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SENATE FILE **454**
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HAMMOND, DVORSKY, FLYNN,
and REHBERG

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 remedies
9 and penalties.

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

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S.F. 454

1 Section 1. Sections 2 through 7 of this Act are created as
2 a new division of chapter 56.

3 Sec. 2. NEW SECTION. 56.50 DEFINITIONS.

4 For purposes of this division, unless the context otherwise
5 requires:

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

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

12 3. "Candidate's committee" means a candidate's committee
13 as defined in section 56.2.

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

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

23 6. "Political party" means a political party under section
24 43.2.

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

31 Sec. 3. NEW SECTION. 56.51 STATEMENTS BY OR ABOUT
32 CANDIDATES.

33 1. A candidate shall not make or cause to be made
34 untruthful or deliberately misleading statements regarding a
35 candidate. For purposes of this section, a statement shall be

1 deemed to have been caused by a candidate if it is made by a
2 candidate's designated spokesperson, if it is contained in
3 materials produced or paid for by the candidate's committee,
4 or if it is contained in materials imputed to a candidate
5 under section 56.13.

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

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

15 Sec. 4. NEW SECTION. 56.52 TRUTH IN CAMPAIGN PRACTICES
16 BOARD.

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

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

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

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

14 4. Members of the board shall receive a per diem as
15 specified in section 7E.6 while conducting business of the
16 board, and payment of actual and necessary expenses incurred
17 in the performance of their duties. Members of the board
18 shall file statements of financial interest under section
19 68B.35.

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

35 Sec. 5. NEW SECTION. 56.53 DUTIES OF THE BOARD.

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

3 1. Adopt rules pursuant to chapter 17A and conduct
4 investigations and hearings pursuant to section 56.54 and
5 chapter 17A, as necessary to carry out the purposes of this
6 division.

7 2. Adopt rules pursuant to chapter 17A establishing
8 standards for truthfulness and avoidance of making
9 deliberately misleading statements in campaign advertising by
10 candidates under this division and requiring candidates to
11 personally utter negative statements about candidates if the
12 statement is paid for by the candidate or candidate's
13 committee.

14 3. Develop, prescribe, and furnish any forms necessary for
15 the implementation of the procedures contained in this
16 division for the filing and hearing of complaints or the
17 issuance of advisory opinions.

18 4. Establish and impose penalties and any other
19 recommendations for punishment of persons who are subject to
20 penalties of or punishment by the board for failure to comply
21 with the requirements of this division.

22 5. Determine, in case of dispute, at what time a person
23 has become a candidate.

24 6. Preserve copies of complaints, requests, and other
25 information filed with the board for a period of at least five
26 years from the date of receipt.

27 7. Establish a procedure for requesting and issuing formal
28 and informal board opinions to candidates and representatives
29 of political parties and political organizations. Following
30 advice contained in a formal board opinion shall constitute a
31 defense to a complaint based upon the same facts and
32 circumstances which is filed with the board and which alleges
33 a violation of this division or rules of the board.

34 8. Establish a procedure for informing candidates and
35 other persons of the requirements of this division and rules

1 adopted by the board.

2 9. Establish fees, where necessary, to cover the costs
3 associated with preparing, printing, and distributing
4 materials to persons subject to the authority of the board.

5 Sec. 6. NEW SECTION. 56.54 COMPLAINTS -- INVESTIGATIONS
6 -- HEARINGS.

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

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

21 a. The name and address of the complainant.

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

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

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

31 e. If the statement complained of was made in writing, a
32 copy of the statement.

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

1 statement to be untruthful or deliberately misleading.

2 g. The name and address, if known, of the candidate or
3 other person who made the statement.

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

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

11 j. Any other relevant information or sources of
12 information.

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

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

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

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

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

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

17 5. The board shall render its decision within forty-eight
18 hours of receiving a legally valid complaint. If the forty-
19 eight-hour period concludes on a weekend or holiday, the
20 decision shall be made by the close of business hours on the
21 next succeeding business day. If the board finds that the
22 statement complained of was untruthful or deliberately
23 misleading or that an oral negative statement was made by
24 someone other than a candidate and was paid for by the
25 candidate or candidate's committee, the board's decision shall
26 include an order for any remedy, under section 56.55, that the
27 board deems appropriate.

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

1 attention of the board or its staff.

2 7. A complaint shall be a public record. The entire
3 record of the board's action, including any investigation,
4 shall also be a public record.

5 Sec. 7. NEW SECTION. 56.55 REMEDIES.

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

18 2. In addition to the remedies specified in subsection 1,
19 for any violations of this division or rules adopted by the
20 board, the board may impose one or more of the following
21 penalties:

22 a. Issue an order requiring the person to cease and desist
23 from the violation.

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

26 c. Publicly reprimand the violator for violations of this
27 division or rules adopted by the board.

28 d. Issue an order requiring the violator to pay a civil
29 penalty of not more than fifty thousand dollars for each
30 violation of this division or rules adopted by the board.

31 3. If a person fails to comply with an order of the board
32 under this section, the board may petition the district court
33 for an order for enforcement of the order of the board.

34 Judicial enforcement of orders of the board shall be sought in
35 accordance with chapter 17A.

1 4. At any stage in a proceeding, the board may refer the
2 complaint and supporting information to the attorney general
3 or appropriate county attorney with a recommendation for
4 prosecution or enforcement of criminal penalties.

5 EXPLANATION

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

22 If a statement is found to be untruthful or deliberately
23 misleading, the board is to require retractions of false or
24 deliberately misleading statements and may impose other
25 appropriate penalties. The penalties that may be imposed by
26 the board include reprimands, cease and desist orders, orders
27 for other remedial action, and the imposition of up to a
28 \$50,000 civil penalty.

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