

By: Geren

H.B. No. 2377

Substitute the following for H.B. No. 2377:

By: Kuempel

C.S.H.B. No. 2377

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the use of legislatively produced audio or visual
3 materials; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 306.005, Government Code, is amended to
6 read as follows:

7 Sec. 306.005. USE OF LEGISLATIVELY PRODUCED AUDIO OR VISUAL
8 MATERIALS IN POLITICAL ADVERTISING PROHIBITED. (a) A person may
9 not use audio or visual [~~video~~] materials produced by or under the
10 direction of the legislature or of a house, committee, or agency of
11 the legislature in political advertising.

12 (b) After a formal hearing held as provided by Subchapter E,
13 Chapter 571, the Texas Ethics Commission may impose a civil penalty
14 against a person who violates this section. The amount of the
15 penalty may not exceed \$5,000 for each violation.

16 (c) Subsection (a) does not prohibit describing or quoting
17 the verbal content of the audio or visual [~~video~~] materials in
18 political advertising.

19 (d) Subsection (a) does not apply to a photograph of a
20 current or former member of the legislature obtained from a house,
21 committee, or agency of the legislature that is used in accordance
22 with terms and conditions established by the entity from which the
23 photograph was obtained.

24 (e) In this section:

1 (1) "Political [~~,"political]~~ advertising" has the
2 meaning assigned by Section 251.001, Election Code.

3 (2) "Visual materials" means photographic, video, or
4 other material containing a still or moving recorded image or
5 images.

6 SECTION 2. Chapter 306, Government Code, is amended by
7 adding Section 306.055 to read as follows:

8 Sec. 306.055. LEGISLATIVELY PRODUCED PHOTOGRAPHS. A house,
9 committee, or agency of the legislature may charge for a photograph
10 produced by or under the direction of the entity the fair market
11 value of the photograph.

12 SECTION 3. Section 306.006, Government Code, is amended to
13 read as follows:

14 Sec. 306.006. COMMERCIAL USE OF LEGISLATIVELY PRODUCED
15 AUDIO OR VISUAL MATERIALS. (a) A person may not use audio or visual
16 [~~video~~] materials produced by or under the direction of the
17 legislature or of a house, committee, or agency of the legislature
18 for a commercial purpose unless the legislative entity that
19 produced the audio or visual [~~video~~] materials or under whose
20 direction the audio or visual [~~video~~] materials were produced gives
21 its permission for the person's commercial use and:

22 (1) the person uses the audio or visual [~~video~~]
23 materials only for educational or public affairs programming,
24 including news programming, that does not also constitute a use
25 prohibited under Section 306.005; or

26 (2) the person transmits [~~to paid subscribers~~] an
27 unedited feed of the audio or visual materials:

1 (A) to paid subscribers; or
2 (B) on an Internet website that is accessible to
3 the public.

4 (b) A person who violates Subsection (a) commits an offense.
5 An offense under this subsection is a Class C misdemeanor.

6 (c) The legislative entity that produced the audio or visual
7 ~~[video]~~ materials or under whose direction the audio or visual
8 ~~[video]~~ materials were produced shall give its permission to a
9 person to use the materials for a commercial purpose described by
10 Subsection (a)(1) if the person or the person's representative
11 submits to the legislative entity a signed, written request for the
12 use that:

13 (1) states the purpose for which the audio or visual
14 ~~[video]~~ materials will be used and the stated purpose is allowed
15 under Subsection (a)(1); and

16 (2) contains an agreement by the person that the audio
17 or visual materials will not be used for a commercial purpose other
18 than the stated purpose.

19 (d) Subsection (a)(2) does not apply to visual materials
20 consisting of photographs or other still images. A ~~[The]~~
21 legislative entity is not required to give its permission to any
22 person to use ~~[the]~~ materials for a purpose described by Subsection
23 (a)(2) and may limit the number of persons to whom it gives its
24 permission to use ~~[the]~~ materials for a purpose described by
25 Subsection (a)(2).

26 (e) Subsection (a) and an agreement under Subsection (c)(2)
27 do not prohibit compiling, describing, quoting from, analyzing, or

1 researching the verbal content of the audio or visual materials for
2 a commercial purpose.

3 (f) In addition to the criminal penalty that may be imposed
4 under Subsection (b), the attorney general shall enforce this
5 section at the request of the legislative entity by bringing a civil
6 action to enjoin a violation of Subsection (a) or of an agreement
7 under Subsection (c)(2).

8 (g) In this section:

9 (1) "Commercial [~~,"commercial]~~ purpose" means a
10 purpose that is intended to result in a profit or other tangible
11 benefit.

12 (2) "Visual materials" has the meaning assigned by
13 Section 306.005.

14 SECTION 4. The change in law made by this Act applies only
15 to an offense or other violation of the law amended by this Act
16 committed on or after the effective date of this Act. An offense or
17 other violation of that law committed before the effective date of
18 this Act is governed by the law in effect when the offense or
19 violation was committed, and the former law is continued in effect
20 for that purpose. For purposes of this section, an offense or other
21 violation was committed before the effective date of this Act if any
22 element of the offense or violation was committed before that date.

23 SECTION 5. This Act takes effect September 1, 2013.