

By Senator Lee

10-1618A-04

1 A bill to be entitled
2 An act relating to elections; amending s.
3 106.011, F.S.; redefining the terms "political
4 committee," "contribution," "expenditure,"
5 "communications media," and "political
6 advertisement"; defining the term
7 "electioneering communication"; amending s.
8 106.04, F.S.; modifying contribution reporting
9 requirements for committees of continuous
10 existence; amending s. 106.071, F.S.; modifying
11 the reporting requirements for independent
12 expenditures; establishing reporting
13 requirements for certain individuals making
14 electioneering communications; modifying
15 sponsorship disclaimer requirements for
16 independent expenditures; establishing
17 sponsorship disclaimer requirements for
18 electioneering communications; creating an
19 exemption; repealing s. 106.1437, relating to
20 sponsorship disclaimers on miscellaneous
21 advertisements; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 106.011, Florida Statutes, is
26 amended to read:
27 106.011 Definitions.--As used in this chapter, the
28 following terms have the following meanings unless the context
29 clearly indicates otherwise:
30 (1)(a) "Political committee" means:

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1 1. A combination of two or more individuals, or a
2 person other than an individual, that, in an aggregate amount
3 in excess of \$500 during a single calendar year:

4 a. Accepts contributions for the purpose of making
5 contributions to any candidate, political committee, committee
6 of continuous existence, or political party;

7 b. Accepts contributions for the purpose of expressly
8 advocating the election or defeat of a candidate or the
9 passage or defeat of an issue;

10 c. Makes expenditures that expressly advocate the
11 election or defeat of a candidate or the passage or defeat of
12 an issue; ~~or~~

13 d. Makes contributions to a common fund, other than a
14 joint checking account between spouses, from which
15 contributions are made to any candidate, political committee,
16 committee of continuous existence, or political party;~~;~~

17 e. Accepts contributions for the purpose of making
18 electioneering communications; or

19 f. Makes expenditures to fund electioneering
20 communications.

21 2. The sponsor of a proposed constitutional amendment
22 by initiative who intends to seek the signatures of registered
23 electors.

24 (b) Notwithstanding paragraph (a), the following
25 entities are not considered political committees for purposes
26 of this chapter:

27 1. Organizations which are certified by the Department
28 of State as committees of continuous existence pursuant to s.
29 106.04, national political parties, and the state and county
30 executive committees of political parties regulated by chapter
31 103.

1 2. Corporations regulated by chapter 607 or chapter
2 617 or other business entities formed for purposes other than
3 to support or oppose issues or candidates, if their political
4 activities are limited to contributions to candidates,
5 political parties, or political committees or expenditures in
6 support of or opposition to an issue from corporate or
7 business funds and if no contributions are received by such
8 corporations or business entities.

9 (2) "Committee of continuous existence" means any
10 group, organization, association, or other such entity which
11 is certified pursuant to the provisions of s. 106.04.

12 (3) "Contribution" means:

13 (a) A gift, subscription, conveyance, deposit, loan,
14 payment, or distribution of money or anything of value,
15 including contributions in kind having an attributable
16 monetary value in any form, made for the purpose of funding an
17 electioneering communication or otherwise influencing the
18 results of an election.

19 (b) A transfer of funds between political committees,
20 between committees of continuous existence, or between a
21 political committee and a committee of continuous existence.

22 (c) The payment, by any person other than a candidate
23 or political committee, of compensation for the personal
24 services of another person which are rendered to a candidate
25 or political committee without charge to the candidate or
26 committee for such services.

27 (d) The transfer of funds by a campaign treasurer or
28 deputy campaign treasurer between a primary depository and a
29 separate interest-bearing account or certificate of deposit,
30 and the term includes any interest earned on such account or
31 certificate.

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2 Notwithstanding the foregoing meanings of "contribution," the
3 word shall not be construed to include services, including,
4 but not limited to, legal and accounting services, provided
5 without compensation by individuals volunteering a portion or
6 all of their time on behalf of a candidate or political
7 committee. This definition shall not be construed to include
8 editorial endorsements.

9 (4)(a) "Expenditure" means a purchase, payment,
10 distribution, loan, advance, transfer of funds by a campaign
11 treasurer or deputy campaign treasurer between a primary
12 depository and a separate interest-bearing account or
13 certificate of deposit, or gift of money or anything of value
14 made for the purpose of funding an electioneering
15 communication or otherwise influencing the results of an
16 election. However, "expenditure" does not include a purchase,
17 payment, distribution, loan, advance, or gift of money or
18 anything of value made for the purpose of influencing the
19 results of an election when made by an organization, in
20 existence prior to the time during which a candidate qualifies
21 or an issue is placed on the ballot for that election, for the
22 purpose of printing or distributing such organization's
23 newsletter, containing a statement by such organization in
24 support of or opposition to a candidate or issue, which
25 newsletter is distributed only to members of such
26 organization.

27 (b) As used in this chapter, an "expenditure" for an
28 electioneering communication is made when the earliest of the
29 following occurs:

30 1. A person executes a contract for applicable goods
31 or services;

1 2. A person makes payment, in whole or in part, for
2 applicable goods or services; or

3 3. The electioneering communication is publicly
4 disseminated.

5 (5)(a) "Independent expenditure" means an expenditure
6 by a person for the purpose of advocating the election or
7 defeat of a candidate or the approval or rejection of an
8 issue, which expenditure is not controlled by, coordinated
9 with, or made upon consultation with, any candidate, political
10 committee, or agent of such candidate or committee. An
11 expenditure for such purpose by a person having a contract
12 with the candidate, political committee, or agent of such
13 candidate or committee in a given election period shall not be
14 deemed an independent expenditure.

15 (b) An expenditure for the purpose of advocating the
16 election or defeat of a candidate which is made by the
17 national, state, or county executive committee of a political
18 party, including any subordinate committee of a national,
19 state, or county committee of a political party, or by any
20 political committee or committee of continuous existence, or
21 any other person, shall not be considered an independent
22 expenditure if the committee or person:

23 1. Communicates with the candidate, the candidate's
24 campaign, or an agent of the candidate acting on behalf of the
25 candidate, including any pollster, media consultant,
26 advertising agency, vendor, advisor, or staff member,
27 concerning the preparation of, use of, or payment for, the
28 specific expenditure or advertising campaign at issue; or

29 2. Makes a payment in cooperation, consultation, or
30 concert with, at the request or suggestion of, or pursuant to
31 any general or particular understanding with the candidate,

1 the candidate's campaign, a political committee supporting the
2 candidate, or an agent of the candidate relating to the
3 specific expenditure or advertising campaign at issue; or

4 3. Makes a payment for the dissemination,
5 distribution, or republication, in whole or in part, of any
6 broadcast or any written, graphic, or other form of campaign
7 material prepared by the candidate, the candidate's campaign,
8 or an agent of the candidate, including any pollster, media
9 consultant, advertising agency, vendor, advisor, or staff
10 member; or

11 4. Makes a payment based on information about the
12 candidate's plans, projects, or needs communicated to a member
13 of the committee or person by the candidate or an agent of the
14 candidate, provided the committee or person uses the
15 information in any way, in whole or in part, either directly
16 or indirectly, to design, prepare, or pay for the specific
17 expenditure or advertising campaign at issue; or

18 5. After the last day of qualifying for statewide or
19 legislative office, consults about the candidate's plans,
20 projects, or needs in connection with the candidate's pursuit
21 of election to office and the information is used in any way
22 to plan, create, design, or prepare an independent expenditure
23 or advertising campaign, with:

24 a. Any officer, director, employee, or agent of a
25 national, state, or county executive committee of a political
26 party that has made or intends to make expenditures in
27 connection with or contributions to the candidate; or

28 b. Any person whose professional services have been
29 retained by a national, state, or county executive committee
30 of a political party that has made or intends to make

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1 expenditures in connection with or contributions to the
2 candidate; or

3 6. After the last day of qualifying for statewide or
4 legislative office, retains the professional services of any
5 person also providing those services to the candidate in
6 connection with the candidate's pursuit of election to office;
7 or

8 7. Arranges, coordinates, or directs the expenditure,
9 in any way, with the candidate or an agent of the candidate.

10 (6) "Election" means any primary election, special
11 primary election, general election, special election, or
12 municipal election held in this state for the purpose of
13 nominating or electing candidates to public office, choosing
14 delegates to the national nominating conventions of political
15 parties, or submitting an issue to the electors for their
16 approval or rejection.

17 (7) "Issue" means any proposition which is required by
18 the State Constitution, by law or resolution of the
19 Legislature, or by the charter, ordinance, or resolution of
20 any political subdivision of this state to be submitted to the
21 electors for their approval or rejection at an election, or
22 any proposition for which a petition is circulated in order to
23 have such proposition placed on the ballot at any election.

24 (8) "Person" means an individual or a corporation,
25 association, firm, partnership, joint venture, joint stock
26 company, club, organization, estate, trust, business trust,
27 syndicate, or other combination of individuals having
28 collective capacity. The term includes a political party,
29 political committee, or committee of continuous existence.

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1 (9) "Campaign treasurer" means an individual appointed
2 by a candidate or political committee as provided in this
3 chapter.

4 (10) "Public office" means any state, county,
5 municipal, or school or other district office or position
6 which is filled by vote of the electors.

7 (11) "Campaign fund raiser" means any affair held to
8 raise funds to be used in a campaign for public office.

9 (12) "Division" means the Division of Elections of the
10 Department of State.

11 (13) "Communications media" means broadcasting
12 stations, newspapers, magazines, outdoor advertising
13 facilities, printers, direct mailing companies, advertising
14 agencies, the Internet, and telephone companies; but with
15 respect to telephones, an expenditure shall be deemed to be an
16 expenditure for the use of communications media only if made
17 for the costs of telephones, paid telephonists, or automatic
18 telephone equipment to be used by a candidate or a political
19 committee to communicate with potential voters but excluding
20 any costs of telephones incurred by a volunteer for use of
21 telephones by such volunteer.

22 (14) "Filing officer" means the person before whom a
23 candidate qualifies, the agency or officer with whom a
24 political committee registers, or the agency by whom a
25 committee of continuous existence is certified.

26 (15) "Unopposed candidate" means a candidate for
27 nomination or election to an office who, after the last day on
28 which any person, including a write-in candidate, may qualify,
29 is without opposition in the election at which the office is
30 to be filled or who is without such opposition after such date
31 as a result of any primary election or of withdrawal by other

1 candidates seeking the same office. A candidate is not an
2 unopposed candidate if there is a vacancy to be filled under
3 s. 100.111(4), if there is a legal proceeding pending
4 regarding the right to a ballot position for the office sought
5 by the candidate, or if the candidate is seeking retention as
6 a justice or judge.

7 (16) "Candidate" means any person to whom any one or
8 more of the following apply:

9 (a) Any person who seeks to qualify for nomination or
10 election by means of the petitioning process.

11 (b) Any person who seeks to qualify for election as a
12 write-in candidate.

13 (c) Any person who receives contributions or makes
14 expenditures, or consents for any other person to receive
15 contributions or make expenditures, with a view to bring about
16 his or her nomination or election to, or retention in, public
17 office.

18 (d) Any person who appoints a treasurer and designates
19 a primary depository.

20 (e) Any person who files qualification papers and
21 subscribes to a candidate's oath as required by law.

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23 However, this definition does not include any candidate for a
24 political party executive committee.

25 (17) "Political advertisement" means a paid expression
26 in any communications media prescribed in subsection (13),
27 whether radio, television, newspaper, magazine, periodical,
28 campaign literature, direct mail, or display or by means other
29 than the spoken word in direct conversation, which shall
30 support or oppose any candidate, ~~elected public official, or~~
31 issue. However, political advertisement does not include:

1 (a) A statement by an organization, in existence prior
2 to the time during which a candidate qualifies or an issue is
3 placed on the ballot for that election, in support of or
4 opposition to a candidate or issue, in that organization's
5 newsletter, which newsletter is distributed only to the
6 members of that organization.

7 (b) Editorial endorsements by any newspaper, radio or
8 television station, or other recognized news medium.

9 (18)(a) "Electioneering communication" means a paid
10 expression in any communications media prescribed in
11 subsection (13), published 60 days before a general election
12 or 30 days before a primary election, which names or depicts a
13 candidate for office in that election or which identifies that
14 an issue is to be voted on at that election. In the case of a
15 communication naming or depicting a candidate for office, the
16 communication must also be able to be received by 1,000 or
17 more persons in the district the candidate seeks to represent.

18 (b) The term "electioneering communication" does not
19 include:

20 1. Any communication that qualifies as an independent
21 expenditure or a political advertisement under this section;

22 2. A statement or depiction by an organization, in
23 existence prior to the time during which a candidate named or
24 depicted qualifies or an issue identified is placed on the
25 ballot for that election, made in that organization's
26 newsletter, which newsletter is distributed only to members of
27 that organization; or

28 3. An editorial endorsement by any newspaper, radio,
29 television station, or other recognized news medium.

30 Section 2. Paragraph (c) of subsection (4) of section
31 106.04, Florida Statutes, is amended to read:

1 106.04 Committees of continuous existence.--

2 (4)

3 (c) All committees of continuous existence shall file
4 the original and one copy of their reports with the Division
5 of Elections. In addition, a duplicate copy of each report
6 shall be filed with the supervisor of elections in the county
7 in which the committee maintains its books and records, except
8 that if the filing officer to whom the committee is required
9 to report is located in the same county as the supervisor no
10 such duplicate report is required to be filed with the
11 supervisor. Reports shall be on forms provided by the
12 division and shall contain the following information:

13 1. The full name, address, and occupation of each
14 person who has made one or more contributions, including
15 contributions that represent the payment of membership dues,
16 to the committee during the reporting period, together with
17 the amounts and dates of such contributions. For
18 corporations, the report must provide as clear a description
19 as practicable of the principal type of business conducted by
20 the corporation. However, if the contribution is \$100 or
21 less, the occupation of the contributor or principal type of
22 business need not be listed. However, for any contributions
23 that ~~which~~ represent the regular payment of dues by members in
24 a fixed amount of no more than \$50 per payment, aggregating no
25 more than \$250 per calendar year, pursuant to the schedule on
26 file with the Division of Elections, only the aggregate amount
27 of such contributions need be listed, together with the number
28 of members paying such dues and the amount of the membership
29 dues.

30 2. The name and address of each political committee or
31 committee of continuous existence from which the reporting

1 committee received, or the name and address of each political
2 committee, committee of continuous existence, or political
3 party to which it made, any transfer of funds, together with
4 the amounts and dates of all transfers.

5 3. Any other receipt of funds not listed pursuant to
6 subparagraph 1. or subparagraph 2., including the sources and
7 amounts of all such funds.

8 4. The name and address of, and office sought by, each
9 candidate to whom the committee has made a contribution during
10 the reporting period, together with the amount and date of
11 each contribution.

12 Section 3. Section 106.071, Florida Statutes, is
13 amended to read:

14 106.071 Independent expenditures; electioneering
15 communications;reports; disclaimers.--

16 (1) Each person who makes an independent expenditure
17 with respect to any candidate or issue and each individual who
18 makes an expenditure for an electioneering communication that
19 is not otherwise reported pursuant to this chapter, which
20 expenditure, in the aggregate, is in the amount of \$100 or
21 more, shall file periodic reports of such expenditures in the
22 same manner, at the same time, subject to the same penalties,
23 and with the same officer as a political committee supporting
24 or opposing such candidate or issue. The report shall contain
25 the full name and street address of the person making the
26 expenditure;the full name and street address of each person
27 to whom and for whom each such expenditure has been made; the
28 amount, date, and purpose of each such expenditure; a
29 description of the services or goods obtained by each such
30 expenditure; the issue to which the expenditure relates;and
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1 the name and address of, and office sought by, each candidate
2 on whose behalf such expenditure was made.

3 (2) Any political advertisement paid for by an
4 independent expenditure shall prominently state "Paid
5 political advertisement paid for by ...(Full name and street
6 address ~~Name~~ of person ~~or committee~~ paying for
7 advertisement)... independently of any ...(candidate or
8 committee)..." followed prominently by the designation "Top
9 Contributors" and the full name and street address of the
10 person's top four contributors ~~and shall contain the name and~~
11 ~~address of the person paying for the political advertisement.~~

12 (3) Any electioneering communication shall prominently
13 state, "Paid political communication paid for by ...(Full name
14 and street address of person paying for the
15 communication)..." ...(in coordination with [name of
16 candidate or committee]/independently of any [candidate or
17 committee])... followed prominently by the designation "Top
18 Contributors" and the full name and street address of the
19 person's top four contributors.

20 (4)~~(2)~~ Any person who fails to include the disclaimer
21 prescribed in subsection (2) or subsection (3)~~subsection (1)~~
22 in any political advertisement or electioneering communication
23 that ~~which~~ is required to contain such disclaimer commits is
24 ~~guilty of~~ a misdemeanor of the first degree, punishable as
25 provided in s. 775.082 or s. 775.083.

26 (5) Subsections (2) and (3) do not apply to political
27 advertisements and electioneering communications that are
28 designed to be worn by an individual.

29 (6)~~(3)~~ No person may make a contribution in excess of
30 \$1,000 to any other person, to be used by such other person to
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1 make an independent expenditure or electioneering
2 communication.

3 Section 4. Section 106.1437, Florida Statutes, is
4 repealed.

5 Section 5. This act shall take effect July 1, 2004.

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8 SENATE SUMMARY

9 Defines the term "electioneering communication" for
10 purposes of provisions governing campaign financing.
11 Requires that expenditures made for electioneering
12 communications be reported as other campaign
13 expenditures. Specifies the information to be reported.
14 Requires that a statement be included in an
15 electioneering communication. Provides penalties for
16 failure to report or provide the proper disclaimer. (See
17 bill for details.)
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