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HOUSE BILL 737

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

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Short Title: Constitutional Limits.

(Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CONSTITUTIONAL REQUIREMENTS FOR REPORTING AND REGULATION OF ELECTIONEERING COMMUNICATIONS, AS APPROVED BY THE UNITED STATES SUPREME COURT; TO ADOPT CONSTITUTIONAL LIMITS FOR CORPORATE EXPENDITURES ON MASS MAILINGS AND TELEPHONE BANKS; AND TO REPEAL A DUPLICATIVE REQUIREMENT FOR OUT-OF-STATE CONTRIBUTORS.

The General Assembly of North Carolina enacts:

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

"Article 22E.

"Electioneering Communications.

"§ 163-278.80. Definitions.

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

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

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

b. Any other date during that calendar year by which an entity has made disbursements for the direct costs of producing or airing

- 1 electioneering communications aggregating in excess of ten
2 thousand dollars (\$10,000) since the most recent disclosure date
3 for that calendar year.
- 4 (2) The term 'electioneering communication' means any broadcast, cable,
5 or satellite communication 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 election for the office
10 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 the facilities of any broadcasting
19 station, unless those facilities are owned or controlled by any
20 political 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 made while the General Assembly is in
28 session which, incidental to advocacy for or against a specific
29 piece of legislation pending before the General Assembly, urges
30 the audience to communicate with a member or members of the
31 General Assembly concerning that piece of legislation.
- 32 (4) The term 'prohibited source' means any corporation, insurance
33 company, labor union, or professional association. The term
34 'prohibited source' does not include an entity that meets all the criteria
35 set forth in G.S. 163-278.19(f).
- 36 (5) The term 'targeted to the relevant electorate' means a communication
37 which refers to a clearly identified candidate for statewide office or the
38 General Assembly and which can be received by 50,000 or more
39 individuals in the State in the case of a candidacy for statewide office
40 and 7,500 or more individuals in the district in the case of a candidacy
41 for General Assembly.
- 42 (6) 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 (7) Except as otherwise provided in this Article, the definitions in Article
8 22A of this Chapter apply in this Article.

9 **"§ 163-278.81. Disclosure of Electioneering Communications.**

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

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

19 (1) The identification of the entity making the disbursement, of any entity
20 sharing or exercising direction or control over the activities of that
21 entity, and of the custodian of the books and accounts of the entity
22 making the disbursement.

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

25 (3) The amount of each disbursement of more than one thousand dollars
26 (\$1,000) during the period covered by the statement and the
27 identification of the entity to whom the disbursement was made.

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

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

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

1 **"§ 163-278.82. Prohibition of corporate and labor disbursements for electioneering**
2 **communications.**

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

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

19 **"§ 163-278.83. Penalties.**

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

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

30 **"Article 22F.**

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

32 **"§ 163-278.90. Definitions.**

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

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

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

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

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

- 1 a. If transmitted by mail or facsimile in connection with a clearly
2 identified candidate for statewide office, is transmitted to
3 50,000 or more addresses in the State, by the transmission of
4 identical or substantially similar matter within any 30-day
5 period, or, in connection with a clearly identified candidate for
6 the General Assembly, is transmitted to 5,000 or more
7 addresses in the district, by the transmission of identical or
8 substantially identical matter within any 30-day period.
- 9 b. If transmitted by telephone, in connection with a clearly
10 identified candidate for statewide office, more than 50,000
11 telephone calls in the State of an identical or substantially
12 similar nature within any 30-day period, or in the case of a
13 clearly identified candidate for the General Assembly, more
14 than 5,000 calls in the district of an identical or substantially
15 similar nature within any 30-day period.

16 (7) The term 'telephone bank' means telephone calls that are targeted to
17 the relevant electorate, except when those telephone calls are made by
18 volunteer workers, whether or not the design of the telephone bank
19 system, development of calling instructions, or training of volunteers
20 was done by paid professionals.

21 (8) The term '501(c)(4) organization' means either of the following:

- 22 a. An organization described in section 501(c)(4) of the Internal
23 Revenue Code of 1986 and exempt from taxation under section
24 501(a) of that Code.
- 25 b. An organization that has submitted an application to the Internal
26 Revenue Service for determination of its status as an
27 organization described in sub-subdivision a. of this subdivision.

28 (9) Except as otherwise provided in this Article, the definitions in Article
29 22A of this Chapter apply in this Article.

30 **§ 163-278.91. Disclosure of Electioneering Communications.**

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

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

- 40 (1) The identification of the entity making the disbursement, of any entity
41 sharing or exercising direction or control over the activities of that
42 entity, and of the custodian of the books and accounts of the entity
43 making the disbursement.

- 1 (2) The principal place of business of the entity making the disbursement
2 if the entity is not an individual.
- 3 (3) The amount of each disbursement of more than one thousand dollars
4 (\$1,000) during the period covered by the statement and the
5 identification of the entity to whom the disbursement was made.
- 6 (4) The elections to which the electioneering communications pertain and
7 the names, if known, of the candidates identified or to be identified.
- 8 (5) If the disbursements were paid out of a segregated bank account that
9 consists of funds contributed solely by individuals directly to that
10 account for electioneering communications, the names and addresses
11 of all contributors who contributed an aggregate amount of more than
12 one thousand dollars (\$1,000) during the period beginning on the first
13 day of the preceding calendar year and ending on the disclosure date.
14 Nothing in this subdivision is to be construed as a prohibition on the
15 use of funds in such a segregated account for a purpose other than
16 electioneering communications.
- 17 (6) If the disbursements were paid out of funds not described in
18 subdivision (5) of this subsection, the names and addresses of all
19 contributors who contributed an aggregate amount of more than one
20 thousand dollars (\$1,000) to the entity making the disbursement during
21 the period beginning on the first day of the preceding calendar year
22 and ending on the disclosure date.

23 **§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering**
24 **communications.**

25 (a) Prohibition. – No prohibited source may make any disbursement for the costs
26 of producing or airing any electioneering communication. No individual, committee,
27 association, or any other organization or group of individuals, including but not limited
28 to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code
29 of 1986), which has received any payment from a prohibited source may make any
30 disbursement for the costs of producing and airing any electioneering communication.
31 For the purpose of this section, the term 'electioneering communication' does not
32 include a communication by a section 501(c)(4) organization or a political organization
33 (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the
34 communication is paid for exclusively by funds provided by individuals and the
35 disbursements for costs of producing and airing the communication are paid out of a
36 segregated bank account that consists of funds contributed solely by individuals directly
37 to that account.

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

41 **§ 163-278.93. Penalties.**

42 Except as otherwise provided in this Article, a violation of this Article is a Class 2
43 misdeemeanor. The State Board of Elections has the same authority to compel from any
44 organization covered by this Article the disclosures required by this Article that the

1 Board has to compel from a political committee the disclosures required by Article 22A
2 of this Chapter. The civil penalties in G.S. 163-278.34 shall apply to violations of this
3 Article, and where those provisions apply to violations involving contributions and
4 expenditures they shall apply in the same manner to payments and disbursements in
5 violation of G.S. 163-278.92."

6 **SECTION 3.** 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
10 to 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
12 a referendum committee, whether or not made in an election year, and
13 any contract, agreement, promise or other obligation, whether or not
14 legally enforceable, to make a contribution. These terms include,
15 without limitation, such contributions as labor or personal services,
16 postage, publication of campaign literature or materials, in-kind
17 transfers, loans or use of any supplies, office machinery, vehicles,
18 aircraft, office space, or similar or related services, goods, or personal
19 or real property. These terms also include, without limitation, the
20 proceeds of sale of services, campaign literature and materials,
21 wearing apparel, tickets or admission prices to campaign events such
22 as rallies or dinners, and the proceeds of sale of any campaign-related
23 services or goods. Notwithstanding the foregoing meanings of
24 "contribution," the word shall not be construed to include services
25 provided without compensation by individuals volunteering a portion
26 or all of their time on behalf of a candidate, political committee, or
27 referendum committee. The term 'contribution' does not include an
28 'independent expenditure.' If:

29 a. Any individual, person, committee, association, or any other
30 organization or group of individuals, including but not limited
31 to, a political organization (as defined in section 527(e)(1) of
32 the Internal Revenue Code of 1986) makes, or contracts to
33 make, any disbursement for any electioneering communication,
34 as defined in G.S. 163-278.80(2) and (3) and
35 G.S. 163-278.90(2) and (3); and

36 b. That disbursement is coordinated with a candidate, an
37 authorized political committee of that candidate, a State or local
38 political party or committee of that party, or an agent or official
39 of any such candidate, party, or committee

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

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

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

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

3 "(b) No ~~individual or person~~ entity shall give, and no candidate, committee or
4 treasurer shall accept, any monetary contribution in excess of one hundred dollars
5 (\$100.00) unless such contribution be in the form of a check, draft, money order, credit
6 card charge, debit, or other noncash method that can be subject to written verification.
7 The State Board of Elections may prescribe guidelines as to the reporting and
8 verification of any method of contribution payment allowed under this Article. For a
9 contribution made by credit card, the credit card account number of a contributor is not
10 a public record."

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

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

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