

JAN 20 2005
STATE GOVERNMENT

HOUSE FILE 104
BY RAECKER, JACOBS, and HUSER

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

A BILL FOR

1 An Act prohibiting the publication of certain false statements of
2 fact made with actual malice concerning a candidate for public
3 office and providing remedies.

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

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HF 104

1 Section 1. NEW SECTION. 68A.407 PUBLICATION OF CERTAIN
2 FALSE STATEMENTS OF FACT CONCERNING CANDIDATE PROHIBITED --
3 REMEDIES.

4 1. The general assembly finds that the increasing use of
5 false statements of fact aimed at candidates for public office
6 impedes campaigns and diminishes the trust and confidence of
7 the public in the electoral process. It is not the intent of
8 the general assembly to lessen political debate that furthers
9 the ability of the public to understand the issues and
10 positions of candidates for public office. The general
11 assembly declares that a compelling state interest exists in
12 prohibiting the use of false statements of fact that impede
13 campaigns for public office in Iowa and diminish the public's
14 trust and confidence in the electoral process.

15 2. As used in this section:

16 a. "Actual malice" means knowledge of the falsity of a
17 statement or reckless disregard for whether a statement is
18 true or false.

19 b. "Public office" means any state, county, city, school,
20 or other office of a political subdivision of this state
21 filled by election.

22 c. "Publish" means the act of printing, posting,
23 broadcasting, mailing, speaking, or otherwise disseminating.

24 3. A person shall not, with actual malice, cause to be
25 published a false statement of fact concerning a candidate for
26 public office involving any of the following:

27 a. The education or training of the candidate.

28 b. The current profession or occupation of the candidate
29 or any former profession or occupation of the candidate.

30 c. Whether the candidate committed, was indicted for
31 committing, or was convicted of committing a crime punishable
32 by law.

33 d. Whether the candidate was subject to discipline or
34 sanction by any body of the federal government, state
35 government, or political subdivision of the state.

1 e. Whether the candidate has received treatment for a
2 mental illness.

3 f. Whether another person endorses or opposes the
4 candidate.

5 g. The record of voting of a candidate if the candidate
6 serves or formerly served in an elected office.

7 4. Any candidate for public office who alleges that a
8 false statement of fact concerning the candidate has been
9 published in violation of this section may file a complaint
10 with the board. The board shall give priority consideration
11 to any complaint filed under this section over all other
12 matters pending before the board.

13 5. If the board determines that a violation did occur, the
14 board may impose any of the recommended actions under section
15 68B.32D, except that the board shall not refer any complaint
16 or supporting information of a violation of this section to
17 the attorney general or any county attorney for prosecution.

18 6. This section shall not preclude the filing of a civil
19 action based on the same facts or event giving rise to a
20 complaint filed with the board under this section.

21 7. Section 68A.701, which otherwise applies criminal
22 penalties for violations of this chapter, shall not apply to
23 violations of this section.

24 EXPLANATION

25 This bill creates new Code section 68A.407 that prohibits
26 the publication by any person of certain specified false
27 statements of fact concerning a candidate for public office.
28 The prohibition applies to seven categories of statements
29 concerning a candidate and the following:

- 30 1. Education or training.
- 31 2. Profession or occupation.
- 32 3. Any crime punishable by law.
- 33 4. Any governmental discipline or sanctions.
- 34 5. Treatment for a mental illness.
- 35 6. Endorsements.

1 7. Voting record.

2 To fall within the prohibition, the statement must first be
3 false and secondly be made with knowledge of the falsity of
4 the statement or reckless disregard for whether the statement
5 is true or false.

6 Any candidate may file a complaint with the ethics and
7 campaign disclosure board. If the board determines that a
8 violation did occur, the board may impose any of the
9 administrative, noncriminal sanctions and remedial actions
10 under Code section 68B.32D. These include a civil penalty of
11 not more than \$2,000 for each violation. This administrative
12 procedure does not preclude the candidate from filing a libel
13 action in court. A criminal penalty is made inapplicable to a
14 violation of this bill.

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