

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1847  
Committee Substitute Favorable 5/24/06  
Senate Judiciary I Committee Substitute Adopted 7/6/06

Short Title: Electioneering Communications.

(Public)

Sponsors:

Referred to:

May 10, 2006

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

4 The General Assembly of North Carolina enacts:

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

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

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

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

18 "§ 163-278.90. Definitions.

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

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

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

- 1 aggregating in excess of ten thousand dollars (\$10,000) since  
2 the most recent disclosure date for that calendar year.
- 3 (2) The term "electioneering communication" means any mass mailing or  
4 telephone bank 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 an election for the  
9 office 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 any newspaper or periodical,  
18 unless that publication is owned or controlled by any political  
19 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 d. A communication that is distributed by a corporation solely to  
27 its shareholders or employees, or by a labor union or  
28 professional association solely to its members.
- 29 e. A communication made while the General Assembly is in  
30 session which, incidental to advocacy for or against a specific  
31 piece of legislation pending before the General Assembly, urges  
32 the audience to communicate with a member or members of the  
33 General Assembly concerning that piece of legislation.
- 34 (4) The term "mass mailing" means any mailing by United States mail or  
35 ~~facsimile that is targeted to the relevant electorate and is made by a~~  
36 ~~commercial vendor or made from any commercial list.~~ facsimile. Part  
37 1A of Article 22A of this Chapter has its own internal definition of  
38 "mass mailing" under the definition of "print media," and that  
39 definition does not apply in this Article.
- 40 (5) The term "prohibited source" means any corporation, insurance  
41 company, labor union, or professional association. The term  
42 "prohibited source" does not include an entity that meets all the criteria  
43 set forth in G.S. 163-278.19(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the  
2 prohibitions on disbursements for electioneering communications from prohibited  
3 sources or the reporting requirements contained in this Article."

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

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