

SENATE BILL REPORT

SB 5211

As Reported by Senate Committee On:
Government Operations & Elections, January 29, 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: Senators Sheldon, Roach, Fairley, McDermott, Parlette, Haugen, Shin and Benton; by request of Public Disclosure Commission.

Brief History:

Committee Activity: Government Operations & Elections: 1/29/09 [DP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Benton, McDermott, Pridemore and Swecker.

Staff: Sharon Swanson (786-7447)

Background: Defamation consists of three primary parts: (1) a defamatory statement; (2) published to a third party; and (3) which the speaker or publisher knew or should have known was false. Some statements are considered so defamatory that they are considered defamation per se and the plaintiff does not have to prove that the statements harmed his or her reputation. Classic examples of defamation per se are allegations of serious sexual misconduct; allegations of serious criminal misbehavior; or allegations that a person is inflicted with a "loathsome" disease such as AIDS. When a plaintiff is able to prove defamation per se, damages are presumed, but the presumption is rebuttable.

In *Rickert v. State of Washington*, Public Disclosure Commission, 161 Wn. 2d. 843 (2007), the Washington State Supreme Court (Court) found RCW 42.17.530 (1) (a) unconstitutional on its face. In its ruling, the Court stated that only defamatory statements are not constitutionally protected. Because the statute in question "does not require proof of the defamatory nature of the statement it prohibits, its reach is not limited to the very narrow category of unprotected speech." The Court further stated that it is not an accurate statement

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of the law to suggest that "non-defamatory, false statements about a candidate may be prohibited."

Summary of Bill: Libel or defamation per se are defined as statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive that person of the benefit of public confidence or social intercourse, or to injure that person in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

A person cannot defame himself or herself. An organization cannot defame itself.

If a violation is proven, damages are presumed and do not need to be proven.

Appropriation: None.

Fiscal Note: Not requested.

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: The Public Disclosure Commission supports this legislation because restoration of the false political advertising provision with respect to defamatory statements about candidates benefits voters, candidates, and the integrity of the political process. In 2007, on a five to four vote, the State Supreme Court declared the false advertising law unconstitutional, with the decisive concurring opinion concluding the law was overbroad because it applied to non-defamatory speech. If passed into law, this bill will prohibit a person from sponsoring with actual malice defamatory political ads that contain false statements of material fact about a candidate, that falsely represent that a candidate is the incumbent, or that falsely imply a candidate has the support or endorsement of any person or organization.

Persons Testifying: PRO: Vicki Rippie, Executive Director, Public Disclosure Commission; Nancy Krier, Public Disclosure Commission.