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SENATE BILL NO. 1237

Offered January 11, 2023

Prefiled January 10, 2023

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

Patrons—Obenshain; Delegate: Hope

Referred to Committee on the Judiciary

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 at least 50 of the preceding 52 weeks;
3. 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 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.

C. However, a newspaper that does not have a periodicals mailing permit issued by the USPS pursuant to subdivision B 5 may petition the circuit court for the jurisdiction in which 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 subsection in another newspaper 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 B 2, 3, and 4; (ii) employs a 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 jurisdiction in which authority is sought; and (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.

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 that had a general circulation in the county, a bona fide list of paying subscribers, and a 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 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. The court shall grant such authority for good cause shown. Such authority shall be granted for one year and may be continued for successive one-year periods for good cause shown.

F. Any newspaper authorized by this section to publish ordinances, resolutions, notices, or

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59 advertisements shall (i) print such ordinances, resolutions, notices, or advertisements together under an
60 identifying heading and such heading shall be in boldface letters no smaller than 24-point type and (ii)
61 maintain at least three years' worth of print archives of such newspaper containing any such ordinance,
62 resolution, notice, or advertisement and make such archives available to the public for inspection upon
63 request.

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

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

78 *I. Whenever any ordinance, resolution, notice, or advertisement is required by law to be published in*
79 *a newspaper, such ordinance, resolution, notice, or advertisement may be published in an online*
80 *publication in lieu of publication in a newspaper. Such online publication shall:*

- 81 *1. Have site content related to the geographic area in which the notice is required to be published;*
- 82 *2. Have as its purpose the dissemination of news of general or legal character;*
- 83 *3. Employ at least one journalist on a full-time basis for such publication in the jurisdiction in which*
84 *such notice is required to be published;*
- 85 *4. Have been published online at least daily for 24 consecutive weeks;*
- 86 *5. Be printed in the English language;*
- 87 *6. Hold a valid business license to operate in Virginia;*
- 88 *7. Be published exclusively online;*
- 89 *8. Have a readership audience of at least 1,000 unique visitors per month in the month prior to*
90 *publication as determined by a web analytics service; and*
- 91 *9. Provide to the advertiser of such notice proof of publication of such notice and readership figures*
92 *via a web analytics service within 30 days of such publication of such notice.*

93 *Notices published pursuant to this subsection shall be archived online for 24 months following*
94 *publication of such notice in a searchable format available to the public.*