

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 921*
Committee Substitute Favorable 4/15/99

Short Title: Campaign Finance Changes.

(Public)

Sponsors:

Referred to:

April 5, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE DEFINITIONS OF "POLITICAL
3 COMMITTEE,""CONTRIBUTION,""EXPENDITURE,"AND "CANDIDATE"; TO
4 ADD A DEFINITION OF "INDEPENDENT EXPENDITURE"; TO REMOVE THE
5 TERM "POLITICAL PURPOSE"; TO NARROW THE PROHIBITION ON
6 CORPORATE AND OTHER POLITICAL EXPENDITURES TO
7 CONSTITUTIONAL BOUNDS; TO MERGE THE FIRST QUARTERLY REPORT
8 WITH THE PRE-PRIMARY REPORT; TO AMEND THE STATUTES WITH
9 REGARD TO REPORTING CONTRIBUTIONS AND EXPENDITURES; AND TO
10 MAKE OTHER CHANGES RELATED TO REPAIRING THE CAMPAIGN
11 STATUTES AFTER THE DECISION OF THE FOURTH U.S. CIRCUIT COURT
12 OF APPEALS IN NORTH CAROLINA RIGHT TO LIFE, INC., V. BARTLETT.

13 The General Assembly of North Carolina enacts:

14 – REDEFINING "POLITICAL COMMITTEE"AND RELATED CHANGES.

15 Section 1.(a) G.S. 163-278.6(14) reads as rewritten:

16 "(14) The term 'political committee' means a combination of two or more
17 individuals, or any person, committee, association, ~~or~~organization, ~~the~~
18 ~~primary or incidental purpose of which is to support or oppose any candidate~~
19 ~~or political party or to influence or attempt to influence the result of an~~

1 ~~election or which accepts contributions or makes~~ or other entity that makes,
2 ~~or accepts anything of value to make, contributions or expenditures and~~
3 ~~has one or more of the following characteristics:~~

- 4 a. Is controlled by a candidate;
5 b. Is a political party or executive committee of a political party or
6 is controlled by a political party or executive committee of a
7 political party;
8 c. Is created by a corporation, business entity, insurance company,
9 labor union, or professional association pursuant to G.S. 163-
10 278.19(b); or
11 d. Has as a major purpose expenditures for the purpose of influencing
12 or attempting to influence to support or oppose the nomination or
13 election of any candidate at any election, or which one or more
14 clearly identified candidates.

15 Supporting or opposing the election of clearly identified candidates
16 includes supporting or opposing the candidates of a clearly identified
17 political party.

18 An entity is rebuttably presumed to have as a major purpose to
19 support or oppose the nomination or election of one or more clearly
20 identified candidates if it contributes or expends or both contributes and
21 expends during an election cycle more than three thousand dollars
22 (\$3,000). Contributions to referendum committees and expenditures to
23 support or oppose ballot issues shall not be facts considered to give rise
24 to the presumption or otherwise be used in determining whether an
25 entity is a political committee.

26 If the entity qualifies as a 'political committee' under sub-subdivision
27 a., b., c., or d. of this subdivision, it continues to be a political
28 committee if it receives contributions to repay loans or cover a deficit, or
29 which makes expenditures to satisfy obligations of an election already held.
30 The term includes, without limitation, any political party's State, county or
31 district executive committee, or maintains assets or liabilities. A political
32 committee ceases to exist when it winds up its operations, disposes of
33 its assets, and files its final report."

34 Section 1.(b) G.S. 163-278.6 is amended by adding a new subdivision to read:

35 "(7c) The term 'election cycle' means the period of time from January 1 after
36 an election for an office through December 31 after the election for the
37 next term of the same office. Where the term is applied in the context of
38 several offices with different terms, 'election cycle' means the period
39 from January 1 of an odd-numbered year through December 31 of the
40 next even-numbered year."

41 Section 1.(c) Article 22A of Chapter 163 of the General Statutes is amended by
42 adding a new section to read:

43 **"§ 163-278.34A. Presumptions.**

1 In any proceeding brought pursuant to this Article in which a presumption arises from
2 the proof of certain facts, the defendant has the burden of offering some evidence to rebut
3 the presumption. The State bears the ultimate burden of proving the essential elements of
4 its case."

5 Section 1.(d) G.S. 163-278.16(a) reads as rewritten:

6 "(a) Except as provided in G.S. 163-278.6(14) and G.S. 163-278.12, no
7 contribution may be received or expenditure made by or on behalf of a candidate,
8 political committee, or referendum committee:

9 (1) Until the candidate, political committee, or referendum committee
10 appoints a treasurer and certifies the name and address of the treasurer
11 to the Board; and

12 (2) Unless the contribution is received or the expenditure made by or
13 through the treasurer of the candidate, political committee, or
14 referendum committee."

15 – REDEFINING "CONTRIBUTION" AND "EXPENDITURE"; DEFINING
16 "INDEPENDENT EXPENDITURE"; AND CHANGING THE SPECIAL REPORTING
17 REQUIREMENT FOR CONTRIBUTIONS AND INDEPENDENT EXPENDITURES.

18 Section 2.(a) G.S. 163-278.6(6) reads as rewritten:

19 "(6) The terms 'contribute' or 'contribution' mean any advance, conveyance,
20 deposit, distribution, transfer of funds, loan, payment, gift, pledge or
21 subscription of money or anything of value whatsoever, to a candidate,
22 political committee, political party, or referendum committee, from any
23 person or individual, whether or not made in an election year, and any
24 contract, agreement, promise or other obligation, whether or not legally
25 enforceable, to make a contribution, in support of or in opposition to any
26 candidate, political committee, referendum committee, or political party.
27 contribution. These terms include, without limitation, such contributions
28 as labor or personal services, postage, publication of campaign literature
29 or materials, in-kind transfers, loans or use of any supplies, office
30 machinery, vehicles, aircraft, office space, or similar or related services,
31 goods, or personal or real property. These terms also include, without
32 limitation, the proceeds of sale of services, campaign literature and
33 materials, wearing apparel, tickets or admission prices to campaign
34 events such as rallies or dinners, and the proceeds of sale of any
35 campaign-related services or goods ~~notwithstanding goods.~~
36 Notwithstanding the foregoing meanings of 'contribution,' the word
37 shall not be construed to include services provided without
38 compensation by individuals volunteering a portion or all of their time
39 on behalf of a candidate, political committee, or referendum committee.
40 The term 'contribution' does not include an 'independent expenditure.'"

41 Section 2.(b) G.S. 163-278.6(9) reads as rewritten:

42 "(9) The terms 'expend' or 'expenditure' mean any purchase, advance,
43 conveyance, deposit, distribution, transfer of funds, loan, payment, gift,

1 pledge or subscription of money or anything of value whatsoever, ~~from~~
2 ~~any person or individual~~, whether or not made in an election year, and any
3 contract, agreement, promise or other obligation, whether or not legally
4 enforceable, to make an expenditure, ~~in support of or in opposition to~~
5 ~~support or oppose the nomination, election, or passage of any candidate,~~
6 ~~political committee, referendum committee, or political party.~~ one or more
7 clearly identified candidates, or ballot measure. Supporting or opposing
8 the election of clearly identified candidates includes supporting or
9 opposing the candidates of a clearly identified political party. The term
10 'expenditure' also includes any payment or other transfer made by a
11 candidate, political committee, or referendum committee. The special
12 definition of 'expenditure' in G.S. 163-278.12A applies only in that
13 section."

14 Section 2.(c) G.S. 163-278.6 is amended by adding a new subdivision to read:

15 "(9a) The term 'independently expend' or 'independent expenditure' means an
16 expenditure to support or oppose the nomination or election of one or
17 more clearly identified candidates that is made without consultation or
18 coordination with a candidate or agent of a candidate whose nomination
19 or election the expenditure supports or whose opponent's nomination or
20 election the expenditure opposes. Supporting or opposing the election of
21 clearly identified candidates includes supporting or opposing the
22 candidates of a clearly identified political party. A contribution is not an
23 independent expenditure. As applied to referenda, the term 'independent
24 expenditure' applies if consultation or coordination does not take place
25 with a referendum committee that supports a ballot measure the
26 expenditure supports, or a referendum committee that opposes the ballot
27 measure the expenditure opposes."

28 Section 2.(d) G.S. 163-278.12 reads as rewritten:

29 "**§ 163-278.12. Contributions and expenditures by an individual other than a candidate.**
30 **Special reporting of contributions and independent expenditures.**

31 (a) Subject to G.S. 163-278.16(f) and 163-278.14, ~~it shall be permissible for an~~
32 ~~individual other than a candidate to~~ individuals and other entities not otherwise prohibited
33 from doing so may make contributions or expenditures in support of, or in opposition to, any
34 candidate, political committee, or referendum committee other than by contribution to a
35 candidate, political committee, or referendum committee. independent expenditures. In the
36 event an individual or other entity making independent expenditures but not otherwise
37 required to report them makes contributions or expenditures, other than by contribution to a
38 candidate, political committee, or referendum committee, independent expenditures in excess
39 of one hundred dollars (\$100.00), then, within 10 days after making such a contribution or
40 expenditure, he that individual or entity shall file a statement of such contribution or
41 independent expenditure with the Board in accordance with the terms and conditions of G.S.
42 163-278.11. appropriate board of elections in the manner prescribed by the State Board of
43 Elections.

1 (b) Any entity other than an individual that is permitted to make contributions but
2 is not otherwise required to report them shall report each contribution in excess of one
3 hundred dollars (\$100.00) with the appropriate board of elections in the manner
4 prescribed by the State Board of Elections.

5 (c) In assuring compliance with subsections (a) and (b) of this section, the State
6 Board of Elections shall require the identification of each entity making a donation of
7 more than one hundred dollars (\$100.00) to the entity filing the report if the donation was
8 made for the purpose of furthering the reported independent expenditure or contribution.

9 (d) Contributions or expenditures required to be reported under this section shall
10 be reported within 30 days after they exceed one hundred dollars (\$100.00) or 10 days
11 before an election the contributions or expenditures affect, whichever occurs earlier."

12 – REDEFINING THE TERM "CANDIDATE".

13 Section 3. G.S. 163-278.6(4) reads as rewritten:

14 "(4) The term 'candidate' means any individual who, with respect to a public
15 office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a
16 petition requesting to be a candidate, or has been certified as a nominee
17 of a political party for a vacancy, ~~or~~ has otherwise qualified as a
18 candidate in a manner authorized by ~~law~~—law, or has received funds or
19 made payments or has given the consent for anyone else to receive
20 funds or transfer anything of value for the purpose of exploring or
21 bringing about that individual's nomination or election to office.
22 Transferring anything of value includes incurring an obligation to
23 transfer anything of value. Status as a candidate for the purpose of this
24 Article continues if the individual is receiving contributions to repay
25 loans or cover a deficit or is making expenditures to satisfy obligations
26 from an election already held."

27 – REMOVING THE TERM "POLITICAL PURPOSE".

28 Section 4.(a) G.S. 163-278.6(16) is repealed.

29 Section 4.(b) G.S. 163-278.16(g) reads as rewritten:

30 "(g) All printed matter ~~for a political purpose~~—from a political party or political
31 committee which ~~identifies a candidate that party or committee is opposing~~—opposes the
32 nomination or election of a clearly identified candidate shall indicate in type no smaller
33 than 12 point the name of the political party or political committee and the name of the
34 candidate that is intended to benefit from the printed matter."

35 Section 4.(c) G.S. 163-278.36 reads as rewritten:

36 "**§ 163-278.36. Elected officials to report funds.**

37 All ~~contributions—donations~~ to, and all ~~expenditures—payments~~ from any 'booster fund,'
38 'support fund,' 'unofficial office account' or any other similar source ~~which are made to, in~~
39 ~~behalf of,~~ or used in support of ~~any person holding an individual's candidacy for elective~~
40 office, or in support of an individual's duties and activities while in an elective office for
41 any political purpose whatsoever during his term of office—shall be deemed contributions and
42 expenditures as defined in this Article and shall be reported as contributions and
43 expenditures as required by this Article. The ~~annual report—reports~~ due in January and July

1 of each year shall show the balance of each separate fund or account maintained on
2 behalf of the elected office holder."

3 Section 4.(d) G.S. 163-278.19(a) reads as rewritten:

4 "(a) Except as provided in ~~G.S. 163-278.19(b)~~, ~~subsections (b), (d), (e), and (f) of~~
5 this section it shall be unlawful for any corporation, business entity, labor union,
6 professional association or insurance company directly or indirectly:

7 (1) To make any contribution to a candidate or political committee ~~or~~
8 ~~expenditure~~—(except a loan of money by a national or State bank or
9 federal or State savings and loan association made in accordance with
10 the applicable banking or savings and loan association laws and
11 regulations and in the ordinary course of business) ~~in aid or in behalf of or~~
12 ~~in opposition to any candidate or political committee in any election or for any~~
13 ~~political purpose whatsoever; or to make any expenditure to support or~~
14 oppose the nomination or election of a clearly identified candidate;

15 (2) To pay or use or offer, consent or agree to pay or use any of its money
16 or property ~~for or in aid of or in opposition to any candidate or political~~
17 ~~committee or for or in aid of any person, organization or association~~
18 ~~organized or maintained for political purposes, or for or in aid of or in~~
19 ~~opposition to any candidate or political committee or for any political~~
20 ~~purpose whatsoever; and for any contribution to a candidate or political~~
21 committee or for any expenditure to support or oppose the nomination
22 or election of a clearly identified candidate; or

23 (3) To ~~reimburse~~—compensate, reimburse, or indemnify any person or
24 individual for money or property so used or for any contribution or
25 expenditure so made;

26 and it shall be unlawful for any officer, director, stockholder, attorney, agent or member
27 of any corporation, business entity, labor union, professional association or insurance
28 company to aid, abet, advise or consent to any such contribution or expenditure, or for
29 any person or individual to solicit or knowingly receive any such contribution or
30 expenditure. Supporting or opposing the election of clearly identified candidates includes
31 supporting or opposing the candidates of a clearly identified political party. Any officer,
32 director, stockholder, attorney, agent or member of any corporation, business entity, labor
33 union, professional association or insurance company aiding or abetting in any
34 contribution or expenditure made in violation of this section shall be guilty of a Class 2
35 misdemeanor, and shall in addition be liable to such corporation, business entity, labor
36 union, professional association or insurance company for the amount of such contribution
37 or expenditure, and the same may be recovered of him upon suit by any stockholder or
38 member thereof."

39 – PERMITTING CONTRIBUTIONS AND INDEPENDENT EXPENDITURES BY
40 NONBUSINESS CORPORATIONS; REMOVING REDUNDANT STATUTES
41 CONCERNING CORPORATE AND INSURANCE COMPANY CONTRIBUTIONS;
42 AND MAKING CONFORMING CHANGES.

43 Section 5.(a) G.S. 163-278.19 is amended by adding a new subsection to read:

1 "f) This section does not prohibit a contribution or independent expenditure by an
2 entity that:

- 3 (1) Has as an express purpose promoting social, educational, or political
4 ideas and not to generate business income;
5 (2) Does not have shareholders or other persons which have an economic
6 interest in its assets and earnings;
7 (3) Is exempt from or has a pending application to be exempt from federal
8 income taxation; and
9 (4) Was not established by a business corporation, by an insurance
10 company, by a business entity, including, but not limited to, those
11 chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58
12 of the General Statutes, by a professional association, or by a labor
13 union and does not receive substantial revenue from such entities.
14 Substantial revenue is rebuttably presumed to be more than ten percent
15 (10%) of total revenues in a calendar year."

16 Section 5.(b) G.S. 163-269 and G.S. 163-270 are repealed.

17 Section 5.(c) G.S. 163-278.13 reads as rewritten:

18 "**§ 163-278.13. Limitation on contributions.**

19 (a) No ~~individual or political committee~~ individual, political committee, or other
20 entity shall contribute to any candidate or other political committee any money or make
21 any other contribution in any election in excess of four thousand dollars (\$4,000) for that
22 election.

23 (b) No candidate or political committee shall accept or solicit any contribution
24 from any ~~individual or other political committee~~ individual, other political committee, or
25 other entity of any money or any other contribution in any election in excess of four
26 thousand dollars (\$4,000) for that election.

27 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, it
28 shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to
29 make a contribution to the candidate or to the candidate's treasurer of any amount of
30 money or to make any other contribution in any election in excess of four thousand
31 dollars (\$4,000) for that election.

32 (d) For the purposes of this section, the term 'an election' means any primary,
33 second primary, or general election in which the candidate or political committee may be
34 involved, without regard to whether the candidate is opposed or unopposed in the
35 election, except that where a candidate is not on the ballot in a second primary, that
36 second primary is not 'an election' with respect to that candidate.

37 (e) This section shall not apply to any national, State, district or county executive
38 committee of any political party. For the purposes of this section only, the term 'political
39 party' means only those political parties officially recognized under G.S. 163-96.

40 (e1) No referendum committee which received any contribution from a corporation,
41 labor union, insurance company, business entity, or professional association may make
42 any contribution to another referendum committee, to a candidate or to a political
43 committee.

1 (f) Any individual, candidate, political committee, ~~or referendum committee who~~
2 committee, or other entity that violates the provisions of this section is guilty of a Class 2
3 misdemeanor."

4 Section 5.(d) G.S. 163-278.13B(a)(1) reads as rewritten:

5 "(1) 'Limited contributor' means a lobbyist registered pursuant to Article 9A
6 of Chapter 120 of the General Statutes, that lobbyist's agent, that
7 lobbyist's principal as defined in G.S. 120-47.1(7), or a political
8 committee that employs or contracts with or whose parent entity
9 employs or contracts with a lobbyist registered pursuant to Article 9A of
10 Chapter 120 of the General Statutes."

11 Section 5.(e) G.S. 163-278.15 reads as rewritten:

12 **"§ 163-278.15. No acceptance of contributions made by corporations, foreign and**
13 **domestic.**

14 No candidate, political committee, political party, or treasurer shall accept any
15 contribution made by any corporation, foreign or domestic, regardless of whether such
16 corporation does business in the State of North Carolina. This section does not apply
17 with regard to entities permitted to make contributions by G.S. 163-278.19(f)."

18 – CLARIFYING WHAT IS COVERED BY ARTICLE 22A AND WHAT IS
19 ACTIVITY THAT CONSTITUTES INDIRECT CONTRIBUTIONS BY
20 CORPORATIONS, ETC.

21 Section 6.(a) Part 1 of Article 22A of Chapter 163 of the General Statutes is
22 amended by adding a new section to read:

23 **"§ 163-278.5. Scope of Article; severability.**

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

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

31 Section 6.(b) G.S. 163-278.19 is amended by adding a new subsection to read:

32 "(a1) A transfer of funds shall be deemed to have been a contribution or expenditure
33 made indirectly if it is made to any committee or political party account, whether inside
34 or outside this State, with the intent or purpose of being exchanged in whole or in part for
35 any other funds to be contributed or expended in an election for North Carolina office or
36 to offset any other funds contributed or expended in an election for North Carolina
37 office."

38 – MERGING THE FIRST QUARTER REPORT AND THE PRE-PRIMARY REPORT.

39 Section 7.(a) G.S. 163-278.9(a)(2) is repealed.

40 Section 7.(b) G.S. 163-278.9(a)(5a) reads as rewritten:

41 "(5a) Quarterly Reports. – During even-numbered years
42 during which there is an election for that candidate or in which
43 the campaign committee is supporting a candidate, the

1 treasurer shall file a report by mailing or otherwise delivering it
2 to the Board no later than seven working days after the end of
3 each calendar quarter covering the prior calendar quarter,
4 except ~~that the~~ that:

5 a. The report for the first quarter shall also cover the period in April
6 through the seventeenth day before the primary, the first quarter
7 report shall be due seven days after that date, and the second
8 quarter report shall not include that period if a first quarter report
9 was required to be filed; and

10 b. The report for the third quarter shall also cover the period in
11 October through the seventeenth day before the election, the third
12 quarter report shall be due seven days after that date, and the
13 fourth quarter report shall not include that period if a third
14 quarter report was required to be filed."

15 Section 7.(c) This section becomes effective January 1, 2000, and applies to all
16 reports due on or after that date.

17 Section 8. This act is effective when it becomes law.