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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

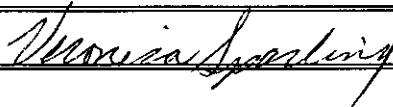
Senate Government and Veterans Affairs Committee

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

