

SENATE, No. 484

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1996

By Senator McGREEVEY

1 AN ACT concerning campaign advertising and supplementing Title 19  
2 of the Revised Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

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7 1. The Legislature finds and declares that:

8 a. the United States Constitution and the Constitution of the State  
9 of New Jersey guarantee the citizens of this State the fundamental  
10 right to freedom of political expression;

11 b. in recognition of the essential importance of this right to the  
12 democratic process, the federal and State courts have accorded  
13 political speech the highest degree of protection and subjected  
14 government regulation thereof to the strictest scrutiny;

15 c. for over two centuries the unfettered expression of ideas and  
16 discussion of issues in the course of campaigns for public office have  
17 helped to preserve our democratic form of government;

18 d. while campaigns for public office have traditionally been far  
19 from sedate, the vicious personal attacks, deceptive statements and  
20 outright lies which now constitute so-called "negative advertising"  
21 threaten to undermine the political process;

22 e. part of the cost of democracy is toleration of offensive speech  
23 and much of what constitutes "negative advertising" is protected  
24 speech which is beyond the reach of government regulation;

25 f. nevertheless, the courts have recognized that certain types of  
26 deliberately false statements made in the context of a campaign for  
27 public office may be subject to punishment; and

28 g. it is, therefore, time for New Jersey to join approximately 20  
29 other states which penalize certain types of deliberately false campaign  
30 advertising.

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32 2. As used in this act:

33 "campaign advertisement" means a press release, pamphlet, flyer,  
34 form letter, sign, billboard or paid advertisement printed in any  
35 newspaper or other publication or broadcast on radio or television, or  
36 any other form of advertising directed to the electorate, which urges

1 the election or defeat of any candidate for nomination or election to a  
2 State or local elective public office;

3 "material fact" means a fact about a candidate for nomination or  
4 election to a State or local elective public office which has real  
5 importance or significant consequences in regard to how a reasonably  
6 prudent person views that candidate and includes, but is not limited to,  
7 the following facts about a candidate: the titles of any offices held or  
8 previously held, status as an incumbent, academic degrees or  
9 certificates held, the dates or location of education or training,  
10 criminal history, mental health history, military record, voting record  
11 or endorsements by others.

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13 3. No person, with intent to affect the outcome of a campaign for  
14 nomination or election to a State or local elective public office, shall  
15 publish, broadcast or otherwise disseminate to members of the public  
16 any campaign advertisement which contains a false statement of  
17 material fact about a candidate for nomination or election to that  
18 office, with knowledge that the statement is false or with reckless  
19 disregard for whether it is false. The provisions of this section shall  
20 apply to statements made on behalf of, or in opposition to, a candidate  
21 and to statements made about oneself or another.

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23 4. Any person who is found to have violated the provisions of this  
24 act shall be guilty of a disorderly persons offense and subject to up to  
25 six months imprisonment or a fine of up to \$1,000, or both.

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27 5. a. The provisions of this act shall not be construed to apply to  
28 any bona fide news item or editorial contained in any publication of  
29 bona fide general circulation. No penalty shall be imposed under this  
30 act upon acts done by the publisher, owner, agent, or employee of a  
31 newspaper or periodical or a radio or television station in the  
32 publication or dissemination of any advertisement.

33 b. The provisions of this act shall not be construed to apply to any  
34 candidate for an office of a political party.

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36 6. This act shall take effect immediately.

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#### STATEMENT

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41 This bill seeks to address the problem of so-called "negative  
42 advertising" in connection with campaigns for elective office within the  
43 parameters permitted by the federal and State Constitutions. It  
44 prohibits certain types of false statements in campaign advertising.  
45 The bill provides that no person, with intent to affect the outcome of  
46 a campaign for nomination or election to a State or local elective

1 public office, shall publish, broadcast or otherwise disseminate to the  
2 public any campaign advertisement which contains a false statement of  
3 material fact about a candidate for nomination or election to a State or  
4 local elective public office, with knowledge that the statement is false  
5 or with reckless disregard for whether it is false. The prohibition  
6 would apply to statements made on behalf of, or in opposition to, a  
7 candidate and to statements made about oneself or another.

8 The bill defines a "material fact" as a fact about a candidate which  
9 has real importance or significant consequences in regard to how a  
10 reasonably prudent person views a candidate. It includes, but is not  
11 limited to, the titles of any offices held or previously held, status as an  
12 incumbent, academic degrees or certificates held, the dates or location  
13 of education or training, criminal history, mental health history,  
14 military record, voting record or endorsements by others.

15 A violation of the bill's provisions would be a disorderly persons  
16 offense and punishable by up to six months' imprisonment, a fine of up  
17 to \$1,000, or both.

18 A bona fide news item or editorial contained in any publication of  
19 bona fide general circulation would be exempt from coverage under  
20 the bill. In addition, acts done by the publisher, owner, agent or  
21 employee of a newspaper or periodical or a radio or television station  
22 in the publication of any advertisement would not be subject to penalty  
23 under the bill.

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28 Prohibits certain false statements in campaign advertisements.