 penalty under this section:

10 (1) the severity of the violation for which the penalty is to be assessed;

11 (2) the good faith of the violator; and

12 (3) any history of prior violations.

13 (s) Penalties collected under this section shall be distributed to the Fair
14 Campaign Financing Fund established under § 15–103 of this article.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2016.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.