

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

4

HOUSE BILL 1111  
Committee Substitute Favorable 4/23/09  
Committee Substitute #2 Favorable 5/4/09  
Senate Judiciary I Committee Substitute Adopted 8/4/09

Short Title: Campaign Finance Amendments.

(Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

Examples of positive action include:

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



\* H 1 1 1 1 - V - 4 \*

1 anything of value for the purpose of ~~exploring or~~ bringing about that  
 2 individual's nomination or election to office. Transferring anything of  
 3 value includes incurring an obligation to transfer anything of value.

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

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

10 **"§ 163-278.300. Definitions.**

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

- 12 (1) Board. – The State Board of Elections.
- 13 (2) ~~Contribution.~~ Legal expense donation. – ~~As defined in G.S. 163-278.6.A~~  
 14 legal expense donation means any advance, conveyance, deposit,  
 15 distribution, transfer of funds, loan, payment, gift, subscription of money, or  
 16 anything of value whatsoever, and any contract, agreement, or other  
 17 obligation to make a contribution to a legal expense fund for a permitted use  
 18 as provided in G.S. 163-278.320. The term "~~contribution~~"legal expense  
 19 donation" does not include either of the following:
- 20 a. The provision of legal services to an elected officer by the State or  
 21 any of its political subdivisions when those services are authorized or  
 22 required by law, or
- 23 b. The provision of free or pro bono legal advice or legal services,  
 24 provided that any costs incurred or expenses advanced for which  
 25 clients are liable under other provisions of law shall be deemed  
 26 ~~contributions.~~ legal expense donations.
- 27 (3) Elected officer. – Any individual serving in or seeking a public office. An  
 28 individual is seeking a public office when that individual has filed any  
 29 notice, petition, or other document required by law or local act as a condition  
 30 of election to public office. An individual continues to be an elected officer  
 31 for purposes of this Article as long as a legal action commenced while the  
 32 individual was an elected officer continues. If a legal action is commenced  
 33 after an individual ceases to serve in or seek public office but the legal action  
 34 concerns subject matter in the individual's official capacity as an elected  
 35 officer, for purposes of this Article, that individual is an elected officer as  
 36 long as that legal action continues.
- 37 (4) Expenditure. – ~~As defined in G.S. 163-278.6.~~ An expenditure means any  
 38 purchase, advance, conveyance, deposit, distribution, transfer of funds, loan,  
 39 payment, gift, pledge, subscription of money, anything of value whatsoever,  
 40 and any contract, agreement, promise, or other obligation to make an  
 41 expenditure, by a legal defense fund for a permitted use as provided in  
 42 G.S. 163-278.320. An expenditure forgiven by a person or entity to whom it  
 43 is owed shall be reported as a legal expense donation.
- 44 (5) Legal action. – A formal dispute in a judicial, legislative, or administrative  
 45 forum, including but not limited to, a civil or criminal action filed in a court,  
 46 a complaint or protest filed with a board of elections, an election contest  
 47 filed under Article 3 of Chapter 120 of the General Statutes or  
 48 G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or  
 49 Legislative Ethics Committee. The term "legal action" also includes  
 50 investigations made or conducted before the commencement of any formal

1 proceedings. The term "legal action" does not include the election itself or  
2 the campaign for election.

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

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

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

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

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

15 **"§ 163-278.301. Creation of legal expense funds.**

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

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

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

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

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

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

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

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

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

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

47 **"§ 163-278.307. Detailed accounts to be kept by treasurer.**

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

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

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

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

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

13 **"§ 163-278.308. Reports filed with Board.**

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

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

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

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

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

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

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

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

37 **"§ 163-278.310. Quarterly report.**

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

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

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

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

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

17 **"§ 163-278.316. Limitations on ~~contributions~~ legal expense donations.**

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

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

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

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

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

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

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

12 "**§ 163-278.320. Permitted uses of legal expense funds.**

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

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

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

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

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

- 34 (1) Expenditures resulting from the campaign for public office by the candidate  
35 or candidate's campaign committee.
- 36 (2) Expenditures resulting from holding public office.
- 37 (3) Donations to an organization described in section 170(c) of the Internal  
38 Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or  
39 the candidate's spouse, children, parents, brothers, or sisters are not  
40 employed by the organization.
- 41 (4) Contributions to a national, State, or district or county committee of a  
42 political party or a caucus of the political party.
- 43 (5) Contributions to another candidate or candidate's campaign committee.
- 44 (6) To return all or a portion of a contribution to the contributor.
- 45 (7) Payment of any penalties against the candidate or candidate's campaign  
46 committee for violation of this Article imposed by a board of elections or a  
47 court of competent jurisdiction.
- 48 (8) Payment to the Escheat Fund established by Chapter 116B of the General  
49 Statutes.

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

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

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

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

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

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

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

1 includes any payment or other transfer made by a candidate, political  
2 committee, or referendum committee."

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

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

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

13 "**§ 163-278.10A. Threshold of ~~\$3,000~~ \$1,000 for ~~Financial Reports~~ financial reports for**  
14 **certain candidates.**

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

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

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

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

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

48 "**§ 163-278.5. Scope of Article; severability.**

49 The provisions of this Article apply to primaries and elections for North Carolina offices  
50 and to North Carolina referenda and do not apply to primaries and elections for federal offices  
51 or offices in other States or to non-North Carolina referenda. Any provision in this Article that



1 regulates a non-North Carolina entity does so only to the extent that the entity's actions affect  
2 elections for North Carolina offices or North Carolina referenda.

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

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

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

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

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

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

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

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

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

46 "**§ 163-278.84. Determination of electioneering communication.**

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

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

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

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

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

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

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

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

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

48       "**§ 163-278.94. Determination of electioneering communication.**

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

1 determination as to whether or not that communication is an electioneering communication  
2 prior to the airing of that communication.

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

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

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

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

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

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

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

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

49 **"§ 163-278.103. Determination of candidate-specific communication.**

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

1 periods under G.S. 163-278.100(1)b. may, but is not required to, ask the State Board for a  
2 determination as to whether or not that communication is a candidate-specific communication  
3 prior to the airing of that communication.

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

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

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

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

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

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

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

- 1 2. Does not take a position on the candidate's character or
- 2 qualifications and fitness for office.
- 3 3. Proposes a commercial transaction."

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

6 "**§ 163-278.113. Determination of candidate-specific communication.**

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

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

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