

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**SESSION LAW 2009-534  
HOUSE BILL 1111**

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; TO MAKE A CHANGE TO THE PROCEDURE FOR ALLOCATING MONEY IN THE POLITICAL PARTIES FINANCING FUND; 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~~
- d. Making a public announcement of a definite intent to run for public office in a particular election, or
- e. ~~has received~~ Receiving funds or ~~made~~ making payments or ~~has given~~ giving the consent for anyone else to receive funds or transfer anything of value for the purpose of ~~exploring or~~ bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

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

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

**"§ 163-278.300. Definitions.**

As used in this Article, the following terms mean:



- (1) Board. – The State Board of Elections.
- (2) ~~Contribution.~~ Legal expense donation. – ~~As defined in G.S. 163-278.6.A~~ legal expense donation means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, subscription of money, or anything of value whatsoever, and any contract, agreement, or other obligation to make a contribution to a legal expense fund for a permitted use as provided in G.S. 163-278.320. The term "~~contribution~~" "legal expense donation" does not include either of the following:
  - a. The provision of legal services to an elected officer by the State or any of its political subdivisions when those services are authorized or required by law, or
  - b. The provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed ~~contributions.~~ legal expense donations.
- (3) Elected officer. – Any individual serving in or seeking a public office. An individual is seeking a public office when that individual has filed any notice, petition, or other document required by law or local act as a condition of election to public office. An individual continues to be an elected officer for purposes of this Article as long as a legal action commenced while the individual was an elected officer continues. If a legal action is commenced after an individual ceases to serve in or seek public office but the legal action concerns subject matter in the individual's official capacity as an elected officer, for purposes of this Article, that individual is an elected officer as long as that legal action continues.
- (4) Expenditure. – ~~As defined in G.S. 163-278.6.~~ An expenditure means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge, subscription of money, anything of value whatsoever, and any contract, agreement, promise, or other obligation to make an expenditure, by a legal defense fund for a permitted use as provided in G.S. 163-278.320. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a legal expense donation.
- (5) Legal action. – A formal dispute in a judicial, legislative, or administrative forum, including but not limited to, a civil or criminal action filed in a court, a complaint or protest filed with a board of elections, an election contest filed under Article 3 of Chapter 120 of the General Statutes or G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or Legislative Ethics Committee. The term "legal action" also includes investigations made or conducted before the commencement of any formal proceedings. The term "legal action" does not include the election itself or the campaign for election.
- (6) Legal expense fund. – Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.
- (7) Official capacity. – Related to or resulting from the campaign for public office or related to or resulting from holding public office. "Official capacity" is not limited to "scope and course of employment" as used in G.S. 143-300.3.
- (8) Public office. – As defined in G.S. 163-278.6.
- (9) Treasurer. – An individual appointed by an elected officer or other individual or group of individuals collecting money for a legal expense fund."

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

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

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

- (1) To fund an existing legal action taken by or against the elected officer in that elected officer's official capacity.
  - (2) To fund a potential legal action taken by or against an elected officer in that elected officer's official capacity.
- (b) This section shall not apply to any ~~contribution~~ payment to the State or any of its political subdivisions.
- (c) The legal expense fund shall comply with all provisions of this Article.
- (d) If an elected officer funds legal actions entirely from that elected officer's own ~~contributions or the contributions~~ legal expense donations or those of the elected officer's spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense fund. If a legal expense fund accepts ~~contributions~~ legal expense donations as described in subsection (a) of this section, that legal expense fund shall report the elected officer's own ~~contributions~~ legal expense donations and those of those family members along with the other ~~contributions~~ legal expense donations in accordance with G.S. 163-278.310.
- (e) No more than one legal expense fund shall be created by or for an elected officer for the same legal action. Legal actions arising out of the same set of transactions and occurrences are deemed the same legal action for purposes of this subsection. A legal expense fund created for one legal action or potential legal action may be kept open by or on behalf of the elected officer for subsequent legal actions or potential legal actions.
- (f) Contractual arrangements, including liability insurance, or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying, are not ~~"contributions"~~ "legal expense donations" for purposes of this Article. Use of such contractual arrangements to fund legal actions does not by itself require the elected officer to create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a) of this section, such contractual arrangements shall be reported as expenditures.

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

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

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

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

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

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

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

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

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

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

- (1) Organizational report. – The report required under G.S. 163-278.309.
- (2) Quarterly report. – The report required under G.S. 163-278.310.

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

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

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

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

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

**"§ 163-278.310. Quarterly report.**

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

- (1) ~~Contributions.~~ Legal expense donations. – The name and complete mailing address of each ~~contributor, donor,~~ the amount of the ~~contribution, legal expense donation,~~ the principal occupation of the ~~contributor, donor,~~ and the date the ~~contribution legal expense donation~~ was received. The total sum of all ~~contributions legal expense donations~~ to date shall also be plainly exhibited. The treasurer is not required to report the name of any ~~contributor donor~~ making a total ~~contribution legal expense donation~~ of fifty dollars (\$50.00) or less in a calendar quarter, but shall instead report the fact that the treasurer has received a total ~~contribution legal expense donation~~ of fifty dollars (\$50.00) or less, the amount of the ~~contribution, legal expense donation,~~ and the date of receipt.
- (2) Expenditures. – A list of all expenditures made by or on behalf of the legal expense fund. The report shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall also be plainly exhibited. The payee shall be the entity to whom the legal expense fund is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.
- (3) Loans. – All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers."

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

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

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

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

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

(d) No legal expense fund shall accept ~~contributions legal expense donations~~ from a corporation, labor union, insurance company, professional association, or business entity in excess of four thousand dollars (\$4,000) per calendar year. No legal expense fund shall accept ~~contributions legal expense donations~~ from a corporation which when totaled with ~~contributions legal expense donations~~ to the same legal expense fund for the same calendar

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

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

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

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

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

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

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

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

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

- (1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
- (2) Expenditures resulting from holding public office.
- (3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
- (4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- (5) Contributions to another candidate or candidate's campaign committee.
- (6) To return all or a portion of a contribution to the contributor.

- (7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.
- (8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.
- (9) Legal expense donation not in excess of four thousand dollars (\$4,000) per calendar year to a legal expense fund established pursuant to Article 22M of Chapter 163 of the General Statutes."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time periods under G.S. 163-278.80(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

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

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

- "(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:
- a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
  - b. Is ~~made transmitted~~ within one of the following time periods:
    - 1. 60 days before a general or special an election for the office sought by the candidate, or
    - 2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.
  - c. Is targeted to the relevant electorate."



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

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

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

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

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

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

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

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

"(1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

- a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
- b. Is ~~made~~ aired in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.
- c. Is targeted to the relevant electorate."

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

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

- a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station,

- unless those facilities are owned or controlled by any political party, political committee, or candidate.
- b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
- c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
- d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
- e. An electioneering communication as defined in Article 22E of this Chapter.
- f. A communication that meets all of the following criteria:
  1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
  2. Does not take a position on the candidate's character or qualifications and fitness for office.
  3. Proposes a commercial transaction."

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

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

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

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

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

- "(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:
- a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
  - b. Is ~~made-transmitted~~ in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.
  - c. Is targeted to the relevant electorate."

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

- "(2) The term "candidate-specific communication" does not include any of the following:
- a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.
  - b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
  - c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely

- promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
- d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.
  - e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
  - f. An electioneering communication as defined in Article 22F of this Chapter.
  - g. A public opinion poll conducted by a newspaper, periodical, or other news gathering organization.
  - h. A communication that meets all of the following criteria:
    1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
    2. Does not take a position on the candidate's character or qualifications and fitness for office.
    3. Proposes a commercial transaction."

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

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

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

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

**SECTION 10.1.** G.S. 163-278.42(d) reads as rewritten:

"(d) The allocation of the remaining fifty percent (50%) of the funds under subsections (a) or (b) of this section shall be made by a committee composed of the State Chairman of that political party, the Treasurer of that party, the Congressional District Chairmen of that party, and ~~two persons~~ a number of persons that shall not exceed the number of congressional districts in North Carolina appointed by the State Chairman of that party, and the State Chairman shall serve as Chairman of this committee. The allocation of funds shall be in the sole discretion of the committee, but must be for a purpose permitted by subsection (e) of this section and if allocated to a candidate, shall be disbursed by the State Chairman of that party only to the Treasurer of that candidate or committee appointed under Article 22A of this Chapter or under the Federal Election Campaign Act of 1971, Chapter 14 of Title 2, United States Code."

**SECTION 11.** This act becomes effective December 1, 2009.  
In the General Assembly read three times and ratified this the 11<sup>th</sup> day of August,  
2009.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 10:00 a.m. this 28<sup>th</sup> day of August, 2009