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HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 78

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 § 8040, Title 15 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows.

§ 8040. Certificates of election; candidacy requirement for future elections.

(a) No certificate of election shall be granted to any candidate until the Superior Court has certified that such candidate has caused to be filed all reports required by § 8030 of this title to be filed prior to the election and has paid all fines assessed by the Commissioner under § 8044 of this title. The Commissioner shall certify to the Superior Court whether each candidate has caused to be filed all reports required by § 8030 of this title to be filed prior to the election and has paid all fines assessed by the Commissioner under § 8044 of this title.

(b) No individual may be a candidate in a subsequent election until the individual or the treasurer has, for all prior elections in which the individual was a candidate, caused to be filed all reports required by § 8030 of this title and paid all fines assessed by the Commissioner under § 8044 of this title.

Section 2. Amend § 8044, Title 15 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 8044. Tardy and incomplete reports [Effective Feb. 15, 2017]

(a) 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. In the event any report required under this chapter shall be incomplete, such report shall be deemed tardy for purposes of this section. Notwithstanding the foregoing, a reporting party shall be entitled to an automatic, 1-time 24-hour extension hereunder, provided such party notifies the Commissioner in writing thereof no later than 11:59 p.m. on the date such report is due.

(b) In the event that the Commissioner determines a report is incomplete or otherwise tardy, the Commissioner ~~shall immediately~~ shall, within 1 business day, notify the reporting party thereof in writing. Such notice shall state that a

fine 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.

(c) Upon receipt of the notice required under subsection (b) of this section, the reporting party shall have ~~30 days~~ 15 days to appeal such fine in writing to the Reports Appeals Subcommittee established under § 220 of this title.

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

(1) Meet and conduct an appeal hearing within 15 days of 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) Take testimony.

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

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

(5) Notify the reporting party of the Subcommittee's factual findings and conclusions regarding the appeal, by mail to the reporting party's last known address or electronic means, within 10 business days of the hearing on the appeal.

(e) The reporting party shall have 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) 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 is not due to reasonable cause, or the reporting party fails to timely file an appeal, such fine shall constitute a debt due and owing the State, assessable by the Commissioner and recoverable against the reporting party.

(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 30 days of 1 of the following:

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

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

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

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

52 (2) The name of any candidate against whom the Commissioner has assessed a fine for failing to file a report
53 under this chapter, along with the amount of the fine.

54 (3) The name of any candidate who the Reports Appeals Subcommittee has reported to the Attorney General
55 pursuant to subsection (g) of this section.

56 Section 3. This Act shall take effect on January 1 following its enactment into law.

SYNOPSIS

This Act improves the enforcement mechanisms related to Delaware's campaign finance disclosure laws in four ways.

First, this Act amends § 8040, Title 15 to require that the Superior Court may not grant a certificate of election to a successful candidate for office until the candidate has paid all fines assessed by the Commissioner of Elections ("Commissioner") for the candidate's wilful failure to file a required campaign finance report. And, this Act specifically requires the Commissioner to provide the Superior Court with the information necessary for the Court to perform its function.

Second, this Act further amends § 8040, Title 15 to prohibit an individual from being a candidate in a future election until all previous campaign finance reports are filed and all previously assessed fines assessed by the Commissioner are paid.

Third, this Act clarifies the timeframe in which the Commissioner must notify a candidate that a report is incomplete or tardy and decreases the time in which a candidate may appeal the Commissioner's decision to issue a fine for a tardy or incomplete report.

Fourth, this Act amends § 8044, Title 15 to require the Commissioner to publish, on the Department of Elections website, the name of any candidate who has (1) wilfully neglected to file a campaign finance report, (2) been assessed a fine by the Commissioner for wilfully neglecting to file a campaign finance report, or (3) been reported to the Office of the Attorney General by the Commissioner.