

# SENATE BILL REPORT

## SB 6202

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As Reported By Senate Committee On:  
Government Operations & Elections, February 05, 2008

**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 and Rasmussen.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/04/08, 2/05/08 [DPS].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6202 be substituted therefor, and the substitute bill do pass.

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

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

**Summary of Bill:** The bill as referred to committee was not considered.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**SUMMARY OF BILL (Recommended Substitute):** The statute that prohibits persons from sponsoring, with actual malice, political advertising containing false statements of material fact is amended to include statements constituting libel or defamation *per se*.

If a violation is proven, damages are presumed.

**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 on Substitute Bill:** PRO: This legislation restores the false political advertising provision with respect to defamatory statements about candidates benefit voters, candidates, and the integrity of the political process. Deliberate lies subvert the free political process.

CON: The American Civil Liberties Union opposes the idea of defamation of a public figure without actual malice.

**Persons Testifying:** PRO: Vicki Rippie, Public Disclosure Commission.

CON: Jennifer Shaw, American Civil Liberties Union of Washington.