

LAWS OF DELAWARE
VOLUME 83
CHAPTER 209
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 176

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING TO ELECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8044, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8044. Tardy ~~and incomplete~~ reports.

~~(a)(1) Any reporting party who fails to file or deliver to the Commissioner any report required under this chapter shall be assessed a fine by the Commissioner of \$50 for each day that such report is tardy in delivery to the Commissioner. The Commissioner may issue a citation to a reporting party when a report required under this chapter is tardy.~~

~~(2) In the event any report required under this chapter shall be incomplete, such report shall be deemed tardy for purposes of this section. For the purposes of this section, "tardy" and "tardiness" means a report that is not filed, not filed on time, or is filed on time but incomplete.~~

~~(3) Notwithstanding the foregoing, paragraph (a)(1) of this section, a reporting party shall be is entitled to an automatic, 1-time 24-hour extension hereunder, provided such party to file a report required under this chapter if the reporting party notifies the Commissioner in writing thereof no later than 11:59 p.m. on the date such the report is due.~~

~~(4)a. The penalty for a citation issued under paragraph (a)(1) of this section is as follows:~~

~~1. An administrative penalty of \$50 for each day that the report is tardy in delivery to the Commissioner, up to a maximum of 100 days.~~

~~2. An order requiring the completion of training on the Department's electronic campaign finance reporting system.~~

~~b. The penalty under this paragraph (a)(4) is in addition to any other sanction provided by this chapter.~~

~~(5)a. A reporting party named in a citation is responsible for the administrative penalty assessed under paragraph (a)(4)a.1. of this section.~~

~~b. Notwithstanding paragraph (4)a. of this section, the administrative penalty may be paid by a political committee or political action committee for which a reporting party named in a citation is responsible for filing a report required under this chapter.~~

~~(6) The Commissioner may do the following:~~

~~a. If a reporting party has filed or corrected the tardy report, permit the reporting party to enter a payment plan to pay an administrative penalty assessed against the reporting party.~~

~~b. If an administrative penalty assessed against a reporting party totals less than \$500 and the reporting party has filed or corrected the tardy report, waive the administrative penalty assessed against the reporting party, in whole or part.~~

~~c. If a reporting party has filed or corrected the tardy report, negotiate with the reporting party to reach a settlement as to the total administrative penalty due.~~

~~(b)(1) In the event that the Commissioner determines a report is incomplete or otherwise tardy, the Commissioner shall immediately notify the reporting party thereof in writing. If the Commissioner issues a citation under subsection (a) of this section, the citation must include all of the following:~~

~~a. The name and address of the reporting party charged.~~

~~b. A statement explaining why the Commissioner has determined the report to be tardy.~~

~~c. Such notice shall state that a fine A statement that a penalty for a tardy report is an administrative penalty under subsection (a)(4) of this section and that the penalty is being assessed for each late day that the report is incomplete or otherwise tardy and, to the extent applicable, shall also specify why such report is incomplete or otherwise tardy. tardy.~~

~~d. Information on how to complete the training required under subsection (a)(4)a.2. of this section.~~

e. A statement that the reporting party receiving the citation may appeal the Commissioner's determination to the Reports Appeals Subcommittee of the State Board of Elections under § 220 of this title ("Subcommittee") within the time prescribed under subsection (c) of this section.

f. The consequences of failing to do one of the following:

1. File the tardy report, pay the penalty due, and complete training on the Department's electronic campaign finance reporting system.

2. Demand an appeal in the time prescribed under subsection (c) of this section.

(2) The Commissioner shall serve a citation on a reporting party by one of the following:

a. Personal service on the reporting party.

b. Certified mail, return receipt requested, to the reporting party's last known address and by electronic means to the reporting party's last known e-mail address.

~~(c) Upon receipt of the notice required~~ On receipt of a citation under subsection (b) of this section, ~~the a~~ reporting party ~~shall have~~ has 30 days to appeal ~~such fine~~ the citation in writing to the ~~Reports Appeals Subcommittee established under § 220 of this title.~~ Subcommittee.

(d)(1) When an appeal is timely filed under subsection (c) of this section, the Subcommittee shall do all of the following:

(1) a. Meet and conduct an appeal hearing ~~within 15 days of~~ not later than 45 days after the filing of the appeal. The Subcommittee Chair shall schedule the meeting and give notice of the meeting to the members and the reporting party that filed the appeal.

(2) b. Take testimony.

(3) c. Keep records of all evidence taken at ~~hearings~~ a hearing under this section, including a recording of the hearing by electronic or any other means standard to recording judicial or quasi-judicial hearings.

(4) d. Make and put into writing factual findings and conclusions regarding the appeal.

(5) e. Notify the reporting party of the Subcommittee's factual findings and conclusions regarding the ~~appeal,~~ appeal by mail to the reporting party's last known address ~~or~~ and by electronic means, means to the reporting party's last known e-mail address ~~within~~ not later than 10 business days ~~of~~ after the hearing on the appeal. The notice must include a statement on the consequences of failing to file the tardy report, pay the penalty due, and complete training on the Department's electronic campaign finance reporting system.

(2) The accrual and payment of the administrative penalty due and mandatory training required under subsection (a)(4) of this section is stayed pending a validly filed appeal.

(e) The reporting party ~~shall have~~ has the opportunity and burden of proof to show the ~~Reports Appeals Subcommittee,~~ by a preponderance of the evidence, that the reporting party's tardiness in filing a report required under this chapter is due to reasonable cause and not wilful neglect.

(f)(1) The payment of any fines due under this section is stayed pending a validly filed appeal. If the ~~Reports Appeals Subcommittee~~ determines that ~~such tardiness~~ a reporting party's tardiness in filing a report required under this chapter is not due to reasonable cause, or the reporting party fails to timely file an appeal, ~~such fine shall constitute~~ the administrative penalty under subsection (a)(4) of this section constitutes a debt due and owing the State, assessable by the Commissioner and recoverable against the reporting party.

(2) If the Subcommittee determines that a reporting party's tardiness in filing a report required under this chapter is not due to reasonable cause, the stay on the accrual and payment of the administrative penalty due under subsection (a)(4) of this section is immediately lifted and penalty continues to accrue until the tardy report is filed or the maximum period under subsection (a)(4)a.1. of this section is met.

(g) The ~~Reports Appeal Subcommittee~~ shall notify the Office of the Attorney General that the reporting party has failed to file a report if a tardy report is not filed or corrected ~~within~~ not later than 30 days ~~of~~ after 1 of the following:

(1) A determination by the ~~Reports Appeals Subcommittee~~ that ~~such~~ the tardiness is not due to reasonable cause.

(2) The expiration of the appeal period set forth in subsection (c) of this section.

(h) On receipt of the notice under subsection (g) of this section, the Attorney General may file charges based on the reporting party's failure to file the report that is the subject of the citation.

(i) The Commissioner shall publish all of the following information on the Department of Elections website:

(1) The name of a candidate who the Subcommittee determines has failed to file or correct a report without reasonable cause.

(2) The name of a candidate against whom the Commissioner has assessed an administrative penalty for failing to file or correct a report required by this chapter, along with the total amount of the penalty.

Section 2. Amend § 220, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 220. Reports Appeals Subcommittee of the State Board of Elections.

(c) Each Subcommittee member ~~shall~~ must receive a ~~\$50~~ \$100 stipend for each Subcommittee meeting, but ~~no~~ a member may not receive more than ~~\$250~~ \$500 in any calendar year.

Section 3. This Act takes effect on January 1 following its enactment into law.

Section 4. A fine assessed under § 8044(a) of Title 15 before the effective date of this Act is deemed an administrative penalty for the purposes of § 8044(a)(5) and (a)(6) of Title 15.

Approved September 30, 2021