

SENATE BILL REPORT

SHB 1673

As Reported By Senate Committee On:
State & Local Government, April 1, 1999

Title: An act relating to false political advertising.

Brief Description: Penalizing false political advertising.

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

Brief History:

Committee Activity: State & Local Government: 3/31/99, 4/1/99 [DPA].

SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

Majority Report: Do pass as amended.

Signed by Senators Patterson, Chair; Gardner, Vice Chair; Hale, Haugen, Horn, Kline and McCaslin.

Staff: Diane Smith (786-7410)

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 Amended Bill: The statute that prohibits persons from sponsoring, with actual malice, political advertising containing false statements of material fact is limited to false statements of material fact about a candidate for public office. This prohibition does not apply to statements about a candidate made by the candidate or by the candidate's agent.

Amended Bill Compared to Substitute Bill: The striking amendment preserves the underlying law while the Substitute House Bill struck the underlying law, replacing it with three separate sections. In substance, the striking amendment does not include a provision doubling the civil penalty.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill addresses the recent Supreme Court opinion.

Testimony Against: None.

Testified: PRO: Melissa Warheit, PDC.