

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 737

Senate State Government, Local Government, and Veterans' Affairs Committee
Substitute Adopted 6/11/03

Senate State Government, Local Government, and Veterans' Affairs Committee
Substitute #2 Adopted 7/14/04

Senate Rules and Operations of the Senate Committee Substitute #3 Adopted
7/17/04

Short Title: Constitutional Limits.

(Public)

Sponsors:

Referred to:

March 27, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR CONSTITUTIONAL REQUIREMENTS FOR
3 REPORTING AND REGULATION OF ELECTIONEERING
4 COMMUNICATIONS, AS APPROVED BY THE UNITED STATES SUPREME
5 COURT; TO ADOPT CONSTITUTIONAL LIMITS FOR CORPORATE
6 EXPENDITURES ON MASS MAILINGS AND TELEPHONE BANKS; AND TO
7 REPEAL A DUPLICATIVE REQUIREMENT FOR OUT-OF-STATE
8 CONTRIBUTORS.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** Chapter 163 of the General Statutes is amended by adding a
11 new Article to read:

12 **"Article 22E.**

13 **"Electioneering Communications.**

14 **"§ 163-278.80. Definitions.**

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

16 (1) The term 'disclosure date' means either of the following:

17 a. The first date during any calendar year when an electioneering
18 communication is aired after an entity has made disbursements
19 for the direct costs of producing or airing electioneering
20 communications aggregating in excess of ten thousand dollars
21 (\$10,000).

22 b. Any other date during that calendar year by which an entity has
23 made disbursements for the direct costs of producing or airing
24 electioneering communications aggregating in excess of ten

- 1 thousand dollars (\$10,000) since the most recent disclosure date
2 for that calendar year.
- 3 (2) The term 'electioneering communication' means any broadcast, cable,
4 or satellite communication that has all the following characteristics:
5 a. Refers to a clearly identified candidate for a statewide office or
6 the General Assembly.
7 b. Is made within one of the following time periods:
8 1. 60 days before a general or special election for the office
9 sought by the candidate, or
10 2. 30 days before a primary election or a convention of a
11 political party that has authority to nominate a candidate
12 for the office sought by the candidate.
13 c. Is targeted to the relevant electorate.
- 14 (3) The term 'electioneering communication' does not include any of the
15 following:
16 a. A communication appearing in a news story, commentary, or
17 editorial distributed through the facilities of any broadcasting
18 station, unless those facilities are owned or controlled by any
19 political party, political committee, or candidate.
20 b. A communication that constitutes an expenditure or
21 independent expenditure under Article 22A of this Chapter.
22 c. A communication that constitutes a candidate debate or forum
23 conducted pursuant to rules adopted by the Board or that solely
24 promotes that debate or forum and is made by or on behalf of
25 the person sponsoring the debate or forum.
- 26 (4) The term 'prohibited source' means any corporation, insurance
27 company, labor union, or professional association. The term
28 'prohibited source' does not include an entity that meets all the criteria
29 set forth in G.S. 163-278.19(f).
- 30 (5) The term 'targeted to the relevant electorate' means a communication
31 which refers to a clearly identified candidate for statewide office or the
32 General Assembly and which can be received by 50,000 or more
33 individuals in the State in the case of a candidacy for statewide office
34 and 7,500 or more individuals in the district in the case of a candidacy
35 for General Assembly.
- 36 (6) The term '501(c)(4) organization' means either of the following:
37 a. An organization described in section 501(c)(4) of the Internal
38 Revenue Code of 1986 and exempt from taxation under section
39 501(a) of that Code.
40 b. An organization that has submitted an application to the Internal
41 Revenue Service for determination of its status as an
42 organization described in sub-subdivision a. of this subdivision.
- 43 (7) Except as otherwise provided in this Article, the definitions in Article
44 22A of this Chapter apply in this Article.

1 **"§ 163-278.81. Disclosure of Electioneering Communications.**

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

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

11 (1) The identification of the entity making the disbursement, of any entity
12 sharing or exercising direction or control over the activities of that
13 entity, and of the custodian of the books and accounts of the entity
14 making the disbursement.

15 (2) The principal place of business of the entity making the disbursement
16 if the entity is not an individual.

17 (3) The amount of each disbursement of more than one thousand dollars
18 (\$1,000) during the period covered by the statement and the
19 identification of the entity to whom the disbursement was made.

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

22 (5) If the disbursements were paid out of a segregated bank account that
23 consists of funds contributed solely by individuals directly to that
24 account for electioneering communications, the names and addresses
25 of all contributors who contributed an aggregate amount of more than
26 one thousand dollars (\$1,000) during the period beginning on the first
27 day of the preceding calendar year and ending on the disclosure date.
28 Nothing in this subdivision is to be construed as a prohibition on the
29 use of funds in such a segregated account for a purpose other than
30 electioneering communications.

31 (6) If the disbursements were paid out of funds not described in
32 subdivision (5) of this subsection, the names and addresses of all
33 contributors who contributed an aggregate amount of more than one
34 thousand dollars (\$1,000) to the entity making the disbursement during
35 the period beginning on the first day of the preceding calendar year
36 and ending on the disclosure date.

37 **"§ 163-278.82. Prohibition of corporate and labor disbursements for electioneering**
38 **communications.**

39 (a) Prohibition. – No prohibited source may make any disbursement for the costs
40 of producing or airing any electioneering communication. No individual, committee,
41 association, or any other organization or group of individuals, including but not limited
42 to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code
43 of 1986), which has received any payment from a prohibited source may make any
44 disbursement for the costs of producing and airing any electioneering communication.

1 For the purpose of this section, the term 'electioneering communication' does not
2 include a communication by a section 501(c)(4) organization or a political organization
3 (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the
4 communication is paid for exclusively by funds provided by individuals and the
5 disbursements for costs of producing and airing the communication are paid out of a
6 segregated bank account that consists of funds contributed solely by individuals directly
7 to that account.

8 (b) Direct or Indirect Disbursement. – An electioneering communication shall be
9 treated as made by a prohibited source if the prohibited source directly or indirectly
10 disburses any amount for any of the costs of the communication.

11 **"§ 163-278.83. Penalties.**

12 Except as otherwise provided in this Article, a violation of this Article is a Class 2
13 misdemeanor. The State Board of Elections has the same authority to compel from any
14 organization covered by this Article the disclosures required by this Article that the
15 Board has to compel from a political committee the disclosures required by Article 22A
16 of this Chapter. The civil penalties in G.S. 163-278.34 shall apply to violations of this
17 Article, and where those provisions apply to violations involving contributions and
18 expenditures they shall apply in the same manner to payments and disbursements in
19 violation of G.S. 163-278.82."

20 **SECTION 2.** Chapter 163 of the General Statutes is amended by adding a
21 new Article to read:

22 **"Article 22F.**

23 **"Mass Mailings and Telephone Banks: Electioneering Communications.**

24 **"§ 163-278.90. Definitions.**

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

26 (1) The term 'disclosure date' means either of the following:

27 a. The first date during any calendar year when an electioneering
28 communication is transmitted after an entity has made
29 disbursements for the direct costs of producing or transmitting
30 electioneering communications aggregating in excess of ten
31 thousand dollars (\$10,000).

32 b. Any other date during that calendar year by which an entity has
33 made disbursements for the direct costs of producing or
34 transmitting electioneering communications aggregating in
35 excess of ten thousand dollars (\$10,000) since the most recent
36 disclosure date for that calendar year.

37 (2) The term 'electioneering communication' means any mass mailing or
38 telephone bank that has all the following characteristics:

39 a. Refers to a clearly identified candidate for a statewide office or
40 the General Assembly.

41 b. Is made within one of the following time periods:

42 1. 60 days before a general or special election for the office
43 sought by the candidate, or

- 1 2. 30 days before a primary election or a convention of a
2 political party that has authority to nominate a candidate
3 for the office sought by the candidate.
4 c. Is targeted to the relevant electorate.
5 (3) The term 'electioneering communication' does not include any of the
6 following:
7 a. A communication appearing in a news story, commentary, or
8 editorial distributed through any newspaper or periodical,
9 unless that publication is owned or controlled by any political
10 party, political committee, or candidate.
11 b. A communication that constitutes an expenditure or
12 independent expenditure under Article 22A of this Chapter.
13 c. A communication that constitutes a candidate debate or forum
14 conducted pursuant to rules adopted by the Board or that solely
15 promotes that debate or forum and is made by or on behalf of
16 the person sponsoring the debate or forum.
17 (4) The term 'mass mailing' means any mailing by United States mail or
18 facsimile that is targeted to the relevant electorate and is made by a
19 commercial vendor or made from any commercial list. Part 1A of
20 Article 22A of this Chapter has its own internal definition of 'mass
21 mailing' under the definition of 'print media,' and that definition does
22 not apply in this Article.
23 (5) The term 'prohibited source' means any corporation, insurance
24 company, labor union, or professional association. The term
25 'prohibited source' does not include an entity that meets all the criteria
26 set forth in G.S. 163-278.19(f).
27 (6) The term 'targeted to the relevant electorate' means a communication
28 which refers to a clearly identified candidate for statewide office or the
29 General Assembly and which:
30 a. If transmitted by mail or facsimile in connection with a clearly
31 identified candidate for statewide office, is transmitted to
32 50,000 or more addresses in the State, by the transmission of
33 identical or substantially similar matter within any 30-day
34 period, or, in connection with a clearly identified candidate for
35 the General Assembly, is transmitted to 5,000 or more
36 addresses in the district, by the transmission of identical or
37 substantially identical matter within any 30-day period.
38 b. If transmitted by telephone, in connection with a clearly
39 identified candidate for statewide office, more than 50,000
40 telephone calls in the State of an identical or substantially
41 similar nature within any 30-day period, or in the case of a
42 clearly identified candidate for the General Assembly, more
43 than 5,000 calls in the district of an identical or substantially
44 similar nature within any 30-day period.

- 1 (7) The term 'telephone bank' means telephone calls that are targeted to
2 the relevant electorate, except when those telephone calls are made by
3 volunteer workers, whether or not the design of the telephone bank
4 system, development of calling instructions, or training of volunteers
5 was done by paid professionals.
- 6 (8) The term '501(c)(4) organization' means either of the following:
7 a. An organization described in section 501(c)(4) of the Internal
8 Revenue Code of 1986 and exempt from taxation under section
9 501(a) of that Code.
- 10 b. An organization that has submitted an application to the Internal
11 Revenue Service for determination of its status as an
12 organization described in sub-subdivision a. of this subdivision.
- 13 (9) Except as otherwise provided in this Article, the definitions in Article
14 22A of this Chapter apply in this Article.

15 **§ 163-278.91. Disclosure of Electioneering Communications.**

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

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

- 25 (1) The identification of the entity making the disbursement, of any entity
26 sharing or exercising direction or control over the activities of that
27 entity, and of the custodian of the books and accounts of the entity
28 making the disbursement.
- 29 (2) The principal place of business of the entity making the disbursement
30 if the entity is not an individual.
- 31 (3) The amount of each disbursement of more than one thousand dollars
32 (\$1,000) during the period covered by the statement and the
33 identification of the entity to whom the disbursement was made.
- 34 (4) The elections to which the electioneering communications pertain and
35 the names, if known, of the candidates identified or to be identified.
- 36 (5) If the disbursements were paid out of a segregated bank account that
37 consists of funds contributed solely by individuals directly to that
38 account for electioneering communications, the names and addresses
39 of all contributors who contributed an aggregate amount of more than
40 one thousand dollars (\$1,000) during the period beginning on the first
41 day of the preceding calendar year and ending on the disclosure date.
42 Nothing in this subdivision is to be construed as a prohibition on the
43 use of funds in such a segregated account for a purpose other than
44 electioneering communications.

1 (6) If the disbursements were paid out of funds not described in
2 subdivision (5) of this subsection, the names and addresses of all
3 contributors who contributed an aggregate amount of more than one
4 thousand dollars (\$1,000) to the entity making the disbursement during
5 the period beginning on the first day of the preceding calendar year
6 and ending on the disclosure date.

7 "**§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering**
8 **communications.**

9 (a) Prohibition. – No prohibited source may make any disbursement for the costs
10 of producing or airing any electioneering communication. No individual, committee,
11 association, or any other organization or group of individuals, including but not limited
12 to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code
13 of 1986), which has received any payment from a prohibited source may make any
14 disbursement for the costs of producing and airing any electioneering communication.
15 For the purpose of this section, the term 'electioneering communication' does not
16 include a communication by a section 501(c)(4) organization or a political organization
17 (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the
18 communication is paid for exclusively by funds provided by individuals and the
19 disbursements for costs of producing and airing the communication are paid out of a
20 segregated bank account that consists of funds contributed solely by individuals directly
21 to that account.

22 (b) Direct or Indirect Disbursement. – An electioneering communication shall be
23 treated as made by a prohibited source if the prohibited source directly or indirectly
24 disburses any amount for any of the costs of the communication.

25 "**§ 163-278.93. Penalties.**

26 Except as otherwise provided in this Article, a violation of this Article is a Class 2
27 misdemeanor. The State Board of Elections has the same authority to compel from any
28 organization covered by this Article the disclosures required by this Article that the
29 Board has to compel from a political committee the disclosures required by Article 22A
30 of this Chapter. The civil penalties in G.S. 163-278.34 shall apply to violations of this
31 Article, and where those provisions apply to violations involving contributions and
32 expenditures they shall apply in the same manner to payments and disbursements in
33 violation of G.S. 163-278.92."

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

35 "(6) The terms 'contribute' or 'contribution' mean any advance, conveyance,
36 deposit, distribution, transfer of funds, loan, payment, gift, pledge or
37 subscription of money or anything of value whatsoever, to a candidate
38 to support or oppose the nomination or election of one or more clearly
39 identified candidates, to a political committee, to a political party, or to
40 a referendum committee, whether or not made in an election year, and
41 any contract, agreement, promise or other obligation, whether or not
42 legally enforceable, to make a contribution. These terms include,
43 without limitation, such contributions as labor or personal services,
44 postage, publication of campaign literature or materials, in-kind

1 transfers, loans or use of any supplies, office machinery, vehicles,
2 aircraft, office space, or similar or related services, goods, or personal
3 or real property. These terms also include, without limitation, the
4 proceeds of sale of services, campaign literature and materials,
5 wearing apparel, tickets or admission prices to campaign events such
6 as rallies or dinners, and the proceeds of sale of any campaign-related
7 services or goods. Notwithstanding the foregoing meanings of
8 "contribution," the word shall not be construed to include services
9 provided without compensation by individuals volunteering a portion
10 or all of their time on behalf of a candidate, political committee, or
11 referendum committee. The term 'contribution' does not include an
12 'independent expenditure.' If:

13 a. Any individual, person, committee, association, or any other
14 organization or group of individuals, including but not limited
15 to, a political organization (as defined in section 527(e)(1) of
16 the Internal Revenue Code of 1986) makes, or contracts to
17 make, any disbursement for any electioneering communication,
18 as defined in G.S. 163-278.80(2) and (3) and
19 G.S. 163-278.90(2) and (3); and

20 b. That disbursement is coordinated with a candidate, an
21 authorized political committee of that candidate, a State or local
22 political party or committee of that party, or an agent or official
23 of any such candidate, party, or committee

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

28 **SECTION 4.** G.S. 163-278.12A is repealed.

29 **SECTION 5.(a)** G.S. 163-278.8(c) is repealed.

30 **SECTION 5.(b)** G.S. 163-278.14(b) reads as rewritten:

31 "(b) ~~No individual or person entity shall give, and no candidate, committee or~~
32 ~~treasurer shall accept, any monetary contribution in excess of one hundred dollars~~
33 ~~(\$100.00) unless such contribution be in the form of a check, draft, money order, credit~~
34 ~~card charge, debit, or other noncash method that can be subject to written verification.~~
35 ~~The State Board of Elections may prescribe guidelines as to the reporting and~~
36 ~~verification of any method of contribution payment allowed under this Article. For a~~
37 ~~contribution made by credit card, the credit card account number of a contributor is not~~
38 ~~a public record."~~

39 **SECTION 5.(c)** This section applies to any contribution made on or after
40 January 1, 2003.

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

1 **SECTION 7.** This act is effective when it becomes law, except as otherwise
2 provided in this act, and except that any criminal penalty resulting from this act
3 becomes effective October 1, 2004.