

By Representative Posey

1                                   A bill to be entitled  
2           An act relating to elections; providing a short  
3           title; amending s. 104.271, F.S.; expanding  
4           applicability of the prohibition against making  
5           false or malicious charges against, or false  
6           statements about, candidates; eliminating the  
7           requirement of actual malice in the prohibition  
8           against making false statements about  
9           candidates and providing for personal liability  
10          with respect thereto; clarifying and providing  
11          penalties; providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15           Section 1. This act may be cited as the "Truth in  
16 Campaigning Act of 1997."

17           Section 2. Section 104.271, Florida Statutes, is  
18 amended to read:

19           104.271 False or malicious charges against, or false  
20 statements about, ~~opposing~~ candidates; penalty.--

21           (1) Any person ~~candidate~~ who, in any ~~a primary~~  
22 ~~election or other~~ election, willfully charges a an ~~opposing~~  
23 candidate participating in such election with a violation of  
24 any provision of this code, which charge is known by the  
25 person ~~candidate~~ making such charge to be false or malicious,  
26 commits ~~is guilty of~~ a felony of the third degree, punishable  
27 as provided in s. 775.082 or s. 775.083, and upon, ~~in~~  
28 ~~addition, after~~ conviction is ~~shall be~~ disqualified to hold  
29 office until restoration of civil rights, as provided by s. 4,  
30 Art. VI of the State Constitution.

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1           (2) Any person candidate who, in any a primary  
2 ~~election or other~~ election, ~~with actual malice~~ makes or causes  
3 to be made any statement about a ~~an opposing~~ candidate which  
4 is false commits is guilty of a violation of this code. An  
5 aggrieved candidate may file a complaint with the Division of  
6 Elections pursuant to s. 106.25. The division shall adopt  
7 rules to provide an expedited hearing before the Florida  
8 Elections Commission of complaints filed under this  
9 subsection. Notwithstanding any other provision of law, the  
10 Florida Elections Commission shall assess a civil penalty of  
11 up to \$5,000 against any person candidate found in violation  
12 of this subsection, which shall be deposited to the account of  
13 the General Revenue Fund of the state. In addition, any  
14 person making or causing to be made any statement about a  
15 candidate which is false shall be personally liable for  
16 damages.

17           Section 3. This act shall take effect January 1, 1998.

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20           HOUSE SUMMARY

21           Expands the prohibition against making false or malicious  
22 charges against, or false statements about, candidates,  
23 to apply it to any person in any election making such a  
24 charge or statement about any candidate participating in  
25 such election. Clarifies that disqualification to hold  
26 office, resulting from conviction for making such a false  
27 or malicious charge, applies until restoration of civil  
28 rights. Eliminates the requirement of actual malice in  
29 the prohibition against making false statements about  
30 candidates, and provides that a person making or causing  
31 to be made such a false statement shall be personally  
liable for damages.