

HOUSE BILL REPORT

SHB 1673

As Amended by the Senate

Title: An act relating to false political advertising.

Brief Description: Penalizing false political advertising.

Sponsors: By House Committee on State Government (Originally sponsored by Representatives Lambert, O'Brien, Thomas and Sullivan).

Brief History:

Committee Activity:

State Government: 2/19/99, 3/2/99 [DPS].

Floor Activity:

Passed House: 3/12/99, 93-0.

Senate Amended.

Passed Senate: 4/12/99, 41-7.

<p>Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">· Revises false campaign advertising laws by limiting them to campaigns relating to candidates, requiring actual knowledge of the falsity, and doubling fines if the false advertising is made in the last 30 days of a campaign.
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HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives McMorris, Republican Co-Chair; Romero, Democratic Co-Chair; Campbell, Republican Vice Chair; Miloscia, Democratic Vice Chair; Dunshee; Haigh; Lambert and D. Schmidt.

Staff: Steve Lundin (786-7127).

Background:

It is a violation of the state's public disclosure laws for a person to sponsor false political advertising in support of or opposition to a candidate, or a campaign in support of or opposition to a ballot proposition, if:

- The false political advertising is made with actual malice; and
- The violation is proven by clear and convincing evidence.

A person who is in violation of the public disclosure laws is subject to a civil penalty of not more than \$10,000 for each violation. In addition, an election may be voided by a court if it finds that a violation of the public disclosure laws by a candidate or political committee probably affected the outcome of an election. If such a finding is made, a special election is held within 60 days of the finding.

The state Supreme Court, in split decisions, recently found this statute relating to false political advertising to be unconstitutional. Four separate decisions were issued, none of which had a majority of the court. Three justices found the statute to be facially unconstitutional. Two justices found the portion of the statute relating to false advertising about ballot propositions to be facially unconstitutional, but indicated that constitutional legislation could be crafted relating to false advertising about candidates without indicating whether the clear and convincing evidence requirement was a necessary element of the statute. Two justices indicated that the statute was constitutional as it applied to both ballot measures and candidates, but emphasized the clear and convincing evidence requirement. Two justices found the statute to be constitutional as it applied to both ballot measures and candidates and mentioned, but did not emphasize, the clear and convincing evidence requirement.

Summary of Bill:

The public disclosure statute making it a violation to sponsor false political advertising is repealed and replaced with three separate provisions. These three separate provisions only apply to false political advertising about a candidate and require the person to have knowingly sponsored the false advertising with actual malice. A violation of these provisions within 30 or fewer days of a primary or general election is subject to double the maximum civil penalty otherwise provided in the public disclosure laws.

One provision makes it a violation to sponsor political advertising falsely representing a candidate to be an incumbent for the office that is sought when in fact the candidate is not the incumbent.

A second provision makes it a violation to sponsor political advertising falsely representing that a candidate has the support or endorsement of a person or organization when in fact the candidate does not have this support or endorsement.

A third statute makes it a violation to sponsor political advertising that contains a false statement of material fact calculated to benefit or harm a candidate. A violation of this statute must be proven by clear and convincing evidence.

EFFECT OF SENATE AMENDMENT(S): The violation of Public Disclosure laws for sponsoring political advertising containing a false statement of material fact is limited by:

- Only applying to statements about candidates and no longer applying to statements about ballot propositions; and
- No longer applying to statements made by a candidate or the candidate's agent.

The existing statute is amended to provide for these changes, rather than being repealed and new provisions added relating to false statements. The clear and convincing evidence standard is retained to prove any of the three types of false political advertising.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) This fixes the law. Keep campaigns clean and honest. Some campaigns find it cheap to provide false advertising. This is an opportunity to restore accountability, honesty, and integrity to campaigns.

Testimony Against: (Original bill) This misses the whole point. There is no way to effectively stop people from not voting when they see the whole process controlled by special interests. This will encourage people to stay away from the polls.

Testified: (In favor) Representative Lambert, prime sponsor, Melissa Warheit, Public Disclosure Commission, Yvonne Conway, Reform Party; and Bill Backlund, citizen.

(Opposed) Douglas Witt, citizen.

