

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 708

Short Title: Stand By Your Ad.

(Public)

Sponsors: Senators Cooper, Conder, Plyler, Hartsell, Horton; Albertson, Blust, Clark, East, Forrester, Garwood, Gulley, Hoyle, Jenkins, Kerr, Ledbetter, Lee, McDaniel, Miller, Odom, Page, Perdue, Phillips, Rand, Reeves, Rucho, Shaw of Guilford, Webster, and Winner.

Referred to: Judiciary.

April 7, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE CERTAIN DISCLOSURES BY THE SPONSORS OF
3 POLITICAL ADVERTISEMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 163-278.16 reads as rewritten:

6 "**§ 163-278.16. Regulations regarding ~~contributions, expenditures and media advertising~~**
7 **timing of contributions and expenditures.**

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

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

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

17 (b) to (e) Repealed by Session Laws 1975, c. 565, s. 2.

1 (f) No media advertisement of any kind may be made by a treasurer, candidate,
2 political committee, referendum committee or individual unless

3 (1) It bears the legend or includes the statement: "Paid for by (or Sponsored
4 by)..... (Name of candidate, political committee, referendum
5 committee, individual)";

6 (2) The name used in the labeling required in subdivision (1) of this
7 subsection is the name that appears on the statement of organization as
8 required in G.S. 163-278.7(b)(1), provided that this subdivision applies
9 only if the sponsor is a political committee or referendum committee;

10 (3) The sponsor states in the media advertisement its position:
11 a. For or against the candidate; or
12 b. For or against an opposing candidate
13 provided that this subdivision applies only if the media advertisement is
14 made for or against a candidate; and

15 (4) The sponsor states in the media advertisement its position for or against
16 the ballot measure; provided this subdivision applies only if the media
17 advertisement is made for or against a ballot measure.

18 The requirements of subdivisions (3) and (4) of this subsection do not apply to any
19 print advertisement less than two inches by two inches in size, or to any radio or
20 television advertisement of less than 20 seconds in length.

21 The media shall not publish or broadcast any political advertisement unless it bears
22 the legend or includes the statement required herein. For purposes of this subsection,
23 "media" means broadcasting stations, carrier current stations, newspapers, magazines,
24 periodicals, outdoor advertising facilities, billboards, and newspaper inserts."

25 Section 2. Article 22A of Chapter 163 of the General Statutes is amended by
26 adding a new Part to read:

27 **"PART 1A. DISCLOSURE REQUIREMENTS FOR MEDIA**
28 **ADVERTISEMENTS.**

29 **"§ 163-278.39. Disclosure requirements for political advertisements in print media.**

30 (a) Required Disclosure. – No print-media advertisement of any kind may be
31 made by a treasurer, candidate, political committee, referendum committee, or individual
32 unless all the following conditions are met:

33 (1) It bears the visual legend: 'Paid for by (or Sponsored by).....
34 [Name of candidate, political committee, referendum committee,
35 individual].'

36 (2) The name used in the labeling required in subdivision (1) of this
37 subsection is the name that appears on the statement of organization as
38 required in G.S. 163-278.7(b)(1). This subdivision applies only if the
39 sponsor is a political committee or referendum committee.

40 (3) The sponsor states in the print-media advertisement its position:
41 a. For or against the candidate; or
42 b. For or against an opposing candidate.

1 This subdivision applies only if the print-media advertisement is made
2 for or against a candidate; and

3 (4) The sponsor states in the print-media advertisement its position for or
4 against the ballot measure. This subdivision applies only if the print-
5 media advertisement is made for or against a ballot measure.

6 (5) The sponsor states in the advertisement whether it is authorized by a
7 candidate. This subdivision applies only if:

8 a. The advertisement supports or opposes a candidate; and

9 b. The sponsor is an individual other than the candidate or a
10 political committee other than the committee of that candidate.

11 The visual legend in the advertisement shall state either 'Authorized by
12 [name of candidate], candidate for [name of office]' or 'Not authorized
13 by a candidate.'

14 (b) Size Requirements. – All the statements required in an advertisement by
15 subsection (a) of this section shall constitute at least ten percent (10%) of the space of the
16 advertisement. If each copy of an advertisement consists of multiple pages, folds, or
17 faces, the requirement of the previous sentence applies only to one page, fold, or face in
18 each copy.

19 (c) Print-Media Responsibility. – The print media shall not publish any political
20 advertisement unless it bears the visual legends required in this section.

21 (d) Misrepresentation of Authorization. – Notwithstanding G.S. 163-278.27(a),
22 any individual, person, political committee, or referendum committee that submits to the
23 print media an advertisement bearing any visual legend required by subsection (a) of this
24 section that misrepresents the sponsorship or authorization of the advertisement is guilty
25 of a Class 1 misdemeanor.

26 **"§ 163-278.39A. Disclosure requirements for political advertisements related to**
27 **candidates on television and radio.**

28 (a) Purpose. – It is the purpose of this section to effectuate the State's compelling
29 interest in the integrity of its electoral processes by fulfilling the public's right to know
30 the identity of sponsors of sophisticated and professional campaign advertisements on
31 television and radio. In contrast to advertisements in print, those on television and radio
32 present special challenges to the public's right to know because any disclosure on an
33 electronic ad lacks permanence.

34 (b) Relation to Federal Law. – State law incorporates the visual disclosure
35 requirements of federal law on television and radio outlets. Any violation of federal
36 visual disclosure requirements is a violation of State law.

37 (c) Candidate Advertisements on Television and Radio. – The sponsoring
38 candidate of an advertisement on television or radio shall orally state at least the
39 following words: 'I am (or "This is...") [candidate's name], candidate for [name of
40 office], and I (or "my campaign...") sponsored this ad.'

41 (d) Political Party Advertisements on Television and Radio. – The chair, executive
42 director, or treasurer of an official political party organization that sponsors an
43 advertisement on television or radio shall orally state at least the following words: 'The

1 [name of political party organization] sponsored this ad opposing/supporting [name of
2 candidate] for [name of office].' The disclosed name of the political party organization
3 must include the name of the political party as it appears on the ballot.

4 (e) Political Action Committee Advertisements on Television and Radio. – The
5 chief executive officer or treasurer of the political action committee that sponsors an
6 advertisement on television or radio shall orally state at least the following words: 'The
7 [name of political action committee] political action committee sponsored this ad
8 opposing/supporting [name of candidate] for [name of office].' The name of the political
9 action committee used in the advertisement shall be the name that appears on the
10 statement of organization as required in G.S. 163-278.7(b)(1).

11 (f) Advertisements on Television and Radio by an Individual. – An individual
12 sponsoring an advertisement on television or radio shall orally state at least the following
13 words: 'I am [individual's name], and I sponsored this advertisement opposing/sponsoring
14 [name of candidate] for [name of office].'

15 (g) All Advertisements on Television Related to Candidate. – In any television
16 advertisement related to a candidate, an unobscured, full-screen view of the disclosing
17 person, either in photographic form or through the actual appearance of the disclosing
18 person on camera, shall be featured throughout the duration of the disclosure statement.
19 Any visual legend accompanying the disclosure statement shall be at least 32 scan lines
20 in size.

21 (h) Placement of Disclosure Statement in Television and Radio Advertisements. –
22 A sponsoring candidate committee, political party organization, political action
23 committee, or individual may place the disclosure statement required by this section at
24 any point during the advertisement. The sponsoring entity may combine the oral
25 disclosure statement required by this section with, or separate it from, any visual
26 disclosure requirement under federal law. But any visual disclosure legend shall be at
27 least 32 scan lines in size.

28 (i) Choice by Noncandidate Entity of Supporting or Opposing a Candidate. – In
29 its oral disclosure statement, a sponsoring political party organization, political action
30 committee, or individual may choose either to identify an advertisement as supporting a
31 particular candidate or opposing a particular candidate.

32 (j) Legal Remedy. – Pursuant to the conditions established in subdivisions (1), (2),
33 and (3) of this subsection, a candidate for an elective office who complied with the
34 television and radio disclosure requirements throughout that candidate's entire campaign
35 shall have a monetary remedy in a civil action against (i) an opposing candidate or
36 candidate committee whose television or radio advertisement violates these disclosure
37 requirements and (ii) against any political party organization, political action committee,
38 or individual whose advertising for that elective office violates these disclosure
39 requirements.

40 (1) Any plaintiff candidate in a statewide race in an action under this
41 section must complete and file a Notice of Complaint Regarding Failure
42 to Disclose on Television or Radio Campaign Advertising with the State
43 Board of Elections after the airing of the advertisement but no later than

1 the first Friday after the Tuesday on which the election occurred.
2 Candidates in nonstatewide races may file the notice with one county
3 board of elections within the electoral area in which they are candidates.
4 The timely filing of this notice preserves the candidate's right to bring
5 an action in superior court any time within 90 days after the election. A
6 candidate shall bring the civil action in the county where the candidate
7 filed the notice.

8 (2) Upon receiving a favorable verdict in accordance with existing law, the
9 plaintiff candidate shall receive a monetary award of actual damages.
10 The price of actual damages shall be calculated as the total dollar
11 amount of television and radio advertising time that was aired and that
12 the plaintiff candidate correctly identifies as being in violation of the
13 disclosure requirements of this section.

14 The plaintiff candidate shall also receive an award that trebles the
15 amount of actual damages if:

- 16 a. The plaintiff candidate can establish having notified or attempted
17 to notify the sponsor of the advertising by return-receipt mail that
18 a particular advertisement or advertisements failed to comply
19 with the disclosure requirements of this section, and
20 b. After the notice or attempted notice, the advertisement continued
21 to be aired.

22 The treble damages shall be calculated from the date on which the
23 return-receipt notice was accepted or rejected by a defendant sponsoring
24 candidate or candidate committee, political party organization, political
25 action committee, or individual. The plaintiff candidate or candidate
26 committee shall send a copy of any return-receipt mailing to the relevant
27 board of elections as provided in subdivision (1) of this subsection
28 within five days after the notice is returned to the possession of the
29 candidate or candidate committee.

30 The court shall award reasonable attorneys' fees to a plaintiff
31 candidate who prevails in an action under this section. The plaintiff
32 candidate may bring the civil action personally or authorize his or her
33 candidate committee to bring the civil action.

34 (3) A sponsoring candidate and the sponsoring candidate's committee shall
35 be jointly and severally liable for the payment of damages and attorneys'
36 fees. If the sponsoring candidate is held personally liable for any
37 payment of damages or attorneys' fees, the sponsoring candidate shall
38 not use or be reimbursed by funds from the candidate's campaign
39 committee in paying any amount.

40 (k) No Regulation or Liability of Television or Radio Outlets. – The disclosure
41 requirements in this section impose no additional liability on or regulation of television or
42 radio outlets beyond that otherwise existing in law.

1 (l) No Criminal Liability. – Nothing in this section shall be relied upon or
2 otherwise interpreted to create criminal liability for any person.

3 **"§ 163-278.39B. Definitions.**

4 As used in this Part:

5 (1) 'Print media' means billboards, cards, newspapers, newspaper inserts,
6 magazines, mass mailings, pamphlets, periodicals, and outdoor
7 advertising facilities.

8 (2) 'Political action committee' has the same meaning as 'political
9 committee' in G.S. 163-278.6(14), except that 'political action
10 committee' does not include any political party or political party
11 organization.

12 (3) 'Political party organization' means any political party executive
13 committee or any political committee that operates under the direction
14 of a political party executive committee or political party chair.

15 (4) 'Scan line' means a standard term of measurement used in the electronic
16 media industry calculating a certain area in a television advertisement.

17 **"§ 163-278.39C. Scope of disclosure requirements.**

18 The disclosure requirements of this Part apply to those candidates or candidate
19 committees, political party organizations, political action committees, and individuals
20 required to file financial disclosure statements pursuant to this Article or pursuant to
21 federal law. The disclosure requirements of this Part apply to candidates for elective
22 federal office from North Carolina unless and until Congress takes clear action
23 demonstrating that it has preempted the authority of State law."

24 Section 3. G.S. 163-278.27(a) reads as rewritten:

25 "(a) Any individual, candidate, political committee, referendum committee,
26 treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8,
27 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17,
28 163-278.18, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-
29 278.40E is guilty of a Class 2 misdemeanor."

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

33 Section 5. This act becomes effective January 1, 1998, and applies to all
34 advertisements published on or after that date. Prosecutions for, or sentences based on,
35 offenses occurring before the effective date of this act are not abated or affected by this
36 act, and the statutes that would be applicable to those prosecutions or sentences but for
37 the provisions of this act remain applicable to those prosecutions or sentences.