

A QUICK GUIDE TO ELECTION-RELATED ADVERTISING LAWS¹

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DISCLOSURES

- Most political ads must include the statement: “Paid for by _____ [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor].” G.S. § 163-278.39
- If the ad supports or opposes the nomination or election of one or more clearly identified candidates, the ad must state whether it is authorized by a candidate. This requirement does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate’s campaign committee. G.S. § 163-278.39
- An ad that opposes a particular candidate must disclose the candidate who is intended to benefit from the advertisement. This requirement does not apply when the sponsor of the ad does not coordinate or consult about the ad with the candidate who the ad is intended to benefit. G.S. § 163-278.39
- The height of these disclosures must be at least five percent (5%) of the height of the printed space of the advertisement. The disclosure must be at least 12 points in size but need not be more than 28 points in size, even if that is less than five percent of the height. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. G.S. § 163-278.39
- These requirements do not apply to an individual who makes uncoordinated independent expenditures aggregating less than one thousand dollars (\$1,000) in a political campaign or to an individual who incurs expenses with respect to a referendum. Advertisements that relate to issues that are not on a ballot are not subject to these requirements at all. G.S. § 163-278.39C

FEES AND PAYMENT

- All expenditures for media expenses shall be made by a verifiable form of payment (such as a check). G.S. § 163-278.8(e)
- No media may charge a rate for political advertising that is higher than its normal charge for comparable advertising. A newspaper may not charge a rate for political advertising that is higher than the comparable rate charged to other persons of comparable frequency and volume; and every political advertiser shall be entitled to the same discounts under comparable conditions and circumstances. G.S. § 163-278.18

¹ All references to North Carolina statutes are current as of August 2006. The complete text of statutes is included, and portions applicable to newspapers are highlighted.

- Each media shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure. All such authorizations are deemed public records and copies of said authorizations shall be available for inspection during normal business hours at the office of the publisher. G.S. § 163-278.17
- All required records related to political advertising must be retained for at least two years from the date of the election to which such records refer. G.S. § 163-278.35

PROHIBITIONS

- After December 31 prior to a general election in which a Council of State office will be on the ballot, no declared candidate for that Council of State office shall use State funds for any advertisement that contains that declared candidate's name or picture except in case of State or national emergency and only if the announcement is reasonably necessary to that candidate's official function. G.S. § 163-278.16A

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G.S. § 163-278.6. Definitions

When used in this Article:

(1) The term “board” means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term “broadcasting station” means any commercial radio or television station or community antenna radio or television station. Special definitions of ‘radio’ and ‘television’ that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term “business entity” means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

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

already held. Special definitions of 'candidate' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of 'print media,' 'radio,' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

- a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163- 278.90(2) and (3); and
- b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the

term is applied in the context of several offices with different terms, “election cycle” means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term “election” means any general or special election, a first or second primary, a runoff election, or an election to fill a vacancy. The term “election” shall not include any local or statewide referendum.

(8a) The term “enforcement costs” means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(9) The terms “expend” or “expenditure” mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term “expenditure” also includes any payment or other transfer made by a candidate, political committee, or referendum committee. The special definition of “expenditure” in G.S. 163- 278.12A applies only in that section.

(9a) The term “independently expend” or “independent expenditure” means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent’s nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term “independent expenditure” applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term “individual” means a single individual or more than one individual.

(11) The term “insurance company” means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term “labor union” means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term “person” means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term “political committee” means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of

value to make, contributions or expenditures and has one or more of the following characteristics:

- a. Is controlled by a candidate;
- b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;
- c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or
- d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

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

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars (\$3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

Special definitions of 'political action committee' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of 'political party organization' that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by S.L. 1999-31, § 4(a), eff. May 4, 1999.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any

initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term “referendum committee” means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a “referendum committee” under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(19) The term “treasurer” means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A.

G.S. § 163-278.8. Detailed accounts to be kept by political treasurers

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163--278.22.

(c) Repealed by S.L. 2004-125, § 5(a), eff. July 20, 2004.

(d) Repealed by S.L. 2006-195, § 4, eff. Jan. 1, 2007.

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars (\$50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and reported individually and separately, but expenditures of fifty dollars (\$50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of fifty dollars (\$50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

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

G.S. § 163-278.12. Special reporting of contributions and independent expenditures

(a) Subject to G.S. 163-278.39 and G.S. 163-278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes independent expenditures in excess of one hundred dollars (\$100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections.

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

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

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

G.S. § 163-278.16A. Restriction on use of State funds by declared candidate for Council of State for advertising or public service announcements using their names, pictures, or voices

After December 31 prior to a general election in which a Council of State office will be on the ballot, no declared candidate for that Council of State office shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that declared candidate's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to that candidate's official function. For purposes of this section, "declared candidate" means someone who has publicly announced an intention to run.

G.S. § 163-278.17. Statements of media receiving campaign expenditures

(a) Repealed by Laws 1985, c. 183, § 1.

(b) Each media shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure. A candidate may authorize advertisement paid for by a treasurer appointed by the candidate. All authorizations of expenditures signed by a candidate, treasurer or individual shall be deemed public records and copies of said authorizations shall be available for inspection during normal business hours at the office(s) of the media making the publication or broadcast nearest to the place(s) of publication or broadcast.

(c) Repealed by Laws 1985, c. 183, § 2.

G.S. § 163-278.18. Normal commercial charges for political advertising

(a) No media and no supplier of materials or services shall charge or require a candidate, treasurer, political party, or individual to pay a charge for advertising, materials, space, or services purchased for or in support of or in opposition to any candidate, political committee, or political party that is higher than the normal charge it requires other customers to pay for comparable advertising, materials, space, or services purchased for other purposes.

(b) A newspaper, magazine, or other advertising medium shall not charge any candidate, treasurer, political committee, political party, or individual for any advertising for or in support of or in opposition to any candidate, political committee or political party at a rate higher than the comparable rate charged to other persons for advertising of comparable frequency and volume; and every candidate, treasurer, political party or individual, with respect to political advertising, shall be entitled to the same discounts afforded by the advertising medium to other advertisers under comparable conditions and circumstances.

G.S. § 163-278.35. Preservation of records

All reports, records and accounts required by this Article to be made, kept, filed, or maintained by any individual, media, candidate or treasurer shall be preserved and retained by the individual, media, candidate or treasurer for at least two years counting from the date of the election to which such reports, records and accounts refer.

G.S. § 163-278.38Z. Definitions

As used in this Part:

- (1) "Advertisement" means any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under this Article.
- (2) "Candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of organization under G.S. 163-278.7 and is required to file periodic financial disclosure statements under G.S. 163-278.9.
- (3) "Candidate campaign committee" means any political committee organized by or under the direction of a candidate.

(4) "Full-screen" means the only picture appearing on the television screen during the oral disclosure statement contains the disclosing person, that the picture occupies all visible space on the television screen, and that the image of the disclosing person occupies at least fifty percent (50%) of the vertical height of the television screen.

(5) "Political action committee" has the same meaning as "political committee" in G.S. 163-278.6(14), except that "political action committee" does not include any political party or political party organization.

(6) "Political party organization" means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

(7) "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. A "mass mailing" is a mailing with more than 500 pieces.

(8) "Radio" means any radio broadcast station that is subject to the provisions of 47 U.S.C. § § 315 and 317.

(9) "Scan line" means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

(10) "Sponsor" means a candidate, candidate committee, political party organization, political action committee, referendum committee, individual, or other entity that purchases an advertisement.

(11) "Television" means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. § § 315 and 317.

(12) "Unobscured" means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face.

G.S. § 163-278.39. Basic disclosure requirements for all political campaign advertisements

(a) Basic Requirements. --It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an expenditure or contribution required to be disclosed under this Article unless all the following conditions are met:

(1) It bears the legend or includes the statement: "Paid for by _____ [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor]." In television advertisements, this disclosure shall be made by visual legend.

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(3) Repealed by S.L. 2001-353, § 5, eff. Aug. 10, 2001.

(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure.

(5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either "Authorized by [name of candidate], candidate for [name of office]" or "Not authorized by a candidate." This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

(6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the advertisement or the expenditure for it with the candidate who is intended to benefit.

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. - In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. In an advertisement in a newspaper or a newspaper insert, the total height of the disclosure statement need not constitute five percent of the printed space of the advertisement if the type of the disclosure statement is at least 28 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size. In a radio advertisement covered by subsection (a) of this section, the disclosure statement shall last at least two seconds, provided the statement is spoken so that its contents may be easily understood.

(c) Misrepresentation of Authorization. --Notwithstanding G.S. 163- 278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor.

G.S. § 163-278.39C. Scope of disclosure requirements

The disclosure requirements of this Part apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution required to be disclosed under this Article, except that the disclosure requirements of this Part:

(1) Do not apply to an individual who makes uncoordinated independent expenditures aggregating less than one thousand dollars (\$1,000) in a political campaign; and

(2) Do not apply to an individual who incurs expenses with respect to a referendum. The disclosure requirements of this Part do not apply to any advertisement the expenditure for which is required to be disclosed by G.S. 163-278.12A alone and by no other law.