

FINAL BILL REPORT

SHB 1286

C 222 L 09
Synopsis as Enacted

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).

House Committee on State Government & Tribal Affairs
Senate Committee on Government Operations & Elections

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 have been 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 in violation of the campaign laws. A prohibition against political advertising or electioneering communications that contain a false statement of material fact about a candidate for public office was invalidated by the Washington Supreme Court in 2007.

Summary:

An intent section establishes that the Legislature is responding to *Rickert*. The Legislature finds that it is a violation of state law if a person sponsors a false statement about candidates in political advertising and electioneering communications when the statements are made with actual malice and are defamatory.

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

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about a candidate and is in political advertising or electioneering communications; a person falsely represents that a candidate 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 an 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 this 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 him or her 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 the campaign laws for a person or organization to falsely represent that the person or organization supports or endorses a candidate as persons and organizations cannot defame themselves. If a violation is proven, damages are presumed and need not be proven.

Votes on Final Passage:

House	92	2
Senate	44	1

Effective: July 26, 2009