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HOUSE BILL NO. 264

Offered January 10, 2024

Prefiled January 5, 2024

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

Patron—Hope

Referred to Committee for Courts of Justice

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 36 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

INTRODUCED

HB264

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 *1. 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-only*
80 *news publication in lieu of publication in a newspaper. Such online-only news publication shall:*

81 *1. Employ local news staff;*

82 *2. Have been in business for at least two years with a Virginia State Corporation Commission entity*
83 *registration;*

84 *3. Have its own dedicated and registered domain name;*

85 *4. Be published exclusively online;*

86 *5. Publish regularly updated general news coverage of the area in which the notice is required to be*
87 *published;*

88 *6. Have published at least once per week for at least 50 out of the preceding 52 weeks;*

89 *7. Have a clear and easily found link to the public notice section on its website homepage;*

90 *8. Allow, if such online-only news publication requires that users pay for other content on the*
91 *website, any user to access public notices free of any charge;*

92 *9. Allow for search engine accessibility and optimization and the ability to be indexed by search*
93 *engines; and*

94 *10. Post the complete notice on a searchable statewide repository website, established and*
95 *maintained as a joint venture of the majority of newspapers in the Commonwealth as a repository for*
96 *such notices. Such notices shall remain on such repository website for at least three years.*

97 *J. In order to be certified to publish ordinances, resolutions, notices, or advertisements, an*
98 *online-only news publication shall petition the circuit court for the jurisdiction in which ordinances,*
99 *resolutions, notices, or advertisements are required to be published. Prior to filing the petition, such*
100 *online-only news publication shall publish a notice of intent to file a petition pursuant to this subsection*
101 *in a newspaper of record in the jurisdiction in which the petition will be filed. If no such newspaper*
102 *exists, such notice of intent shall be published in a newspaper in a neighboring jurisdiction.*

103 *Upon a finding that the online-only news publication (i) meets the requirements of subdivisions 1*
104 *through 9 of subsection I; (ii) reports local current events and governmental meetings and is, in*
105 *general, a news forum for the jurisdiction in which authority is sought; and (iii) has an audit of discrete*
106 *users for a time period ending no more than 12 months prior to the filing of such petition certified by*
107 *an independent firm recognized in the online news industry as a web traffic auditor, and provided that*
108 *such audit provides a breakdown of the discrete users of such online-only news publications by zip code*
109 *or jurisdiction, the court shall grant the online-only news publication the authority to publish such*
110 *ordinances, resolutions, notices, or advertisements for a period of one year.*

111 *The authority to publish public notices shall be continued for successive one-year periods upon filing*
112 *with the court a copy of web analytics showing discrete users by zip code or jurisdiction for the*
113 *immediately preceding year and an affidavit certifying that such online-only news publication continues*
114 *to meet the requirements of this subsection and subsection I. In addition, such online-only news*
115 *publication shall provide every third year an audit of web traffic for the time period since the previous*
116 *audit. Such audit shall be certified by an independent firm recognized in the online news industry as a*
117 *web traffic auditor.*

118 *K. Ordinances, resolutions, notices, or advertisements published pursuant to subsections I and J shall*
119 *be (i) archived for up to three years, which may include posting pursuant to subdivision 10 of*
120 *subsection I; (ii) available on the online-only news publication's website in a searchable format*

121 *available to the public; and (iii) available as an electronic equivalent of a tear sheet for affidavit*
122 *purposes, including being notarized when required by law, and shall be time stamped and dated to show*
123 *when such ordinance, resolution, notice, or advertisement was published.*

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HB264