

2020 SPECIAL SESSION I

INTRODUCED

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HOUSE BILL NO. 5038

Offered August 18, 2020

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A *BILL to amend and reenact §§ 24.2-945.1, 24.2-955, 24.2-955.1, as it is currently effective and as it shall become effective, 24.2-955.2, 24.2-957.2, and 24.2-958.2 of the Code of Virginia, relating to elections; political campaign advertisements; referendum committees.*

Patron—Miyares

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-945.1, 24.2-955, 24.2-955.1, as it is currently effective and as it shall become effective, 24.2-955.2, 24.2-957.2, and 24.2-958.2 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-945.1. Definitions.

A. As used in this chapter, unless the context requires a different meaning:

"Authorization" means express approval or express consent by the candidate, the candidate's campaign committee, or an agent of the candidate or his campaign committee after coordination.

"Campaign committee" means the committee designated by a candidate to receive all contributions and make all expenditures for him or on his behalf in connection with his nomination or election.

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

"Contribution" means money and services of any amount, in-kind contributions, and any other thing of value, given, advanced, loaned, or in any other way provided to a candidate, campaign committee, political committee, or person for the purpose of expressly advocating the election or defeat of a clearly identified candidate *or the passage or defeat of a question on the ballot*, or to an inaugural committee for the purpose of defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General. "Contribution" includes money, services, or things of value in any way provided by a candidate to his own campaign and the payment by the candidate of a filing fee for any party nomination method.

"Coordinated" or "coordination" refers to an expenditure that is made (i) at the express request or suggestion of a candidate, a candidate's campaign committee, or an agent of the candidate or his campaign committee or (ii) with material involvement of the candidate, a candidate's campaign committee, or an agent of the candidate or his campaign committee in devising the strategy, content, means of dissemination, or timing of the expenditure.

"Designated contribution" means a contribution that is designated specifically and in writing for a particular candidate or candidates and that is made using a political committee solely as a conduit.

"Expenditure" means money and services of any amount, and any other thing of value, paid, loaned, provided, or in any other way disbursed by any candidate, campaign committee, political committee, or person for the purpose of expressly advocating the election or defeat of a clearly identified candidate *or the passage or defeat of a question on the ballot*, or by any inaugural committee for the purpose of defraying the costs of the inauguration of a Governor, Lieutenant Governor, or Attorney General.

"Federal political action committee" means any political action committee registered with the Federal Election Commission that makes contributions to candidates or political committees registered in Virginia.

"Inaugural committee" means any organization, person, or group of persons that anticipates receiving contributions or making expenditures, from other than publicly appropriated funds, for the inauguration of the Governor, Lieutenant Governor, or Attorney General and related activities.

"Independent expenditure" means an expenditure made by any person, candidate campaign committee, or political committee that is not made to, controlled by, coordinated with, or made with the authorization of a candidate, his campaign committee, or an agent of the candidate or his campaign committee. "Independent expenditure" includes an expenditure made by a candidate campaign committee (i) that is not related to the candidate's own campaign and (ii) that is not made to, controlled by, coordinated with, or made with the authorization of a different candidate, his campaign committee, or an agent of that candidate or his campaign committee.

"In-kind contribution" means the donation of goods, services, property, or other thing of value, other than money, including an expenditure controlled by, coordinated with, or made upon the authorization of a candidate, his campaign committee, or an agent of the candidate or his campaign committee, that is provided for free or less than the usual and normal charge. The basis for arriving at the dollar value of

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59 an in-kind contribution is as follows: new items are valued at retail value; used items are valued at fair
60 market value; and services rendered are valued at the actual cost of service per hour. Services shall not
61 be deemed to include personal services voluntarily rendered for which no compensation is asked or
62 given.

63 "Out-of-state political committee" means an entity covered by § 527 of the United States Internal
64 Revenue Code that is not registered as a political committee or candidate campaign committee in
65 Virginia and that does not have as its primary purpose expressly advocating the election or defeat of a
66 clearly identified candidate. The term shall not include a federal political action committee.

67 "Person" means any individual or corporation, partnership, business, labor organization, membership
68 organization, association, cooperative, or other like entity.

69 "Political action committee" means any organization, person, or group of persons, established or
70 maintained to receive and expend contributions for the primary purpose of expressly advocating the
71 election or defeat of a clearly identified candidate. The term shall not include a campaign committee,
72 federal political action committee, out-of-state political committee, political party committee, referendum
73 committee, or inaugural committee.

74 "Political committee" means and includes any political action committee, political party committee,
75 referendum committee, or inaugural committee. The term shall not include: (i) a federal political action
76 committee or out-of-state political committee; (ii) a campaign committee; (iii) a political party committee
77 exempted pursuant to § 24.2-950.1; or (iv) a person who receives no contributions from any source and
78 whose only expenditures are made solely from his own funds and are either contributions made by him
79 which are reportable by the recipient pursuant to this chapter or independent expenditures which are
80 reportable by him to the extent required by § 24.2-945.2, or a combination of such reportable
81 contributions and independent expenditures.

82 "Political party committee" means any state political party committee, congressional district political
83 party committee, county or city political party committee, other election district political party
84 committee, or organized political party group of elected officials. This definition is subject to the
85 provisions of § 24.2-950.1.

86 "Primary purpose" means that 50% or more of the committee's expenditures made in the form of
87 contributions shall be made to candidate campaign committees or political committees registered in
88 Virginia. Administrative expenditures and the transfer of funds between affiliated or connected
89 organizations shall not be considered in determining the committee's primary purpose. The primary
90 purpose of the committee shall not be determined on the basis of only one report or election cycle, but
91 over the entirety of the committee's registration.

92 "Referendum committee" means any organization, person, group of persons, or committee, that makes
93 expenditures in a calendar year in excess of (i) \$10,000 to advocate the passage or defeat of a statewide
94 referendum, (ii) \$5,000 to advocate the passage or defeat of a referendum being held in two or more
95 counties and cities, or (iii) \$1,000 to advocate the passage or defeat of a referendum held in a single
96 county or city.

97 "Residence" means "residence" or "resident" as defined in § 24.2-101.

98 "Statewide office" means the office of Governor, Lieutenant Governor, or Attorney General.

99 B. For the purpose of applying the filing and reporting requirements of this chapter, the terms
100 "person" and "political committee," shall not include an organization holding tax-exempt status under
101 § 501(c) (3), 501(c) (4), or 501(c) (6) of the United States Internal Revenue Code which, in providing
102 information to voters, does not advocate or endorse the election or defeat of a particular candidate,
103 group of candidates, or the candidates of a particular political party.

104 **§ 24.2-955. Scope of disclosure requirements.**

105 The disclosure requirements of this chapter apply to any sponsor of an advertisement in the print
106 media, on radio or television, or placed or promoted for a fee on an online platform, the cost or value
107 of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3
108 (§ 24.2-945 et seq.) except that the disclosure requirements of this chapter do not apply to (i) an
109 individual who makes independent expenditures aggregating less than \$1,000 in an election cycle for or
110 against a candidate for statewide office or less than \$200 in an election cycle for or against a candidate
111 for any other office or (ii) an individual, *who is not a referendum committee*, who incurs expenses only
112 with respect to a referendum.

113 **§ 24.2-955.1. (Effective until January 1, 2021) Definitions.**

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

115 "Advertisement" means any message appearing in the print media, on television, on radio, or on an
116 online platform, that constitutes a contribution or expenditure under Chapter 9.3 (§ 24.2-945 et seq.).

117 "Advertisement" shall not include novelty items authorized by a candidate including, but not limited to,
118 pens, pencils, magnets, and buttons to be attached to wearing apparel.

119 "Authorized by _____" means the same as "authorization" as defined in § 24.2-945.1.

120 "Campaign telephone calls" means a series of telephone calls or text messages, electronic or

otherwise, made (i) to 25 or more telephone numbers in the Commonwealth, (ii) during the 180 days before a general or special election or during the 90 days before a primary or other political party nominating event, (iii) conveying or soliciting information relating to (a) any candidate or political party participating in the election, primary, or other nominating event, or (b) a question on the ballot during the election, and (iv) under an agreement to compensate the telephone callers.

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

"Candidate campaign committee" or "campaign committee" means "campaign committee" as defined in § 24.2-945.1.

"Coordinated" or "coordination" means an expenditure that is made (i) at the express request or suggestion of a candidate, a candidate's campaign committee, or an agent of the candidate or his campaign committee or (ii) with material involvement of the candidate, a candidate's campaign committee, or an agent of the candidate or his campaign committee in devising the strategy, content, means of dissemination, or timing of the expenditure.

"Conspicuous" means so written, displayed, or communicated that a reasonable person ought to have noticed it.

"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 50% of the vertical height of the television screen.

"Independent expenditure" means "independent expenditure" as defined in § 24.2-945.1.

"Occurrence" means one broadcast of a radio or television political campaign advertisement.

"Online platform" means any public-facing website, web application, or digital application, including a social network, ad network, or search engine, that sells advertisements.

"Online political advertisement" means an advertisement that is placed or promoted for a fee on an online platform.

"Online political advertiser" means any person who purchases an advertisement from an online platform or promotes an advertisement on an online platform for a fee.

"Political action committee" means "political action committee" as defined in § 24.2-945.1.

"Political committee" means "political committee" as defined in § 24.2-945.1.

"Political party" has the same meaning as "party" or "political party" as defined 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, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, websites, electronic mail, non-video or non-audio messages placed or promoted for a fee on an online platform, yard signs, and outdoor advertising facilities. If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.

"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 committee, or person that purchases an advertisement.

"Telephone call" means any single telephone call or text message, electronic or otherwise, that when combined with other telephone calls or text messages constitutes campaign telephone calls.

"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.

"Yard sign" means a sign paid for or distributed by a candidate, campaign committee, or political committee to be placed on public or private property. Yard signs paid for or distributed prior to July 1, 2015, shall not be subject to the provisions of §§ 24.2-956 and 24.2-956.1.

§ 24.2-955.1. (Effective January 1, 2021) Definitions.

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

"Advertisement" means any message appearing in the print media, on television, on radio, or on an online platform, that constitutes a contribution or expenditure under Chapter 9.3 (§ 24.2-945 et seq.). "Advertisement" shall not include novelty items authorized by a candidate including, but not limited to,

182 pens, pencils, magnets, and buttons to be attached to wearing apparel.

183 "Authorized by _____" means the same as "authorization" as defined in § 24.2-945.1.

184 "Campaign telephone calls" means a series of telephone calls or text messages, electronic or
185 otherwise, made (i) to 25 or more telephone numbers in the Commonwealth, (ii) during the 180 days
186 before a general or special election or during the 90 days before a primary or other political party
187 nominating event, (iii) conveying or soliciting information relating to (a) any candidate or political party
188 participating in the election, primary, or other nominating event, or (b) a question on the ballot during
189 the election, and (iv) under an agreement to compensate the telephone callers.

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

191 "Candidate campaign committee" or "campaign committee" means "campaign committee" as defined
192 in § 24.2-945.1.

193 "Coordinated" or "coordination" means an expenditure that is made (i) at the express request or
194 suggestion of a candidate, a candidate's campaign committee, or an agent of the candidate or his
195 campaign committee or (ii) with material involvement of the candidate, a candidate's campaign
196 committee, or an agent of the candidate or his campaign committee in devising the strategy, content,
197 means of dissemination, or timing of the expenditure.

198 "Conspicuous" means so written, displayed, or communicated that a reasonable person ought to have
199 noticed it.

200 "Full-screen" means the only picture appearing on the television screen during the oral disclosure
201 statement that (i) contains the disclosing person, (ii) occupies all visible space on the television screen,
202 and (iii) contains the image of the disclosing person that occupies at least 50% of the vertical height of
203 the television screen.

204 "Independent expenditure" means "independent expenditure" as defined in § 24.2-945.1.

205 "Name of candidate" means (i) the full name of the candidate as it appears on the statement of
206 qualification filed pursuant to § 24.2-501 or as it will appear on the ballot or (ii) the first name, middle
207 name, or "nickname" of the candidate as it appears on his statement of qualification and a last name of
208 the candidate as it appears on his statement of qualification.

209 "Occurrence" means one broadcast of a radio or television political campaign advertisement.

210 "Online platform" means any public-facing website, web application, or digital application, including
211 a social network, ad network, or search engine, that sells advertisements.

212 "Online political advertisement" means an advertisement that is placed or promoted for a fee on an
213 online platform.

214 "Online political advertiser" means any person who purchases an advertisement from an online
215 platform or promotes an advertisement on an online platform for a fee.

216 "Political action committee" means "political action committee" as defined in § 24.2-945.1.

217 "Political committee" means "political committee" as defined in § 24.2-945.1.

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

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

223 "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, printed material
224 disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, websites, electronic mail,
225 non-video or non-audio messages placed or promoted for a fee on an online platform, yard signs, and
226 outdoor advertising facilities. If a single print media advertisement consists of multiple pages, folds, or
227 faces, the disclosure requirement of this section applies only to one page, fold, or face.

228 "Radio" means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and
229 317.

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

232 "Sponsor" means a candidate, candidate campaign committee, political committee, or person that
233 purchases an advertisement.

234 "Telephone call" means any single telephone call or text message, electronic or otherwise, that when
235 combined with other telephone calls or text messages constitutes campaign telephone calls.

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

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

242 "Yard sign" means a sign paid for or distributed by a candidate, campaign committee, or political
243 committee to be placed on public or private property. Yard signs paid for or distributed prior to July 1,

2015, shall not be subject to the provisions of §§ 24.2-956 and 24.2-956.1.

§ 24.2-955.2. 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 *or the passage or defeat of a question on the ballot*. 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, *or article or articles* advocating the election or defeat of any candidate *or the passage or defeat of a question on the ballot*, 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 this chapter.

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 pursuant to this chapter by an individual or entity other than a candidate, candidate campaign committee, political party committee, ~~or~~ political action committee, *or referendum 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 publishing the advertisement. Any candidate clearly identified in the advertisement is entitled to the name of the person who submitted the advertisement after the publication of the advertisement in the newspaper, magazine, or periodical.

C. Any such owner, proprietor, editor, manager, officer, clerk, agent, reporter, or employee violating the provisions of subsection A or B shall be subject to a civil penalty not to exceed \$50; 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 Article 8 (§ 24.2-953 et seq.) of Chapter 9.3.

§ 24.2-957.2. Requirements for television advertisements sponsored by a political committee.

It shall be unlawful for a political committee to sponsor a television advertisement that constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 (§ 24.2-945 et seq.) unless the following requirements are met:

1. It bears the legend or includes the statement: "Paid for by _____ [Name of political committee]."

2. A television advertisement supporting or opposing the nomination or election of one or more clearly identified candidates ~~(i)~~ *or expressly advocating the passage or defeat of a question on the ballot* shall include a disclosure statement, spoken by the chief executive officer or treasurer of the political committee, containing at least the following words: "The [Name of political committee] sponsored this ad."

3. If an advertisement is jointly sponsored, the disclosure statement shall include the names of all the sponsors and the disclosing individual shall be one of those sponsors.

4. The disclosure shall be made by visual legend, which shall constitute 20 scan lines in size.

5. The content of these visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 and this section.

6. The political committee 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.

7. The advertisement shall include throughout the disclosure statement an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera.

8. A political committee 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.

9. In its oral disclosure statement, a political committee may choose to identify an advertisement (i) as either supporting or opposing the nomination or election of one or more clearly identified candidates *or (ii) as expressly advocating the passage or defeat of a question on the ballot*.

10. If the advertisement is jointly sponsored, the disclosure statement shall name all of the sponsors and the disclosing individual shall be one of those sponsors. This provision supersedes any contrary provisions of the Code of Virginia.

§ 24.2-958.2. Requirements for radio advertisements sponsored by a political committee.

305 It shall be unlawful for a political committee to sponsor an advertisement that constitutes an
306 expenditure or contribution required to be disclosed under Chapter 9.3 (§ 24.2-945 et seq.) unless the
307 following requirements are satisfied:

308 1. A radio advertisement supporting or opposing the nomination or election of one or more clearly
309 identified candidates *or expressly advocating the passage or defeat of a question on the ballot* (i) shall
310 include a disclosure statement, spoken by the chief executive officer or treasurer of the committee,
311 containing at least the following words: "This ad was paid for (or 'sponsored by' or 'furnished by')
312 [Name of political action committee]." (ii) The disclosure statement shall last at least two seconds and
313 the statement shall be spoken so that its contents may be easily understood. (iii) The placement of the
314 oral disclosure statement shall also comply with the requirements of the Communications Act of 1934,
315 47 U.S.C. §§ 315 and 317.

316 2. In its oral disclosure statement, a political committee may choose to identify an advertisement (i)
317 as either supporting or opposing the nomination or election of one or more clearly identified candidates
318 *or (ii) as expressly advocating the passage or defeat of a question on the ballot.*

319 3. If the advertisement is jointly sponsored, the disclosure statement shall name all of the sponsors
320 and the disclosing individual shall be one of those sponsors.