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Short Title: Electioneering Communications.

(Public)

Sponsors:

Referred to:

May 10, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN REGULATION OF ELECTIONEERING
3 COMMUNICATIONS IN NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 163-278.80(1) reads as rewritten:

6 "(1) The term "disclosure date" means either of the following:

- 7 a. The first date during any calendar year when an electioneering
8 communication is aired after an entity has ~~made~~
9 ~~disbursements~~incurred expenses for the direct costs of
10 producing or airing electioneering communications aggregating
11 in excess of ten thousand dollars (\$10,000).
12 b. Any other date during that calendar year by which an entity has
13 ~~made disbursements~~incurred expenses for the direct costs of
14 producing or airing electioneering communications aggregating
15 in excess of ten thousand dollars (\$10,000) since the most
16 recent disclosure date for that calendar year."

17 **SECTION 1.(b)** G.S. 163-278.90 reads as rewritten:

18 "§ 163-278.90. Definitions.

19 As used in this Article, the following terms have the following definitions:

20 (1) The term "disclosure date" means either of the following:

- 21 a. The first date during any calendar year when an electioneering
22 communication is transmitted after an entity has ~~made~~
23 ~~disbursements~~incurred expenses for the direct costs of
24 producing or transmitting electioneering communications
25 aggregating in excess of ten thousand dollars (\$10,000).
26 b. Any other date during that calendar year by which an entity has
27 ~~made disbursements~~incurred expenses for the direct costs of

- 1 producing or transmitting electioneering communications
2 aggregating in excess of ten thousand dollars (\$10,000) since
3 the most recent disclosure date for that calendar year.
- 4 (2) The term "electioneering communication" means any mass mailing or
5 telephone bank that has all the following characteristics:
6 a. Refers to a clearly identified candidate for a statewide office or
7 the General Assembly.
8 b. Is made within one of the following time periods:
9 1. 60 days before a general or special an election for the
10 office sought by the candidate, or
11 2. 30 days before a primary election or a convention of a
12 political party that has authority to nominate a candidate
13 for the office sought by the candidate.
14 c. Is targeted to the relevant electorate.
- 15 (3) The term "electioneering communication" does not include any of the
16 following:
17 a. A communication appearing in a news story, commentary, or
18 editorial distributed through any newspaper or periodical,
19 unless that publication is owned or controlled by any political
20 party, political committee, or candidate.
21 b. A communication that constitutes an expenditure or
22 independent expenditure under Article 22A of this Chapter.
23 c. A communication that constitutes a candidate debate or forum
24 conducted pursuant to rules adopted by the Board or that solely
25 promotes that debate or forum and is made by or on behalf of
26 the person sponsoring the debate or forum.
27 d. A communication that is distributed by a corporation solely to
28 its shareholders or employees, or by a labor union or
29 professional association solely to its members.
30 e. A communication made while the General Assembly is in
31 session which, incidental to advocacy for or against a specific
32 piece of legislation pending before the General Assembly, urges
33 the audience to communicate with a member or members of the
34 General Assembly concerning that piece of legislation.
- 35 (4) The term "mass mailing" means any mailing by United States mail or
36 ~~facsimile that is targeted to the relevant electorate and is made by a~~
37 ~~commercial vendor or made from any commercial list, facsimile.~~ Part
38 1A of Article 22A of this Chapter has its own internal definition of
39 "mass mailing" under the definition of "print media," and that
40 definition does not apply in this Article.
- 41 (5) The term "prohibited source" means any corporation, insurance
42 company, labor union, or professional association. The term
43 "prohibited source" does not include an entity that meets all the criteria
44 set forth in G.S. 163-278.19(f).

- 1 (5a) The term "race" means a ballot item, as defined in G.S. 163-165(2), in
2 which the voters are to choose between or among candidates.
- 3 (6) ~~The term "targeted to the relevant electorate" means a communication~~
4 ~~which refers to a clearly identified candidate for statewide office or the~~
5 ~~General Assembly and which electorate" means:~~
- 6 a. ~~If transmitted by mail or facsimile in connection with a clearly~~
7 ~~identified candidate for statewide office, is transmitted to~~
8 ~~50,000 or more addresses in the State, by the transmission of~~
9 ~~identical or substantially similar matter within any 30 day~~
10 ~~period, or, in connection with a clearly identified candidate for~~
11 ~~the General Assembly, is transmitted to 5,000 or more~~
12 ~~addresses in the district, by the transmission of identical or~~
13 ~~substantially identical matter within any 30 day period.~~
- 14 b. ~~If transmitted by telephone, in connection with a clearly~~
15 ~~identified candidate for statewide office, more than 50,000~~
16 ~~telephone calls in the State of an identical or substantially~~
17 ~~similar nature within any 30 day period, or in the case of a~~
18 ~~clearly identified candidate for the General Assembly, more~~
19 ~~than 5,000 calls in the district of an identical or substantially~~
20 ~~similar nature within any 30 day period.~~
- 21 a. With respect to a statewide race:
- 22 1. Transmitting, by mail or facsimile to a cumulative total
23 of 50,000 or more addresses in the State, items
24 identifying one or more candidates in the same race
25 within any 30-day period; or
- 26 2. Making a cumulative total of 50,000 or more telephone
27 calls in the State identifying one or more candidates in
28 the same race within any 30-day period.
- 29 b. With respect to a race for the General Assembly:
- 30 1. Transmitting, by mail or facsimile to a cumulative total
31 of 2,500 or more addresses in the district, items
32 identifying one or more candidates in the same race
33 within any 30-day period; or
- 34 2. Making a cumulative total of 2,500 or more telephone
35 calls in the district identifying one or more candidates in
36 the same race within any 30-day period.
- 37 (7) The term "telephone bank" means telephone calls that are targeted to
38 the relevant electorate, except when those telephone calls are made by
39 volunteer workers, whether or not the design of the telephone bank
40 system, development of calling instructions, or training of volunteers
41 was done by paid professionals.
- 42 (8) The term "501(c)(4) organization" means either of the following:

- 1 a. An organization described in section 501(c)(4) of the Internal
2 Revenue Code of 1986 and exempt from taxation under section
3 501(a) of that Code.
- 4 b. An organization that has submitted an application to the Internal
5 Revenue Service for determination of its status as an
6 organization described in sub-subdivision a. of this subdivision.
- 7 (9) Except as otherwise provided in this Article, the definitions in Article
8 22A of this Chapter apply in this Article."

9 **SECTION 2.(a)** G.S. 163-278.81 reads as rewritten:

10 **"§ 163-278.81. Disclosure of Electioneering Communications.**

11 (a) Statement Required. – Every individual, committee, association, or any other
12 organization or group of individuals that ~~makes a disbursement~~incurs an expense for
13 the direct costs of producing ~~and~~ or airing electioneering communications in an
14 aggregate amount in excess of ten thousand dollars (\$10,000) during any calendar year
15 shall, within 24 hours of each disclosure date, file with the Board a statement containing
16 the information described in subsection (b) of this section.

17 (b) Contents of Statement. – Each statement required to be filed by this section
18 shall be made under the penalty of perjury in G.S. 14-209 and shall contain the
19 following information:

- 20 (1) The identification of the entity ~~making the disbursement, incurring the~~
21 expense, of any entity sharing or exercising direction or control over
22 the activities of that entity, and of the custodian of the books and
23 accounts of the entity making the disbursement, incurring the expense.
- 24 (2) The principal place of business of the entity ~~making the disbursement~~
25 incurring the expense if the entity is not an individual.
- 26 (3) The amount of each ~~disbursement expense incurred~~ of more than one
27 thousand dollars (\$1,000) during the period covered by the statement
28 and the identification of the entity to whom the ~~disbursement was~~
29 made. expense was incurred.
- 30 (4) The elections to which the electioneering communications pertain and
31 the names, if known, of the candidates identified or to be identified.
- 32 (5) The names and addresses of all ~~contributors who contributed entities~~
33 that provided funds or anything of value whatsoever in an aggregate
34 amount of more than one thousand dollars (\$1,000) during the period
35 beginning on the first day of the preceding calendar year and ending
36 on the disclosure date to a segregated bank account that consists of
37 funds ~~contributed~~ provided solely by entities other than prohibited
38 sources. Nothing in this subdivision is to be construed as a prohibition
39 on the use of funds in such a segregated account for a purpose other
40 than electioneering communications. If the provider is an individual,
41 the statement shall also contain the principal occupation of the
42 provider. The "principal occupation of the provider" shall mean the
43 same as the "principal occupation of the contributor" in
44 G.S. 163-278.11.

1 (6) Repealed by Session Laws 2005-430, s. 9(a), effective December 1,
2 2005, and applicable to all contributions and expenditures made or
3 accepted on or after that date."

4 **SECTION 2.(b)** G.S. 163-278.91 reads as rewritten:

5 **"§ 163-278.91. Disclosure of Electioneering Communications.**

6 (a) Statement Required. – Every individual, committee, association, or any other
7 organization or group of individuals who ~~makes a disbursement~~ incurs an expense for
8 the direct costs of producing ~~and~~ or transmitting electioneering communications in an
9 aggregate amount in excess of ten thousand dollars (\$10,000) during any calendar year
10 shall, within 24 hours of each disclosure date, file with the Board a statement containing
11 the information described in subsection (b) of this section.

12 (b) Contents of Statement. – Each statement required to be filed by this section
13 shall be made under the penalty of perjury in G.S. 14-209 and shall contain the
14 following information:

15 (1) The identification of the entity ~~making the disbursement,~~ incurring the
16 expense, of any entity sharing or exercising direction or control over
17 the activities of that entity, and of the custodian of the books and
18 accounts of the entity ~~making the disbursement,~~ incurring the expense.

19 (2) The principal place of business of the entity ~~making the disbursement~~
20 incurring the expense if the entity is not an individual.

21 (3) The amount of each ~~disbursement~~ expense incurred of more than one
22 thousand dollars (\$1,000) during the period covered by the statement
23 and the identification of the entity to whom the ~~disbursement was~~
24 made. expense was incurred.

25 (4) The elections to which the electioneering communications pertain and
26 the names, if known, of the candidates identified or to be identified.

27 (5) The names and addresses of all ~~contributors who contributed~~ entities
28 that provided funds or anything of value whatsoever in an aggregate
29 amount of more than one thousand dollars (\$1,000) during the period
30 beginning on the first day of the preceding calendar year and ending
31 on the disclosure date to a segregated bank account that consists of
32 funds ~~contributed~~ provided solely by entities other than prohibited
33 sources. Nothing in this subdivision is to be construed as a prohibition
34 on the use of funds in such a segregated account for a purpose other
35 than electioneering communications. If the provider is an individual,
36 the statement shall also contain the principal occupation of the
37 provider. The "principal occupation of the provider" shall mean the
38 same as the "principal occupation of the contributor" in
39 G.S. 163-278.11.

40 (6) Repealed by Session Laws 2005-430, s. 9(c), effective December 1,
41 2005, and applicable to all contributions and expenditures made or
42 accepted on or after that date."

43 **SECTION 3.(a)** G.S. 163-278.82(a) reads as rewritten:

1 "(a) Prohibition. – No prohibited source may make any disbursement for the costs
2 of producing or airing any electioneering communication. No individual, committee,
3 association, or any other organization or group of individuals, including but not limited
4 to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code
5 of 1986), which has received any ~~payment~~ funds or anything of value whatsoever from
6 a prohibited source may make any disbursement for the costs of producing ~~and~~ or airing
7 any electioneering ~~communication~~ communication, unless that individual, committee,
8 association, or other organization or group of individuals maintains a segregated bank
9 account that consists of funds provided solely by entities other than prohibited
10 sources. ~~For the purpose of this section, the term "electioneering communication" does~~
11 ~~not include a communication by a section 501(c)(4) organization or a political~~
12 ~~organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if~~
13 ~~the communication is paid for exclusively by funds provided by individuals and the~~
14 ~~disbursements for costs of producing and airing the communication are paid out of a~~
15 ~~segregated bank account that consists of funds contributed solely by entities other than~~
16 ~~prohibited sources directly to that account.~~ For purposes of this section, the term "funds
17 or anything of value whatsoever" shall not include monies paid to an individual,
18 committee, association, or other organization or group of individuals for services
19 rendered or other payment of debt owed. It shall be unlawful for any person or entity to
20 create, establish, or organize more than one political organization (as defined in section
21 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the
22 prohibitions on disbursements for electioneering communications from prohibited
23 sources or the reporting requirements contained in this Article."

24 **SECTION 3.(b)** G.S. 163-278.92(a) reads as rewritten:

25 "(a) Prohibition. – No prohibited source may make any disbursement for the costs
26 of producing or ~~airing~~ transmitting any electioneering communication. No individual,
27 committee, association, or any other organization or group of individuals, including but
28 not limited to, a political organization (as defined in section 527(e)(1) of the Internal
29 Revenue Code of 1986), which has received any ~~payment~~ funds or anything of value
30 whatsoever from a prohibited source may make any disbursement for the costs of
31 producing ~~and~~ airing ~~or~~ transmitting any electioneering ~~communication~~
32 communication, unless that individual, committee, association, or other organization or
33 group of individuals maintains a segregated bank account that consists of funds
34 provided solely by entities other than prohibited sources. ~~For the purpose of this section,~~
35 ~~the term "electioneering communication" does not include a communication by a~~
36 ~~section 501(c)(4) organization or a political organization (as defined in section~~
37 ~~527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for~~
38 ~~exclusively by funds provided by individuals and the disbursements for costs of~~
39 ~~producing and airing the communication are paid out of a segregated bank account that~~
40 ~~consists of funds contributed solely by entities other than prohibited sources directly to~~
41 ~~that account.~~ For purposes of this section, the term "funds or anything of value
42 whatsoever" shall not include monies paid to an individual, committee, association, or
43 other organization or group of individuals for services rendered or other payment of
44 debt owed. It shall be unlawful for any person or entity to create, establish, or organize

1 more than one political organization (as defined in section 527(c)(1) of the Internal
2 Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for
3 electioneering communications from prohibited sources or the reporting requirements
4 contained in this Article."

5 **SECTION 4.** The provisions of this act are severable. If any provision of
6 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
7 other provisions of the act that can be given effect without the invalid provision.

8 **SECTION 5.** This act is effective when it becomes law, except that any
9 criminal penalty resulting from this act becomes effective October 1, 2006.