

By: Geren

H.B. No. 3682

A BILL TO BE ENTITLED

AN ACT

relating to the categorization and resolution of violations of laws enforced by the Texas Ethics Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 571.073, Government Code, is amended to read as follows:

Sec. 571.073. REPORT. On or before December 31 of each even-numbered year, the commission shall report to the governor and legislature. The report must include:

(1) each advisory opinion issued by the commission under Subchapter D in the preceding two years;

(2) a summary of commission activities in the preceding two years, including:

(A) the number of sworn complaints filed with the commission;

(B) the number of sworn complaints dismissed for noncompliance with statutory form requirements;

(C) the number of sworn complaints dismissed for lack of jurisdiction;

(D) the number of sworn complaints dismissed after a finding of no credible evidence of a violation;

(E) the number of sworn complaints dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the commission has

1 occurred;

2 (F) the number of sworn complaints resolved by
3 the commission through an agreed decision [~~order~~];

4 (G) the number of sworn complaints in which the
5 commission issued a decision [~~an order~~] finding a violation and the
6 resulting penalties, if any; and

7 (H) the number and amount of civil penalties
8 imposed for failure to timely file a statement or report, the number
9 and amount of those civil penalties fully paid, the number and
10 amount of those civil penalties partially paid, and the number and
11 amount of those civil penalties no part of which has been paid, for
12 each of the following category of statements and reports, listed
13 separately:

14 (i) financial statements required to be
15 filed under Chapter 572;

16 (ii) political contribution and
17 expenditure reports required to be filed under Section 254.063,
18 254.093, 254.123, 254.153, or 254.157, Election Code;

19 (iii) political contribution and
20 expenditure reports required to be filed under Section 254.064(b),
21 254.124(b), or 254.154(b), Election Code;

22 (iv) political contribution and
23 expenditure reports required to be filed under Section 254.064(c),
24 254.124(c), or 254.154(c), Election Code;

25 (v) political contribution and expenditure
26 reports required to be filed under Section 254.038 or 254.039,
27 Election Code; and

(vi) political contribution and expenditure reports required to be filed under Section 254.0391, Election Code; and

(3) recommendations for any necessary statutory changes.

SECTION 2. Section 571.076, Government Code, is amended to read as follows:

Sec. 571.076. CONTRACT FOR ADMINISTRATION. The commission may contract with persons to administer and carry out this chapter and rules, standards, ~~and~~ orders, and decisions adopted under this chapter, excluding any enforcement authority.

SECTION 3. Section 571.1211, Government Code, is amended to read as follows:

Sec. 571.1211. DEFINITIONS. In this subchapter, "campaign
[÷

~~[(1) "Campaign]~~ communication" and "political advertising" have the meanings assigned by Section 251.001, Election Code.

~~[(2) "Category One violation" means a violation of a law within jurisdiction of the commission as to which it is generally not difficult to ascertain whether the violation occurred or did not occur, including:~~

~~[(A) the failure by a person required to file a statement or report to:~~

~~[(i) file the required statement or report in a manner that complies with applicable requirements; or~~

~~[(ii) timely file the required statement or~~

1 ~~report,~~

2 [~~(B) a violation of Section 255.001, Election~~
3 ~~Code,~~

4 [~~(C) a misrepresentation in political~~
5 ~~advertising or a campaign communication relating to the office held~~
6 ~~by a person in violation of Section 255.006, Election Code,~~

7 [~~(D) a failure to include in any written~~
8 ~~political advertising intended to be seen from a road the~~
9 ~~right-of-way notice in violation of Section 255.007, Election Code,~~

10 ~~or~~

11 [~~(E) a failure to timely respond to a written~~
12 ~~notice under Section 571.123(b).~~

13 [~~(3) "Category Two violation" means a violation of a~~
14 ~~law within the jurisdiction of the commission that is not a Category~~
15 ~~One violation.]~~

16 SECTION 4. Subchapter E, Chapter 571, Government Code, is
17 amended by adding Section 571.1213 to read as follows:

18 Sec. 571.1213. CATEGORIZATION OF VIOLATIONS. (a) The
19 commission staff shall categorize, in ascending order of
20 seriousness, each violation of law alleged in a sworn complaint or
21 on a motion of the commission as:

22 (1) a technical, clerical, or de minimis violation;

23 (2) an administrative or filing violation; or

24 (3) a more serious violation.

25 (b) The commission shall adopt rules defining what
26 violations of law are included in each category of violation.

27 SECTION 5. Subchapter E, Chapter 571, Government Code, is

1 amended by adding Section 571.1214 to read as follows:

2 Sec. 571.1214. RESOLUTION OF VIOLATIONS. (a) The
3 commission staff and the commission shall resolve a sworn complaint
4 or motion in the form corresponding to the most serious category of
5 violation alleged in the complaint or motion as provided in this
6 section.

7 (b) A complaint or motion alleging a technical, clerical, or
8 de minimis violation must be resolved in a letter of
9 acknowledgment.

10 (c) A complaint or motion alleging an administrative or
11 filing violation must be resolved in a notice of administrative or
12 filing error.

13 (d) A complaint or motion alleging a more serious violation
14 must be resolved in a notice of violation.

15 SECTION 6. Section 571.124(e), Government Code, is amended
16 to read as follows:

17 (e) If the executive director determines that the
18 commission has jurisdiction, the notice under Section 571.123(b)
19 must include:

20 (1) a statement that the commission has jurisdiction
21 over the violation of law alleged in the complaint;

22 (2) a statement of whether the complaint will be
23 processed as a technical, clerical, or de minimis violation, an
24 administrative or filing violation, or a more serious violation
25 ~~[Category One violation or a Category Two violation, subject to~~
26 ~~reconsideration as provided for by Section 571.1212];~~

27 (3) the date by which the respondent is required to

1 respond to the notice;

2 (4) a copy of the complaint and the rules of procedure
3 of the commission;

4 (5) a statement of the rights of the respondent;

5 (6) a statement inviting the respondent to provide to
6 the commission any information relevant to the complaint; and

7 (7) a statement that a failure to timely respond to the
8 notice will be treated as a separate violation.

9 SECTION 7. Sections 571.1242(a), (b), (c), and (d),
10 Government Code, are amended to read as follows:

11 (a) If the alleged violation is a technical, clerical, or de
12 minimis [~~Category One~~] violation:

13 (1) the respondent must respond to the notice required
14 by Section 571.123(b) not later than the 10th business day after the
15 date the respondent receives the notice; and

16 (2) if the matter is not resolved by agreement between
17 the commission and the respondent before the 30th business day
18 after the date the respondent receives the notice under Section
19 571.123(b), the commission shall set the matter for a preliminary
20 review hearing to be held at the next commission meeting for which
21 notice has not yet been posted.

22 (b) If the alleged violation is an administrative or filing
23 violation or a more serious [~~a Category Two~~] violation:

24 (1) the respondent must respond to the notice required
25 by Section 571.123(b) not later than the 25th business day after the
26 date the respondent receives the notice under Section 571.123(b);
27 and

1 (2) if the matter is not resolved by agreement between
2 the commission and the respondent before the 75th business day
3 after the date the respondent receives the notice under Section
4 571.123(b), the commission shall set the matter for a preliminary
5 review hearing to be held at the next commission meeting for which
6 notice has not yet been posted.

7 (c) A respondent's failure to timely respond as required by
8 Subsection (a)(1) or (b)(1) is a [~~Category One~~] violation.

9 (d) The response required by Subsection (a) or (b) must
10 include any challenge the respondent seeks to raise to the
11 commission's exercise of jurisdiction. In addition, the respondent
12 may:

13 (1) acknowledge the occurrence or commission of a
14 violation;

15 (2) deny the allegations contained in the complaint
16 and provide evidence supporting the denial; or

17 (3) agree to enter into an assurance of voluntary
18 compliance or other agreed decision [~~order~~], which may include an
19 agreement to immediately cease and desist.

20 SECTION 8. Section 571.126(a), Government Code, is amended
21 to read as follows:

22 (a) As soon as practicable after the completion of a
23 preliminary review hearing, the commission by vote shall issue a
24 decision stating:

25 (1) whether there is credible evidence for the
26 commission to determine that a violation within the jurisdiction of
27 the commission has occurred and whether the violation is a

1 technical, clerical, or de minimis violation, an administrative or
2 filing violation, or a more serious violation; or

3 (2) that there is insufficient evidence for the
4 commission to determine whether a violation within the jurisdiction
5 of the commission has occurred.

6 SECTION 9. Section 571.139(c), Government Code, is amended
7 to read as follows:

8 (c) Subchapters C through H, Chapter 2001, apply only to a
9 formal hearing under this subchapter, the resolution of a formal
10 hearing, and the appeal of a final decision [~~order~~] of the
11 commission, and only to the extent consistent with this chapter.

12 SECTION 10. Section 571.140(b), Government Code, is amended
13 to read as follows:

14 (b) A notice of administrative or filing error or a notice
15 of violation [~~An order~~] issued by the commission after the
16 completion of a preliminary review or hearing [~~determining that a~~
17 ~~violation other than a technical or de minimis violation has~~
18 ~~occurred~~] is not confidential. A letter of acknowledgment issued
19 by the commission after the completion of a preliminary review or
20 hearing is confidential.

21 SECTION 11. Section 571.141, Government Code, is amended to
22 read as follows:

23 Sec. 571.141. AVAILABILITY OF NOTICES OF ADMINISTRATIVE OR
24 FILING ERROR AND NOTICES OF VIOLATION [~~COMMISSION ORDERS~~] ON
25 INTERNET. (a) As soon as practicable following a preliminary
26 review, preliminary review hearing, or formal hearing at which the
27 commission determines that a person has committed a violation

1 within the commission's jurisdiction, the commission shall make
2 available on the Internet:

3 (1) a copy of the notice of administrative or filing
4 error or notice of violation issued by the commission [~~commission's~~
5 ~~order stating the determination~~]; or

6 (2) a summary of the notice [~~commission's order~~].

7 (b) This section does not apply to a letter of
8 acknowledgment [~~determination of a violation that is technical or~~
9 ~~de minimis~~].

10 SECTION 12. Section 571.142(a), Government Code, is amended
11 to read as follows:

12 (a) This section applies only to a sworn complaint if:

13 (1) the complaint was filed after the 30th day before
14 the date of an election;

15 (2) the respondent is a candidate in the election; and

16 (3) the complaint alleges an administrative or filing
17 [a] violation or a more serious violation [~~other than a technical or~~
18 ~~clerical violation~~].

19 SECTION 13. Section 571.173, Government Code, is amended to
20 read as follows:

21 Sec. 571.173. CIVIL PENALTY FOR DELAY OR VIOLATION. The
22 commission may impose a civil penalty of not more than \$5,000 or
23 triple the amount at issue under a law administered and enforced by
24 the commission, whichever amount is more, for a delay in complying
25 with a commission order or decision or for a violation of a law
26 administered and enforced by the commission.

27 SECTION 14. Section 571.1212, Government Code, is repealed.

1 SECTION 15. (a) Not later than December 1, 2015, the Texas
2 Ethics Commission shall adopt any rules necessary to implement the
3 changes in law made by this Act.

4 (b) The changes in law made by this Act apply only to a sworn
5 complaint filed with the Texas Ethics Commission under Section
6 571.122, Government Code, or a motion adopted by the commission
7 under Section 571.124(b), Government Code, on or after December 1,
8 2015. A sworn complaint filed with the Texas Ethics Commission
9 under Section 571.122, Government Code, or a motion adopted by the
10 commission under Section 571.124(b), Government Code, before that
11 date is governed by the law in effect on the date the complaint is
12 filed or the motion is adopted, and the former law is continued in
13 effect for that purpose.

14 SECTION 16. This Act takes effect September 1, 2015.