

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**HOUSE BILL 1737
RATIFIED BILL**

AN ACT TO REGULATE LEGAL EXPENSE FUNDS OF ELECTED OFFICERS TO
PROVIDE FOR DISCLOSURE OF CONTRIBUTIONS AND EXPENDITURES
AND TO LIMIT CERTAIN CONTRIBUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter VIII of Chapter 163 of the General Statutes is amended to add a new Article to read:

"Article 22M.

"Legal Expense Funds.

"§ 163-278.300. Definitions.

As used in this Article, the following terms mean:

- (1) Board. – The State Board of Elections.
- (2) Contribution. – As defined in G.S. 163-278.6. The term "contribution" does not include either of the following:
 - a. The provision of legal services to an elected officer by the State or any of its political subdivisions when those services are authorized or required by law or
 - b. The provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed contributions.
- (3) Elected officer. – Any individual serving in or seeking a public office. An individual is seeking a public office when that individual has filed any notice, petition, or other document required by law or local act as a condition of election to public office. An individual continues to be an elected officer for purposes of this Article as long as a legal action commenced while the individual was an elected officer continues. If a legal action is commenced after an individual ceases to serve in or seek public office but the legal action concerns subject matter in the individual's official capacity as an elected officer, for purposes of this Article, that individual is an elected officer as long as that legal action continues.
- (4) Expenditure. – As defined in G.S. 163-278.6.
- (5) Legal action. – A formal dispute in a judicial, legislative, or administrative forum, including but not limited to, a civil or criminal action filed in a court, a complaint or protest filed with a board of elections, an election contest filed under Article 3 of Chapter 120 of the General Statutes or G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or Legislative Ethics Committee. The term "legal action" also includes investigations made or conducted before the commencement of any formal proceedings. The term "legal action" does not include the election itself or the campaign for election.

- (6) Legal expense fund. – Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.
- (7) Official capacity. – Related to or resulting from the campaign for public office or related to or resulting from holding public office. "Official capacity" is not limited to "scope and course of employment" as used in G.S. 143-300.3.
- (8) Public office. – As defined in G.S. 163-278.6.
- (9) Treasurer. – An individual appointed by an elected officer or other individual or group of individuals collecting money for a legal expense fund.

"§ 163-278.301. Creation of legal expense funds.

(a) An elected officer, or another individual or group of individuals on the elected officer's behalf, shall create a legal expense fund if given a contribution, other than from that elected officer's self, spouse, parents, brothers, or sisters, for any of the following purposes:

- (1) To fund an existing legal action taken by or against the elected officer in that elected officer's official capacity.
- (2) To fund a potential legal action taken by or against an elected officer in that elected officer's official capacity.

(b) This section shall not apply to any contribution to the State or any of its political subdivisions.

(c) The legal expense fund shall comply with all provisions of this Article.

(d) If an elected officer funds legal actions entirely from that elected officer's own contributions or the contributions of the elected officer's spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense fund. If a legal expense fund accepts contributions as described in subsection (a) of this section, that legal expense fund shall report the elected officer's own contributions and those of those family members along with the other contributions in accordance with G.S. 163-278.310.

(d1) No more than one legal expense fund shall be created by or for an elected officer for the same legal action. Legal actions arising out of the same set of transactions and occurrences are deemed the same legal action for purposes of this subsection. A legal expense fund created for one legal action or potential legal action may be kept open by or on behalf of the elected officer for subsequent legal actions or potential legal actions.

(e) Contractual arrangements, including liability insurance, or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying, are not "contributions" for purposes of this Article. Use of such contractual arrangements to fund legal actions does not by itself require the elected officer to create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a) of this section, such contractual arrangements shall be reported as expenditures.

(f) A violation of this Article shall be punishable as a Class 1 misdemeanor.

"§§ 163-278.302 through 163-278.305: Reserved for future codification purposes.

"§ 163-278.306. Treasurer.

(a) Each legal expense fund shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board.

(b) A legal expense fund may remove its treasurer. In case of the death, resignation, or removal of its treasurer, the legal expense fund shall appoint a successor within 10 calendar days of the vacancy and certify the name and address of the successor in the same manner provided in the case of an original appointment.

(c) Every treasurer of a legal expense fund shall receive training from the Board as to the duties of the office within three months of appointment and at least once every four years thereafter.

"§ 163-278.307. Detailed accounts to be kept by treasurer.

(a) The treasurer of each legal expense fund shall keep detailed accounts, current within seven calendar 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 legal expense fund.

(b) Accounts kept by the treasurer of a legal expense fund or the accounts of a treasurer or legal expense fund at any bank or other depository may be inspected by a member, designee, agent, attorney, or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) For purposes of this section, "detailed accounts" shall mean at least all information required to be included in the quarterly report required under this Article.

(d) When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article, any report of the legal expense shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties. The State Board of Elections shall adopt rules to implement this subsection.

"§ 163-278.308. Reports filed with Board.

(a) The treasurer of each legal expense fund shall file with the Board the following reports:

(1) Organizational report. – The report required under G.S. 163-278.309.

(2) Quarterly report. – The report required under G.S. 163-278.310.

(b) Any report or attachment required by this Article must be filed under certification of the treasurer as true and correct to the best of the knowledge of that officer.

(c) The organizational report shall be filed within 10 calendar days of the creation of the legal expense fund. All quarterly reports shall be filed with the Board no later than 10 business days after the end of each calendar quarter.

(d) Treasurers shall electronically file each report required by this section that shows a cumulative total for the quarter in excess of five thousand dollars (\$5,000) in contributions or expenditures, according to rules adopted by the Board. The Board shall provide the software necessary to the treasurer to file the required electronic report at no cost to the legal expense fund.

(e) Any statement required to be filed under this Article shall be signed and certified as true and correct by the treasurer and shall be certified as true and correct to the best of the treasurer's knowledge. The elected officer creating the legal expense fund, or the other individual or group of individuals creating the legal expense fund on the elected officer's behalf, shall certify as true and correct to the best of their knowledge the organizational report and appointment of the treasurer. A certification under this Article shall be treated as under oath, and any individual making a certification under this Article knowing the information to be untrue is guilty of a Class I felony.

"§ 163-278.309. Organizational report.

(a) Each appointed treasurer shall file with the Board a statement of organization that includes all of the following:

(1) The name, address, and purpose of the legal expense fund.

(2) The names, addresses, and relationships of affiliated or connected elected officers, candidates, political committees, referendum committees, political parties, or similar organizations.

(3) The name, address, and position with the legal expense fund of the custodian of books and accounts.

(4) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used. The Board shall keep any account number required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a

court of competent jurisdiction, or except as confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(5) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer.

(6) Any other information which might be requested by the Board that deals with the legal expense fund organization.

(b) Any change in information previously submitted in a statement of organization shall be reported to the Board within 10 calendar days following the change.

"§ 163-278.310. Quarterly report.

The treasurer of each legal expense fund shall be required to file a quarterly report with the Board containing all of the following:

(1) Contributions. – The name and complete mailing address of each contributor, the amount of the contribution, the principal occupation of the contributor, and the date the contribution was received. The total sum of all contributions to date shall also be plainly exhibited. The treasurer is not required to report the name of any contributor making a total contribution of fifty dollars (\$50.00) or less in a calendar quarter, but shall instead report the fact that the treasurer has received a total contribution of fifty dollars (\$50.00) or less, the amount of the contribution, and the date of receipt.

(2) Expenditures. – A list of all expenditures made by or on behalf of the legal expense fund. The report shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall also be plainly exhibited. The payee shall be the entity to whom the legal expense fund is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans. – 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.

"§§ 163-278.311 through 163-278.315: Reserved for future codification purposes.

"§ 163-278.316. Limitations on contributions.

(a) No entity shall make, and no treasurer shall accept, any monetary contribution in excess of fifty dollars (\$50.00) unless such contribution is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No contribution in the form of check, draft, money order, credit card charge, debit, or other noncash method may be made or accepted

unless it contains a specific designation of the intended contributee chosen by the contributor.

(b) The State Board of Elections may adopt rules as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall adopt rules to ensure an audit trail for every contribution so that the identity of the contributor can be determined.

(c) For any contribution made by credit card, the credit card account number of a contributor is not a public record.

(d) No legal expense fund shall accept contributions from a corporation, labor union, insurance company, professional association, or business entity in excess of four thousand dollars (\$4,000) per calendar year. No legal expense fund shall accept contributions from a corporation which when totaled with contributions to the same legal expense fund for the same calendar year from any affiliated corporation exceed the per calendar year contribution limits for that legal expense fund. No legal expense fund shall accept contributions from a labor union which when totaled with contributions to the same legal expense fund for the same calendar year from any affiliated labor union exceed the per calendar year contribution limits for that legal expense fund. No legal expense fund shall accept contributions from an insurance company which when totaled with contributions to the same legal expense fund for the same calendar year from any affiliated insurance company exceed the per calendar year contribution limits for that legal expense fund. No legal expense fund shall accept contributions from a professional association which when totaled with contributions to the same legal expense fund for the same calendar year from any affiliated professional association exceed the per calendar year contribution limits for that legal expense fund. No legal expense fund shall accept contributions from a business entity which when totaled with contributions to the same legal expense fund for the same calendar year from any affiliated business entity exceed the per calendar year contribution limits for that legal expense fund. The definitions of corporation, labor union, insurance company, professional association, and business entity are the same as those in G.S. 163-278.6. This subsection does not apply to political committees created pursuant to G.S. 163-278.19(b), except that no legal expense fund shall accept a contribution which would be a violation of G.S. 163-278.13B if accepted by a candidate or political committee. This subsection does not apply to corporations permitted to make contributions in G.S. 163-278.19(f).

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

"§§ 163-278.317 through 163-278.319: Reserved for future codification purposes.

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

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

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

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

"§§ 163-278.321 through 163-278.329: Reserved for future codification purposes."

SECTION 2. G.S. 163-278.22(7) reads as rewritten:

"(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this ~~Article~~Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this ~~Article~~Article or Article 22M of the General Statutes."

SECTION 3. G.S. 163-278.22(8) reads as rewritten:

"(8) After investigation, to report apparent violations by candidates, political committees, referendum committees, legal expense funds, individuals or persons to the proper district attorney as provided in G.S. 163-278.27."

SECTION 4. G.S. 163-278.36 is repealed.

SECTION 5. G.S. 163-278.5 reads as rewritten:

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

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

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

This section applies to Articles 22B, 22D, 22E, ~~and 22F~~22F, 22G, 22H, and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 6. G.S. 163-278.23 reads as rewritten:

"§ 163-278.23. Duties of Executive Director of Board.

The Executive Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, media, or other entity that may be required to file a statement under this Article if:

- (1) It appears that the individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement as required by law or that a statement filed does not conform to this Article; or
- (2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement required by this Article.

The entity that is the subject of the complaint will be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The Executive Director of the Board of Elections shall issue written opinions to candidates, the communications media, political committees, referendum committees, or other entities upon request, regarding filing procedures and compliance with this Article. Any such opinion so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, referendum committees, or

other entities rely on and comply with the opinion of the Executive Director of the Board of Elections, then prosecution or civil action on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. The Executive Director shall file all opinions issued pursuant to this section with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

This section applies to Articles 22B, 22D, 22E, ~~and 22F~~ 22F, 22G, 22H, and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 7. This act becomes effective January 1, 2008.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

Marc Basnight
President Pro Tempore of the Senate

Joe Hackney
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2007