

HB

40

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 16, 1991

SUBJECT: Sectional analysis of CSHB 40 (Jud)

TO: Representative Betty Bruckman
Attn: Anne Ziesmer-Hays

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

This single-section bill expands the criminal offense of campaign misconduct in the first degree (AS 15.56.010), a class A misdemeanor, to include the writing and circulating of information that a person knows is false and that relates to the reputation for honesty and integrity, qualifications, or background and experience of a candidate for office (including the person circulating the information). Current law only covers such false information when it would seriously provoke or damage the reputation of another person. The bill also provides that the criminal penalties of AS 15.56.010 apply to information printed in a paid statement in the official state election pamphlet, as well as to information in a letter, circular, bill, placard, poster, or newspaper, radio or television advertisement.

JBG:lmb:pl
91-124.lmb

Sectional Analysis

§ 15.55.250

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The lieutenant
AS 15.50.010

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§ 15.56.010

ELECTIONS

§ 15.56.010

Sec. 15.56.010. Campaign misconduct in the first degree. (a) A person commits the crime of campaign misconduct in the first degree if the person

(1) knowingly circulates or has written, printed or circulated a letter, circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face;

(2) knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement or other communication intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising or communication and, if a candidate or group, with the name of the campaign chairman; or

(3) knowingly writes or prints and circulates, or has written, printed and circulated, a letter, circular, bill, placard, poster or advertisement in a newspaper, on radio or television

(A) containing false factual information relating to a candidate for an election;

(B) which the person knows to be false; and

(C) which would provoke a reasonable person under the circumstances to a breach of the peace or damages the candidate's reputation for honesty, integrity, or the candidate's qualifications to serve if elected to office.

(b) Violation of this section is a corrupt practice.

(c) Campaign misconduct in the first degree is a class A misdemeanor. (§ 205 ch 100 SLA 1980)

Revisor's notes. — Enacted as AS 15.56.011. Renumbered in 1980.

NOTES TO DECISIONS

Constitutionality. — See Tally v. California, 362 U.S. 60, 80 S. Ct. 536, 4 L. Ed. 2d 559 (1960) holding a Los Angeles mu-

nicipal ordinance, similar to this section, void on its face.

Collateral references. — Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.

Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 ALR4th 1088.

Photograph, defamation by. 52 ALR4th 488.

Class or group defamation as actionable by individual member. 52 ALR4th 618.

Sufficiency of identification of allegedly defamed party. 54 ALR4th 746.

Defamation by statement made in jest. 57 ALR4th 520.

False light invasion of privacy — neutral or laudatory depiction of subject. 59 ALR4th 502.

T B L E A

STATE	(1) MENTAL CULPABILITY	BURDEN OF PROOF	ELEMENTS/ TYPE	PENALTY PROVISION
Alaska 15.56.010(3)	"knowingly"	None	(1)	Class A Misd.
Florida 106.143(3)	"willfully"	None	(B)	Civil
Louisiana 18:1463	None	None	(B)	Max Fine \$2000 Max Prison 2yrs
Michigan 6.1944	None	None	(C)	Misdemeanor
Massachusetts 56 §92	"knowingly"	None	(1)	Max Fine \$1000 Max Jail 6 mos
Minnesota 210A.02 210A.04	"knowingly" or "intentionally"	None	(1)	
Mississippi 23-3-33	"willfully" and "knowingly"	None	(A)	Misdemeanor
Montana 13-35-234	"knowingly" or with "reckless disregard"	None	(A)	Misdemeanor
New Hampshire 69:14	"knowingly"	None	(B)	Max Fine \$1000 Max Jail 1year
North Carolina 163-274(8)	"knowingly" or with "reckless disregard"	None	(A)	Misdemeanor
North Dakota 16.1-10-04	"knowingly"	None	(1)	Class A Misd.
Nebraska 49-1474(2)	"knowingly"	None	(1)	Class III Misd.
Ohio 3599.091	"knowingly" or with "reckless disregard"	"Preponderance of evidence"-establ. by case law only	(1)	1st Degree Misd.
Oregon 260.532	"knowingly" or "reckless disregard"	"Clear and convincing" evidence	(1)	Private action
Tennessee 2-19-142	"knowingly"	None	(1)	Misdemeanor
Utah 20-17-530	"knowingly"	None	(1)	Class A Misd.
Washington 42.17.530	"knowingly or negligently"	None	(1)	Civil
West Virginia 3-8-11(e)	"knowingly"	None	(1)	Misdemeanor

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 40

Revision Date: _____ Department Affected: Office of the Governor-Elections
 Title: An Act relating to the providing of false info. in an election pamphlet BRU: Division of Elections
 Component: _____
 Sponsor: Representative Bruckman
 Requestor: State Affairs COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estim current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Elizabeth Ziegler, Deputy Director Phone: 465-4611
 Division: Division of Elections Date: 2-8-91
 Approved by Commissioner: *Charlotte E. Dickson*
 Agency: Division of Elections Date: 2-8-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 40

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to false information in an election pamphlet." BRU: Prosecution
 Component: Criminal Justice Litigation
 Sponsor: Representative Bruckman
 Requestor: House State Affairs COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

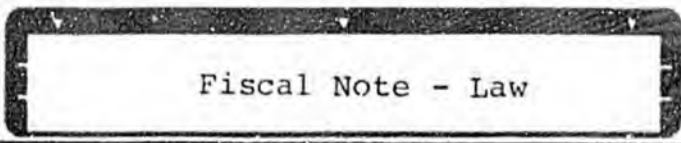
Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 455-3672
 Division: Administrative Services Date: February 11, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 11, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 40

House Bill No. 40 amends AS 15.56.010(a) by adding a new offense to the crime of campaign misconduct in the first degree to include a person who submits, or causes to be submitted, factual information that the person knows is false for inclusion in the election pamphlet under AS 15.68. Campaign misconduct in the first degree is a class A misdemeanor. Although there have been past incidents of false information being submitted for inclusion in the state's official election pamphlet, the number of such incidents has not been great enough to warrant fiscal note costs.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 10, 1991

To: Senator Rodey, Chair
Members, State Affairs Committee

From: Max Gifford
Committee staff

Subj: CSHB-40(Jud), false campaign information

At the last hearing concern was expressed over the definition of "knowingly" used on page 1, lines 5, 8, 14 of the bill.

According to legal counsel (Gaguine) the definition of "knowingly" as it is used in this context (AS 15.56.010 (a)) is defined in the Criminal Law statutes, AS 11.81.900 (a) (2), attached. Note the definitions of other terms including, "*intentionally*", "*recklessly*", and "*criminal negligence*."

Sec. 11.81.335. Justification: Use of deadly force in defense of self. (a) Except as provided in (b) of this section, a person may use deadly force upon another person when and to the extent

(1) the use of nondeadly force is justified under AS 11.81.330; and

(2) the person reasonably believes the use of deadly force is necessary for self defense against death, serious physical injury, kidnapping, sexual assault in the first degree, sexual assault in the second degree, or robbery in any degree.

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others, the person can avoid the necessity of using deadly force by retreating, except there is no duty to retreat if the person is

(1) on premises which the person owns or leases and the person is not the initial aggressor; or

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380. (§ 10 ch 166 SLA 1978; am § 10 ch 4 SLA 1990)

Effect of amendments. — The 1990 amendment, effective February 2, 1990, deleted "under AS 11.41.410(a)(1) or (2)" following "sexual assault in the first degree" in paragraph (a)(2).

Article 5. General Principles of Criminal Liability.

Sec. 11.81.620. Effect of ignorance or mistake upon liability.

NOTES TO DECISIONS

Applied in *Russell v. State*, Ct. App. Op. No. 1055 (File No. A-2653), P.2d (1990).

Article 6. Definitions.

Section
900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular

Letter of Intent

CSHB-40(Jud) - Campaign Misconduct

It is the intent of the legislature that candidates be notified by the Division of Elections of the provisions of AS 15.56.010, when receiving official information concerning the election pamphlet. It is further the intent of the legislature that voters be made aware that candidates have been notified of the provisions of AS 15.56.010, by including the information in the official election pamphlet provided by the Division of Elections.

Offered by Senate State Affairs Committee

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4843



STATE AFFAIRS

REPRESENTATIVE BETTY BRUCKMAN
MEMORANDUM

TO: Senator Rodey, Chair Senate State Affairs Committee

FROM: Representative Betty Bruckman

DATE: April 30, 1991

RE: CSHB 40 (Judiciary) - "An act relating to the crime of election misconduct in the first degree."

The CSHB 40 (Judiciary) incorporates an unfortunate version of the letter of intent. Apparently the House Judiciary Committee failed to transmit the actual letter of intent as adopted by the committee to the Rules Committee and subsequently a letter of intent was hastily added on the floor of the House.

I would respectfully request that the committee consider redrafting the letter of intent to notify candidates for office, in the instructions to candidates for submitting information for inclusion in the official election pamphlet, that AS 15.56 states that a person commits the crime of campaign of campaign misconduct in the first degree if that person knowingly misrepresents the truth in the election pamphlet. Additionally, similar notification should be included in the actual election pamphlet

If you have additional questions please contact me or Anne Hays of my staff at 465-4843. Thank you for your prompt consideration of this request.

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4843



STATE AFFAIRS

MEMORANDUM
REPRESENTATIVE BETTY BRUCKMAN

TO: Senator Rodey, Chair Senate State Affairs Committee

FROM: Representative Betty Bruckman

DATE: April 24, 1991

RE: CSHB 40 (Judiciary) - "An act relating to the crime of election misconduct in the first degree."

I respectfully request CSHB 40 (Judiciary) be scheduled for consideration before the Senate State Affairs Committee at your earliest convenience. CSHB 40 (Judiciary) relates to the crime of election misconduct in the first degree.

As of this writing 21 states have passed laws prohibiting false campaign statements. Current Alaska statute criminalizes false statements in printed campaign material *only* if it pertains to other candidates.

The primary purpose of this legislation is to constructively put candidates for public office and potential candidates on notice that knowingly mis-representing the truth in the official state election pamphlet or any other circulated campaign material would now be a crime punishable by law as a class A misdemeanor (1 year in jail and up to \$5000.00 fine).

HB 40 expands the criminal offense of campaign misconduct in the first degree (AS 15.56.010), a class A misdemeanor, to include the writing and circulating of information that a person knows is false and that relates to the reputation for honesty and integrity, qualifications, or background and experience of a candidate for office (including the person circulating the information). Current law only covers such false information when it would seriously provoke or damage the reputation of another person. The bill also provides that the criminal penalties of AS 15.56.010 apply to information printed in a paid statement in the official state election pamphlet, as well as information in a letter circular, bill, placard, poster, or newspaper, radio or television advertisement.

The CSHB 40 (Judiciary) also incorporates a letter of intent directing the Division of Elections to notify candidates that AS 15.56 states that a person commits the crime of campaign misconduct in the first degree if that person knowingly misrepresents the truth in the election pamphlet.

If you have additional questions please contact me or Anne Hays of my staff at 465-4843. Thank you for your prompt consideration of this request. I will look forward to your early scheduling of CSHB 40 (Judiciary).

Alaska State Legislature



Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 163-3991
Fax: (907) 163-3351

MAR 26 1991

March 26, 1991

MEMORANDUM

TO: Representative Betty Bruckman

FROM: Linda J. Snow *LJ Snow*
Legislative Analyst

RE: Truth in Campaign Advertising

You asked if it is a crime in other states for political candidates to publish false personal information on a resume or brochure. You also asked if Alaska had ever required candidates to swear to the truthfulness of statements published in voter pamphlets.

Background

False statements about a political candidate's record is part of the larger issue of false campaign advertising. In most states, the greater concern is libelous and slanderous campaign statements about a candidate's opponent, and many state laws address both concerns together.

Political speech tends to have more constitutional protection than other forms of speech¹. Many challenges to the constitutionality of truth in campaign speech laws have passed through the courts, and it is difficult to word a law such that it does not draw challenge. A decision in *New York Times vs. Sullivan* resulted in the "actual malice" standard for claims of false campaign statements.

"Actual malice" demands that the candidate deliberately spoke the falsehood with prior knowledge of its falseness. However, this standard of "actual malice" is difficult to prove. Interpretation and opinion of the speaker must be considered in determining the truth of a statement. Does the statement have some kernel of truth and is merely a distortion of that truth? We offer an anecdotal example of the difficulty. A government-oriented publication selected a certain state legislator (from another state) as the least ethical

¹According to Alison Reed, project manager in election services, national office of the League of Women Voters, under most states' employment laws, an employee can be fired for falsifying a resume, yet an elected official cannot be impeached (equivalent of being fired) for the same reason.

Representative Bruckman
February 26, 1991
Page 2

legislator in that state. In a subsequent campaign brochure, the legislator stated that he had been chosen as a "legislator of note" by this publication.

Attachment A contains several articles and reports that address the broader issue of falsehood in campaign statements. Not every paper addresses candidates' statements about their background, but the theories discussed apply to that issue. The background report by the office of the Washington Attorney General is particularly helpful in formulating law, as it discusses particular wording, and presents a model statute.

Statutes in Other States

Attachment B contains a survey of the 50 states' campaign advertising laws performed by the National Conference of State Legislatures. Also included are current statutes from Massachusetts, Ohio, Oregon, Utah and Washington. The survey reports that 21 states have passed laws prohibiting false campaign statements. Seven states have adopted fair campaign practices codes. The candidate can take a voluntary oath to uphold that code. The statutes in seven states, including Alaska, pertain only to written statements. In most states, violation of this statute is a misdemeanor, although it is a felony in Indiana. Some states provide only civil penalties, which could include voiding an election.²

Alaska Statute (AS 15.56.010) addresses false statements in printed campaign advertising. However, because subsection (3)(B) includes the word "and," this statute pertains only to statements about other candidates. Alaska Statute 15.56.010 is included as Attachment C.

Other Regulation

The U. S. Fair Campaign Practices Commission dealt with this subject on the federal level; however, that agency is now defunct. According to a representative of the Federal Election Commission, if political advertisements include a disclaimer, the federal government doesn't care what they say.

Because of the difficulty in applying state laws to political campaigns, many representatives of state and national organizations we contacted during our research advocate a watch dog role for the press, the public and the opposing candidates. These representatives feel political statements should be questioned and investigated by interested or affected parties such as the public and opposing candidates.

²According to Graham Johnson, executive director of the Washington State Public Disclosure Commission, civil penalties can be used in Washington to void an election through the courts.

Representative Bruckman
February 26, 1991
Page 3

Past Requirements in Alaska

According to staff of the Alaska Division of Elections, candidates are not currently required to swear to the truthfulness of statements submitted for inclusion in the voter pamphlet. However, at one time candidates were required to swear to take such an oath, as evidenced by the signature page of the 1978 election pamphlet statement form attached. Alaska Statute 11.56.200 makes willful falsification of a sworn statement a class B felony. We have not been able to determine when and why the practice of requiring a sworn statement was discontinued. Seven former Division of Elections' employees with whom we spoke had no recollection of the existence of such a requirement.

We hope this information is useful to you. If you need further assistance, please feel free to contact this agency.

Attachments

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

February 11, 1991

FEB 13 1991

Representative Betty Bruckman
P.O. Box V
Juneau, Ak 99811

Dear Representative Bruckman:

The Alaska Public Offices Commission discussed HB 40 "An act relating to the providing of false information in an election pamphlet" at your request during their meeting on February 8, 1991.

The Commission would like to convey its' appreciation for the opportunity to comment. However, they did not feel commenting on this bill would be appropriate since AS 15.56 is not within their jurisdiction.

If I can be of further assistance, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karen Boorman
Executive Director

cc: APOC Members
Barbara Prichart, Department of Administration

TESTIMONY
(APOC)



House of Representatives
House Judiciary Committee
Chairman Dave Donley

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Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

HOUSE JUDICIARY LETTER OF INTENT

CSHB 40 (JUD)

It is the intent of the Legislature that the instructions for the official election pamphlet contain a notice to candidates that under AS 15.56, a person commits the crime of campaign misconduct in the first degree, which is a class A misdemeanor, if the person knowingly misrepresents the truth in the election pamphlet.

Dave Donley

Chairman Dave Donley

4/18/91

Date:

Letter of Intent