A BILL TO BE ENTITLED
AN ACT TO DEFINE AND REGULATE DIGITAL COMMUNICATION IN ELECTIONEERING COMMUNICATIONS AND ADVERTISING DISCLOSURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163A-1411 is amended by adding a new subdivision to read:

"(81) The term "qualified digital communication" means any communication placed or promoted on a public-facing Web site, Web application, or digital application, including a social network, advertising network, or search engine, when a fee is required to be paid for such placement or promotion."

SECTION 2. G.S. 163A-1411, as amended by S.L. 2018-144 and S.L. 2018-146, reads as rewritten:

"§ 163A-1411. Definitions.

When used in this Article:

…

(41) The term "electioneering communication" means any broadcast, cable, or satellite communication, or mass mailing, or telephone bank, or qualified digital communication that has all the following characteristics:

a. Refers to a clearly identified candidate for elected office.

b. In the case of the general election in November of the even numbered year is aired or transmitted within 30 days of the election for that office.

c. May be received by either in the case that the communication, mass mailing, or telephone bank is not a qualified digital communication, may be received by the following:

1. 50,000 or more individuals in the State in an election for statewide office or 7,500 or more individuals in any other election if in the form of broadcast, cable, or satellite communication.

2. 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election if in the form of mass mailing or telephone bank.

(43) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless
those facilities are owned or controlled by any political party, affiliated party committee, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under this Article.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation or a solicitation of others as defined in G.S. 163A-250(a)(36) properly reported under Article 8 of this Chapter.

e. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction.

f. A public opinion poll conducted by a news medium, as defined in G.S. 8-53.11(a)(3), conducted by an organization whose primary purpose is to conduct or publish public opinion polls, or contracted for by a person to be conducted by an organization whose primary purpose is to conduct or publish public opinion polls. This sub-subdivision shall not apply to a push poll. For the purpose of this sub-subdivision, "push poll" shall mean the political campaign technique in which an individual or organization attempts to influence or alter the view of respondents under the guise of conducting a public opinion poll.

g. A communication made by a news medium, as defined in G.S. 8-53.11(a)(3), if the communication is in print.

SECTION 3. G.S. 163A-1475(1) reads as rewritten:

"(1) "Advertisement" means any message appearing in the print media, on television, or on radio, television, or radio, or through a qualified digital communication that constitutes a contribution or expenditure any of the following under this Article: Article:

a. A contribution.

b. An expenditure.

c. An independent expenditure."

SECTION 4. G.S. 163A-1476 reads as rewritten:

"§ 163A-1476. Basic disclosure requirements for all political advertisements.

(a) Basic Requirements. – It shall be unlawful for any sponsor to sponsor an advertisement or an electioneering communication (i) in the print media, (ii) on radio or television, or (iii) through a qualified digital communication that constitutes an expenditure, independent expenditure, electioneering communication, or contribution unless such advertisement or electioneering communication complies with required to be disclosed under this Article. The sponsor of a qualified digital communication shall also comply with G.S. 163A-1478.
(a1) Legend Requirements. – All advertisements and electioneering communications described in subsection (a) of this section unless shall comply with all the following conditions:

(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, advertisements or qualified digital communications, 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. 163A-1412(b)(1) or G.S. 163A-1424(a).

(3) In a print media advertisement or a qualified digital communication supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor shall state whether it is authorized by a candidate. The visual legend in the advertisement or qualified digital communication 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 or electioneering communication is the candidate the advertisement or qualified digital communication supports or that candidate's campaign committee.

(4) In a print media advertisement—advertisements or qualified digital communications that identifies a candidate the sponsor is opposing, the sponsor shall disclose in the advertisement or qualified digital communication the name of the candidate who is intended to benefit from the electioneering communication or advertisement. This subdivision applies only when the sponsor coordinates or consults about the advertisement or the expenditure for it—electioneering communication with the candidate who is intended to benefit.

(a2) If an advertisement or electioneering communication described in subsection (a) of this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. – The following shall apply to all advertisements and electioneering communications described in subsection (a) of this section:

(1) In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection (a1) of this section shall constitute at least five percent (5%) of the height of the printed space of the advertisement, advertisement or electioneering communication, provided that the type shall in no event be less than 12 points in size. In an advertisement or electioneering communication in a newspaper or a newspaper insert, the total height of the disclosure statement legend required by subsection (a1) of this section need not constitute five percent of the printed space of the advertisement or electioneering communication if the type of the disclosure statement legend is at least 28 points in size. If a single advertisement or electioneering communication consists of multiple pages, folds, or faces, the disclosure requirement legend required by subsection (a1) of this section applies only to one page, fold, or face.

(2) In a television advertisement covered by subsection (a) of this section, on television, the visual disclosure legend shall constitute four percent (4%) of vertical picture height in size, and where the television advertisement or electioneering communication that appears is paid for by a candidate or candidate campaign committee, the visual disclosure legend shall appear
simultaneously with an easily identifiable photograph of the candidate for at least two seconds.

(3) In a radio advertisement covered by subsection (a) of this section, on radio, the disclosure statement shall last at least two seconds, provided the statement is spoken so that its contents may be easily understood.

(4) In a qualified digital communication, the legend required by subsection (a1) of this section shall appear (i) in letters at least as large as the smallest text in the qualified digital communication or (ii) in a heading or similar section of text displayed above or within the qualified digital communication that is visually distinct from the text of the qualified digital communication and shall have a reasonable degree of color contrast between the background and the legend.

(c) Misrepresentation of Authorization. – Notwithstanding G.S. 163A-1445(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement or electioneering communication described in subsection (a) of this section (i) in the print media or media, (ii) on radio or television, or (iii) through a qualified digital communication bearing any legend required by subsection (a) or subsection (a1) of this section that misrepresents the sponsorship or authorization of the advertisement or electioneering communication is guilty of a Class I misdemeanor."

SECTION 5. G.S. 163A-1477 reads as rewritten:

"§ 163A-1477. 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, or electioneering communication described in G.S. 163A-1476(a), 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."

SECTION 6. Part 2 of Article 23 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"§ 163A-1478. State Board to maintain records of qualified digital communications for political advertisements.

(a) Any sponsor making advertisements or electioneering communications described by G.S. 163A-1476(a) through a qualified digital communication shall submit an informational statement to the State Board, in the form required by the State Board for each qualified digital communication placed or promoted upon reaching the threshold. At a minimum, the State Board shall require all of the following information with respect to a qualified digital communication:

(1) The name of the sponsor.
(2) The city and state where the sponsor is located.
(3) The amount spent by the sponsor for the qualified digital communication.
(4) A description of the qualified digital communication.
(5) The dates or date range on which the qualified digital communication runs.
(6) The candidate or candidates intended to benefit from the qualified digital communication, if the sponsor is not the candidate or the candidate's campaign committee.
(7) The audience targeted by the qualified digital communication, if less than the entire district in which the identified candidate or candidates are seeking election.

(8) The manner in which the qualified digital communication was distributed.

(9) Which Web site, Web application, or digital application, including any social network, advertising network, or search engine, was paid the fee to place or promote the qualified digital communication.

(b) All informational statements submitted to the State Board under this section are a public record and shall be maintained by the State Board on its Web site for at least two election cycles.

(c) This section applies only to the following:

(1) Any sponsor making advertisements described by G.S. 163A-1476(a) through a qualified digital communication totaling more than one thousand dollars ($1,000) per election.

(2) Any sponsor making electioneering communications described by G.S. 163A-1476(a) through a qualified digital communication totaling more than five thousand dollars ($5,000) per election.

SECTION 7. This act becomes effective January 1, 2020, and applies to elections conducted on or after that date.