

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 487

An Act 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; penalty.

[H 558]

Approved April 4, 2002

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

as provided by law.

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

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

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

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

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

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

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

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

§ 24.2-622. Sample ballots.

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

CHAPTER 9.2.

DISCLOSURE REQUIREMENTS FOR POLITICAL CAMPAIGN ADVERTISEMENTS.

§ 24.2-941. 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 (i) an individual who makes uncoordinated independent expenditures aggregating less than \$1,000 in a political campaign or (ii) an individual who incurs expenses only with respect to a referendum.

§ 24.2-942. Definitions.

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

"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. The term 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. Any civil penalties collected pursuant to an action under this section shall be payable to the State Treasurer for deposit to the general fund.

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.

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

A. In addition to the basic identification requirements of § 24.2-943, it shall be unlawful for any sponsor to sponsor an advertisement 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 the expanded disclosure requirements set out in this section are met.

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 statement.

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

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

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

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

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

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

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. 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 \$500 per occurrence; and in the case of a willful violation, he shall be guilty of a Class 1 misdemeanor. For the purposes of this section, an "occurrence" shall be defined as one broadcast of a radio or television political campaign advertisement in violation of this section. In no event shall the total civil penalties imposed for multiple broadcasts of one particular campaign advertisement exceed \$5,000. Any civil penalties collected pursuant to an action under this section shall be payable to the State Treasurer for deposit to the general fund.

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 requirements 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.

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

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

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 ~~subdivision B 3 b of § 24.2-1014~~ § 24.2-943 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 publishing the advertisement.

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 fifty dollars; and, in the case of a willful violation, he shall be guilty of a Class 1 misdemeanor. The procedure to enforce the civil penalty provided in this section shall be as stated in § 24.2-929.

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