



2001 ASSEMBLY BILL 811

February 12, 2002 - Introduced by Representatives POCAN, SHILLING, BLACK, TRAVIS, BOYLE, CARPENTER, LASSA, J. LEHMAN, BERCEAU, BOCK, PLOUFF, MUSSER, MILLER, SHERMAN, KREUSER, LA FAVE, COGGS, SERATTI, MEYERHOFER, TURNER, CULLEN and WASSERMAN, cosponsored by Senators ERPENBACH, BURKE, MOEN, WIRCH and HANSEN. Referred to Committee on Campaigns and Elections.

1 **AN ACT to repeal** 11.30 (2); **to renumber** 11.01 (1); **to amend** 7.40, 8.30 (2), 11.05
2 (2g), 11.30 (3) (b), 11.61 (1) (c) and 13.62 (5g); and **to create** 11.01 (1g), 11.01
3 (17), 11.30 (2m) and 11.59 of the statutes; **relating to:** disclosures required in
4 certain campaign advertisements.

Analysis by the Legislative Reference Bureau

CURRENT LAW

Current law contains several disclosure requirements with regard to advertisements and similar communications relating to campaigns for state or local office. For example, with certain exceptions, current law requires every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, or other communication that is paid for through a campaign contribution, disbursement (expenditure), or obligation to make a campaign contribution or disbursement to include a statement disclosing the source of the communication. Generally, current law requires this statement to include the words "Paid for by," followed by the name of the committee, group, or individual who pays for or reimburses the cost of the communication. If the communication is by a personal campaign committee, this statement may identify that committee or any of its bona fide subcommittees. If the communication is a solicitation on behalf of more than one candidate for a lawful joint fund-raising effort, this statement may indicate that a joint fund-raising effort is being conducted on behalf of the named candidates rather than indicate the names of the candidates or personal campaign committees

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assuming responsibility for the communication. The statement need not be included at all if the communication is made by a person that is not primarily organized for political purposes, unless the communication constitutes an independent expenditure (generally, an expenditure made without cooperation or consultation with a candidate or candidate's personal campaign committee and made for the purpose of expressly advocating the election or defeat of a clearly identified candidate). If the communication is made by a person who has filed an oath indicating an intent to make independent expenditures, the communication must also include the words "Not authorized by any candidate or candidate's agent or committee."

Current law contains several exceptions to these disclosure requirements. The requirements do not apply to the preparation and transmittal of personal correspondence; the production, wearing, or display of a single personal item which is not reproduced or manufactured for distribution to more than one individual; or communications printed on small items on which the disclosure information cannot be conveniently printed. In addition, the requirements do not apply to certain election-related, nonadvertising material included in an organization's newsletter, if the newsletter is distributed only to members of the organization.

Current law also prohibits a person from publishing or disseminating a communication that does not comply with these disclosure requirements. However, this prohibition does not apply to a communications medium that relies in good faith on the reasonable representations of a person who places an advertisement with the medium as to the applicability of these requirements to the person.

Currently, a person who violates these disclosure requirements or the prohibition on publication or dissemination is subject to a forfeiture (civil penalty) of up to \$500 per violation. In addition, depending upon the amount or value of the violation, if the violation is intentional, the person is subject to a fine of up to \$10,000 or imprisonment for up to four years and six months, or both, or a fine of up to \$1,000 or imprisonment of up to six months, or both.

CHANGES TO CURRENT LAW***Generally***

This bill repeals these disclosure requirements and the prohibition on publication or dissemination and creates a new system of disclosure requirements applicable to elections for state or local office. The disclosure requirements under the bill apply to any person who purchases or incurs an obligation for an advertisement. Generally, an "advertisement" under this bill is a communication in a billboard, card, newspaper, newspaper insert, magazine, mailing with more than 500 pieces, pamphlet, flier, or periodical or on television or radio, if the communication constitutes a campaign contribution or disbursement. However, among other things, the bill does not apply to certain communications that do not expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a question at a referendum (commonly referred to as "issue ads"). The bill creates general disclosure requirements and additional disclosure requirements applicable to television or radio advertisements. In addition, the bill prohibits any person from

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misrepresenting in an advertisement the sponsorship or authorization of the advertisement.

The general disclosure requirements under the bill prohibit a person from purchasing or incurring an obligation for an advertisement unless: a) the advertisement includes the statement "Paid for by ... [name of each purchaser]"; b) if the advertisement supports or opposes the nomination or election of one or more clearly identified candidates, the person states in the advertisement its position for or against the candidate or candidates; c) if the advertisement supports or opposes a question presented at a referendum, the person states in the advertisement its position for or against the question; d) if the advertisement is in the print media and supports or opposes the nomination or election of one or more clearly identified candidates, the person states whether or not the advertisement is authorized by a candidate, except that this requirement does not apply if the person purchasing the advertisement is the candidate whom the advertisement supports or that candidate's personal campaign committee; and e) if the advertisement is in the print media and identifies a candidate whom the person is opposing, the person discloses in the advertisement the name of any candidate whom the advertisement is intended to benefit, except that this requirement applies only if the person coordinates or consults with regard to the advertisement, or with regard to the disbursement for the advertisement, with the candidate who is intended to benefit.

The bill establishes certain requirements with regard to the manner in which these general disclosure requirements may be satisfied. In a print media advertisement, the height of all of the disclosure statements must constitute at least 5% of the height of the printed space of the advertisement, except that the type may not be less than 12 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure statements apply only to one page, fold, or face of the advertisement. In a television advertisement, a written disclosure statement must be made with letters equal to or greater than 4% of the vertical picture height. In a radio advertisement, the disclosure statements must last at least a total of three seconds.

Additional disclosure requirements applicable to television and radio

The bill requires a person who purchases or incurs an obligation for a television or radio advertisement that supports or opposes the nomination or election of one or more clearly identified candidates to make certain additional disclosures. If the advertisement is obtained by a candidate or a candidate's personal campaign committee and mentions the name of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate, the advertisement must include a statement spoken by the candidate containing at least the following: "I am (or "This is") [name of candidate], candidate for [name of office], and I (or "my campaign committee") sponsored this advertisement." If the advertisement is obtained by a political party, the advertisement must include a statement spoken by the chairperson, executive director, or treasurer of the political party containing at least the following: "The [name of political party] sponsored this advertisement [opposing or supporting] [name of candidate] for [name of office]." If the advertisement is obtained by a committee other than a political party or legislative

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campaign committee, the advertisement must include a statement spoken by the chief executive officer or treasurer of the committee containing at least the following: "The ... [name of committee], a political action committee, sponsored this advertisement [opposing or supporting] ... [name of candidate] for ... [name of office]." If the advertisement is obtained by an individual, the advertisement must include a statement spoken by the individual containing at least the following: "I am ... [individual's name], and I sponsored this advertisement [opposing or supporting] ... [name of candidate] for ... [name of office]." If the advertisement is obtained by any other person, the advertisement must include a statement spoken by the chief executive or principal decision maker of the person containing at least the following: "...[Name of person] sponsored this advertisement ... [opposing or supporting] ... [name of candidate] for ... [name of office]." If an advertisement requiring one of these additional disclosures is obtained by a person other than a candidate or the candidate's personal campaign committee, the person must characterize the advertisement as either supporting or opposing the nomination or election of one or more clearly identified candidates.

The bill establishes certain requirements with regard to the manner in which the additional televised disclosure requirements may be satisfied. A full-screen picture containing the individual making the required statement must be featured throughout the duration of any statement of a candidate, personal campaign committee, political party, individual, or committee other than a political party or legislative campaign committee. The picture may not contain any printed material other than any visual disclosure statement required by law. In addition, the image of the individual must occupy at least 50% of the vertical picture height and nothing may block the view of the individual's face. If the advertisement is more than five minutes long, the statement must be made at the beginning and at the end of the advertisement.

Remedies and penalties

This bill provides a candidate, or his or her personal campaign committee, with a private right of action against any person who purchases or incurs an obligation for a television or radio advertisement that violates these disclosure requirements, if the advertisement relates to an election for the office that the candidate seeks. The bill establishes filing requirements that a candidate or personal campaign committee must follow in order to bring such an action and requires the action to be brought no later than the 90th day after the election. The bill permits a successful plaintiff to receive damages equal to the total dollar amount of the television and radio advertising time that was aired in violation of these disclosure requirements, except that the damages must be increased to three times that amount in certain circumstances. Under the bill, a candidate and his or her personal campaign committee are jointly and individually liable for the payment of damages and any attorney fees awarded in such an action. However, if a candidate is held personally liable for the payment of damages, attorney fees, or both, the candidate may not use or be reimbursed with funds from his or her personal campaign committee in paying the damages or attorney fees.

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This bill also applies the civil and criminal penalties that apply to violations of the current disclosure requirements to violations of the disclosure requirements established under the bill, except that under the bill the criminal penalties do not apply to violations of the additional disclosure requirements for television and radio advertisements.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 7.40 of the statutes is amended to read:

2 **7.40 Sample ballots.** Any individual, committee or candidate, at their own
3 expense, subject to limitations upon contributions and disbursements under ch. 11,
4 may print a supply of sample ballots, provided they bear on their face the information
5 required by s. 11.30 (2) and they contain all of the names shown on the official ballot.

6 **SECTION 2.** 8.30 (2) of the statutes is amended to read:

7 8.30 (2) If no registration statement has been filed by or on behalf of a candidate
8 for state or local office in accordance with s. 11.05 (2g) or (2r) by the applicable
9 deadline for filing nomination papers by such candidate, or the deadline for filing a
10 declaration of candidacy for an office for which nomination papers are not filed, the
11 name of the candidate may not appear on the ballot. This subsection may not be
12 construed to exempt a candidate from applicable penalties if he or she files a
13 registration statement later than the time prescribed in ss. 11.01 (1) (1r) and 11.05
14 (2g).

15 **SECTION 3.** 11.01 (1) of the statutes is renumbered 11.01 (1r).

16 **SECTION 4.** 11.01 (1g) of the statutes is created to read:

17 11.01 (1g) “Advertisement” means a communication in the print media or on
18 television or radio that constitutes a contribution or disbursement.

19 **SECTION 5.** 11.01 (17) of the statutes is created to read:

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1 11.01 (17) "Print media" means billboards, cards, newspapers, newspaper
2 inserts, magazines, mailings with more than 500 pieces, pamphlets, fliers, or
3 periodicals.

4 **SECTION 6.** 11.05 (2g) of the statutes is amended to read:

5 11.05 (2g) CANDIDATES AND PERSONAL CAMPAIGN COMMITTEES. Every candidate,
6 as defined in s. 11.01 (1) (1r), shall file a registration statement with the appropriate
7 filing officer giving the information required by sub. (3). If a candidate appoints
8 another person as campaign treasurer the candidate's registration statement shall
9 be cosigned by the candidate and the candidate's appointed treasurer. A candidate
10 who receives no contributions and makes no disbursements shall file such statement
11 as provided in s. 11.10 (1) but need not appoint a campaign treasurer or designate
12 a campaign depository account until the first contribution is received or
13 disbursement made.

14 **SECTION 7.** 11.30 (2) of the statutes is repealed.

15 **SECTION 8.** 11.30 (2m) of the statutes is created to read:

16 11.30 (2m) (a) Except as provided in par. (f), no person may purchase or incur
17 an obligation for an advertisement unless all of the following conditions are satisfied:

18 1. The advertisement includes the statement "Paid for by ... [name of each
19 purchaser, as indicated on the purchaser's registration statement under s. 11.05]."

20 2. If the advertisement supports or opposes the nomination or election of one
21 or more clearly identified candidates, the person states in the advertisement its
22 position for or against the candidate or candidates.

23 3. If the advertisement supports or opposes a question proposed at a
24 referendum, the person states in the advertisement its position for or against the
25 question.

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1 4. If the advertisement is in the print media and supports or opposes the
2 nomination or election of one or more clearly identified candidates, the person states
3 whether or not the advertisement is authorized by a candidate. The statement in the
4 advertisement shall indicate as follows: "Authorized by [name of candidate],
5 candidate for [name or office]" or "Not authorized by a candidate," as applicable.
6 This subdivision does not apply if the person purchasing the advertisement is the
7 candidate whom the advertisement supports or that candidate's personal campaign
8 committee.

9 5. If the advertisement is in the print media and identifies a candidate whom
10 the person is opposing, the person discloses in the advertisement the name of any
11 candidate whom the advertisement is intended to benefit. This subdivision applies
12 only if the person coordinates or consults with regard to the advertisement, or with
13 regard to the disbursement for the advertisement, with the candidate who is
14 intended to benefit.

15 (b) 1. In a print media advertisement, the height of all disclosure statements
16 required under par. (a) shall constitute at least 5% of the height of the printed space
17 of the advertisement, except that the type may not be less than 12 points in size. If
18 a single advertisement consists of multiple pages, folds, or faces, the disclosure
19 statements required under par. (a) apply only to one page, fold, or face of the
20 advertisement.

21 2. In a television advertisement, a written disclosure statement used to comply
22 with par. (a) shall be made with letters equal to or greater than 4% of the vertical
23 picture height.

24 3. In a radio advertisement, all disclosure statements, combined, that are
25 required under par. (a) shall last at least 3 seconds.

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1 (c) No person may misrepresent in an advertisement the sponsorship or
2 authorization of the advertisement.

3 (d) In addition to the disclosure statements required under par. (a) and except
4 as provided in par. (f), a person purchasing or incurring an obligation for an
5 advertisement on television or radio that supports or opposes the nomination or
6 election of one or more clearly identified candidates shall satisfy all of the following:

7 1. If the advertisement is purchased by a candidate or a candidate's personal
8 campaign committee, the advertisement shall include a statement spoken by the
9 candidate containing at least the following: "I am (or "This is") [name of
10 candidate], candidate for [name of office], and I (or "my campaign committee")
11 sponsored this advertisement." This subdivision applies only to an advertisement
12 that mentions the name of, shows the picture of, transmits the voice of, or otherwise
13 refers to a candidate for the same office as that sought by the purchasing candidate
14 or by the candidate supported by the purchasing personal campaign committee.

15 2. If the advertisement is purchased by a political party, the advertisement
16 shall include a statement spoken by the chairperson, executive director, or treasurer
17 of the political party containing at least the following: "The [name of political
18 party] sponsored this advertisement [opposing or supporting] [name of candidate]
19 for [name of office]." The name of the political party disclosed under this
20 subdivision shall be the same as the name used by the political party on the ballot
21 at the election.

22 3. If the advertisement is purchased by a committee other than a political party
23 or legislative campaign committee, the advertisement shall include a statement
24 spoken by the chief executive officer or treasurer of the committee containing at least
25 the following: "The [name of committee], a political action committee, sponsored

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1 this advertisement [opposing or supporting] ... [name of candidate] for ... [name of
2 office].” The name of the committee disclosed under this subdivision shall be the
3 same as the name indicated on the committee’s registration statement under s.
4 11.05.

5 4. Except as provided under subd. 1., if the advertisement is purchased by an
6 individual, the advertisement shall include a statement spoken by the individual
7 containing at least the following: “I am ... [individual’s name], and I sponsored this
8 advertisement [opposing or supporting] ... [name of candidate] for ... [name of
9 office].”

10 5. If the advertisement is purchased by a person other than a candidate, a
11 candidate’s personal campaign committee, a political party, a committee other than
12 a political party or legislative campaign committee, or an individual, the
13 advertisement shall include a statement spoken by the chief executive or principal
14 decision maker of the person containing at least the following: “...[Name of person]
15 sponsored this advertisement ... [opposing or supporting] ... [name of candidate] for
16 ... [name of office].”

17 6. If the advertisement is televised, a full-screen picture containing an image
18 of the individual making the statement required under subds. 1. to 5., in
19 photographic form or through the actual appearance of the individual on camera,
20 shall be featured throughout the duration of the statement. The picture may not
21 contain any printed material other than any visual disclosure statement required by
22 law. The image of the individual shall occupy at least 50% of the vertical picture
23 height and nothing may block the view of the individual’s face.

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1 7. If the advertisement is televised and is more than 5 minutes long, any
2 statement required under subds. 1. to 5. shall be made at the beginning and at the
3 end of the advertisement.

4 8. If a statement is required under subds. 2. to 5., the person shall characterize
5 the advertisement as either supporting or opposing the nomination or election of one
6 or more clearly identified candidates.

7 (e) If an advertisement that is subject to par. (d) is jointly purchased or if an
8 obligation for such an advertisement is jointly incurred, the statement required
9 under par. (d) shall name all of the purchasers but need be made by only one
10 individual. If a candidate or a candidate's personal campaign committee is one of the
11 purchasers or persons who incurs the obligation, that candidate shall be the
12 individual making the statement. If multiple candidates are the purchasers or
13 persons who incur the obligation, if a candidate and a personal campaign committee
14 of another candidate are the purchasers or persons who incur the obligation, or if the
15 personal campaign committees of multiple candidates are the purchasers or persons
16 who incur the obligation, at least one of the candidates shall be the individual
17 making the statement.

18 (f) Paragraphs (a) and (d) do not apply to any of the following:

19 1. An individual who makes disbursements with regard to a particular election
20 that total less than \$1,000 and that do not constitute a contribution to any candidate
21 or other individual.

22 2. An individual who purchases or incurs an obligation for an advertisement
23 with regard to a referendum.

24 3. A person who is exempt from reporting the purchase of or obligation incurred
25 for an advertisement under s. 11.06 (2).

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1 **SECTION 9.** 11.30 (3) (b) of the statutes is amended to read:

2 11.30 (3) (b) Any person named in par. (a) is guilty of a violation of this chapter
3 unless, before using the communications medium for political purposes other than
4 as provided for in sub. ~~(2)~~ (2m), there is filed with the board a verified declaration
5 specifically stating the communications medium in which the person has financial
6 interest or over which the person has control and the exact nature and extent of the
7 interest or control.

8 **SECTION 10.** 11.59 of the statutes is created to read:

9 **11.59 Liability for unlawful advertisements.** (1) A candidate who
10 complies with all applicable requirements under s. 11.30 (2m) throughout the
11 candidate's campaign, or the personal campaign committee of such a candidate, may
12 bring an action for damages against any person who violates s. 11.30 (2m) with
13 regard to a television or radio advertisement relating to an election for the office that
14 the candidate seeks. As a condition of bringing an action under this section, a
15 candidate for state office, or the personal campaign committee of such a candidate,
16 shall complete and file with the board a notice of complaint, on a form prescribed by
17 the board, regarding a violation of s. 11.30 (2m). The notice shall be filed after the
18 airing of the advertisement, but no later than the Friday after the date of the election.
19 Any other candidate, or the personal campaign committee of such other candidate,
20 as a condition of bringing an action under this section, shall file the notice of
21 complaint during the same time period with the county clerk or, if applicable, the
22 county board of election commissioners, of any county with territory in the
23 jurisdiction or district that the candidate seeks to represent and shall publish a short
24 form notice of complaint, in the form prescribed by the board, in a newspaper having
25 general circulation in the jurisdiction or district that the candidate seeks to

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1 represent. A candidate or personal campaign committee shall bring an action in
2 circuit court for the county where the notice of complaint is filed no later than the
3 90th day following the date of the election.

4 (2) The court shall award a successful plaintiff in an action under this section
5 damages equal to the total dollar amount of the television and radio advertising time
6 that was aired in violation of s. 11.30 (2m). The court shall award treble damages
7 if the plaintiff notified or reasonably attempted to notify the defendant, by 1st class
8 mail with return receipt requested, that a particular advertisement or that
9 particular advertisements failed to comply with s. 11.30 (2m) and if, after the notice
10 or attempted notice, the advertisement continued to be aired. The court shall
11 calculate the treble damages beginning on the date on which the notice was accepted
12 or rejected by the defendant. Within 5 days after the return receipt for any notice
13 mailed under this subsection is provided to the plaintiff, the plaintiff shall send a
14 copy of the notice to the board or to the county clerk or county board of election
15 commissioners of the county where the plaintiff's notice of complaint was filed.

16 (3) A candidate and his or her personal campaign committee are jointly and
17 severally liable for the payment of damages and any attorney fees awarded in an
18 action under this section. If a candidate is held personally liable for the payment of
19 damages or attorney fees or both, the candidate may not use or be reimbursed with
20 funds from his or her campaign depository account in paying the damages or attorney
21 fees.

22 **SECTION 11.** 11.61 (1) (c) of the statutes is amended to read:

23 11.61 (1) (c) Whoever intentionally violates any provision of this chapter other
24 than those provided listed in par. (a) and other than s. 11.30 (2m) (d) and whoever
25 intentionally violates any provision under par. (b) where the intentional violation

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1 concerns a specific figure which does not exceed \$100 in amount or value may be fined
2 not more than \$1,000 or imprisoned for not more than 6 months or both.

3 **SECTION 12.** 13.62 (5g) of the statutes is amended to read:

4 13.62 **(5g)** "Candidate" has the meaning given under s. 11.01 ~~(1)~~ **(1r)**.

5 **(END)**