

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1111
Committee Substitute Favorable 4/23/09
Committee Substitute #2 Favorable 5/4/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1111-PCS50786-ST-75

Short Title: Campaign Finance Amendments.

(Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE MORE SPECIFIC WHEN AN INDIVIDUAL BECOMES A
"CANDIDATE" FOR CAMPAIGN FINANCE LAW; TO USE DIFFERENT
TERMINOLOGY AND DEFINE TERMS IN THE LEGAL EXPENSE FUNDS
STATUTE AND CLARIFY CANDIDATE CONTRIBUTIONS TO LEGAL EXPENSE
FUNDS; TO REVISE THE WAY THE DEFINITIONS OF "CONTRIBUTION" AND
"EXPENDITURE" DEAL WITH PROMISES; TO REQUIRE THAT A TREASURER
FOR A NORTH CAROLINA COMMITTEE BE A NORTH CAROLINA RESIDENT; TO
REDUCE THE THREE-THOUSAND-DOLLAR OR LESS EXEMPTION FOR
CAMPAIGN REPORTING FOR CANDIDATES FOR CERTAIN LOCAL ELECTED
OFFICES TO ONE THOUSAND DOLLARS OR LESS AND TO ELIMINATE THE
THREE-THOUSAND-DOLLAR OR LESS EXEMPTION FOR CAMPAIGN
REPORTING FOR CANDIDATES FOR ALL OTHER OFFICES; TO EXEMPT
COMMERCIAL COMMUNICATIONS FROM THE ELECTIONEERING
COMMUNICATION LAWS AND CANDIDATE-SPECIFIC COMMUNICATION
LAWS; TO AUTHORIZE AN OPTIONAL PROCESS TO DETERMINE WHETHER OR
NOT A COMMUNICATION IS AN ELECTIONEERING COMMUNICATION OR A
CANDIDATE-SPECIFIC COMMUNICATION PRIOR TO ITS DISTRIBUTION; AND
TO MAKE OTHER TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6(4) reads as rewritten:

"(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office.

Examples of positive action include:

- a. ~~filed~~ Filing a notice of candidacy or a petition requesting to be a candidate, ~~or~~
- b. ~~has been certified~~ Being certified as a nominee of a political party for a vacancy,
- c. ~~has otherwise qualified~~ Otherwise qualifying as a candidate in a manner authorized by law, ~~or~~



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- 1 d. Making a public announcement of a definite intent to run for public
 2 office in a particular election, or
 3 e. ~~has received~~Receiving funds or ~~made~~making payments or ~~has~~
 4 ~~given~~giving the consent for anyone else to receive funds or transfer
 5 anything of value for the purpose of ~~exploring or~~bringing about that
 6 individual's nomination or election to office. Transferring anything of
 7 value includes incurring an obligation to transfer anything of value.

8 Status as a candidate for the purpose of this Article continues if the
 9 individual is receiving contributions to repay loans or cover a deficit or is
 10 making expenditures to satisfy obligations from an election already held.
 11 Special definitions of "candidate" and "candidate campaign committee" that
 12 apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."

13 **SECTION 2.(a)** G.S. 163-278.300 reads as rewritten:

14 "**§ 163-278.300. Definitions.**

15 As used in this Article, the following terms mean:

- 16 (1) Board. – The State Board of Elections.
 17 (2) ~~Contribution.~~Legal expense donation. – ~~As defined in G.S. 163-278.6.A~~
 18 legal expense donation means any advance, conveyance, deposit,
 19 distribution, transfer of funds, loan, payment, gift, subscription of money, or
 20 anything of value whatsoever, and any contract, agreement, or other
 21 obligation to make a contribution to a legal expense fund for a permitted use
 22 as provided in G.S. 163-278.320. The term "~~contribution~~"legal expense
 23 donation" does not include either of the following:
 24 a. The provision of legal services to an elected officer by the State or
 25 any of its political subdivisions when those services are authorized or
 26 required by law, or
 27 b. The provision of free or pro bono legal advice or legal services,
 28 provided that any costs incurred or expenses advanced for which
 29 clients are liable under other provisions of law shall be deemed
 30 ~~contributions.~~legal expense donations.
 31 (3) Elected officer. – Any individual serving in or seeking a public office. An
 32 individual is seeking a public office when that individual has filed any
 33 notice, petition, or other document required by law or local act as a condition
 34 of election to public office. An individual continues to be an elected officer
 35 for purposes of this Article as long as a legal action commenced while the
 36 individual was an elected officer continues. If a legal action is commenced
 37 after an individual ceases to serve in or seek public office but the legal action
 38 concerns subject matter in the individual's official capacity as an elected
 39 officer, for purposes of this Article, that individual is an elected officer as
 40 long as that legal action continues.
 41 (4) Expenditure. – ~~As defined in G.S. 163-278.6.A~~An expenditure means any
 42 purchase, advance, conveyance, deposit, distribution, transfer of funds, loan,
 43 payment, gift, pledge, subscription of money, anything of value whatsoever,
 44 and any contract, agreement, promise, or other obligation to make an
 45 expenditure, by a legal defense fund for a permitted use as provided in
 46 G.S. 163-278.320. An expenditure forgiven by a person or entity to whom it
 47 is owed shall be reported as a legal expense donation.
 48 (5) Legal action. – A formal dispute in a judicial, legislative, or administrative
 49 forum, including but not limited to, a civil or criminal action filed in a court,
 50 a complaint or protest filed with a board of elections, an election contest
 51 filed under Article 3 of Chapter 120 of the General Statutes or

1 G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or
2 Legislative Ethics Committee. The term "legal action" also includes
3 investigations made or conducted before the commencement of any formal
4 proceedings. The term "legal action" does not include the election itself or
5 the campaign for election.

6 (6) Legal expense fund. – Any collection of money for the purpose of funding a
7 legal action, or a potential legal action, taken by or against an elected officer
8 in that elected officer's official capacity.

9 (7) Official capacity. – Related to or resulting from the campaign for public
10 office or related to or resulting from holding public office. "Official
11 capacity" is not limited to "scope and course of employment" as used in
12 G.S. 143-300.3.

13 (8) Public office. – As defined in G.S. 163-278.6.

14 (9) Treasurer. – An individual appointed by an elected officer or other
15 individual or group of individuals collecting money for a legal expense
16 fund."

17 **SECTION 2.(b)** G.S. 163-278.301 reads as rewritten:

18 **"§ 163-278.301. Creation of legal expense funds.**

19 (a) An elected officer, or another individual or group of individuals on the elected
20 officer's behalf, shall create a legal expense fund if given a ~~contribution,~~ legal expense
21 donation, other than from that elected officer's self, spouse, parents, brothers, or sisters, for any
22 of the following purposes:

23 (1) To fund an existing legal action taken by or against the elected officer in that
24 elected officer's official capacity.

25 (2) To fund a potential legal action taken by or against an elected officer in that
26 elected officer's official capacity.

27 (b) This section shall not apply to any ~~contribution-payment~~ to the State or any of its
28 political subdivisions.

29 (c) The legal expense fund shall comply with all provisions of this Article.

30 (d) If an elected officer funds legal actions entirely from that elected officer's own
31 ~~contributions or the contributions~~ legal expense donations or those of the elected officer's
32 spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense
33 fund. If a legal expense fund accepts ~~contributions~~ legal expense donations as described in
34 subsection (a) of this section, that legal expense fund shall report the elected officer's own
35 ~~contributions~~ legal expense donations and those of those family members along with the other
36 ~~contributions~~ legal expense donations in accordance with G.S. 163-278.310.

37 (e) No more than one legal expense fund shall be created by or for an elected officer for
38 the same legal action. Legal actions arising out of the same set of transactions and occurrences
39 are deemed the same legal action for purposes of this subsection. A legal expense fund created
40 for one legal action or potential legal action may be kept open by or on behalf of the elected
41 officer for subsequent legal actions or potential legal actions.

42 (f) Contractual arrangements, including liability insurance, or commercial relationships
43 or arrangements made in the normal course of business if not made for the purpose of lobbying,
44 are not "~~contributions~~" legal expense donations" for purposes of this Article. Use of such
45 contractual arrangements to fund legal actions does not by itself require the elected officer to
46 create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a)
47 of this section, such contractual arrangements shall be reported as expenditures.

48 (g) A violation of this Article shall be punishable as a Class 1 misdemeanor."

49 **SECTION 2.(c)** G.S. 163-278.307 reads as rewritten:

50 **"§ 163-278.307. Detailed accounts to be kept by treasurer.**

1 (a) The treasurer of each legal expense fund shall keep detailed accounts, current within
2 seven calendar days after the date of receiving a ~~contribution~~legal expense donation or making
3 an expenditure, of all ~~contributions~~legal expense donations received and all expenditures made
4 by or on behalf of the legal expense fund.

5 (b) Accounts kept by the treasurer of a legal expense fund or the accounts of a treasurer
6 or legal expense fund at any bank or other depository may be inspected by a member, designee,
7 agent, attorney, or employee of the Board who is making an investigation pursuant to
8 G.S. 163-278.22.

9 (c) For purposes of this section, "detailed accounts" shall mean at least all information
10 required to be included in the quarterly report required under this Article.

11 (d) When a treasurer shows that best efforts have been used to obtain, maintain, and
12 submit the information required by this Article, any report of the legal expense shall be
13 considered in compliance with this Article and shall not be the basis for criminal prosecution or
14 the imposition of civil penalties. The State Board of Elections shall adopt rules to implement
15 this subsection."

16 **SECTION 2.(d)** G.S. 163-278.308 reads as rewritten:

17 "**§ 163-278.308. Reports filed with Board.**

18 (a) The treasurer of each legal expense fund shall file with the Board the following
19 reports:

20 (1) Organizational report. – The report required under G.S. 163-278.309.

21 (2) Quarterly report. – The report required under G.S. 163-278.310.

22 (b) Any report or attachment required by this Article must be filed under certification of
23 the treasurer as true and correct to the best of the knowledge of that officer.

24 (c) The organizational report shall be filed within 10 calendar days of the creation of
25 the legal expense fund. All quarterly reports shall be filed with the Board no later than 10
26 business days after the end of each calendar quarter.

27 (d) Treasurers shall electronically file each report required by this section that shows a
28 cumulative total for the quarter in excess of five thousand dollars (\$5,000) in ~~contributions~~
29 legal expense donations or expenditures, according to rules adopted by the Board. The Board
30 shall provide the software necessary to the treasurer to file the required electronic report at no
31 cost to the legal expense fund.

32 (e) Any statement required to be filed under this Article shall be signed and certified as
33 true and correct by the treasurer and shall be certified as true and correct to the best of the
34 treasurer's knowledge. The elected officer creating the legal expense fund, or the other
35 individual or group of individuals creating the legal expense fund on the elected officer's
36 behalf, shall certify as true and correct to the best of their knowledge the organizational report
37 and appointment of the treasurer. A certification under this Article shall be treated as under
38 oath, and any individual making a certification under this Article knowing the information to be
39 untrue is guilty of a Class I felony."

40 **SECTION 2.(e)** G.S. 163-278.310 reads as rewritten:

41 "**§ 163-278.310. Quarterly report.**

42 The treasurer of each legal expense fund shall be required to file a quarterly report with the
43 Board containing all of the following:

44 (1) ~~Contributions.~~Legal expense donations. – The name and complete mailing
45 address of each ~~contributor, donor,~~ the amount of the ~~contribution, legal~~
46 expense donation, the principal occupation of the ~~contributor, donor,~~ and the
47 date the ~~contribution~~legal expense donation was received. The total sum of
48 all ~~contributions~~legal expense donations to date shall also be plainly
49 exhibited. The treasurer is not required to report the name of any ~~contributor~~
50 donor making a total ~~contribution~~legal expense donation of fifty dollars
51 (\$50.00) or less in a calendar quarter, but shall instead report the fact that the

1 treasurer has received a total ~~contribution~~ legal expense donation of fifty
2 dollars (\$50.00) or less, the amount of the ~~contribution~~, legal expense
3 donation, and the date of receipt.

4 (2) Expenditures. – A list of all expenditures made by or on behalf of the legal
5 expense fund. The report shall list the name and complete mailing address of
6 each payee, the amount paid, the purpose, and the date such payment was
7 made. The total sum of all expenditures to date shall also be plainly
8 exhibited. The payee shall be the entity to whom the legal expense fund is
9 obligated to make the expenditure. If the expenditure is to a financial
10 institution for revolving credit or a reimbursement for a payment to a
11 financial institution for revolving credit, the statement shall also include a
12 specific itemization of the goods and services purchased with the revolving
13 credit. If the obligation is for more than one good or service, the statement
14 shall include a specific itemization of the obligation so as to provide a
15 reasonable understanding of the obligation.

16 (3) Loans. – All proceeds from loans shall be recorded separately with a detailed
17 analysis reflecting the amount of the loan, the source, the period, the rate of
18 interest, and the security pledged, if any, and all makers and endorsers."

19 **SECTION 2.(f)** G.S. 163-278.316 reads as rewritten:

20 **"§ 163-278.316. Limitations on ~~contributions~~ legal expense donations.**

21 (a) No entity shall make, and no treasurer shall accept, any monetary ~~contribution~~ legal
22 expense donation in excess of fifty dollars (\$50.00) unless such ~~contribution~~ legal expense
23 donation is in the form of a check, draft, money order, credit card charge, debit, or other
24 noncash method that can be subject to written verification. No ~~contribution~~ legal expense
25 donation in the form of check, draft, money order, credit card charge, debit, or other noncash
26 method may be made or accepted unless it contains a specific designation of the intended
27 ~~contributor~~ donee chosen by the ~~contributor~~ donor.

28 (b) The State Board of Elections may adopt rules as to the reporting and verification of
29 any method of ~~contribution~~ legal expense donation payment allowed under this Article. For
30 ~~contributions~~ legal expense donations by money order, the State Board shall adopt rules to
31 ensure an audit trail for every ~~contribution~~ legal expense donation so that the identity of the
32 ~~contributor~~ donor can be determined.

33 (c) For any ~~contribution~~ legal expense donation made by credit card, the credit card
34 account number of a ~~contributor~~ donor is not a public record.

35 (d) No legal expense fund shall accept ~~contributions~~ legal expense donations from a
36 corporation, labor union, insurance company, professional association, or business entity in
37 excess of four thousand dollars (\$4,000) per calendar year. No legal expense fund shall accept
38 ~~contributions~~ legal expense donations from a corporation which when totaled with
39 ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar
40 year from any affiliated corporation exceed the per calendar year ~~contribution~~ legal expense
41 donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~
42 legal expense donations from a labor union which when totaled with ~~contributions~~ legal
43 expense donations to the same legal expense fund for the same calendar year from any
44 affiliated labor union exceed the per calendar year ~~contribution~~ legal expense donation limits
45 for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense
46 donations from an insurance company which when totaled with ~~contributions~~ legal expense
47 donations to the same legal expense fund for the same calendar year from any affiliated
48 insurance company exceed the per calendar year ~~contribution~~ legal expense donation limits for
49 that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense
50 donations from a professional association which when totaled with ~~contributions~~ legal expense
51 donations to the same legal expense fund for the same calendar year from any affiliated

1 professional association exceed the per calendar year ~~contribution~~legal expense donation limits
2 for that legal expense fund. No legal expense fund shall accept ~~contributions~~legal expense
3 donations from a business entity which when totaled with ~~contributions~~legal expense donations
4 to the same legal expense fund for the same calendar year from any affiliated business entity
5 exceed the per calendar year ~~contribution~~legal expense donation limits for that legal expense
6 fund. The definitions of corporation, labor union, insurance company, professional association,
7 and business entity are the same as those in G.S. 163-278.6. This subsection does not apply to
8 political committees created pursuant to G.S. 163-278.19(b), except that no legal expense fund
9 shall accept a ~~contribution~~legal expense donation which would be a violation of
10 G.S. 163-278.13B if accepted by a candidate or political committee. This subsection does not
11 apply to corporations permitted to make contributions in G.S. 163-278.19(f).

12 (e) No entity shall make a ~~contribution~~legal expense donation to a legal expense fund
13 that the legal expense fund could not accept under subsection (d) of this section."

14 **SECTION 2.(g)** G.S. 163-278.320 reads as rewritten:

15 "**§ 163-278.320. Permitted uses of legal expense funds.**

16 (a) A legal expense fund may be used for reasonable expenses actually incurred by the
17 elected officer in relation to a legal action or potential legal action brought by or against the
18 elected officer in that elected officer's official capacity. The elected officer's campaign itself
19 shall not be funded from a legal expense fund.

20 (b) Upon closing a legal expense account, the treasurer shall distribute the remaining
21 monies in the legal expense fund to any of the following:

- 22 (1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter 7A of
23 the General Statutes.
- 24 (2) The North Carolina State Bar for the provision of civil legal services for
25 indigents.
- 26 (3) ~~Contributions~~Payments to an organization described in section 170(c) of the
27 Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the
28 candidate or the candidate's spouse, children, parents, brothers, or sisters are
29 not employed by the organization.
- 30 (4) To return all or a portion of a ~~contribution~~legal expense donation to the
31 ~~contributor~~donor.
- 32 (5) Payment to the Escheat Fund established by Chapter 116B of the General
33 Statutes."

34 **SECTION 2.(h)** G.S. 163-278.16B(a) reads as rewritten:

35 "(a) A candidate or candidate campaign committee may use contributions only for the
36 following purposes:

- 37 (1) Expenditures resulting from the campaign for public office by the candidate
38 or candidate's campaign committee.
- 39 (2) Expenditures resulting from holding public office.
- 40 (3) Donations to an organization described in section 170(c) of the Internal
41 Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or
42 the candidate's spouse, children, parents, brothers, or sisters are not
43 employed by the organization.
- 44 (4) Contributions to a national, State, or district or county committee of a
45 political party or a caucus of the political party.
- 46 (5) Contributions to another candidate or candidate's campaign committee.
- 47 (6) To return all or a portion of a contribution to the contributor.
- 48 (7) Payment of any penalties against the candidate or candidate's campaign
49 committee for violation of this Article imposed by a board of elections or a
50 court of competent jurisdiction.

- 1 (8) Payment to the Escheat Fund established by Chapter 116B of the General
2 Statutes.
- 3 (9) Legal expense donation not in excess of four thousand dollars (\$4,000) per
4 calendar year to a legal expense fund established pursuant to Article 22M of
5 Chapter 163 of the General Statutes."

6 **SECTION 3.(a)** G.S. 163-278.6(6) reads as rewritten:

7 "(6) The terms "contribute" or "contribution" mean any advance, conveyance,
8 deposit, distribution, transfer of funds, loan, payment, gift, pledge or
9 subscription of money or anything of value whatsoever, to a candidate to
10 support or oppose the nomination or election of one or more clearly
11 identified candidates, to a political committee, to a political party, or to a
12 referendum committee, whether or not made in an election year, and any
13 contract, agreement, ~~promise~~ or other ~~obligation, whether or not legally~~
14 ~~enforceable, obligation~~ to make a contribution. An expenditure forgiven by a
15 person or entity to whom it is owed shall be reported as a contribution from
16 that person or entity. These terms include, without limitation, such
17 contributions as labor or personal services, postage, publication of campaign
18 literature or materials, in-kind transfers, loans or use of any supplies, office
19 machinery, vehicles, aircraft, office space, or similar or related services,
20 goods, or personal or real property. These terms also include, without
21 limitation, the proceeds of sale of services, campaign literature and
22 materials, wearing apparel, tickets or admission prices to campaign events
23 such as rallies or dinners, and the proceeds of sale of any campaign-related
24 services or goods. Notwithstanding the foregoing meanings of
25 "contribution," the word shall not be construed to include services provided
26 without compensation by individuals volunteering a portion or all of their
27 time on behalf of a candidate, political committee, or referendum committee.
28 The term "contribution" does not include an "independent expenditure." If:

- 29 a. Any individual, person, committee, association, or any other
30 organization or group of individuals, including but not limited to, a
31 political organization (as defined in section 527(e)(1) of the Internal
32 Revenue Code of 1986) makes, or contracts to make, any
33 disbursement for any electioneering communication, as defined in
34 G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and
35 b. That disbursement is coordinated with a candidate, an authorized
36 political committee of that candidate, a State or local political party
37 or committee of that party, or an agent or official of any such
38 candidate, party, or committee

39 that disbursement or contracting shall be treated as a contribution to the
40 candidate supported by the electioneering communication or that candidate's
41 party and as an expenditure by that candidate or that candidate's party."

42 **SECTION 3.(b)** G.S. 163-278.6(9) reads as rewritten:

43 "(9) The terms "expend" or "expenditure" mean any purchase, advance,
44 conveyance, deposit, distribution, transfer of funds, loan, payment, gift,
45 pledge or subscription of money or anything of value whatsoever, whether or
46 not made in an election year, and any contract, agreement, ~~promise~~ or other
47 ~~obligation, whether or not legally enforceable, obligation~~ to make an
48 expenditure, to support or oppose the nomination, election, or passage of one
49 or more clearly identified candidates, or ballot measure. An expenditure
50 forgiven by a person or entity to whom it is owed shall be reported as a
51 contribution from that person or entity. Supporting or opposing the election

1 of clearly identified candidates includes supporting or opposing the
2 candidates of a clearly identified political party. The term "expenditure" also
3 includes any payment or other transfer made by a candidate, political
4 committee, or referendum committee."

5 **SECTION 4.** G.S. 163-278.7(a) reads as rewritten:

6 "(a) Each candidate, political committee, and referendum committee shall appoint a
7 treasurer and, under verification, report the name and address of the treasurer to the Board.
8 Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate
9 may appoint himself or any other individual, including any relative except his spouse, as his
10 treasurer, and, upon failure to file report designating a treasurer, the candidate shall be
11 concluded to have appointed himself as treasurer and shall be required to personally fulfill the
12 duties and responsibilities imposed upon the appointed treasurer and subject to the penalties
13 and sanctions hereinafter provided."

14 **SECTION 5.** G.S. 163-278.10A reads as rewritten:

15 "**§ 163-278.10A. Threshold of ~~\$3,000~~ \$1,000 for ~~Financial Reports~~ financial reports for**
16 **certain candidates.**

17 (a) Notwithstanding any other provision of this Chapter, a ~~candidate~~ candidate for a
18 county office, municipal office, local school board office, soil and water conservation district
19 board of supervisors, or sanitary district board shall be exempted from the reports of
20 contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B,
21 163-278.40C, 163-278.40D, and 163-278.40E if to further ~~his~~ the candidate's campaign that
22 candidate:

- 23 (1) Does not receive more than ~~three thousand dollars (\$3,000)~~ one thousand
24 dollars (\$1,000) in contributions, and
- 25 (2) Does not receive more than ~~three thousand dollars (\$3,000)~~ one thousand
26 dollars (\$1,000) in loans, and
- 27 (3) Does not spend more than ~~three thousand dollars (\$3,000)~~ one thousand
28 dollars (\$1,000).

29 To qualify for the exemption from those reports, the candidate's treasurer shall file a
30 certification that ~~he~~ the candidate does not intend to receive in contributions or loans or expend
31 more than ~~three thousand dollars (\$3,000)~~ one thousand dollars (\$1,000) to further ~~his~~ the
32 candidate's campaign. The certification shall be filed with the Board at the same time the
33 candidate files ~~his~~ the candidate's Organizational Report as required in G.S. 163-278.7,
34 G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a
35 political committee which is handling all contributions, loans, and expenditures for ~~his~~ the
36 candidate's campaign, the treasurer of the political committee shall file a certification of intent
37 to stay within the threshold amount. If the intent to stay within the threshold changes, or if the
38 ~~three thousand dollar (\$3,000)~~ one-thousand-dollar (\$1,000) threshold is exceeded, the treasurer
39 shall immediately notify the Board and shall be responsible for filing all reports required in
40 G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that
41 any contribution, loan, or expenditure which would have been required to be reported on an
42 earlier report but for this section shall be included on the next report required after the intent
43 changes or the threshold is exceeded.

44 (b) The exemption from reporting in subsection (a) of this section applies to political
45 party committees under the same terms as for candidates, except that the term "to further ~~his~~ the
46 candidate's campaign" does not relate to a political party committee's exemption, and all
47 contributions, expenditures, and loans during an election shall be counted against the political
48 party committee's threshold amount."

49 **SECTION 6.** G.S. 163-278.5 reads as rewritten:

50 "**§ 163-278.5. Scope of Article; severability.**

1 The provisions of this Article apply to primaries and elections for North Carolina offices
2 and to North Carolina referenda and do not apply to primaries and elections for federal offices
3 or offices in other States or to non-North Carolina referenda. Any provision in this Article that
4 regulates a non-North Carolina entity does so only to the extent that the entity's actions affect
5 elections for North Carolina offices or North Carolina referenda.

6 The provisions of this Article are severable. If any provision is held invalid by a court of
7 competent jurisdiction, the invalidity does not affect other provisions of the Article that can be
8 given effect without the invalid provision.

9 This section applies to Articles 22B, 22D, 22E, 22F, 22G, 22H, 22J, and 22M of the
10 General Statutes to the same extent that it applies to this Article."

11 **SECTION 7.(a)** G.S. 163-278.80(2) reads as rewritten:

12 "(2) The term "electioneering communication" means any broadcast, cable, or
13 satellite communication that has all the following characteristics:

- 14 a. Refers to a clearly identified candidate for a statewide office or the
15 General Assembly.
- 16 b. Is ~~made~~ aired within one of the following time periods:
 - 17 1. 60 days before a general or special election for the office
18 sought by the candidate, or
 - 19 2. 30 days before a primary election or a convention of a
20 political party that has authority to nominate a candidate for
21 the office sought by the candidate.
- 22 c. Is targeted to the relevant electorate."

23 **SECTION 7.(b)** G.S. 163-278.80(3) reads as rewritten:

24 "(3) The term "electioneering communication" does not include any of the
25 following:

- 26 a. A communication appearing in a news story, commentary, or
27 editorial distributed through the facilities of any broadcasting station,
28 unless those facilities are owned or controlled by any political party,
29 political committee, or candidate.
- 30 b. A communication that constitutes an expenditure or independent
31 expenditure under Article 22A of this Chapter.
- 32 c. A communication that constitutes a candidate debate or forum
33 conducted pursuant to rules adopted by the Board or that solely
34 promotes that debate or forum and is made by or on behalf of the
35 person sponsoring the debate or forum.
- 36 d. A communication made while the General Assembly is in session
37 which, incidental to advocacy for or against a specific piece of
38 legislation pending before the General Assembly, urges the audience
39 to communicate with a member or members of the General Assembly
40 concerning that piece of legislation.
- 41 e. A communication that meets all of the following criteria:
 - 42 1. Does not mention any election, candidacy, political party,
43 opposing candidate, or voting by the general public.
 - 44 2. Does not take a position on the candidate's character or
45 qualifications and fitness for office.
 - 46 3. Proposes a commercial transaction."

47 **SECTION 7.(c)** Article 22E of Chapter 163 of the General Statutes is amended by
48 adding a new section to read:

49 "**§ 163-278.84. Determination of electioneering communication.**

50 (a) Any individual, committee, association, or any other organization or group of
51 individuals that produces a communication to be aired to the relevant electorate in the time

1 periods under G.S. 163-278.80(2)b. may, but is not required to, ask the State Board for a
2 determination as to whether or not that communication is an electioneering communication
3 prior to the airing of that communication.

4 (b) The State Board shall establish a process for determination as to whether a
5 communication is an electioneering communication prior to the airing of that communication
6 when it is requested under subsection (a) of this section. The responsibility for the
7 determination may be delegated to the Executive Director. If the responsibility is delegated to
8 the Executive Director, the process established by the State Board shall include an opportunity
9 for immediate appeal to the State Board of the determination by the Executive Director."

10 **SECTION 8.(a)** G.S. 163-278.90(2) reads as rewritten:

11 "(2) The term "electioneering communication" means any mass mailing or
12 telephone bank that has all the following characteristics:

- 13 a. Refers to a clearly identified candidate for a statewide office or the
14 General Assembly.
- 15 b. ~~Is made-transmitted~~ within one of the following time periods:
 - 16 1. 60 days before a general or special an election for the office
17 sought by the candidate, or
 - 18 2. 30 days before a primary election or a convention of a
19 political party that has authority to nominate a candidate for
20 the office sought by the candidate.
- 21 c. Is targeted to the relevant electorate."

22 **SECTION 8.(b)** G.S. 163-278.90(3) reads as rewritten:

23 "(3) The term "electioneering communication" does not include any of the
24 following:

- 25 a. A communication appearing in a news story, commentary, or
26 editorial distributed through any newspaper or periodical, unless that
27 publication is owned or controlled by any political party, political
28 committee, or candidate.
- 29 b. A communication that constitutes an expenditure or independent
30 expenditure under Article 22A of this Chapter.
- 31 c. A communication that constitutes a candidate debate or forum
32 conducted pursuant to rules adopted by the Board or that solely
33 promotes that debate or forum and is made by or on behalf of the
34 person sponsoring the debate or forum.
- 35 d. A communication that is distributed by a corporation solely to its
36 shareholders or employees, or by a labor union or professional
37 association solely to its members.
- 38 e. A communication made while the General Assembly is in session
39 which, incidental to advocacy for or against a specific piece of
40 legislation pending before the General Assembly, urges the audience
41 to communicate with a member or members of the General Assembly
42 concerning that piece of legislation.
- 43 f. A communication that meets all of the following criteria:
 - 44 1. Does not mention any election, candidacy, political party,
45 opposing candidate, or voting by the general public.
 - 46 2. Does not take a position on the candidate's character or
47 qualifications and fitness for office.
 - 48 3. Proposes a commercial transaction."

49 **SECTION 8.(c)** Article 22F of Chapter 163 of the General Statutes is amended by
50 adding a new section to read:

51 **§ 163-278.94. Determination of electioneering communication.**

1 (a) Any individual, committee, association, or any other organization or group of
2 individuals that produces a communication to be distributed to the relevant electorate in the
3 time periods under G.S. 163-278.90(2)b. may, but is not required to, ask the State Board for a
4 determination as to whether or not that communication is an electioneering communication
5 prior to the airing of that communication.

6 (b) The State Board shall establish a process for determination as to whether a
7 communication is an electioneering communication prior to the airing of that communication
8 when it is requested under subsection (a) of this section. The responsibility for the
9 determination may be delegated to the Executive Director. If the responsibility is delegated to
10 the Executive Director, the process established by the State Board shall include an opportunity
11 for immediate appeal to the State Board of the determination by the Executive Director."

12 **SECTION 9.(a)** G.S. 163-278.100(1) reads as rewritten:

- 13 (1) The term "candidate-specific communication" means any broadcast, cable,
14 or satellite communication that has all the following characteristics:
- 15 a. Refers to a clearly identified candidate for a statewide office or the
16 General Assembly.
 - 17 b. Is ~~made~~-aired in an even-numbered year after the final date on which
18 a Notice of Candidacy can be filed for the office, pursuant to
19 G.S. 163-106(c) or G.S. 163-323, and through the day on which the
20 general election is conducted, excluding the time period set in the
21 definition for "electioneering communication" in
22 G.S. 163-278.80(2)b.
 - 23 c. Is targeted to the relevant electorate."

24 **SECTION 9.(b)** G.S. 163-278.100(2) reads as rewritten:

- 25 (2) The term "candidate-specific communication" does not include any of the
26 following:
- 27 a. A communication appearing in a news story, commentary, or
28 editorial distributed through the facilities of any broadcasting station,
29 unless those facilities are owned or controlled by any political party,
30 political committee, or candidate.
 - 31 b. A communication that constitutes an expenditure or independent
32 expenditure under Article 22A of this Chapter.
 - 33 c. A communication that constitutes a candidate debate or forum
34 conducted pursuant to rules adopted by the Board or that solely
35 promotes that debate or forum and is made by or on behalf of the
36 person sponsoring the debate or forum.
 - 37 d. A communication made while the General Assembly is in session
38 which, incidental to advocacy for or against a specific piece of
39 legislation pending before the General Assembly, urges the audience
40 to communicate with a member or members of the General Assembly
41 concerning that piece of legislation.
 - 42 e. An electioneering communication as defined in Article 22E of this
43 Chapter.
 - 44 f. A communication that meets all of the following criteria:
 - 45 1. Does not mention any election, candidacy, political party,
46 opposing candidate, or voting by the general public.
 - 47 2. Does not take a position on the candidate's character or
48 qualifications and fitness for office.
 - 49 3. Proposes a commercial transaction."

50 **SECTION 9.(c)** Article 22G of Chapter 163 of the General Statutes is amended by
51 adding a new section to read:

1 **"§ 163-278.103. Determination of candidate-specific communication.**

2 (a) Any individual, committee, association, or any other organization or group of
3 individuals that produces a communication to be aired to the relevant electorate in the time
4 periods under G.S. 163-278.100(1)b. may, but is not required to, ask the State Board for a
5 determination as to whether or not that communication is a candidate-specific communication
6 prior to the airing of that communication.

7 (b) The State Board shall establish a process for determination as to whether a
8 communication is a candidate-specific communication prior to the airing of that
9 communication when it is requested under subsection (a) of this section. The responsibility for
10 the determination may be delegated to the Executive Director. If the responsibility is delegated
11 to the Executive Director, the process established by the State Board shall include an
12 opportunity for immediate appeal to the State Board of the determination by the Executive
13 Director."

14 **SECTION 10.(a)** G.S. 163-278.110(1) reads as rewritten:

15 "(1) The term "candidate-specific communication" means any mass mailing or
16 telephone bank that has all the following characteristics:

- 17 a. Refers to a clearly identified candidate for a statewide office or the
18 General Assembly.
19 b. Is ~~made-transmitted~~ in an even-numbered year after the final date on
20 which a Notice of Candidacy can be filed for the office, pursuant to
21 G.S. 163-106(c) or G.S. 163-323, and through the day on which the
22 general election is conducted, excluding the time period set in the
23 definition for "electioneering communication" in
24 G.S. 163-278.90(2)b.
25 c. Is targeted to the relevant electorate."

26 **SECTION 10.(b)** G.S. 163-278.110(2) reads as rewritten:

27 "(2) The term "candidate-specific communication" does not include any of the
28 following:

- 29 a. A communication appearing in a news story, commentary, or
30 editorial distributed through any newspaper or periodical, unless that
31 publication is owned or controlled by any political party, political
32 committee, or candidate.
33 b. A communication that constitutes an expenditure or independent
34 expenditure under Article 22A of this Chapter.
35 c. A communication that constitutes a candidate debate or forum
36 conducted pursuant to rules adopted by the Board or that solely
37 promotes that debate or forum and is made by or on behalf of the
38 person sponsoring the debate or forum.
39 d. A communication that is distributed by a corporation solely to its
40 shareholders or employees or by a labor union or professional
41 association solely to its members.
42 e. A communication made while the General Assembly is in session
43 which, incidental to advocacy for or against a specific piece of
44 legislation pending before the General Assembly, urges the audience
45 to communicate with a member or members of the General Assembly
46 concerning that piece of legislation.
47 f. An electioneering communication as defined in Article 22F of this
48 Chapter.
49 g. A public opinion poll conducted by a newspaper, periodical, or other
50 news gathering organization.
51 h. A communication that meets all of the following criteria:

- 1 1. Does not mention any election, candidacy, political party,
- 2 opposing candidate, or voting by the general public.
- 3 2. Does not take a position on the candidate's character or
- 4 qualifications and fitness for office.
- 5 3. Proposes a commercial transaction."

6 **SECTION 10.(c)** Article 22H of Chapter 163 of the General Statutes is amended
7 by adding a new section to read:

8 **"§ 163-278.113. Determination of candidate-specific communication.**

9 (a) Any individual, committee, association, or any other organization or group of
10 individuals that produces a communication to be distributed to the relevant electorate in the
11 time periods under G.S. 163-278.110(1)b. may, but is not required to, ask the State Board for a
12 determination as to whether or not that communication is a candidate-specific communication
13 prior to the airing of that communication.

14 (b) The State Board shall establish a process for determination as to whether a
15 communication is a candidate-specific communication prior to the airing of that
16 communication when it is requested under subsection (a) of this section. The responsibility for
17 the determination may be delegated to the Executive Director. If the responsibility is delegated
18 to the Executive Director, the process established by the State Board shall include an
19 opportunity for immediate appeal to the State Board of the determination by the Executive
20 Director."

21 **SECTION 11.** This act becomes effective December 1, 2009.