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HOUSE BILL NO. 558

Offered January 9, 2002

Prefiled January 8, 2002

A BILL to amend and reenact §§ 24.2-101, 24.2-622, and 24.2-1013 of the Code of Virginia, to amend the Code of Virginia by adding in Title 24.2 a chapter numbered 9.2, consisting of sections numbered 24.2-941 through 24.2-944, and to repeal § 24.2-1014 of the Code of Virginia, relating to disclosure requirements for political campaign advertisements, definitions, and sample ballots.

Patrons—Jones, S.C., Abbitt, Albo, Armstrong, Bell, Byron, Carrico, Cosgrove, Councill, Devolites, Drake, Johnson, Keister, Kilgore, Landes, Louderback, McDonnell, Nixon, O'Bannon, Parrish, Phillips, Rapp, Reese, Saxman, Sears, Stump, Suit, Weatherholtz and Welch

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-101, 24.2-622, and 24.2-1013 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 24.2 a chapter numbered 9.2, consisting of sections numbered 24.2-941 through 24.2-944, as follows:

§ 24.2-101. Definitions.

As used in this title, unless the context requires a different meaning:

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.) and 9 (§ 24.2-900 et seq.), and 9.2 (§ 24.2-941 et seq.) of this title, "candidate" shall include any write-in candidate. However, no write-in candidate who has received less than fifteen percent of the votes cast for the office shall be eligible to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8 of this title.

"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.

"Constitutional office" or "constitutional officer" means a county or city office or officer referred to in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Election" means a general, primary, or special election.

"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.

"Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.

"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.

"Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve at a polling place for any election.

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least ten percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Polling place" means the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.

"Precinct" means the territory designated by the governing body of a county, city, or town to be served by one polling place.

"Primary" or "primary election" means an election held for the purpose of selecting a candidate to be the nominee of a political party for election to office.

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57 "Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and
 58 who is (i) eighteen years of age, (ii) a resident of the Commonwealth and of the precinct in which he
 59 offers to vote, and (iii) registered to vote. No person who has been convicted of a felony shall be a
 60 qualified voter unless his civil rights have been restored by the Governor or other appropriate authority.
 61 No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished
 62 as provided by law.

63 "Qualified voter in a town" means a person who is a resident within the corporate boundaries of the
 64 town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified
 65 voter.

66 "Referendum" means any election held pursuant to law to submit a question to the voters for
 67 approval or rejection.

68 "Registered voter" means any person who is maintained on the Virginia voter registration system. All
 69 registered voters shall be maintained on the Virginia voter registration system with active status unless
 70 assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.) of
 71 this title. For purposes of applying the precinct size requirements of § 24.2-307, calculating election
 72 machine requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6 of this title, mailing notices
 73 of local election district, precinct or polling place changes as required by subdivision 11 of § 24.2-114
 74 and § 24.2-306, and determining the number of signatures required for candidate and voter petitions,
 75 "registered voter" shall include only persons maintained on the Virginia voter registration system with
 76 active status.

77 "Registration records" means all official records concerning the registration of qualified voters and
 78 shall include all records, lists, and files, whether maintained in books, on cards, on automated data
 79 bases, or by any other legally permitted record-keeping method.

80 "Residence" or "resident," for all purposes of qualification to register and vote, means and requires
 81 both domicile and a place of abode. In determining domicile, consideration may be given to a person's
 82 expressed intent, conduct, and all attendant circumstances including, but not limited to, financial
 83 independence, business pursuits, employment, income sources, residence for income tax purposes,
 84 marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real
 85 property owned by the person, motor vehicle and other personal property registration, and other factors
 86 reasonably necessary to determine the qualification of a person to register or vote.

87 "Special election" means any election which is held pursuant to law to fill a vacancy in office or to
 88 hold a referendum.

89 "State Board" or "Board" means the State Board of Elections.

90 "Virginia voter registration system" or "voter registration system" means the automated central
 91 record-keeping system for all voters registered within the Commonwealth which is maintained as
 92 provided in Article 2 (§ 24.2-404 et seq.) of Chapter 4 of this title.

93 § 24.2-622. Sample ballots.

94 Nothing contained in this title shall be construed to prohibit: (i) the printing and circulation of
 95 sample paper ballots, which are not printed on white paper and do include thereon the words "sample
 96 ballot" in type no smaller than twenty-four point; (ii) the printing and circulation of sample voting
 97 equipment ballots, provided such sample ballots include on their face the words "sample ballot"; or (iii)
 98 the publication in newspapers of sample ballots of either type. All sample ballots, including those
 99 authorized by electoral boards, are ~~writings~~ advertisements for purposes of ~~§ 24.2-1014~~ § 24.2-941.
 100 Voters may take sample ballots into the voting booth or enclosure.

101 CHAPTER 9.2.

102 DISCLOSURE REQUIREMENTS FOR POLITICAL CAMPAIGN ADVERTISEMENTS.

103 § 24.2-941. Basic requirements for political campaign advertisements.

104 A. It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio
 105 or television that constitutes an expenditure or contribution required to be disclosed under Chapter 9
 106 (§ 24.2-900 et seq.) of this title unless all the following conditions are met:

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

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

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

118 4. In a print media 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 section is jointly sponsored, the disclosure statement shall name all the sponsors.

B. In a print media advertisement covered by subsection A, the height of all disclosure statements required by that 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 section applies only to one page, fold, or face. In a television advertisement covered by subsection A, the visual disclosure legend shall constitute twenty scan lines in size. In a radio advertisement covered by subsection A, the disclosure statement shall last at least three seconds.

C. 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 subsection A that intentionally misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor.

D. 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.

E. Television or radio outlets shall not be liable under this section 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.

§ 24.2-942. Additional requirements for radio and television campaign advertisements.

A. In addition to the basic identification requirements of § 24.2-941, any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set out in this section.

B. This subsection shall apply to political campaign advertisements on television.

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

180 *statement.*

181 *C. This subsection shall apply to political campaign advertisements on radio.*

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

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

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

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

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

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

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

218 *F. If an advertisement described in this section is jointly sponsored, the disclosure statement shall*
219 *name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one*
220 *of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the*
221 *sponsor, at least one of the candidates shall be the disclosing individual.*

222 *G. Pursuant to the conditions established in subdivisions 1, 2, and 3, a candidate for an elected*
223 *office who complied with the television and radio disclosure requirements throughout that candidate's*
224 *entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or*
225 *candidate campaign committee whose television or radio advertisement violates these disclosure*
226 *requirements and (ii) against any political party committee, political action committee, individual, or*
227 *other sponsor whose advertisement for that elective office violates these disclosure requirements:*

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

236 *2. On receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall*
237 *receive a monetary award of actual damages. The price of actual damages shall be calculated as the*
238 *total dollar amount of television and radio advertising time that was aired and that the plaintiff*
239 *candidate correctly identifies as being in violation of the disclosure requirements of this section. The*
240 *plaintiff candidate shall also receive an award that trebles the amount of actual damages if (i) the*
241 *plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement*

properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section and (ii) after the notice or attempted notice, the advertisement continued to be aired. The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsor. The plaintiff candidate or candidate campaign committee shall send a copy of any return-receipt mailing to the appropriate State Board or local electoral board as provided in subdivision 1 within five days after the notice is returned to the possession of the candidate or candidate campaign committee. The court shall award reasonable attorneys' fees to a plaintiff candidate who prevails in an action under this section. The plaintiff candidate may bring the civil action personally or authorize his candidate campaign committee to bring the civil action.

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

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

I. Television or radio outlets shall not be liable under this section 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.

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

§ 24.2-943. Definitions.

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

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

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

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

"Political action committee" has the same meaning as "political committee" in § 24.2-901 except that "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.

§ 24.2-944. Scope of disclosure requirements.

The disclosure requirements of this chapter 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 chapter do not apply to an individual who makes uncoordinated independent expenditures aggregating less than \$1,000 in a political campaign.

303 § 24.2-1013. Publications not to receive compensation for advocating candidacy; penalties.

304 A. It shall be unlawful for any owner, proprietor, editor, manager, officer, clerk, agent, reporter, or
305 employee of any newspaper, magazine, or periodical printed or published in this Commonwealth to
306 accept or receive or agree to accept or receive, for himself or another, any money or other valuable
307 consideration for such newspaper, magazine, or other periodical supporting or advocating the election or
308 defeat of any candidate. But nothing in this section shall prevent any person, firm, or corporation
309 engaged in the publication of any newspaper, magazine or periodical from receiving from any person
310 compensation for printing and publishing any matter, article or articles advocating the election or defeat
311 of any candidate, if a statement, "Paid Advertisement," appears in plain type in boldface Roman capitals
312 in a conspicuous place at the beginning of the matter or article and the matter or article otherwise
313 complies with the provisions of ~~§ 24.2-1014~~ Chapter 9.2 (§ 24.2-941 et seq.) of this title.

314 B. The person accepting a "Paid Advertisement" for the newspaper, magazine or periodical shall
315 require, and for one year shall retain a copy of, proof of the identity of the person who submits the
316 advertisement for publication when the authorization statement on the advertisement is made pursuant to
317 ~~subdivision B 3 b of § 24.2-1014~~ § 24.2-941 by an individual or entity other than a candidate,
318 candidate campaign committee, political party committee, or political action committee. Proof of
319 identity shall be submitted either (i) in person and include a valid Virginia driver's license, or any other
320 identification card issued by a government agency of the Commonwealth, one of its political
321 subdivisions, or the United States, or (ii) other than in person, in which case, the person submitting the
322 advertisement shall provide a telephone number and the person accepting the advertisement may phone
323 the person to verify the validity of the person's identifying information before publishing the
324 advertisement.

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

329 **2. That § 24.2-1014 of the Code of Virginia is repealed.**