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## SENATE BILL NO. 1244

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Scott  
on February 22, 2001)

(Patron Prior to Substitute—Senator Watkins)

A *BILL to amend and reenact §§ 24.2-1013 and 24.2-1014 of the Code of Virginia, relating to campaign advertisements; identification and authorization requirements; penalties.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-1013 and 24.2-1014 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-1013. Publications not to receive compensation for advocating candidacy; penalties.

A. It shall be unlawful for any owner, proprietor, editor, manager, officer, clerk, agent, reporter, or employee of any newspaper, magazine, or periodical printed or published in this Commonwealth to accept or receive or agree to accept or receive, for himself or another, any money or other valuable consideration for such newspaper, magazine, or other periodical supporting or advocating the election or defeat of any candidate. But nothing in this section shall prevent any person, firm, or corporation engaged in the publication of any newspaper, magazine or periodical from receiving from any person compensation for printing and publishing any matter, article or articles advocating the election or defeat of any candidate, if a statement, "Paid Advertisement," appears in plain type in boldface Roman capitals in a conspicuous place at the beginning of the matter or article and the matter or article otherwise complies with the provisions of § 24.2-1014.

B. *The person accepting a "Paid Advertisement" for the newspaper, magazine or periodical shall require, and for one year shall retain a copy of, proof of the identity of the person who submits the advertisement for publication when the authorization statement on the advertisement is made by a sponsor other than a candidate, candidate campaign committee, political party committee, or political action committee as defined in § 24.2-1014. Proof of identity shall be submitted either (i) in person and include a valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States, or (ii) other than in person, in which case, the person submitting the advertisement shall provide a telephone number and the person accepting the advertisement may phone the person to verify the validity of the person's identifying information before publishing the advertisement.*

C. Any such owner, proprietor, editor, manager, officer, clerk, agent, reporter, or employee violating the provisions of subsections A or B shall be subject to a civil penalty not to exceed fifty dollars; and, in the case of a willful violation, he shall be guilty of a Class 1 misdemeanor. The procedure to enforce the civil penalty provided in this section shall be as stated in § 24.2-929.

§ 24.2-1014. Identifying persons responsible for campaign advertisements; penalties.

A. As used in this section "advertisement" includes any printed or otherwise reproduced material that contains a statement or statements made for the purpose of influencing the outcome of an election for public office, but shall not include: (i) editorial comment or news coverage that is sponsored and financed by the news medium publishing or broadcasting it; (ii) novelties, authorized by the candidate, including, but not limited to, pens, pencils, and buttons to be attached to wearing apparel; or (iii) signs and billboards larger than six square feet in area and authorized by the candidate that show only the candidate's name and one or more of the following facts: the candidate's political party, the elected office held, the elected office sought, or the date of the election.

B. It shall be unlawful for any person to cause any advertisement other than a television or radio broadcast to appear concerning any clearly identified candidate unless such advertisement plainly identifies the person or entity responsible for it. The advertisement shall carry the statement "authorized by: - - -" and contain the following information to complete the statement:

1. The name of the candidate if the advertisement is authorized by the candidate or his campaign committee;

2. The name of the political party committee if the advertisement is authorized by that committee; or

3. If authorized by any person other than the candidate, his campaign committee, or a political party committee, either:

a. In the case of a committee that has filed a statement of organization under § 24.2-908, the full name of the committee and a registration number provided by the State Board; or

b. In any other case, the full name and residence address of the individual responsible for the advertisement.

C. It shall be unlawful for any person to use a false or fictitious name or address on any such advertisement described in subsection B.

D. It shall be unlawful for any person to cause any radio or television or other electronically

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transmitted statement to appear concerning any clearly identified candidate unless the advertisement or statement contains information that plainly identifies the candidate, committee, individual, or entity responsible for it.

E. Any person violating any provision of this section shall be subject to a civil penalty not to exceed fifty dollars; and, in the case of a willful violation, he shall be guilty of a Class 1 misdemeanor. The procedure to enforce the civil penalty provided in this section shall be as stated in § 24.2-929. The violation of this section shall not void any election.

B. This subsection sets out the basic requirements for political campaign advertisements.

It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an expenditure or contribution required to be disclosed under Chapter 9 (§ 24.2-900 et seq.) of this title unless all the following conditions are met:

1. It bears the legend or includes the statement: "Paid for by \_\_\_\_\_ [Name of candidate, candidate campaign committee, political party committee, political action committee, individual, or other sponsor]." In television advertisements, this disclosure shall be made by visual legend.

2. The name used in the labeling required in subdivision 1 for a political party committee contains the name of the political party and for a political action committee is the name that appears on the statement of organization as required in § 24.2-908.

3. In an advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either "Authorized by [name of candidate], candidate for [name of office]" or "Not authorized by a candidate." This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

4. In an advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the advertisement or the expenditure for it with the candidate who is intended to benefit or with that candidate's campaign committee.

5. If an advertisement described in this subsection is jointly sponsored, the disclosure statement shall name all the sponsors.

In a print media advertisement covered by this subsection, the height of all disclosure statements required by this subsection shall constitute at least five percent of the height of the printed space of the advertisement. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this subsection applies only to one page, fold, or face. In a television advertisement covered by this subsection, the visual disclosure legend shall constitute twenty scan lines in size. In a radio advertisement covered by this subsection, the disclosure statement shall last at least three seconds.

Any candidate, candidate campaign committee, political party committee, political action committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by this subsection that intentionally misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor.

The person accepting an advertisement for a radio or television outlet shall require, and for one year shall retain a copy of, proof of identity of the person who submits the advertisement for broadcast when the authorization statement on the advertisement is made by an individual or entity other than a candidate, candidate campaign committee, political party committee, or political action committee. Proof of identity shall be submitted either (i) in person and include a valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States, or (ii) other than in person, in which case, the person submitting the advertisement shall provide a telephone number and the person accepting the advertisement may phone the person to verify the validity of the person's identifying information before broadcasting the advertisement.

Television or radio outlets shall not be liable under this subsection for carriage of political advertisements that fail to include the disclosure requirements provided for in this section. This provision supercedes any contrary provisions of the Code of Virginia.

C. This subsection sets out additional requirements for television campaign advertisements. In addition to the basic identification requirements of subsection B, any political campaign advertisement on television shall comply with the expanded disclosure requirements set out in this subsection.

1. Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate containing at least the following words: "I am (or 'This is. . .') [name of candidate], candidate for [name of office], and I (or 'my campaign') sponsored this ad."

2. Television advertisements purchased by a political party committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement

spoken by the chair, executive director, or treasurer of the political party committee containing at least the following words: "The [name of political party committee] sponsored this ad." The disclosed name of the political party committee shall include the name of the political party.

3. Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee containing at least the following words: "The [name of political action committee] political action committee sponsored this ad." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in § 24.2-908.

4. Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual containing at least the following words: "I am [individual's name], and I sponsored this ad."

5. Television advertisements purchased by a sponsor (other than a candidate, a candidate campaign committee, a political party committee, political action committee, or an individual) supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision-maker of the sponsor containing at least the following words: "[Name of sponsor] sponsored this ad."

6. In any television advertisement described in subdivisions 1 through 5, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the disclosure statement.

D. This subsection sets out additional requirements for radio campaign advertisements. In addition to the basic identification requirements of subsection B, any political campaign advertisement on radio shall comply with the expanded disclosure requirements set out in this subsection.

1. Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate containing at least the following words: "I am (or 'This is. . .') [name of candidate], candidate for [name of office], and this ad was paid for (or 'sponsored by' or 'furnished by') [name of candidate campaign committee that paid for the advertisement]."

2. Radio advertisements purchased by a political party committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party committee containing at least the following words: "This ad was paid for (or 'sponsored by' or 'furnished by') [name of political party committee]." The disclosed name of the political party committee shall include the name of the political party.

3. Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee containing at least the following words: "This ad was paid for (or 'sponsored by' or 'furnished by') [name of political action committee]." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in § 24.2-908.

4. Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual containing at least the following words: "I am [individual's name], and I sponsored this ad."

5. Radio advertisements purchased by a sponsor (other than a candidate, a candidate campaign committee, a political party committee, political action committee, or an individual) supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision-maker of the sponsor containing at least the following words: "[Name of sponsor] paid for (or 'sponsored' or 'furnished') this ad."

E. In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. Any visual disclosure legend shall be at least twenty scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

F. In its oral disclosure statement, a sponsoring political party committee, political action committee, individual, or other noncandidate sponsor may choose to identify an advertisement as either supporting or opposing the nomination or election of one or more clearly identified candidates.

G. If an advertisement described in this section is jointly sponsored, the disclosure statement shall

183 name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one  
184 of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the  
185 sponsor, at least one of the candidates shall be the disclosing individual.

186 H. Pursuant to the conditions established in subdivisions 1, 2, and 3, a candidate for an elected  
187 office who complied with the television and radio disclosure requirements throughout that candidate's  
188 entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or  
189 candidate campaign committee whose television or radio advertisement violates these disclosure  
190 requirements and (ii) against any political party committee, political action committee, individual, or  
191 other sponsor whose advertisement for that elective office violates these disclosure requirements:

192 1. Any plaintiff candidate in a statewide campaign in an action under this section shall complete and  
193 file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising  
194 with the State Board of Elections after the airing of the advertisement but no later than the first Friday  
195 after the Tuesday on which the election occurred. A plaintiff candidate in any other campaign may file  
196 the notice during the same time period with a local electoral board with jurisdiction in the election  
197 district in which he is a candidate. The timely filing of this notice preserves the candidate's right to  
198 bring an action in the circuit court any time within ninety days after the election. A candidate shall  
199 bring the civil action in the county or city where the candidate filed the notice.

200 2. On receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall  
201 receive a monetary award of actual damages. The price of actual damages shall be calculated as the  
202 total dollar amount of television and radio advertising time that was aired and that the plaintiff  
203 candidate correctly identifies as being in violation of the disclosure requirements of this section. The  
204 plaintiff candidate shall also receive an award that trebles the amount of actual damages if (i) the  
205 plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement  
206 properly by return-receipt mail about the failure of a particular advertisement or advertisements to  
207 comply with the disclosure requirements of this section and (ii) after the notice or attempted notice, the  
208 advertisement continued to be aired. The treble damages shall be calculated from the date on which the  
209 return-receipt notice was accepted or rejected by a defendant sponsor. The plaintiff candidate or  
210 candidate campaign committee shall send a copy of any return-receipt mailing to the appropriate State  
211 Board or local electoral board as provided in subdivision 1 within five days after the notice is returned  
212 to the possession of the candidate or candidate campaign committee. The court shall award reasonable  
213 attorneys' fees to a plaintiff candidate who prevails in an action under this section. The plaintiff  
214 candidate may bring the civil action personally or authorize his candidate campaign committee to bring  
215 the civil action.

216 3. A candidate who violates the disclosure requirement of this section and that candidate's campaign  
217 committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the  
218 candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall  
219 not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

220 I. Television advertisements by a sponsor supporting or opposing the nomination or election of one  
221 or more clearly identified candidates shall comply with the oral disclosure requirements of this section.  
222 Those advertisements shall also comply with the disclosure requirements under the Communications Act  
223 of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is  
224 specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 and this section. The size of  
225 those visual legends is determined by subsection E, which satisfies requirement under the  
226 Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral  
227 disclosure requirements under this section incorporate the content requirements under the  
228 Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

229 J. Television or radio outlets shall not be liable under this section for carriage of political  
230 advertisements that fail to include the disclosure requirements provided for in this section. This  
231 provision supercedes any contrary provisions of the Code of Virginia.

232 K. Nothing in this section regarding the disclosure requirements in subsections B and C shall be  
233 relied on or otherwise interpreted to create criminal liability for any person.

234 L. For purposes of this section, the following definitions shall apply.

235 "Advertisement" means any message appearing in the print media, on television, or on radio that  
236 constitutes a contribution or expenditure under Chapter 9 (§ 24.2-900 et seq.) of this title.

237 "Candidate" means "candidate" as defined in § 24.2-101.

238 "Candidate campaign committee" or "campaign committee" has the meaning defined in § 24.2-901.

239 "Full-screen" means the only picture appearing on the television screen during the oral disclosure  
240 statement that (i) contains the disclosing person, (ii) occupies all visible space on the television screen,  
241 and (iii) contains the image of the disclosing person that occupies at least fifty percent of the vertical  
242 height of the television screen.

243 "Political action committee" has the same meaning as "political committee" in § 24.2-901 except that  
244 "political action committee" does not include any political party or political party committee.

"Political party committee" means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

"Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. A "mass mailing" is a mailing with more than 500 pieces.

"Radio" means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

"Scan line" means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

"Sponsor" means a candidate, candidate campaign committee, political party committee, political action committee, individual, or other entity that purchases an advertisement.

"Television" means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

"Unobscured" means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face.

M. The disclosure requirements of this section apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution required to be disclosed under Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title except that the disclosure requirements of this section do not apply to an individual who makes uncoordinated independent expenditures aggregating less than \$1,000 in a political campaign.