

FILED JAN 9 1995

SENATE FILE 8
BY BOSWELL

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to regulation of public statements made about
2 candidates, by establishing a truth in campaign practices
3 board, providing for the investigation of complaints and
4 issuance of advisory and regulatory opinions by the board,
5 regulating the manner in which negative statements about
6 candidates or candidates' immediate family members may be
7 made, providing for retractions or explanations of untruthful
8 or deliberately misleading statements, and providing
9 penalties.

SF 8

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Section 1. NEW SECTION. 56A.1 DEFINITIONS.

2 For purposes of this chapter, unless the context otherwise
3 requires:

4 1. "Board" means the truth in campaign practices board.

5 2. "Candidate" means a person who has taken affirmative
6 action to seek nomination or election to a state legislative
7 office or to the office of governor, lieutenant governor,
8 secretary of state, auditor of state, treasurer of state,
9 attorney general, or secretary of agriculture.

10 3. "Candidate's committee" means a candidate's committee
11 as defined under chapter 56.

12 4. "Negative statement" means a statement which attacks
13 the record, reputation, or integrity of a candidate or which
14 attacks the reputation or integrity of a member of a
15 candidate's immediate family. For purposes of this chapter, a
16 candidate's spouse, children, parents, and siblings are
17 members of a candidate's immediate family.

18 5. "Political organization" means an organization which is
19 not a political party but which meets the criteria established
20 under section 44.1 for nomination of candidates.

21 6. "Political party" means a political party under section
22 43.2.

23 7. "Statement" means a public written, electronic, or oral
24 communication which is made or transmitted by any means. For
25 purposes of this section, a communication is public if it is
26 made or transmitted in a manner that can be reasonably
27 expected to result in the statement being heard, read, or
28 viewed by members of the general public.

29 Sec. 2. NEW SECTION. 56A.2 STATEMENTS BY OR ABOUT
30 CANDIDATES.

31 1. A candidate shall not make or cause to be made
32 untruthful or deliberately misleading statements regarding a
33 candidate. For purposes of this section, a statement shall be
34 deemed to have been caused by a candidate if it is made by a
35 candidate's designated spokesperson, if it is contained in

1 materials produced or paid for by the candidate's committee,
2 or if it is contained in materials imputed to a candidate
3 under section 56.13.

4 2. A person who is not a candidate shall not knowingly
5 make untruthful or deliberately misleading statements about a
6 candidate.

7 3. If a candidate or candidate's committee pays for or
8 sponsors an oral negative statement about a candidate, the
9 statement shall be stated by the candidate. For purposes of
10 this section, a statement which is imputed to a candidate
11 under section 56.13 is not sponsored by a candidate or
12 candidate's committee.

13 Sec. 3. NEW SECTION. 56A.3 TRUTH IN CAMPAIGN PRACTICES
14 BOARD.

15 1. A three-member truth in campaign practices board is
16 established as an independent agency to investigate, review,
17 and determine the truthfulness or deliberately misleading
18 nature of statements made by candidates, and other persons in
19 support or opposition of a candidate as well as to investigate
20 negative statements made about candidates. Members of the
21 board shall be appointed by the chief justice of the supreme
22 court. Two members of the board shall be affiliated with one
23 of the two political parties whose candidates for president of
24 the United States or for governor, as the case may be,
25 received the largest and next largest number of votes at the
26 last general election but neither shall be affiliated with the
27 same political party. The other member shall not be
28 affiliated with a political party, but may be affiliated with
29 a political organization.

30 2. Members shall serve staggered four-year terms, which
31 shall begin at 12:01 a.m. on May 1 in the year of appointment
32 and end at 12:00 midnight on April 30 in the year of
33 expiration. Any vacancy on the board shall be filled by
34 appointment for the unexpired portion of the term, within
35 ninety days of the vacancy and in accordance with the

1 procedures for regular appointments. A member of the board
2 may be reappointed to serve additional terms on the board.
3 Members may be removed in the same manner as provided in
4 section 69.15 except that once a vacancy or resignation
5 occurs, the governor shall notify the chief justice of the
6 supreme court, who shall make another appointment.

7 3. The board shall annually elect one member to serve as
8 the chairperson of the board and one member to serve as vice
9 chairperson. The vice chairperson shall act as the
10 chairperson in the absence or disability of the chairperson,
11 or in the event of a vacancy in that office.

12 4. Members of the board shall receive a per diem as
13 specified in section 7E.6 while conducting business of the
14 board, and payment of actual and necessary expenses incurred
15 in the performance of their duties. Members of the board
16 shall file statements of financial interest under section
17 68B.35.

18 5. The board shall employ a full-time executive director
19 who shall be the board's chief administrative officer. The
20 board shall employ or contract for the employment of legal
21 counsel notwithstanding section 13.7, and may employ any other
22 personnel as may be necessary to carry out the duties of the
23 board. The board's legal counsel shall be the chief legal
24 officer of the board, and shall advise the board on all legal
25 matters relating to the administration of this chapter. The
26 state may be represented by the board's legal counsel in any
27 civil action regarding the enforcement of this chapter or, at
28 the board's request, the state may be represented by the
29 office of the attorney general. Notwithstanding section
30 19A.3, all of the board's employees, except for the executive
31 director and legal counsel, shall be employed subject to the
32 merit system provisions of chapter 19A.

33 Sec. 4. NEW SECTION. 56A.4 DUTIES OF THE BOARD.

34 The duties of the board shall include, but are not limited
35 to, all of the following:

- 1 1. Adopt rules pursuant to chapter 17A and conduct
2 investigations and hearings pursuant to section 56A.5 and
3 chapter 17A, as necessary to carry out the purposes of this
4 chapter.
- 5 2. Adopt rules pursuant to chapter 17A establishing
6 standards for truthfulness and avoidance of making
7 deliberately misleading statements in campaign advertising by
8 candidates under this chapter and requiring candidates to
9 personally utter negative statements about candidates if the
10 statement is paid for by the candidate or candidate's
11 committee.
- 12 3. Develop, prescribe, and furnish any forms necessary for
13 the implementation of the procedures contained in this chapter
14 for the filing and hearing of complaints or the issuance of
15 advisory opinions.
- 16 4. Establish and impose penalties and any other
17 recommendations for punishment of persons who are subject to
18 penalties of or punishment by the board for failure to comply
19 with the requirements of this chapter.
- 20 5. Determine, in case of dispute, at what time a person
21 has become a candidate.
- 22 6. Preserve copies of complaints, requests, and other
23 information filed with the board for a period of at least five
24 years from the date of receipt.
- 25 7. Establish a procedure for requesting and issuing formal
26 and informal board opinions to candidates and representatives
27 of political parties and political organizations. Following
28 advice contained in a formal board opinion shall constitute a
29 defense to a complaint based upon the same facts and
30 circumstances which is filed with the board and which alleges
31 a violation of this chapter or rules of the board.
- 32 8. Establish a procedure for informing candidates and
33 other persons of the requirements of this chapter and rules
34 adopted by the board.
- 35 9. Establish fees, where necessary, to cover the costs

1 associated with preparing, printing, and distributing
2 materials to persons subject to the authority of the board.

3 Sec. 5. NEW SECTION. 56A.5 COMPLAINTS -- INVESTIGATIONS
4 -- HEARINGS.

5 1. A candidate, a representative of a candidate's
6 committee, or a representative of a political party or
7 political organization may file a complaint with the board
8 regarding the truthfulness or deliberately misleading nature
9 of any statement made or caused to be made by a candidate or
10 alleging that a candidate or candidate's committee has paid
11 for an oral negative statement which was made by someone other
12 than the candidate. For purposes of this section, a statement
13 is caused to be made by a candidate if it is made by a
14 candidate's designated spokesperson, is contained in materials
15 produced or paid for by the candidate's committee, as defined
16 under chapter 56, or if it is action or is a part of action
17 which has been imputed to the candidate under section 56.13.

18 2. A complaint shall include all of the following:

19 a. The name and address of the complainant.

20 b. If the allegation is that an untruthful or deliberately
21 misleading statement was made, a recitation of the statement
22 alleged to be untruthful or deliberately misleading.

23 c. If the allegation is that a negative statement was paid
24 for or sponsored by a candidate or candidate's committee and
25 was made by a person other than the candidate, a recitation of
26 the negative statement.

27 d. To the extent known, the time and place or manner in
28 which the statement was made.

29 e. If the statement complained of was made in writing, a
30 copy of the statement.

31 f. If the allegation is that an untruthful or deliberately
32 misleading statement was made, any circumstances, other than
33 the express language of the statement, which cause the
34 statement to be untruthful or deliberately misleading.

35 g. The name and address, if known, of the candidate or

1 other person who made the statement.

2 h. If the allegation is that an untruthful or deliberately
3 misleading statement was made, a statement of why or how the
4 statement complained of is untruthful or deliberately
5 misleading.

6 i. A certification by the complainant under penalty of
7 perjury that the facts stated to be true are true to the best
8 of the complainant's knowledge.

9 j. Any other relevant information or sources of
10 information.

11 3. The board staff and legal counsel shall review the
12 complaint to determine if the complaint is sufficient as to
13 form and legal substance. Deficiency as to form shall not
14 preclude consideration of a complaint. If the complaint is
15 legally deficient, the complaint shall be returned to the
16 complainant with a statement of the deficiency and shall not
17 be considered by the board until the deficiency is cured. A
18 legally sufficient complaint must meet all of the following
19 requirements:

20 a. Facts must be alleged that would establish either that
21 a candidate made or caused to be made an untruthful or
22 deliberately misleading statement about another opposing
23 candidate or that a candidate caused an oral negative
24 statement to be made by someone other than the candidate.

25 b. The person making the complaint must be a candidate or
26 a representative of a political party or political
27 organization.

28 c. If the allegation is that an untruthful or deliberately
29 misleading statement was made, the complaint must indicate why
30 or demonstrate how the statement is untruthful or deliberately
31 misleading.

32 d. The complaint must be filed within sixty days from the
33 date on which the statement that is complained of was made.

34 4. Upon receiving a legally sufficient complaint, the
35 board shall investigate or cause the investigation of the

1 facts alleged in the complaint. Once the investigation is
2 completed, the board shall meet and make a determination as to
3 whether the statement violates the requirements of this
4 chapter or rules adopted by the board. The meeting shall be
5 conducted in the manner provided for contested cases under
6 chapter 17A. However, a preponderance of evidence shall be
7 required to support a finding that a statement is untruthful
8 or deliberately misleading. In addition to holding meetings
9 at which two or more members are physically present, meetings
10 may be held electronically as provided under section 21.8.
11 Notwithstanding section 21.4, subsection 2, public notice of
12 the meetings of the board shall be made at a reasonable time
13 before the meeting, but no later than eight hours before the
14 time set for the meeting to begin.

15 5. The board shall render its decision within forty-eight
16 hours of receiving a legally valid complaint. If the forty-
17 eight-hour period concludes on a weekend or holiday, the
18 decision shall be made by the close of business hours on the
19 next succeeding business day. If the board finds that the
20 statement complained of was untruthful or deliberately
21 misleading or that an oral negative statement was made by
22 someone other than a candidate and was paid for by the
23 candidate or candidate's committee, the board's decision shall
24 include an order for any remedy, under section 56A.6, that the
25 board deems appropriate.

26 6. At any stage during the investigation or after the
27 filing of a complaint, the board may approve a settlement
28 regarding an allegedly untruthful or deliberately misleading
29 statement or negative statement made by someone other than a
30 candidate. Terms of a settlement shall be reduced to writing
31 and be available for public inspection. In addition, the
32 board may authorize board staff to seek information in
33 voluntary compliance in routine matters brought to the
34 attention of the board or its staff.

35 7. A complaint shall be a public record. The entire

1 record of the board's action, including any investigation,
2 shall also be a public record.

3 Sec. 6. NEW SECTION. 56A.6 REMEDIES.

4 1. If the board finds that a candidate or other person has
5 made or caused to be made an untruthful or deliberately
6 misleading statement, the board shall require a retraction of
7 the statement by any person found to be responsible for making
8 the statement or causing the statement to be made, within a
9 period of time to be specified by the board, in the same
10 manner and at the same cost as the original statement. Any
11 retraction shall be approved by the board before it is made
12 public. The board shall inform the complainant of any
13 proposed retraction and permit the complainant to submit
14 comments prior to the board's decision on approval or
15 disapproval of the proposed language.

16 2. For any violations of this chapter or rules adopted by
17 the board, the board may impose one or more of the following
18 penalties:

19 a. Issue an order requiring the person to cease and desist
20 from the violation.

21 b. Issue an order requiring the violator to take any
22 remedial action deemed appropriate by the board.

23 c. Publicly reprimand the violator for violations of this
24 chapter or rules adopted by the board.

25 d. Issue an order requiring the violator to pay a civil
26 penalty of not more than fifty thousand dollars for each
27 violation of this chapter or rules adopted by the board.

28 3. If a person fails to comply with an order of the board
29 under this section, the board may petition the district court
30 for an order for enforcement of the order of the board.
31 Judicial enforcement of orders of the board shall be sought in
32 accordance with chapter 17A.

33 4. At any stage in a proceeding, the board may refer the
34 complaint and supporting information to the attorney general
35 or appropriate county attorney with a recommendation for

1 prosecution or enforcement of criminal penalties.

2 EXPLANATION

3 This bill establishes an independent board with three
4 members appointed by the chief justice of the supreme court to
5 regulate negative, untrue, or deliberately misleading public
6 statements made during state campaigns. The board is to hear
7 complaints, adopt rules, and issue advisory and regulatory
8 opinions regarding statements made by candidates and other
9 persons. Decisions of the board are to be made within 48
10 hours of receiving a valid complaint. Complaints regarding
11 allegedly untrue or misleading statements must be filed within
12 60 days of the date on which the untrue or misleading
13 statement was made. The making of untruthful or deliberately
14 misleading statements is prohibited. Candidates are also
15 required, when engaging in advertising that attacks the
16 record, reputation, or integrity of another candidate or the
17 reputation or integrity of a candidate's family members, to
18 make the statements themselves.

19 If a statement is found to be untruthful or deliberately
20 misleading, the board is to require retractions of false or
21 deliberately misleading statements and may impose other
22 appropriate penalties. The penalties that may be imposed by
23 the board include reprimands, cease and desist orders, orders
24 for other remedial action, and the imposition of up to a
25 \$50,000 civil penalty.

26
27
28
29
30
31
32
33
34
35