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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2002



ENROLLED

Com. Sub. for Com. Sub. for

SENATE BILL NO. 554

(By Senator SHARPE, ET AL)



PASSED MARCH 7, 2002

In Effect THIRTY DAYS FROM Passage

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COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 554

(SENATORS SHARPE, MINARD, ROSS, WOOTON, ANDERSON,
OLIVERIO, BURNETTE, SPROUSE, MINEAR, KESSLER, FANNING,
SNYDER, CALDWELL, MITCHELL, HELMICK, EDGELL, UNGER,
McCABE, PLYMALE, CRAIGO, PREZIOSO, BOWMAN, JACKSON,
BAILEY, HUNTER, ROWE, LOVE, MCKENZIE,
TOMBLIN, MR. PRESIDENT, AND CHAFIN, *original sponsors*)

[Passed March 7, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-three, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three and four, article three, chapter fifty-nine of said code, all relating to legal advertising; increasing legal advertising rates; modifying

requirements for publication, typesetting and circulation; and permitting qualified newspapers to charge usual and customary rates for notarizing and producing additional copies of affidavits and statements.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, two, three and four, article three, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-23. Preparation, publication and disposition of financial statements.

1 (a) Every city, within ninety days after the beginning of
2 each fiscal year, shall prepare on a form to be prescribed
3 by the state tax commissioner and cause to be published a
4 sworn statement revealing: (1) The receipts and expendi-
5 tures of the city during the previous fiscal year; (2) the
6 name of each person who received more than fifty dollars
7 during the previous fiscal year, together with the amount
8 received; and (3) all debts of the city, the purpose for
9 which each debt was contracted, its due date and to what
10 date the interest on the debt has been paid. The statement
11 shall be published as a Class I legal advertisement in
12 compliance with the provisions of article three, chapter
13 fifty-nine of this code and the publication area for the
14 publication shall be the city: *Provided*, That all salaries,
15 receipts, payments to each individual vendor and expendi-
16 tures to employees of municipal offices, companies and
17 departments may be published in the aggregate.

18 (b) Every city shall transmit to any resident of the city
19 who requests it a copy of any published statement for the
20 fiscal year designated, supplemented by a document listing
21 the names of each person who received less than fifty

22 dollars from any fund during the fiscal year and showing
23 the amount paid to each and the purpose for which paid
24 and an itemization of the salaries, receipts, payments to
25 each individual vendor and expenditures to employees of
26 municipal offices, companies and departments otherwise
27 published in the aggregate.

28 (c) Every town or village, within one hundred twenty
29 days after the beginning of each fiscal year, shall prepare
30 on a form to be prescribed by the state tax commissioner
31 a sworn statement revealing: (1) The receipts and expendi-
32 tures of the town or village during the previous fiscal year
33 arranged under descriptive headings; (2) the name of each
34 person who received money from any fund during the
35 previous fiscal year, together with the amount received
36 and the purpose for which paid; and (3) all debts of the
37 town or village, the purpose for which each debt was
38 contracted, its due date and to what date the interest on
39 the debt has been paid: *Provided*, That all salaries,
40 receipts, payments to each individual vendor and expendi-
41 tures to employees of municipal offices, companies and
42 departments may be published in the aggregate.

43 (d) Every town or village shall transmit to any resident
44 of the town or village who requests it, a copy of any
45 statement for the fiscal year designated. Any town or
46 village may, if its governing body thereof elects, also
47 publish the statement as a Class I legal advertisement in
48 compliance with the provisions of article three, chapter
49 fifty-nine of this code and in that event, the publication
50 area for the publication shall be the town or village.

51 (e) The statement required by subsection (a) of this
52 section and the statement required by subsection (c) of this
53 section shall be sworn to by the recorder, the mayor and
54 two members of the governing body of the municipality.
55 As soon as practicable following the close of the fiscal
56 year, a copy of any statement required by this section shall
57 be filed by the municipality with the state tax commis-
58 sioner, the clerk of the county commission of the county

59 and the clerk of the circuit court of the circuit in which the
60 municipality or the major portion of the territory of the
61 municipality is located. If the governing body fails or
62 refuses to perform any of the duties set forth in this
63 section, every member of the governing body and the
64 recorder of the governing body concurring in the failure or
65 refusal shall be guilty of a misdemeanor and, upon conviction
66 thereof, shall be fined not less than ten nor more than
67 one hundred dollars. If any of the provisions of this
68 section are violated, it is the duty of the prosecuting
69 attorney of the county in which the municipality or the
70 major portion of the territory of the municipality is
71 located to immediately present the evidence of the violation
72 to the grand jury if in session, and if not in session he
73 or she shall cause the violations to be investigated by the
74 next succeeding grand jury.

75 (f) Where in subsections (a), (b) and (c) of this section,
76 salaries, receipts, payments to each individual vendor and
77 expenditures are published in the aggregate, the city, town
78 or village shall, upon written request, provide to any
79 resident of the city, town or village an itemized accounting
80 of the salaries, receipts, payments to each individual
81 vendor and expenditures.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

§59-3-1. Definitions and general provisions.

1 (a) As used in this article, elsewhere in this code or in
2 any other provision of law:

3 (1) "Legal advertisement" means any notice, advertise-
4 ment, statement, information or other matter required by
5 law or court to be published.

6 (2) "Publication area" means the area or areas for which
7 a legal advertisement is required by law or court to be
8 made.

9 (3) "Once a week for two successive weeks" means two
10 publications of a legal advertisement in a qualified
11 newspaper occurring within a period of fourteen consecu-
12 tive days with at least an interval of six full days within
13 the period between the date of the first publication and the
14 date of the second publication.

15 (4) "Once a week for three successive weeks" means
16 three publications of a legal advertisement in a qualified
17 newspaper occurring within a period of twenty-one
18 consecutive days with at least an interval of six full days
19 within the period between the date of the first publication
20 and the date of the second publication and with at least an
21 interval of six full days within the period between the date
22 of the second publication and the date of the third publi-
23 cation.

24 (5) "Publication date" means the date on which a
25 qualified newspaper is first placed in circulation.

26 (6) "General circulation" means not only a newspaper
27 meeting the other qualifications specified in subsection (b)
28 of this section and circulated among and of interest to the
29 general public in the area in which it circulates, but also a
30 newspaper meeting said other qualifications, the actual
31 circulation of which throughout the publication area is
32 large enough to give basis for a reasonable belief that
33 publication of a legal advertisement in the newspaper will
34 give effective notice to the residents of the publication
35 area.

36 (b) Wherever the term "qualified newspaper" or "quali-
37 fied newspapers" is used in this article, or the term
38 "newspaper" or "newspapers" is used elsewhere in this
39 code or in any other provision of law in connection with a
40 legal advertisement as herein defined in this section, the
41 terms shall be taken to mean only a newspaper or newspa-
42 pers, as the case may be, published (unless otherwise
43 expressly provided) in the state of West Virginia and
44 which meet the following qualifications:

45 (1) Any newspaper shall be of regular issue and must
46 have a bona fide, general circulation in the publication
47 area. A newspaper is considered to be of regular issue if it
48 is published regularly, as frequently as once a week, for at
49 least fifty weeks during the calendar year as prescribed by
50 its mailing permit; and has been published for at least one
51 year immediately preceding the date on which the legal
52 advertisement is delivered to the newspaper for publica-
53 tion. A newspaper is considered to be of bona fide, general
54 circulation in the publication area if it meets the definition
55 of "general circulation" as defined in this section and is
56 circulated to the general public at a definite price or
57 consideration.

58 (2) Any newspaper shall bear a title or name, consist of
59 not less than four pages without a cover, and be a newspa-
60 per to which the general public resorts for passing events
61 of a political, religious, commercial and social nature, and
62 for current happenings, announcements, miscellaneous
63 reading matters, advertisements and other notices.

64 (c) Notwithstanding any other provision of this code or
65 law to the contrary, a qualified newspaper shall for all
66 purposes be considered to be published where it is first
67 placed in circulation.

**§59-3-2. Classification of legal advertisements; designation of
newspapers; frequency of publication; posting;
manner of publishing.**

1 (a) A Class I legal advertisement shall be published one
2 time, a Class II legal advertisement shall be published once
3 a week for two successive weeks and a Class III legal
4 advertisement shall be published once a week for three
5 successive weeks in a qualified newspaper published in the
6 publication area; or if there is no qualified newspaper
7 published in the publication area or if no qualified news-
8 paper published in the publication area will publish the
9 legal advertisement at the rates specified in section three
10 of this article, the legal advertisement shall be published

11 in a qualified newspaper published outside the publication
12 area; or if no qualified newspaper is published outside the
13 publication area or if no qualified newspaper published
14 outside the publication area will publish the legal adver-
15 tisement at the rates specified in section three of this
16 article, the legal advertisement shall be posted in at least
17 three public places in the publication area, one of which
18 postings shall be in the county courthouse, at or near the
19 front door of the county court house, if a county court-
20 house is located in the publication area and one of which
21 postings shall be in the municipal office building or
22 municipal office or offices, at or near the front door
23 thereof, if the publication area is a municipality.

24 (b) A Class I-0 legal advertisement shall be published
25 one time, a Class II-0 legal advertisement shall be pub-
26 lished once a week for two successive weeks, and a Class
27 III-0 legal advertisement shall be published once a week
28 for three successive weeks, in two qualified newspapers of
29 opposite politics published in the publication area; or if
30 two qualified newspapers of opposite politics are not
31 published in the publication area or if two qualified
32 newspapers of opposite politics published in the publica-
33 tion area will not publish the legal advertisement at the
34 rates specified in section three of this article, the legal
35 advertisement shall be published in one qualified newspa-
36 per published in the publication area; or if there is no
37 qualified newspaper published in the publication area or
38 if no qualified newspaper published in the publication
39 area will publish the legal advertisement at the rates
40 specified in section three of this article, the legal adver-
41 tisement shall be published in one qualified newspaper
42 published outside the publication area; or if no qualified
43 newspaper is published outside the publication area or if
44 no qualified newspaper published outside the publication
45 area will publish the legal advertisement at the rates
46 specified in section three of this article, the legal adver-
47 tisement shall be posted in at least three public places in
48 the publication area, one of which postings shall be in the

49 county courthouse, at or near the front door thereof, if a
50 county courthouse is located in the publication area and
51 one of which postings shall be in the municipal office
52 building or municipal office or offices, at or near the front
53 door thereof, if the publication area is a municipality.

54 (c) A legal advertisement may be published in a qualified
55 newspaper published on any day of the week except
56 Sunday.

57 (d) All legal advertisements shall be published together
58 in continuous columns on one page of the newspaper
59 publishing them under a general heading styled "Legal
60 Advertisements", unless the number or size of the legal
61 advertisements requires the use of more than one page, in
62 which event the legal advertisements shall be published as
63 near as practicable in continuous columns on as many
64 pages as necessary under the same heading as above
65 required.

**§59-3-3. Rates for legal advertisements; computation; filing
affidavits with secretary of state.**

1 (a) The rates which a publisher or proprietor of a quali-
2 fied newspaper in West Virginia may charge and receive
3 for a single or first publication of any legal advertisement
4 set solid depends on the bona fide circulation of the
5 newspaper, as follows:

6 (1) Four cents per word if the qualified newspaper has a
7 bona fide circulation of less than one thousand, except as
8 provided in subdivision (1), subsection (a) of this section;

9 (2) Eight and one-half cents per word if the qualified
10 newspaper has a bona fide circulation of one thousand to
11 five thousand;

12 (3) Nine cents per word if the qualified newspaper has a
13 bona fide circulation of more than five thousand but less
14 than ten thousand;

15 (4) Ten cents per word if the qualified newspaper has a
16 bona fide circulation of more than ten thousand and less
17 than thirty thousand; or

18 (5) Eleven cents per word if the qualified newspaper has
19 a bona fide circulation of thirty thousand or more:
20 *Provided*, That on the first day of July in the year two
21 thousand three and on the first day of July in the year two
22 thousand four and on the first day of July in the year two
23 thousand five the allowable rate per word in each of the
24 classifications of qualified newspapers with reference to
25 circulation as set forth in this subsection shall, for each
26 classification, increase one cent per word over the prior
27 year's rate.

28 (b) In computing the number of words in a legal adver-
29 tisement, not set solid, the basis is the size of type in which
30 legal advertising is set by the qualified newspaper making
31 the publication and shall be computed at the legal rate as
32 though the matter were solid type, that is to say, on the
33 basis of eighty-four words to the single column inch in six
34 point type and fifty-four words to the single column inch
35 in eight point type and any other size type in proportion.

36 (c) In determining the cost of a legal advertisement
37 which is to appear more than once in the same qualified
38 newspaper, the cost for the first publication shall be
39 computed as specified in subsections (a) and (b) of this
40 section and the cost of the second and each subsequent
41 publication shall be seventy-five percent of the cost of the
42 first publication computed as specified in subsections (a)
43 and (b) of this section.

44 (d) The average bona fide circulation stated by each
45 qualified newspaper in the statement filed by the newspa-
46 per with the United States post office department in
47 October of each year shall control the rate of circulation
48 classification of the qualified newspaper for the period
49 commencing the first day of July of each year until the last
50 day of June of the following year. On or before the first

51 day of November of each year, the publisher or proprietor
52 of each newspaper desiring to publish any legal advertise-
53 ment during the ensuing one year time period commencing
54 the first day of July shall file with the secretary of state an
55 affidavit stating the average bona fide circulation of the
56 newspaper during the preceding twelve month time period
57 ending the thirtieth day of September of each year and
58 shall set forth sufficient facts in the affidavit to show
59 whether the newspaper is a qualified newspaper. The
60 average bona fide circulation stated in the affidavit by
61 each qualified newspaper shall control the rate circulation
62 classification for the ensuing twelve-month period com-
63 mencing the first day of July. Any qualified newspaper for
64 which the required affidavit is not filed on or before the
65 first day of March of any calendar year shall be conclu-
66 sively presumed to have for the ensuing twelve-month
67 period commencing the first day of July of such year a
68 bona fide circulation of less than one thousand. At the
69 time a publisher or proprietor of a qualified newspaper
70 files an affidavit with the secretary of state, as required by
71 this subsection, the publisher or proprietor shall notify the
72 clerk of the county commission and the board of education
73 of the county in which the qualified newspaper is pub-
74 lished of the circulation classification of the qualified
75 newspaper and of the applicable rate for publishing legal
76 advertisements in the qualified newspaper during the
77 ensuing twelve-month period commencing the first day of
78 July. If the qualified newspaper is published in a municipi-
79 pality, the publisher or proprietor shall at the same time
80 also furnish the same notification to the clerk or recorder
81 of the municipality.

82 (e) The rate charged for political advertising appearing
83 in a newspaper at any time or times during the time period
84 commencing thirty days prior to any primary or general
85 election and ending the day following the election may not
86 exceed one hundred five percent of the lowest commercial
87 rate charged by the newspaper in which the political
88 advertising appears.

89 (f) Nothing contained in this section prohibits qualified
90 newspapers from charging less than the specified rates for
91 any legal advertisement or from charging usual and
92 customary rates for notarizing and producing additional
93 copies of the affidavits and statements required in section
94 four of this article.

§59-3-4. Proof of publication and posting.

1 (a) Any qualified newspaper publishing a legal adver-
2 tisement incident to any type of judicial proceeding or any
3 provision in a deed of trust or contract, or incident to any
4 other case if required by the responsible party placing the
5 legal advertisement for publication, shall make and
6 furnish under oath an affidavit of publication of each legal
7 advertisement published, showing the number of times it
8 was published in the qualified newspaper, the dates of the
9 publications and the cost of the publications. When
10 posting of any legal advertisement is required in addition
11 to publication of the legal advertisement in a qualified
12 newspaper, the posting shall be done by the party respon-
13 sible for causing the legal advertisement to be published.
14 In any case where any legal advertisement is not required
15 to be published in a qualified newspaper but is required to
16 be posted, an affidavit of the type provided for in this
17 section with respect to posting shall be made by the party
18 who would have been responsible for causing the legal
19 advertisement to be published in a qualified newspaper
20 had it been required.

21 (b) The affidavit of the publisher or proprietor of a
22 qualified newspaper required by this section, together
23 with a copy of the legal advertisement as published,
24 constitutes prima facie evidence that the legal advertise-
25 ment was published or published and posted as stated in
26 the affidavit.

Enr. Com. Sub. for Com. Sub. for S. B. No. 554] 12

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *21st*
Day of *March*, 2002.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/15/02

Time

10:40 am