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ROLL NUMBER

DESCRIPTION

1243

2007 HOUSE JUDICIARY

HB 1243

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1243

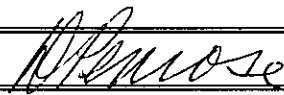
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/5/07

Recorder Job Number: 1243

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1243.

Rep. Jim Kasper: Sponsor of bill, explained the bill. This is a simple bill. This deals with political advertising and campaigns in ND. I believe in most cases, political campaigns are fair and open and honest; and don't do some of the things that are listed in the bill. However, there is more and more a move to bring in money into ND from outside sources. The 529's national political action committees are beginning to pour more and more dollars into campaigns in ND. I've observed over the last couple of campaigns that some ads that I've seen and literature that's been distributed. In some cases, I found it to be quite preposterous. The people that put this out, have to know that it's not true. Why are they putting it out, it's really not right. I called Legislative Council and asked them what could be done to try and put more responsibility on people who are running negative campaigns in our state to be sure that if they are running a negative campaign, there's factual information in that campaign or that advertisement. On line 7, the statute currently says "no person may knowingly sponsor any political advertisement..." down to line 9 "which the sponsor knows to be untrue, deceptive or misleading, whether on behalf of or in opposition to any candidate for public office,....." under current law the word knowingly. I asked what knowingly means. Knowingly, under the law, would mean that well I

didn't know it wasn't true so therefore I put it in, so therefore I'm innocent. I asked how could we strengthen the campaign law, and they said it was very simple. Strike out the word knowingly and put the word "not". The new statute would read "a person may not sponsor any political advertisement or news release.. which the sponsor knows to be untrue, deceptive or misleading, whether on behalf...". The person may not. What that says is that you better do your research because obviously no one should be putting in information in a campaign, which the sponsor knows to be untrue, deceptive or misleading anyway. We are just changing the statute to put more requirement on the sponsor of the advertisement that they investigate to make sure that what they are putting on the air, on the radio, on TV, or in literature is correct. I would ask for the committee's fair consideration on the bill.

Chairman DeKrey: When you go down to line 9, when it goes to say "which the sponsor knows to be untrue". We haven't done anything, have we. We took knowingly out at the top, but when you get down there, it says that the sponsor knows to be untrue.

Rep. Jim Kasper: That may be right, perhaps an amendment could be put on to strengthen as well. The purpose of this bill is to make sure that the sponsor of an advertisement down their homework before they put it on the air and distribute it to the public.

Rep. Klemin: On line 9, in thinking about a possible amendment to this, take out the words "the sponsor knows" and replace it with "which is" untrue, deceptive or misleading. Would that be closer to what you mean.

Rep. Jim Kasper: That sounds great to me. That is the intent to the change to the statute, to put the onus on the person or entity distributing advertisements, etc. that they know is untrue.

Rep. Dahl: Under that proposed amendment, the liability issue, even if it turns out to be untrue, you are criminally liable.

Rep. Jim Kasper: That is precisely why I would like the bill passed. Everybody has an excuse about why they did something, rather than researching for the truth, before they put it on the air, etc. I think we are at the point where it has to be the responsibility of the person who puts false or malicious information or misleading information into the public that they're held responsible. The idea that I got it from another source, to me doesn't cut it anymore.

Rep. Dahl: However, I don't necessarily disagree with what you're saying, but even if they do the research and the research is wrong, they're still guilty.

Rep. Jim Kasper: Correct. Research is just as good as the person who's doing the research.

Rep. Kingsbury: Isn't this already covered somewhere, if you want to clear your name of something, you're going to have to make a case against this, if you are bothered by it. Isn't there something already in place, you can clear your name if you go that route.

Rep. Jim Kasper: How do you get your good name back, once it's been besmirched by a campaign. We had a radio campaign going on in Fargo in the last election, where thousands and thousands of dollars were spent against a candidate. All of us knew that information was incorrect. They were taking snippets here and snippets there and turning it into porridge, when it really was more soup. It's time that the people who are putting this garbage out in the public, when they know it is untrue or misleading, are held accountable.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Mark Dosch: Support. Those of you who have never been through a nasty campaign, probably don't appreciate the value of a bill like this. I can tell you our district had the privilege the last go around, to probably have more money spent against us, than any other district. It was a negative, ugly campaign, and anyone can criticize me for any vote that I've taken here, I have no problem with that. I am fair game, my record is fair game. Just represent it fairly.

Unfortunately, lie after lie was perpetrated on our campaign. It got so bad that the former governor, said he would come and hold a press conference for you guys because this is ridiculous. When we went to our opponents and said this is false, etc. their answer was "oh, we didn't know". They didn't specifically put together the campaign pieces, but they approved them. Their campaign was put together by an outside hired guns that they brought in. Their response was simply, "oh we didn't know". So there we are. That is the need for this bill. That is why this bill is so important. The candidate knew but the way the law was worded, all they had to say was that they didn't know and they were off the hook. When you have three kids, and when one of the pieces that is put out, has said that Rep. Dosch is against families, or hates families, and you're kids pick up those brochures and read it, it hits home.

Chairman DeKrey: How would the application work, you can take just about any campaign and really spin it. If it's got some factual basis, they still wouldn't be guilty under this, would they. This never happened, but they could say that every time we do education funding in this chamber, there are Democratic bill and Republic bills. We pretty much stick to party lines about which bill we're going to support. So let's say the next campaign that comes out, says Rep. DeKrey has consistently voted against education funding. I probably voted against every Democratic bill on education funding there was, but I'm going to look at that and say those lying sons of a gun because they are saying I'm against education, look at all these bills I voted for. So what would be the application. What they're saying has a grain of truth to it. I did vote against all those bill.

Rep. Mark Dosch: I guess I can only speak to what happened to me.

Chairman DeKrey: There is always going to be spin.

Rep. Mark Dosch: I think there is spin and coming out with statements that are absolutely false. You're right. They can come out and say that, you can come out and say I've supported

this and this. I guess what this bill is getting at is statements that are false, where they knowingly made statements that were false. The way it is now, all they have to do is say, I didn't know. There is always going to be spin. This bill is addressing statements that they know are false.

Rep. Kingsbury: Isn't that defamation of character, so wouldn't this fall under that too, or do we need something special for political campaigns.

Rep. Mark Dosch: I'm not an attorney, so I can't answer that question.

Rep. Griffin: If we changed that "knows" on line 9, then we're including deceptive and misleading. Wouldn't you think that we could charge every national politician with that, having a deceptive or misleading statement. Isn't that where they open the door to all kinds of politicians.

Rep. Mark Dosch: I don't believe so, because it will be changed to, they are "sponsoring". That person may not sponsor a political ad....I guess it comes down to ethics and what are you willing to do, and what are we willing to do. I hope that ND politics never goes the way that national politics goes on either side. I guess I'm concerned about ND and what we as legislators do in our races and that's basically the focus of this bill.

Rep. Klemin: We are dealing with a criminal statute here, so wouldn't the state's attorney have to have reasonably good case in order to go ahead and prosecute the case.

Rep. Mark Dosch: I think you are absolutely right.

Chairman DeKrey: Thank you. Further testimony in support of HB 1243. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1243

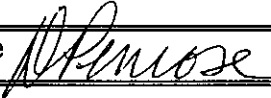
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/6/07

Recorder Job Number: 2912

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1243.

Rep. Onstad: I understand that there is a bill in GVA, HB 1376.

Rep. Wolf: I handed it out yesterday.

Chairman DeKrey: Does it deal with the same section of code.

Rep. Wolf: Yes.

Chairman DeKrey: But this is on the polling place.

Rep. Wolf: HB 1376, dealt with more areas, in the first paragraph is the same. We had lots of discussion in GVA about that word knowingly, and we offered Rep. Kasper the opportunity to join that bill.

Rep. Klemin: The way I understand the Code reviser will do this, if there are two bills that amend the same section in different sections, then the reviser will put both amendments in. So that bill wouldn't be affected by this bill.

Rep. Meyer: How does this affect whisper campaigns. I mean if we're going to put it in this, one of the things that has gone on in the past where you call one person, and then they call the next 25 on the list, and so on.

Chairman DeKrey: I don't think that there will be any effect.

Rep. Meyer: This was done to me in the campaign. So with absolutely dishonest allegations and this bill, won't do anything for that.

Chairman DeKrey: You have the amendments before you.

Rep. Klemin: I move the amendments.

Rep. Koppelman: Seconded.

Chairman DeKrey: All it does is on line 9, where it says "the sponsor knows to be" will be overstruck and insert "is".

Rep. Onstad: What is the definition of sponsor; deceptive, misleading. I think everybody can understand the intent here, but it just seems to me that it is job security for attorneys. I don't know what it is accomplishing. How do you address a situation where, if they're going to look at someone's voting record and let's say you voted against the CHIPs program and somebody sees that as being against families or against providing insurance. Is that misleading. I don't know, it is interpretation. I just think you are getting into something...

Rep. Delmore: I share that same concern. I don't think that second part fixes anything with the amendment added. If I put in a wrong number that was reversed, is someone going to charge me with a class A misdemeanor for something where I transposed a number. Let's get real. If we're doing something down, dirty and dishonest, we can already do that. This is opening it up to a point that's absolutely ludicrous. I don't care which side it is.

Rep. Koppelman: I guess the point that Rep. Onstad made about the lawyers employment act, I don't see it that way. We're dealing with a criminal statute here, and it's only a misdemeanor, but it's still a violation of law. It wouldn't be an issue of one attorney for one side and one for the other side. This would be the issue of state's attorney making a judgment on whether the law has been violated and whether they should prosecute that. I would suspect, if it's a case such as Rep. Delmore used as an example, they wouldn't mess with that.

Right now, I don't know of any case in ND history where the statute we have the books, the one we're looking at has ever been used. So we might as well repeal it or we might as well give it some teeth. We hear a lot of talk about campaign finance reform on the federal level. I'm proud to say that we haven't needed that in ND, but perhaps we're getting to the point where we do sadly. If that's the case, let's have some statutes on the books that really do that. I still think that state's attorneys are going to be very judicious and probably reticent to bring these charges unless it is really a blatant case. I think it improves the law.

Rep. Meyer: With this, if you put this in place, all of the subjective things we do down here on any given day, can be misleading. Like we've got bills coming up, in this committee, we voted against putting in a cruelty to animals. We did that. Any day I could say that they voted against putting in a penalty for cruelty to animals. However, is it misleading, if I don't tell them that we had two similar pieces of legislation and we were working to put them in. Now, Rep. DeKrey voted against education funding. He did. How are you going to handle these subjective arguments that we deal with virtually every single day in here. When it gets into a campaign, we've all been subjected to this in controversial districts. I think our voting public is very good. They can weigh it out. Sometimes it gets to be ugly, but I think the voting public weighs it and they are pretty smart about it. If you put this in law, like even if Rep. Delmore does a typo, it's a class A misdemeanor, but that's a year in jail and a \$1,000 fine.

Rep. Koppelman: The word misleading is already in the statute, so we're not dealing with the word mistaken, and if you think that should be changed, we will consider putting it in the bill. I think what we're doing with this proposal, is it simply would remove that question of knowingly, which is almost impossible to prove. How does a state's attorney take this statute on our books and say, when Rep. Meyer ran that ad against Rep. DeKrey and said he voted against education, she did that knowingly. Because she knew that he really didn't intend to do

that. That's almost impossible to prove. If we don't like having the law on the books, let's repeal it because it's basically non-functional right now. If we want a law on the books, let's put one in that works.

Rep. Klemin: I would like to talk about a requirement of culpability in the criminal statute. Just because this bill takes out the word knowingly, doesn't mean that there isn't still a requirement of culpability in order for someone to be convicted. It is not a strict liability statute. We already have in our Century Code, requirements of culpability in 12.102.02. It defines all these different terms, intentionally, knowingly, recklessly, negligently, and willfully. Those are five different levels of culpability. Then it goes on to say that the statute, defined in the crime does not specify any culpability, it does not provide exclusively that a person may be guilty without culpability, the culpability that is required is willfully. The way I read this, this doesn't specify that a person may be convicted without culpability, it has to explicitly say that. So the way I read this, if you take out knowingly, then the culpability required is willfully. What is willfully, willfully is he engages in the conduct intentionally, knowingly or recklessly. Either of those three different levels of culpability could apply. Knowingly being one, intentionally being another, or recklessly which is the most likely case being the third. You still have a level of culpability. What this bill does is changes the level of culpability that is required from knowingly to willfully.

Rep. Dahl: If say "willfully" instead of implied.

Rep. Klemin: Either way, it's all the same.

Rep. Griffin: I guess I would put the word willfully in there too, because I think it can still be construed or misinterpreted as it's written. I think this is covered under slander and liable. When you run for public office, the law does treat it as a different situation than a private citizen. You're putting yourself out in the public and you are supposed to have a little bit

tougher skin and be able to accept negative comment than a private citizen. Also, I think that Rep. Kasper talked about truth yesterday. You can't put anything in there unless you know it is true. Who defines truth. Things aren't always black and white. You say this person is against whatever, now it's going to be the state's attorney that decides what the truth is. I am in completely opposition to the bill.

Chairman DeKrey: We will try a voice vote on the amendment. The chair is in doubt, the clerk will call the roll on the proposed amendment for HB 1243. Motion fails. We have the bill before us.

Rep. Klemin: I would like to amend the bill by inserting the word "willfully" are "not" on page 1, line 7; and page 1, line 9, overstrike the first comma and overstrike "the sponsor knows to be" and insert immediately thereafter "is". Now we have an explicit requirement of culpability of willful.

Rep. Koppelman: Seconded. What about the knows or should have known standard in law. What does that mean.

Rep. Klemin: Should have known is constructive knowledge, if there was something there that was public record, and you could have located that then you should have known. When you get into other kinds of things that are not of public record, where you had constructive knowledge now you are more into a reasonable standard. If a reasonable person could have known this information.

Rep. Koppelman: When you say willfully, does that actually increase the standard beyond where it is now, is that a higher standard than knowingly.

Rep. Klemin: I would think so. Willfully is intentionally, recklessly or knowingly. Not and it is or. You still have all these things. Those terms are all defined in here. The only one we aren't including in here is negligently.

Rep. Delmore: I call the question.

Chairman DeKrey: We will try a voice vote. Motion carried. What are the committee's wishes in regard to HB 1243.

Rep. Klemin: I move a Do Pass as amended.

Rep. Kingsbury: Seconded.

Rep. Meyer: Who decides what is deceptive or misleading when you are talking about information.

Rep. Klemin: That is left to the jury, you are entitled to a jury trial on this.

Rep. Meyer: But it is a subjective nature of what we're doing here. That is going to be left up to the court.

Rep. Klemin: It doesn't change that part.

9 YES 5 NO 0 ABSENT

DO PASS AS AMEND

CARRIER: Rep. Klemin

Prepared for Rep. DeKrey
by Erica Shively

PROPOSED AMENDMENTS TO H.B. 1243

Page 1, line 9, overstrike “,”, overstrike “the sponsor knows to be” and insert immediately thereafter “is”

Failed

Date: 2-6-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1243

House JUDICIARY

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Proposed Amendment Motion

Motion Made By

Rep. Klemin

Seconded By

Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Meyer		✓
Rep. Charging	✓		Rep. Onstad		✓
Rep. Dahl		✓	Rep. Wolf		✓
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar		✓			

Total (Yes) 7 No 7

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion Fails

House Amendments to HB 1243 (70287.0201) - Judiciary Committee 02/07/2007

Page 1, line 7, after "not" insert "willfully"

Page 1, line 9, overstrike the first comma and overstrike "the sponsor knows to be" and insert immediately thereafter "is"

Renumber accordingly

Date: 2-6-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1243

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep. Klemin Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Meyer		✓
Rep. Charging	✓		Rep. Onstad		✓
Rep. Dahl	✓		Rep. Wolf		✓
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1243: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1243 was placed on the Sixth order on the calendar.

Page 1, line 7, after "not" insert "willfully"

Page 1, line 9, overstrike the first comma and overstrike "the sponsor knows to be" and insert immediately thereafter "is"

Renumber accordingly

2007 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1243

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1243

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/08/07

Recorder Job Number: 4675

Committee Clerk Signature

Victoria Spelling

Minutes:

All members of the committee were present.

Senator Dever, Chairman, opened the hearing on HB 1243.

Representative Jim Kasper from District 46 introduced the bill. See attachment # 1.

HB 1243 amends Section 16.1-10 -04 relating to the publication of false information in political advertisements. The bill involves the degree of culpability required for violation. Under current law a person may not knowingly sponsor a false political advertisement. The bill changes the degree of culpability from knowingly to willfully. The bill does not prohibit negative advertising in political campaigns. However it does make it more clear that when a person engages in negative advertising he or she needs to be sure of the facts. You cannot proceed with the publication of false information and political advertising with reckless disregard for the truth. By changing the word from knowingly to willfully it broadens the scope of the degree of responsibility. The person that publishes negative advertising has to be more careful that what is being published, printed, spoken, written, on the internet, on the billboards is true to the best of their knowledge. The penalty has not been changed. It is still a Class A Misdemeanor punishable by up to a year in prison and a fine of \$2000.00 or both.

Senator Lee asked why the bill had no reference to the internet specifically.

Representative Kasper said the statement in line 14 "by any other public means" does cover that. It could be specifically added.

Senator Dever asked if the definitions here would apply to only one chapter or to more chapters.

Representative Kasper said that is a matter for legislative council.

Senator Oehlke asked if this change would solve the problem.

Representative Kasper said it will at least help the problem.

Senator Oehlke asked what would happen if someone published information they felt was totally accurate at the time and later found out it was not accurate. What is the due diligence required? Where will the lines be drawn? Will this solve a problem or just busy the already too busy court system?

Representative Kasper said the intent of the bill is to make it more difficult to use these tactics and to encourage people to take more due diligence.

Senator Lee asked if it would be considered negative campaigning to disclose a voting record that reveals votes that the person disclosing the information is in opposition to.

Representative Kasper said that would not be addressed by the bill because it is factual information. The law allows truth to be published.

Senator Lee asked about the case where the voting record is accurately reported but then the candidate's detractor goes beyond that and editorializes to the point that the innuendo is "the legislator was really dumb because she voted that way." The detractor has no responsibility to state why the legislator voted as she did. There is a lot of gray area.

Representative Kasper said as long as everything that is put out is the truth. That is the intent.

Senator Horne asked if he were smeared in a campaign, how would he seek redress?

Representative Kasper deferred that question to Secretary of State Al Jaeger to be answered later.

There was discussion about who to go after when misrepresentation does occur.

Representative Mark Dosch from District 32 spoke in favor of the bill. He encountered some trouble during his last campaign and he mentioned people are becoming disenfranchised with politics. People are tired of campaign tactics and want to just stay away from the whole process. People aren't even voting and we certainly aren't seeing younger people wanting to get involved when they see lies being perpetrated. There is a lot of money being spent to oppose candidates. He differentiated between negative advertising which always will exist and misleading or deceptive information being spread. His last campaign got so bad that the former Governor Ed Schafer held a press conference to say "enough is enough." Representative Dosch feels this bill will help to clean it up.

There was discussion about whether this bill would allow candidates the ability to seek redress in the event they felt the need to. The bill would require more accountability and the senators were in favor of that. It was mentioned that this bill could be compared to trying to outlaw gossip and maybe it won't work. They felt it may help and is very needed.

Representative Raeann Kelsch from District 34 spoke in support of HB1243. She feels if this bill becomes law it will be the candidate who will decide whether or not to press charges. She said it is one thing to have a voting record made public but something totally different to have it twisted and contorted beyond recognition. This bill is a step in the right direction. At least it is an effort for truth.

Support: -

Opposition: -

Neutral: -

Senator Nelson expressed that she feels the implication of having only Republican sponsors is not fair. It is not a partisan issue as far as she is concerned. There is not just one party at fault. She feels it would have been a stronger bill if the sponsors weren't all from one party.

Senator Horne asked Secretary Jaeger what recourse could be taken if he as a candidate had been wronged. What would the process be?

Secretary Jaeger said the last sentence mentions it is a Class A Misdemeanor. This makes it a criminal matter so it would be handled by the State's Attorney. Charges have to be filed by the candidate and the State's Attorney decides whether it will be pursued. He also mentioned that the word person is defined in the Century Code. The definition for person was found in Section 16.1.08.1-01.

Senator Dever stated that in North Dakota most often when a candidate becomes negative it results in more votes for the other candidate.

Chairman Dever closed the hearing on HB 1243.

The committee will wait until a later date to act on this bill.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1243

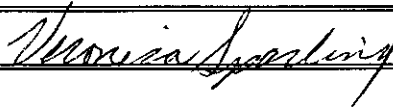
Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/16/07

Recorder Job Number: 5213

Committee Clerk Signature



Minutes:

All members of the committee were present.

Chairman Dever opened discussion on HB 1243.

A do not pass motion was made by Senator Oehlke.

The motion was seconded by Senator Marcellais.

Senator Dever mentioned a discussion he had had with someone whose opponent had published something inaccurate in the newspaper. He took the accurate information to the newspaper but the newspaper would not correct it. It seems the newspaper willfully published inaccurate information if not knowingly. If this bill would be law, the newspaper would be guilty of willfully publishing inaccurate information.

Senator Lee said she wishes there were more responsibility in the laps of newspapers than there is but the newspapers can print almost anything. People in the interest of truth being printed have been told in essence, 'no one cares about your boring facts' and 'as long as the newspaper is quoting somebody it doesn't have to be true.' She said that is even backed up by the Supreme Court. The newspapers have no responsibility to find out if what they are printing is accurate. Senator Lee wants a higher level in campaigns but she doesn't feel this will fix it.

Senator Oehlke said sometimes someone knows the truth and just withholds it.

Senator Lee expressed frustration with the report cards put out by various groups. When they are gathering their information sometimes a bill has been totally changed from its original form and yet they are critical of you when you have voted what appears to be against their wishes. They don't reflect the changes that were made in committee. The report cards end up very inaccurate because of the changes in the bills.

Roll Call Vote: Yes 6 No 0 Absent 0

Carrier: Oehlke

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1243

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/23/07

Recorder Job Number: 5510

Committee Clerk Signature

Monica Spaulding

Minutes:

Roll was taken and all members were present.

Chairman Dever opened discussion on HB 1243.

Senator Dever mentioned that HB 1243 was on the floor yesterday and it was referred back to the committee for consideration of possible further amendments suggested by the Attorney General.

Senator Lee made a motion to reconsider the action by which the committee gave a do not pass recommendation on HB 1243.

The motion was seconded by Senator Oehlke.

Voice vote: Yes.

Senator Dever said the amendments were in front of them. See attachment # 1. Attachment #2 is a copy of how the bill would read with the amendments in place.

Senator Horne asked why the amendments are being recommended.

Senator Dever said from his discussion with the Attorney General and the Deputy Attorney General, his impression was they wanted to caution the legislators to be careful of what they ask for. If the bill passes as it is a person could make a political statement in all sincerity, that

he believes in all sincerity to be the truth, and months later it is determined not to be true and he could be in big trouble.

Senator Dever made mention that the changes the House had made to HB 1243 was to insert the word willfully. The House also over struck the words 'the sponsor knows to be' and replaced it with 'is.' This bill had been considered by the Judiciary Committee in the House. Senator Lee said she feels it is important that people be responsible in running a campaign and in any campaign there will be a certain amount of "batting around." If it is not egregious it is just part of the rules of the game, but it is important that people are held responsible not to act in reckless disregard. She would like to see this bill tuned up.

Senator Nelson questioned whether the State's Attorney would do anything about it.

There was discussion about if there would be any action taken. Senator Dever mentioned that the last time it was prosecuted was in 1991.

There was discussion about the wording "electronic transmission" and what that would include. Senator Dever mentioned that any campaign reform is good if it applies equally to all parties and this bill does.

There was discussion about free speech, rumors and gossip.

Senator Dever said the proposed amendment was an improvement to the bill and part of the committee's responsibility it to put a bill forward that should it pass is in the best shape that it can be.

There was discussion about the definition of reckless disregard and the penalty for a Class A Misdemeanor.

Senator Dever had an email he had received from Jim Kasper. See attachment # 3.

Senator Nelson asked who complained about the 6 – 0 do not pass recommendation of the committee.

Senator Dever said some of the sponsors of the bill had talked to him about it and then he had been provided with a copy of a letter which he had shown Senator Nelson.

Senator Nelson acknowledged that she understood.

Senator Dever said with the bill as it stands, ignorance is no excuse.

There was discussion about whether letters sent through the US Postal Service would qualify as "by any other public means."

There was also discussion about who would be responsible, the candidate or the staff person who works for them. The question of who is responsible elicited the comment that that is why the 527 legislation is important. It will facilitate accountability. If the untruth is something that went through the media, you can find out who bought the ad.

Senator Lee made a motion to adopt the amendment.

The motion was seconded by Senator Oehlke.

Roll Call Vote: Yes 6 No 0 Absent 0

Senator Oehlke made a motion to pass the bill as amended.

The motion was seconded by Senator Lee.

Roll Call Vote: Yes 4 No 2 Absent 0

Carrier: Oehlke

Date : 3-16-07
Roll Call Vote # : / ~~1243~~

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1243

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do not pass.

Motion Made By Oehlke Seconded By Marcellais

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Oehlke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 16, 2007 2:06 p.m.

Module No: SR-50-5594
Carrier: Oehlke
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1243, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1243 was placed on the Fourteenth order on the calendar.

Date : 3-23-07
Roll Call Vote # : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1243

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken motion to reconsider

Motion Made By Lee Seconded By Dehlke

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman			Senator Robert Horne		
Senator Dave Oehlke - VC			Senator Richard Marcellais		
Senator Judy Lee			Senator Carolyn Nelson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice vote (yes)

Amendments to Engrossed HB 1243

attach #1

Page 1, line 1, ¹overstrike "may"; after "may" insert "is guilty of a class A misdemeanor if that person"; remove overstrike over "knowingly"; replace "not willfully" with ",or with reckless disregard for its truth or falsity,"; overstrike "sponsor"; after "sponsor" insert "publishes"

Page 1, line 9, remove the overstrike over the first comma

Page 1, line 13, overstrike "or"

Page 1, line 14, after "advertisements," insert "electronic transmission,"

Page 1, line 14, overstrike "Any person who violates the provisions of this"

Page 1, line 15, overstrike "section is guilty of a class A misdemeanor"

Page 1, line 15, after "misdemeanor" insert "This section does not apply to newspapers, television and radio stations, and other commercial media that are the medium for, but not the source of, the political advertisement or news release"

Renumber accordingly.

FB
3-23-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1243

Page 1, line 7, overstrike "may" and insert immediately thereafter "is guilty of a class A misdemeanor if that person", remove the overstrike over "~~knowingly~~", remove "~~not willfully~~", and overstrike "sponsor" and insert immediately thereafter ", or with reckless disregard for its truth or falsity, publishes"

Page 1, line 9, remove the overstrike over the overstruck comma

Page 1, line 13, overstrike "or"

Page 1, line 14, after the comma insert "electronic transmission," and overstrike "Any person who violates the provisions of this"

Page 1, line 15, overstrike "section is guilty of a class A misdemeanor" and insert immediately thereafter "This section does not apply to a newspaper, television or radio station, or other commercial medium that is not the source of the political advertisement or news release"

Renumber accordingly

Date : 3-23-07
Roll Call Vote # : 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1243

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt amendments as corrected

Motion Made By Lee Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais	✓	
Senator Judy Lee	✓		Senator Carolyn Nelson	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

7
page 1, line X

Date : 3-23-07
Roll Call Vote # : 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1243

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as amended

Motion Made By Oehlke Seconded By Lee

Senators	Yes	No	Senators	Yes	No
Senator Dick Dever - Chairman	✓		Senator Robert Horne	✓	
Senator Dave Oehlke - VC	✓		Senator Richard Marcellais		✓
Senator Judy Lee	✓		Senator Carolyn Nelson		✓

Total (Yes) 4 No 2

Absent 0

Floor Assignment Oehlke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1243, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1243 was placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "may" and insert immediately thereafter "is guilty of a class A misdemeanor if that person", remove the overstrike over "~~knowingly~~", remove "~~not willfully~~", and overstrike "sponsor" and insert immediately thereafter ", or with reckless disregard for its truth or falsity, publishes"

Page 1, line 9, remove the overstrike over the overstruck comma

Page 1, line 13, overstrike "or"

Page 1, line 14, after the comma insert "electronic transmission," and overstrike "Any person who violates the provisions of this"

Page 1, line 15, overstrike "section is guilty of a class A misdemeanor" and insert immediately thereafter "This section does not apply to a newspaper, television or radio station, or other commercial medium that is not the source of the political advertisement or news release"

Renumber accordingly

2007 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1243

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1243

House Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/11/07

Recorder Job Number: 5916

Committee Clerk Signature

Openrose

Minutes:

Rep. Klemin: Open the conference committee. Attendance called. All present. HB 1243, the Senate had amended and the House did not concur with those amendments. It's my understanding from talking to the AG's office that the Senate had some concerns about the language of this bill and had discussions with the AG's office. I asked Doug Bahr from the AG's office today to sort of help us understand the rationale for these changes, I understand they were drafted by the AG's office.

Doug Bahr, AG's office: Typically the AG or the Deputy AG calls me and says they want changes and they give me some guidance. I don't know who specifically asked him regarding those, but there were two points that I was asked to look at and make recommendations regarding. The first was concerned with "knowingly" sponsoring and then the sponsor "knowing". That "knowing" is a very high standard and if someone intentionally did not specifically seek information or anything, they could still do it, and there wouldn't be any responsibility. The second was the word "sponsor", what does that mean. Does that mean if I donate money to an organization and then they pay for it, am I sponsoring it by donating money that ends up paying for that advertisement and things like that. Those were the two things that I was asked to look at. As I was looking at it, I also tried to change the language to

track most of the criminal statutes, that's why the misdemeanor part is put upfront. I also tried to make it to use the words that are common in the legal arena for defamation activity. This language now tracks much of the language in the criminal defamation statute. So instead of sponsor, the word publishes is used. That is the word that is used in the criminal defamation statute, it is the word in the state defamation act. Because the word publishes is used, I also felt and recommended that the last sentence be added, that makes it clear that the media that simply does the print or the form where it comes out is not responsible, unless it is actually their publication, that they drafted it, or prepared it themselves. But as the person who pays to have it disseminated is the one that would be responsible under this statute. With regard to the word knowing under 12.1-02-02, knowing requires actual knowledge or unaccompanied by substantial doubt. The criminal defamation statute it uses the language actual malice or with reckless disregard of the truth. That's why I added that language so that if someone does not, did not actually know it was false, but they recklessly prepared it and published it without taking any visual steps to determine the accuracy of the information. I also used, which is common in many criminal statutes, the word willfully, willfully includes knowingly but it is also defined in that same statute, 12.1-02-02 to be conduct that is intentional, knowing or reckless. So the intent again was to broaden this a little bit from just actual knowledge to should have known, should have made some reasonable efforts before publicly disseminating this information. That's why I made the changes I did.

Rep. Klemin: First, where did you get the "should have known" part from.

Doug Bahr: My draft doesn't say should have known, I thought I had reckless disregard.

Rep. Klemin: You do have it, but when you were just discussing it now, you were talking about knowingly and should have known.

Doug Bahr: Maybe that's how I was trying to explain reckless disregard. Reckless disregard is a higher level of negligence.

Rep. Klemin: Because I don't see should have known anywhere in the requirements of culpability.

Doug Bahr: Sorry if I used that, the language I used was reckless disregard and that is the language in the criminal defamation statute. That's where I got the language.

Rep. Dahl: In the criminal defamation section, it actually says a person is guilty of a class A misdemeanor if he willfully publishes and where the actual reckless disregard of the truth comes in, is in the definition of defamatory matter. I guess my question would be, would we be inconsistent if we didn't put willfully into this section, as that is the language of 12.1-15-01 which is the criminal defamation.

Doug Bahr: I think defamation, I am assuming what is intended by 16.1-10-04 is different than the defamation statute or we wouldn't have both statutes, if they are intended to cover the exact same thing. I understand what you're saying.

Rep. Klemin: I think that maybe what Rep. Dahl is saying, as I understand what you've said, you redrafted the language in 1243, to more closely track the criminal defamation statute, and what Rep. Dahl just said, was that in line 1 of the criminal defamation statute it uses the word willfully. So we're not sure how you're tracking it by not using willfully, which is the way it was in the House version.

Doug Bahr: The instructions I received, at least I understood, was to broaden the coverage so that it would cover more than just when someone had actual knowledge. That's why I used should have known. Willfully could be used, it is actually broader, but the reason I added the reckless disregard to make it broader. I don't know.

Rep. Klemin: As I see it, and you can correct me if I'm wrong, the only thing that we are excluding is intentionally, because we have knowingly, and we've got recklessly, it's called reckless disregard for the truth, but I think that's equivalent to recklessly. Now willfully under the standards of culpability, which I handed out to members of the conference committee, if he willfully engages in the conduct intentionally, knowingly or recklessly. When I look at the definitions of knowingly and recklessly, I don't see the word intentionally used there. So it seems like what we're leaving out is the word intentionally. With the Senate amendments, it's knowingly or recklessly, and with the House it was willfully, which is intentionally, knowingly, or recklessly. So are we leaving out intentionally, and what the affect of doing that is.

Doug Bahr: Are we intentionally leaving out intentionally, it wasn't intentional. This is one of those things where can you get this back to me in a half hour. I did not read all the definitions to make sure, I don't know if there is a reason that someone would prefer knowingly over willfully. To me the intent is to make it broad and I think willfully is broader than knowingly. I'm not sure why I removed that language.

Rep. Klemin: Taking out the word sponsor, I think as I understood what you said, there may be some organization that really had no connection with doing anything related to publishing false information but they were the "sponsor" of it. It might have been in their booklet or something like that. Is that your intent.

Doug Bahr: Correct, we see ads with the words "sponsored by" but they did not actually draft it and they may not know what was going to be used in the advertising, and did nothing more than just pay for it. Defamation applies to publication. Publication being very broad. The other thing I changed too, as you probably noticed as we went through it, because of today's methods, I added "electronic transmission" which would cover much more than just billboards, just to make it clear that was included.

Rep. Klemin: So it really looks like we're leaving out the word "intentionally" as an element of culpability in here and I don't know if you can read that, I don't know if that's implied in the knowingly. Knowingly isn't defined using that word, so I'm not sure. We're leaving out negligently, of course, so that's not covered.

Doug Bahr: I do not specifically recall why I used knowingly instead of willfully, whether some of the other statutes are willfully, if some of the other criminal statute had that. I don't recall. There wasn't an intent to limit intentionally, to me if you know it, that's intentional. They seem very similar if not the same.

Sen. Dever: If I could just share what we were thinking when we went through this with the AG, and I could give an example, an actual example. When we looked at this bill, it seemed to us that ignorance is no excuse. If you thought it was true but it was not true, you would have no excuse. The example, in my last election, an ad was put out that said it took an expensive special election to correct that mistake. The last statewide special election was in December 1992, because there was a vacancy due to a senator vacating his spot. After the election, the media consultant who worked with our opponents, asked me about that. He honestly believed that it was a special election, when actually it was during a primary election in June. I'm sure that somebody along the line knew that and gave him that information. He put that ad out, he would have been, under this as I understand it, just as guilty as anybody else, because it turned out to be untrue even though he thought it was true. That was one of the reasons that we thought that we should adjust the language so that, I don't think he acted with willful disregard either, because he thought it was true. The other thing is when we sat down with the AG and Chief Deputy, one of the things they said was be careful what you ask for. Because a lot of us could be guilty of sponsoring information that we believe to be true that turns out not to be.

Doug Bahr: As I read the current law, there's two knowingly. One is knowingly sponsor and then the other is "knowing" it to be untrue. So if you do not know it to be untrue, it's not the same as you being responsible under this law.

Sen. Oehlke: Another matter that the AG's office did bring up was under the House Bill as we received it, they kind of doubted that you would find very many state's attorneys that would be willing to prosecute on that basis, but on the revised version they thought that it might actually get someone to pay attention to it. That's what was communicated to us.

Rep. Klemin: Following the example that Sen. Dever used, it sounds like we're talking about an element of strict liability being a concern. I guess does the Senate amendment resolve that concern about potential strict liability issue.

Doug Bahr: I don't see under the current bill, under current law, I don't see strict liability existing. I don't know what was in the bill prior to the amendments I made on the Senate side. The current law says the sponsor has to know to be untrue, deceptive or misleading, and that requires knowledge, or as the Century Code define knowingly, as I assume would be used to help define that unaccompanied by substantial doubt. You would pretty much have to know that what he was putting out was false. I don't see that strict liability there, but I don't see my amendments as strict liability either. You have to know, or recklessly not learn the truth.

Rep. Klemin: If it could be argued that the existing law had an element of strict liability in there, you are confident that as amended now with the Senate amendments, it doesn't have that element in there.

Doug Bahr: I don't think either has it.

Rep. Klemin: I'm a little confused. Can you point out where in version .0300, that was the first engrossment, is that what you're looking at.

Doug Bahr: Correct.

Rep. Klemin: Where did it talk about the strict liability issue.

Doug Bahr: As I am just briefly reading that amendment, it says a person may not willfully sponsor, the willfully only applies to "sponsoring" a political advertisement, arguably; which is untrue. If you willfully sponsor it and it is untrue, you're liable, whether you knew it was untrue, whether you believe it to be untrue, whether you did it with reckless disregard. Someone could argue that willful also applies to willfully untrue, to me as I read this, willfully modifies sponsor. If you sponsored it and it was untrue, if you willfully sponsored it and it was untrue whether you knew it or not, you're criminally responsible. That's how that could be read. Because unlike the current law, the engrossed bill says the sponsor knows to be untrue. That is the language that I was referring to when I said I don't see how the current law could be held, found to be strict liability, because it specifically requires you to know, while under the first engrossment, the willfulness just goes to whether you sponsored it arguably.

Rep. Dahl: If we then overstruck the word sponsor in line 7, and inserted publishes, would that take care of the strict liability.

Doug Bahr: From the first engrossment.

Rep. Dahl: Yes.

Doug Bahr: No, because the willfulness would still be doing with regard to whether you published. That's how I would read it on my initial reading. Because it would say that if you willfully published it, you are liable if it is untrue; whether you knew it was untrue, whether you thought it was untrue, no matter what, if it ends up being untrue you're responsible. It's how it could reasonably be read. Again, someone may argue if you read otherwise.

Rep. Onstad: Just going back to the engrossed version, if you're saying to take away that liability part, if that person knowingly publishes any political advertisement, so that is why the

section at the bottom to exempt those agencies that would be in that kind of situation, is that correct.

Doug Bahr: Yes.

Rep. Onstad: Let's just go back, we're saying knowingly publishes that, and you made the statement that willfully publishes that doesn't take away the liability from whoever publishes it, but if we add knowingly publishes it, it does.

Doug Bahr: Are we talking about the first engrossment.

Rep. Onstad: No, we're talking about the last engrossment that came from the Senate.

Doug Bahr: I was looking at the first engrossment.

Rep. Onstad: I'm skipping out all "with reckless regard for its truth", and if we just say that person knowingly publishes or if we say if that person willingly publishes anything. Now your comment earlier was, if I'm correct in that, by saying willfully publishes anything, that includes the person that the newspaper or whatever.

Doug Bahr: No, under the first engrossment, I understand Rep. Klemin's questions and concerns and replacing knowingly with willfully, and taking out reckless disregard accomplishes the same thing. I think you still need the exception for the newspapers. I think you need that either way at the bottom.

Rep. Onstad: That was the point. If you left that in there, then we need that section at the bottom to say that they are exempt.

Doug Bahr: I think for safety reasons, to make it clear that the purpose is not to go after them unless they are the actual individuals who compiled it and willfully, knowingly, intentionally provided false information. I'm hearing differently from what I understood the whole purpose of my amendments was. I am wondering what the ultimate goal here is. Is it to broaden the statute, is it to lessen the statute. I can understand how the first engrossment

made it strict liability, and I think there has to be something that ties it together, not just that you published it or sponsored it, that you had knowledge or reckless disregard for it, whether it was true or not, or else it is strict liability. In the first engrossment by removing the sponsor knows to be untrue, are the descriptive words.

Rep. Klemin: Thank you for the explanation. Any other discussion. I think that we see, at least for me, where the Senate was coming from on these amendments. We certainly, I don't think any of us intended that we would have some kind of strict liability standard in here. But I think it was the intent to have a statute that would be enforceable too. If it just said knowingly, and someone could say I didn't know, whether they do or not, really made it kind of unenforceable, which I think was the purpose, the reason that the sponsors introduced this bill. Any other discussion.

Rep. Onstad: Also in our discussion, it's very hard to prosecute it either way. It's hard to do this kind of thing, I know the discussion, and I think I actually voted against this, because of the fact of what we currently have in place and what we're adding to do. We really kind of came to the resolve that, yes, I guess it might be or it might not be, we really didn't know that that would really answer what the sponsors had to do with that.

Rep. Klemin: It seems to me with the Senate amendments it is a better bill.

Rep. Onstad: I think that putting that exemption in there, I have no problem with that. It makes it clear that they aren't part of that.

Rep. Klemin: Elimination of the word sponsor, as was explained, kind of helps. As for the reset of it, I don't know, you could wordsmith that all you want, I don't think that it makes much difference because you're dealing with a criminal violation here and intent it always an element anyway, and that's when we work that stuff out, other than negligently, which isn't a part of it.

Rep. Dahl: I am pleased with the Senate amendments if it does indeed take out the strict liability. Other than that, I don't really see, with the exception of the media, I don't really see how that changes the bill very much. I would support the Senate bill.

Rep. Klemin: I would entertain a motion to accede to the Senate amendments.

Rep. Dahl: I move that the House accede to the Senate amendments.

Sen. Dever: Second.

Rep. Klemin: Clerk call roll.

6 YES 0 NO 0 ABSENT

HOUSE ACCEDE TO SENATE AMENDMENTS

Rep. Klemin: Motion passed. Conference committee is adjourned.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1243 (, as (re)engrossed):

Date: 4/11/07

Your Conference Committee House Judiciary

For the Senate:

For the House:

	YES / NO			YES / NO	
Sen. DeHike	✓		Rep. Klemin	✓	
Sen. Dever	✓		Rep. Dahl	✓	
Sen. Horne	✓		Rep. Anstad	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (~~RECEDE from~~)

the (Senate/House) amendments on (SJ/HJ) page(s) 1450 -- 1451

✓, and place 1243 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1243 was placed on the Seventh order of business on the calendar.

DATE: 4/11/07

CARRIER: Rep. Klemin

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Dahl

SECONDED BY: Sen. Dever

VOTE COUNT 6 YES 0 NO 0 ABSENT

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1243, as engrossed: Your conference committee (Sens. Oehlke, Dever, Horne and Reps. Klemin, Dahl, Onstad) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1450-1451 and place HB 1243 on the Seventh order.

Engrossed HB 1243 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1243

Kasper, Jim M.

From: Bjornson, John D.
Sent: Friday, January 05, 2007 12:12 PM
To: Kasper, Jim M.
Subject: definition of recklessly

attach #1

12.1-02-02. Requirements of culpability.

1. For the purposes of this title, a person engages in conduct:
 - a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.
 - b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
 - c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.
 - d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
 - e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.
2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.
3. a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".
 - b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
 - c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
 - d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in chapters 12.1-01 through 12.1-06; otherwise the least kind of culpability required for the offense is required with respect to such facts.
 - e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.
4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.
5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.

Attach #2

N.D.C.C. § 16.1-10-04 after amendments to Engrossed HB 1243

A person is guilty of a class A misdemeanor if that person knowingly, or with reckless disregard for its truth or falsity, publishes any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a candidate's prior public record, which is untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether the publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters, billboard advertisements, electronic transmission, or by any other public means. This section does not apply to newspapers, television and radio stations, and other commercial media that are the medium for, but not the source of, the political advertisement or news release.

Dever, Dick D.

Attach # 3

From: Kasper, Jim M.
Sent: Thursday, March 22, 2007 1:20 PM
To: Dever, Dick D.
Cc: Kasper, Jim M.; Dosch, Mark A.; Kelsch, RaeAnn G.; Cook, Dwight C.; Klein, Jerry J.; Wardner, Rich P.; Meier, Lisa M.; Thoreson, Blair
Subject: Rep. Jim Kasper testimony on HB 1243-3/22/07
Importance: High

Hi Dick:

You had asked me to send you a copy of my testimony in front of your committee on HB 1243. Here it is:

SENATOR DEVER AND MEMBERS OF THE SENATE GVA COMMITTEE:

FOR THE RECORD, MY NAME IS REP. JIM KASPER, DISTRICT 46 IN FARGO. I AM HERE TO TESTIFY IN SUPPORT OF HB 1243.

HB 1243 AMENDS SEC. 16.1-10-04, RELATING TO PUBLICATION OF FALSE INFORMATION IN POLITICAL ADVERTISEMENTS. THE BILL INVOLVES THE DEGREE OF CULPABILITY REQUIRED FOR A VIOLATION.

UNDER CURRENT LAW, A PERSON MAY "NOT KNOWINGLY" SPONSOR A FALSE POLITICAL ADVERTISEMENT. IN OTHER WORDS, A PERSON MAY NOT SPONSOR A POLITICAL AD WHICH HE OR SHE KNOWS IS NOT TRUE.

THE BILL CHANGES THE DEGREE OF CULPABILITY FROM "KNOWINGLY" TO "WILLFULLY." UNDER THE REQUIREMENTS OF CULPABILITY IN THE CURRENT CRIMINAL CODE, A PERSON ENGAGES IN FALSE ADVERTISING "KNOWINGLY" IF, WHEN HE ENGAGES IN THE CONDUCT, HE KNOWS OR HAS A FIRM BELIEF ~~THAT HE~~ THAT WHAT HE IS DOING IS NOT TRUE.

HOWEVER, A PERSON ENGAGES IN FALSE ADVERTISING "WILLFULLY" IF HE ENGAGES IN THE CONDUCT "INTENTIONALLY", "KNOWINGLY" OR "RECKLESSLY"

A PERSON ENGAGES IN FALSE ADVERTISING "INTENTIONALLY" IF, WHEN HE ENGAGES IN THE CONDUCT, IT IS HIS PURPOSE TO PUBLISH OR DISSEMINATE FALSE INFORMATION.

A PERSON ENGAGES IN FALSE ADVERTISING "RECKLESSLY" IF HE ENGAGES IN THE CONDUCT IN CONSCIOUS AND UNJUSTIFIABLE DISREGARD OF A SUBSTANTIAL LIKELIHOOD THAT THE ADVERTISEMENT IS FALSE.

THE BILL DOES NOT PROHIBIT NEGATIVE ADVERTISING IN POLITICAL CAMPAIGNS. HOWEVER, IT DOES MAKE IT MORE CLEAR THAT WHEN A PERSON ENGAGES IN NEGATIVE ADVERTISING, HE NEEDS TO BE SURE OF THE FACTS. HE CANNOT

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PROCEED WITH THE PUBLICATION OR DISSEMINATION OF FALSE INFORMATION IN
POLITICAL ADVERTISING WITH RECKLESS DISREGARD FOR THE TRUTH.

THE PENALTY FOR A VIOLATION REMAINS THE SAME AS CURRENT LAW.

12.1-02-02. Requirements of culpability.

1. For the purposes of this title, a person engages in conduct:

- a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.
- b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
- c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.
- d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
- e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.

2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.

3. a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".

b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.

c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.

d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in chapters 12.1-01 through 12.1-06; otherwise the least kind of culpability required for the offense is required with respect to such facts.

e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.

4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is

higher.

5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.