

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH80255-RR-38 (03/10)

Short Title: Campaign Finance Amendments.

(Public)

Sponsors: Representative Goodwin.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE MORE SPECIFIC WHEN AN INDIVIDUAL BECOMES A  
3 "CANDIDATE" FOR CAMPAIGN FINANCE LAW AND TO DEFINE AND PROVIDE  
4 FOR DISCLOSURE OF FUNDING FOR "CANDIDACY EXPLORATION;" TO USE  
5 DIFFERENT TERMINOLOGY IN THE LEGAL DEFENSE FUNDS STATUTE; AND  
6 TO REQUIRE THAT A TREASURER FOR A NORTH CAROLINA CAMPAIGN BE A  
7 NORTH CAROLINA RESIDENT.

8 The General Assembly of North Carolina enacts:

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

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

- 14 a. ~~filed~~Filing a notice of candidacy or a petition requesting to be a  
15 candidate, ~~or~~  
16 b. ~~has been certified~~Being certified as a nominee of a political party for  
17 a vacancy,  
18 c. ~~has otherwise qualified~~Otherwise qualifying as a candidate in a  
19 manner authorized by law, ~~or~~  
20 d. Making a public announcement of a definite intent to run for public  
21 office in a particular election, or  
22 e. ~~has received~~Receiving funds or ~~made~~making payments or ~~has~~  
23 ~~giving~~giving the consent for anyone else to receive funds or transfer  
24 anything of value for the purpose of ~~exploring or~~ bringing about that  
25 individual's nomination or election to office. Transferring anything of  
26 value includes incurring an obligation to transfer anything of value.

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

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

33 "(4a) The term "candidacy exploration" means actions taken by an individual to  
34 explore the feasibility of becoming a candidate prior to taking positive action



1                   for the purpose of bringing about that individual's nomination or election to  
2                   public office."

3                   **SECTION 1.(c)** Article 22A of Chapter 163 of the General Statutes is amended by  
4 adding a new section to read:

5 **"§ 163-278.7B. Candidacy exploration.**

6                   (a) Recordkeeping. – An individual who engages in candidacy exploration shall keep  
7 records of all funds received and expended for that purpose, and shall retain those records for a  
8 minimum of two years.

9                   (b) Reporting. – An individual without an active candidate campaign committee who,  
10 subsequent to candidacy exploration, becomes a candidate shall include as a part of the  
11 organizational report submitted pursuant to G.S. 163-278.9(a)(1) a report of all funds received  
12 and expended for the purpose of candidacy exploration. An individual with an active candidate  
13 campaign committee who engages in candidacy exploration shall include a report of all funds  
14 received and expended for the purpose of candidacy exploration with reports required pursuant  
15 to G.S. 163-278.9."

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

17 **"§ 163-278.300. Definitions.**

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

19                   (1) Board. The State Board of Elections.

20                   (2) ~~Contribution.~~ Legal expense donation. — ~~As a~~ A payment that has the  
21 characteristics of a contribution as defined in G.S. 163-278.6, 163-278.6,  
22 except that it may be used only as provided in G.S. 163-278.320. The term  
23 "~~contribution~~" legal expense donation does not include either of the  
24 following:

25                   a. The provision of legal services to an elected officer by the State or  
26 any of its political subdivisions when those services are authorized or  
27 required by law or

28                   b. The provision of free or pro bono legal advice or legal services,  
29 provided that any costs incurred or expenses advanced for which  
30 clients are liable under other provisions of law shall be deemed  
31 ~~contributions.~~ legal expense donations.

32                   (3) Elected officer. – Any individual serving in or seeking a public office. An  
33 individual is seeking a public office when that individual has filed any  
34 notice, petition, or other document required by law or local act as a condition  
35 of election to public office. An individual continues to be an elected officer  
36 for purposes of this Article as long as a legal action commenced while the  
37 individual was an elected officer continues. If a legal action is commenced  
38 after an individual ceases to serve in or seek public office but the legal action  
39 concerns subject matter in the individual's official capacity as an elected  
40 officer, for purposes of this Article, that individual is an elected officer as  
41 long as that legal action continues.

42                   (4) Expenditure. – ~~As a~~ A payment that has the characteristics of an expenditure  
43 as defined in G.S. 163-278.6, 163-278.6, except that it may only be used as  
44 provided in G.S. 163-278.320.

45                   (5) Legal action. – A formal dispute in a judicial, legislative, or administrative  
46 forum, including but not limited to, a civil or criminal action filed in a court,  
47 a complaint or protest filed with a board of elections, an election contest  
48 filed under Article 3 of Chapter 120 of the General Statutes or  
49 G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or  
50 Legislative Ethics Committee. The term "legal action" also includes  
51 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 donation.**

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 donation 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  
42 limits 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  
50 limits 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~~legal expense donations in  
9 G.S. 163-278.19(f).

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

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

13 "**§ 163-278.320. Permitted uses of legal expense funds.**

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

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

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

32 **SECTION 3.** G.S. 163-278.7 reads as rewritten:

33 "(a) Each candidate, political committee, and referendum committee shall appoint a  
34 treasurer and, under verification, report the name and address of the treasurer to the Board. A  
35 candidate may appoint himself or any other ~~individual~~individual who resides in North  
36 Carolina, including any relative except his spouse, as ~~his~~ treasurer, and, upon failure to file  
37 report designating a treasurer, the candidate shall be concluded to have appointed himself as  
38 treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon  
39 the appointed treasurer and subject to the penalties and sanctions hereinafter provided."

40 **SECTION 4.** This act becomes effective December 1, 2009.