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SENATE BILL NO. 1638

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 28, 2019)

(Patron Prior to Substitute—Senator Boysko)

A BILL to amend and reenact § 8.01-324 of the Code of Virginia, relating to newspapers; legal notices and publications; requirements.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-324 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-324. Newspapers that may be used for legal notices and publications.

A. As used in this section and throughout the Code, the terms "newspaper of record" and "newspaper of general circulation" are interchangeable and identical in meaning.

B. Whenever any ordinance, resolution, notice, or advertisement is required by law, regulation, or judicial order to be published in a newspaper, newspaper of record, or newspaper of general circulation, such newspaper, newspaper of record, or newspaper of general circulation, in addition to any qualifications otherwise required by law, shall:

1. Have a bona fide list of paying subscribers;

2. Have been published and circulated in printed form at least once a week for twenty-four consecutive weeks without interruption for the dissemination of news of a general or legal character at least 50 of the preceding 52 weeks;

3. Have a general circulation in Provide general news coverage of the area in which the notice is required to be published;

4. Be printed in the English language; and

5. Have a second-class periodicals mailing permit issued by the United States Postal Service (USPS). If the newspaper has such a mailing permit, it must publish the USPS Statement of Ownership (Form 3526) in such newspaper at least once per calendar year and maintain a copy of such form that is available for public inspection during regular business hours.

~~B.~~ C. However, a newspaper which that does not have a second-class periodicals mailing permit issued by the USPS pursuant to subdivision B 5 may petition the circuit court for the jurisdiction in which the newspaper is located for authority to publish ordinances, resolutions, notices, or advertisements are required to be published to be certified as a newspaper of record for that jurisdiction. Prior to filing the petition, the newspaper shall publish a notice of intention to file a petition pursuant to this section subsection in a another newspaper published or having general circulation of record in the jurisdiction in which the petition will be filed. If no such newspaper exists, such notice of intent may be published in a newspaper in a neighboring jurisdiction. The court shall grant the authority for a period of one year upon finding that the newspaper (i) meets the requirements of subdivisions A B 2, A 3, and A 4; (ii) has been continually published for at least one year; employs a full-time local news staff, reports local current events and governmental meetings, has an editorial page, accepts letters to the editor, and is, in general, a news forum for the community jurisdiction in which it authority is circulated sought; (iii) has a circulation within the community to which the publication is directed and maintains permanent records of the fact and substance of the publication; and ~~(iv)~~ (iii) has an audit of printed circulation for a time period ending no more than 24 months prior to the filing of such petition certified by an independent auditing firm or a business recognized in the newspaper industry as a circulation auditor. Such audit shall provide a breakdown of such newspaper's circulation by zip code or jurisdiction. The authority shall be continued for successive one-year periods upon the filing of a copy of such newspaper's most recent audit of circulation, completed within the prior 24 months, and an affidavit certifying that the newspaper continues to meet the requirements of this subsection.

~~C.~~ D. If a county with a population of less than 15,000 had regularly advertised its ordinances, resolutions, and notices in a newspaper published in the county which that had a general circulation in the county, a bona fide list of paying subscribers, and a second class mailing periodicals permit, and the newspaper continued to be published in the county and continued to have a general circulation in the county but failed to maintain its bona fide list of paying subscribers and its second class mailing periodicals permit, any advertisement of ordinances, resolutions, or notices in the newspaper by the county shall be deemed to have been in compliance with this section.

E. If a locality determines that no newspaper meets the requirements of subsection B or C with regard to its jurisdiction, such locality may petition the circuit court for its jurisdiction for authority to have such ordinances, resolutions, notices, or advertisements published in another printed medium. Such petition shall not be filed without a majority vote of approval by such locality's local governing body.

60 *The court shall grant such authority for good cause shown. Such authority shall be granted for one year*
61 *and may be continued for successive one-year periods for good cause shown.*

62 *F. Any newspaper authorized by this section to publish ordinances, resolutions, notices, or*
63 *advertisements shall (i) print such ordinances, resolutions, notices, or advertisements together under an*
64 *identifying heading and such heading shall be in boldface letters no smaller than 24-point type and (ii)*
65 *maintain at least three years' worth of print archives of such newspaper containing any such ordinance,*
66 *resolution, notice, or advertisement and make such archives available to the public for inspection upon*
67 *request.*

68 *G. In all cases in which an ordinance, resolution, notice, or advertisement is required to be*
69 *published in a newspaper of general circulation, the newspaper shall (i) post the complete notice on the*
70 *newspaper's website, if a website is published by such newspaper, where it shall be posted*
71 *contemporaneously with the notice's first print publication and shall remain on the website for at least*
72 *as long as the notice appears in such newspaper; (ii) include on its website homepage a link to its*
73 *public notice section; and (iii) post the complete notice on a searchable, statewide repository website,*
74 *established and maintained as a joint venture of the majority of Virginia newspapers as a repository for*
75 *such notices, where it shall remain on such repository website for at least as long as it appears in the*
76 *newspaper. Any notice published on a website pursuant to this section shall be accessible to the public*
77 *at no charge.*

78 *H. An error in a notice placed on a newspaper website or statewide website, or temporary website*
79 *outages or service interruptions prohibiting the posting or display of such notice, shall be considered*
80 *harmless error, and proper legal notice requirements shall be considered met if the notice published in*
81 *the newspaper otherwise complies with the requirements for publication.*