

SENATE BILL REPORT

SHB 1286

As Reported by Senate Committee On:
Government Operations & Elections, March 17, 2009

Title: An act relating to false and defamatory statements about candidates for public office.

Brief Description: Prohibiting false and defamatory statements about candidates for public office.

Sponsors: House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Miloscia, Appleton, Armstrong, Hunt, Newhouse, White, Smith, Rolfes, Roberts, Nelson, Hinkle and Ormsby; by request of Public Disclosure Commission).

Brief History: Passed House: 2/23/09, 92-2.

Committee Activity: Government Operations & Elections: 3/17/09 [DP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; McDermott, Pridemore and Swecker.

Staff: Sharon Swanson (786-7447)

Background: Candidates for public office are subject to numerous laws regarding campaigning. For example, all written political advertising must include the sponsor's name and address, and radio and television advertising must include the sponsor's name. In addition, at least one photograph of the candidate used in political advertising must be taken in the last five years and it cannot be smaller than the largest photo of the same candidate in the same advertisement.

There are also certain prohibitions regarding political advertising and electioneering communications. For example, a candidate that falsely represents that the candidate is an incumbent for the office is a violation of Chapter 42.17 RCW. A prohibition against political advertising or electioneering communications that contain a false statement of material fact about a candidate for public office was the subject of a recent Washington Supreme Court (Court) decision. In *Rickert v. The Public Disclosure Commission*, 161 Wn. 2d 843 (2007), the Court invalidated this prohibition as a violation of the First Amendment to the United States Constitution. Applying strict scrutiny, the Court held that because the statute does not

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require proof of the defamatory nature of the statements, it prohibits its reach and is not limited to the very narrow category of unprotected speech identified in *New York Times v. Sullivan* and subsequent cases.

Defamation is defined as a statement that tends to cause harm to an individual's reputation as to lower that individual in the estimation of the community or to deter third persons from association or dealing with him or her.

Summary of Bill: It is a violation of campaign law for a person to sponsor, with actual malice, a statement constituting libel or defamation per se under certain circumstances:

- the false statement is about a candidate and is in political advertising or electioneering communications;
- a person falsely represents that he or she is an incumbent for the office sought in political advertising or an electioneering communication; or
- a person directly or indirectly implies the support or endorsement of any person or organization in political advertising or in electioneering communication when in fact the candidate does not have such support or endorsement.

A candidate is also prohibited from submitting a defamatory or libelous statement to the Secretary of State for inclusion in the voters' pamphlet about his or her opponent.

For the purposes of the act, "libel or defamation per se" is defined as statements that tend:

- to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive the person of the benefit of public confidence or social intercourse;
- or to injure any person, corporation, or association in his, her, or its business or occupation.

If a person makes a false statement, with actual malice, about himself or herself or falsely represents himself or herself as an incumbent, it is not libel or defamation and is not a violation of the campaign laws. It is also not a violation of campaign laws for a person or organization to falsely represent that the person or organization supports or endorses a candidate. Persons and organizations cannot defame themselves. If a violation is proven, damages are presumed and do not need to be proven.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Restoration of the false political advertising provision with respect to defamatory statements about candidates benefit voters, candidates, and the integrity of the political process. This bill addresses the constitutional infirmity recently identified by the Supreme Court in the *Rickert* decision. The bill also respects free speech protections by requiring that false statements must be about material facts, not ideas or opinion. All violations must be proven by clear and convincing evidence.

Persons Testifying: PRO: Representative Milsocia, prime sponsor; Vicki Rippie, Executive Director, Public Disclosure Committee; Nancy Krier, General Counsel, Public Disclosure Commission.