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HOUSE BILL NO. 558

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Privileges and Elections
 on February 26, 2002)

(Patrons Prior to Substitute—Delegates Jones, S.C. and Scott [HB 1041])

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.

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.

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

60 as provided by law.

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

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

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

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

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

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

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

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

91 § 24.2-622. Sample ballots.

92 Nothing contained in this title shall be construed to prohibit: (i) the printing and circulation of
93 sample paper ballots, which are not printed on white paper and do include thereon the words "sample
94 ballot" in type no smaller than twenty-four point; (ii) the printing and circulation of sample voting
95 equipment ballots, provided such sample ballots include on their face the words "sample ballot"; or (iii)
96 the publication in newspapers of sample ballots of either type. All sample ballots, ~~including~~
97 ~~those excepting those official sample ballots~~ authorized by electoral boards, are "writings" advertisements
98 for purposes of ~~§ 24.2-1014~~ § 24.2-943. Voters may take sample ballots into the voting booth or
99 enclosure.

100 CHAPTER 9.2.

101 DISCLOSURE REQUIREMENTS FOR POLITICAL CAMPAIGN ADVERTISEMENTS.

102 § 24.2-941. Scope of disclosure requirements.

103 *The disclosure requirements of this chapter apply to any sponsor of an advertisement in the print*
104 *media or on radio or television the cost or value of which constitutes an expenditure or contribution*
105 *required to be disclosed under Article 4 (§ 24.2-914 et seq.) of Chapter 9 of this title except that the*
106 *disclosure requirements of this chapter do not apply to (i) an individual who makes uncoordinated*
107 *independent expenditures aggregating less than \$1,000 in a political campaign or (ii) an individual who*
108 *incurs expenses only with respect to a referendum.*

109 § 24.2-942. Definitions.

110 *As used in this chapter, unless the context requires a different meaning:*

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

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

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

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

119 "Political action committee" has the same meaning as "political committee" in § 24.2-901 except that
120 "political action committee" does not include any political party or political party committee. The term
121 shall include any other organization or auxiliary associated with or using the name of a political party.

"Political party" has the same meaning as "party" or "political party" in § 24.2-101.

"Political party committee" means any state political party committee, congressional district political party committee, county or city political party committee, or organized political party group of elected officials. The term shall not include any other organization or auxiliary associated with or using the name of a political party.

"Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, website, electronic mail, 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 that the only printed material that may appear on the television screen is a visual disclosure statement required by law, and that nothing is blocking the view of the disclosing person's face.

§ 24.2-943. Basic requirements for political campaign advertisements; penalty

A. 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 of 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 a print media 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 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 two seconds and the statement shall be spoken so that its contents may be easily understood.

C. Any candidate, candidate campaign committee, political party committee, political action committee, individual, or other sponsor violating any provision of this section shall be subject to a civil penalty not to exceed one hundred 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 State Board shall notify the public through the global information system known as the Internet of any violation based on the failure to comply with this section for which a civil penalty is assessed by the State Board.

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

183 other identification card issued by a government agency of the Commonwealth, one of its political
184 subdivisions, or the United States, or (ii) other than in person, in which case, the person submitting the
185 advertisement shall provide a telephone number and the person accepting the advertisement may phone
186 the person to verify the validity of the person's identifying information before broadcasting the
187 advertisement.

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

191 § 24.2-944. Additional requirements for radio and television campaign advertisements.

192 A. In addition to the basic identification requirements of § 24.2-943, any political campaign
193 advertisement on radio or television shall comply with the expanded disclosure requirements set out in
194 this section.

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

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

201 2. Television advertisements purchased by a political party committee supporting or opposing the
202 nomination or election of one or more clearly identified candidates shall include a disclosure statement
203 spoken by the chair, executive director, or treasurer of the political party committee containing at least
204 the following words: "The [name of political party committee] sponsored this ad." The disclosed name
205 of the political party committee shall include the name of the political party.

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

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

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

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

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

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

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

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

242 4. Radio advertisements purchased by an individual supporting or opposing the nomination or
243 election of one or more clearly identified candidates shall include a disclosure statement spoken by the
244 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."

D. 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.

E. 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.

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

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

1. Any plaintiff candidate in a campaign for Governor, Lieutenant Governor, or Attorney General in an action under this section shall complete and file a notice of complaint, on a form prescribed by the State Board, with the State Board after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. A plaintiff candidate in any other campaign shall file the notice during the same time period with a local electoral board with jurisdiction in the election district in which he is a candidate. A candidate shall bring the civil action in the county or city circuit court where the candidate filed the notice. The timely filing of this notice preserves the candidate's right to bring an action in the circuit court any time within ninety days after the election.

2. The court shall award a successful plaintiff candidate in an action under this section damages equal to the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section. The plaintiff candidate shall also receive an award that trebles the amount of damages if (i) the plaintiff candidate can establish having notified the sponsor of the advertisement properly by return-receipt mail, or by actual notice, about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section and (ii) after the 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 actual notice was received by the 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 knowingly violates the disclosure requirement of this section shall be personally 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

306 *Communications Act of 1934, 47 U.S.C. §§ 315 and 317.*

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

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

312 § 24.2-1013. Publications not to receive compensation for advocating candidacy; penalties.

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

323 B. The person accepting a "Paid Advertisement" for the newspaper, magazine or periodical shall
324 require, and for one year shall retain a copy of, proof of the identity of the person who submits the
325 advertisement for publication when the authorization statement on the advertisement is made pursuant to
326 ~~subdivision B 3 b of § 24.2-1014~~ § 24.2-943 by an individual or entity other than a candidate,
327 candidate campaign committee, political party committee, or political action committee. Proof of
328 identity shall be submitted either (i) in person and include a valid Virginia driver's license, or any other
329 identification card issued by a government agency of the Commonwealth, one of its political
330 subdivisions, or the United States, or (ii) other than in person, in which case, the person submitting the
331 advertisement shall provide a telephone number and the person accepting the advertisement may phone
332 the person to verify the validity of the person's identifying information before publishing the
333 advertisement.

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

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