



2009 ASSEMBLY BILL 249

April 30, 2009 - Introduced by Representatives YOUNG, GRIGSBY, A. WILLIAMS, RICHARDS, BLACK, ROYS, JORGENSEN, PASCH, MASON, POPE-ROBERTS and TOLES, cosponsored by Senators COGGS, RISSER, TAYLOR and HANSEN. Referred to Committee on Elections and Campaign Reform.

1 **AN ACT** *to renumber* 5.07; *to amend* 5.05 (1) (f), 5.06 (2), 5.25 (4) (b), 12.09 (1)
2 and (3), 12.60 (1) (a), 939.50 (3) (d) and 939.50 (3) (e); and *to create* 5.07 (2),
3 5.34, 5.35 (6) (a) 4c., 7.08 (3) (d) to (g), 7.08 (11), 12.17, 12.19, 12.60 (1) (am),
4 12.60 (1) (an), 12.60 (1) (ap) and 12.60 (1) (bn) of the statutes; **relating to:**
5 deceptive election practices; voter intimidation, suppression, and protection;
6 granting rule-making authority; and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the laws relating to elections and voting.

Deceptive election practices

Currently, the statutes provide that no person may knowingly make or publish, or cause to be made or published, a false representation pertaining to a candidate or referendum that is intended to affect voting at an election. Violators may be fined not more than \$1,000 or imprisoned for not more than six months, or both.

This bill prohibits any person, whether acting in an official capacity or otherwise, from intentionally deceiving any other person regarding the date, time, place, or manner of conducting an election; the qualifications for voting or restrictions on the eligibility of electors to vote in an election; or the endorsement of candidates by specified persons. Any person who violates the prohibition with intent to prevent any person from exercising the right to vote in an election may be fined not more than \$100,000 or imprisoned for not more than five years, or both.

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The bill permits any person who is aggrieved by an alleged violation to obtain a court order restraining the violation. The bill also permits any person to file a sworn complaint with the Government Accountability Board alleging that a violation has occurred or is occurring. If the board finds that the facts alleged in the complaint, if true, would constitute a violation, it must promptly investigate the complaint. If the board finds that a violation has occurred or is occurring, the board must take all measures necessary to provide correct information to electors who may have been deceived by the actions of the alleged violator and must refer the matter to the appropriate authority for prosecution.

The bill also directs the Government Accountability Board to promulgate rules concerning corrective measures that may be appropriate whenever violations occur. In addition, the bill directs the board to report biennially to the appropriate standing committees of the legislature with regard to violations and actions taken in response to violations.

Voter intimidation, suppression, and protection

Currently, no person may make use of or threaten to make use of force, violence, or restraint in order to compel any person to vote or refrain from voting at an election, and no person may, by any act compel, induce, or prevail upon an elector to either vote or refrain from voting at any election for or against a particular candidate or question. Violators may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both.

This bill provides that no person may make use of or threaten to make use of force, violence, restraint, or any tactic of coercion or intimidation in order to induce or compel any person to vote or refrain from voting or to refrain from registering to vote at an election, and no person may use or threaten to use force or violence or by use of any threat of any act of coercion or intimidation compel, induce, or prevail upon an elector either to vote or refrain from voting at any election for or against a candidate or question. Violators may be fined not more than \$100,000 or imprisoned for not more than three years, or both.

The bill also provides that no person may knowingly attempt to prevent or deter another person from voting or registering to vote based upon fraudulent, deceptive, or spurious grounds or information. Violators may be fined not more than \$50,000 or imprisoned for not more than two years, or both.

Currently, municipal clerks and boards of election commissioners are directed by law to post specified materials at each polling place. The Government Accountability Board is directed to publish a manual that may be easily understood by the general public explaining the duties of election officials. Currently, the board is also directed to ensure that in any jurisdiction in this state that is required under federal law to provide voting materials in a language other than English, the voting system used in that jurisdiction is in compliance with federal law. There is no specific penalty for violations, but the requirements are enforceable administratively and through the court system.

This bill creates a voter's bill of rights and directs municipal clerks and boards of election commissioners to post a copy of the bill of rights at each polling place. The bill also directs the Government Accountability Board to include a number of specific

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items in its manual. In addition, the bill requires that at each polling place located in a jurisdiction that is required under federal law to provide voting materials in a language other than English, at least one of the election officials who serves at that polling place must speak that language and all required postings must be made in that language as well as in English. Violators may be fined not more than \$10,000 or imprisoned for not more than one year, or both.

The bill also permits any elector of this state to sue for injunctive relief, a court order requiring or prohibiting certain action, or any other appropriate relief, to compel compliance with the bill's prohibitions and requirements relating to voter intimidation, suppression, and protection. Currently, an elector may be required to pursue administrative relief before filing suit, and in some cases must petition a district attorney or the attorney general to file suit on his or her behalf.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 5.05 (1) (f) of the statutes is amended to read:

2 5.05 (1) (f) Promulgate rules under ch. 227 applicable to all jurisdictions for the
3 purpose of interpreting or implementing the laws regulating the conduct of elections
4 or election campaigns or ensuring their proper administration, and shall promulgate
5 rules to enforce ss. 5.25 (4) (b), 5.34, 5.35 (6) (a) 4c., 12.09, and 12.19 and rules
6 concerning the methods and means of providing corrective information to electors
7 under s. 12.17 (5).

8 **SECTION 2.** 5.06 (2) of the statutes is amended to read:

9 5.06 (2) ~~No~~ Except as authorized in ss. 5.07 (2) and 12.17 (3), no person who
10 is authorized to file a complaint under sub. (1), other than the attorney general or
11 a district attorney, may commence an action or proceeding to test the validity of any
12 decision, action or failure to act on the part of any election official with respect to any

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1 matter specified in sub. (1) without first filing a complaint under sub. (1), nor prior
2 to disposition of the complaint by the board. A complaint is deemed disposed of if the
3 board fails to transmit an acknowledgment of receipt of the complaint within 5
4 business days from the date of its receipt or if the board concludes its investigation
5 without a formal decision.

6 **SECTION 3.** 5.07 of the statutes is renumbered 5.07 (1).

7 **SECTION 4.** 5.07 (2) of the statutes is created to read:

8 5.07 (2) Whenever a violation of s. 5.25 (4) (b), 5.34, 5.35 (6) (a) 4c., 7.08 (3),
9 12.09, or 12.19 occurs or is proposed to occur, any elector of this state may sue for
10 injunctive relief, a writ of mandamus or prohibition, or such other legal or equitable
11 relief as may be appropriate to compel compliance with the law. The action shall be
12 filed in circuit court for the county where the violation occurs or is proposed to occur.
13 In such actions, the court shall award costs and reasonable actual attorney fees to
14 the plaintiff if the plaintiff prevails in the action.

15 **SECTION 5.** 5.25 (4) (b) of the statutes is amended to read:

16 5.25 (4) (b) In any jurisdiction that is subject to the requirement under 42 USC
17 1973aa-1a to provide voting materials in any language other than English, the board
18 shall ensure that at least one of the election officials who serves at each polling place
19 in that jurisdiction speaks that language, the materials specified in s. 5.35 (6) are
20 posted in that language, and the voting system used at each polling place in that
21 jurisdiction is in compliance with 42 USC 1973aa-1a.

22 **SECTION 6.** 5.34 of the statutes is created to read:

23 **5.34 Voter's bill of rights.** Every qualified elector has the right to:

24 (1) Inspect a sample ballot before voting.

25 (2) Cast a ballot if he or she is in line when his or her polling place closes.

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1 **(3)** Ask for and receive assistance in voting, including assistance in a language
2 other than English if the elector resides in a jurisdiction where voting materials must
3 be provided in that language under 42 USC 1073aa-1a.

4 **(4)** Receive a replacement ballot, up to 3 ballots in all, if he or she spoils a ballot
5 before casting that ballot.

6 **(5)** Cast a provisional ballot whenever permitted under s. 6.96 or 6.97.

7 **(6)** Vote free from coercion or intimidation by any election official or other
8 person.

9 **(7)** Cast a ballot using voting materials or equipment that enables the elector's
10 ballot to be counted accurately.

11 **SECTION 7.** 5.35 (6) (a) 4c. of the statutes is created to read:

12 5.35 **(6)** (a) 4c. A copy of the voter's bill of rights under s. 5.34.

13 **SECTION 8.** 7.08 (3) (d) to (g) of the statutes are created to read:

14 7.08 **(3)** (d) Be written in clear, unambiguous language.

15 (e) Be indexed by subject.

16 (f) Contain specific examples of common problems encountered at polling
17 places on election day and detailed, specific procedures for resolving those problems.

18 (g) Include an explanation of all of the following:

19 1. Laws and rules governing solicitation by individuals and groups at a polling
20 place.

21 2. Procedures to be followed with respect to electors whose names do not appear
22 on the registration list.

23 3. Proper operation of any electronic voting system used at a polling place.

24 4. Procedures for handling of ballots.

25 5. Procedures governing spoiled ballots.

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1 6. Procedures to be followed after a polling place closes.

2 7. Rights of electors at the polls.

3 8. Procedures for handling of emergency situations.

4 9. Procedures for handling and processing of provisional ballots.

5 10. Security procedures.

6 **SECTION 9.** 7.08 (11) of the statutes is created to read:

7 7.08 (11) REMEDIES FOR DECEPTIVE ELECTION PRACTICES. Disseminate through
8 the Internet and radio, television, and newspaper advertisements information
9 concerning complaint procedures and remedies for deceptive election practices
10 under s. 12.17.

11 **SECTION 10.** 12.09 (1) and (3) of the statutes are amended to read:

12 12.09 (1) No person may personally or through an agent make use of or
13 threaten to make use of force, violence, ~~or~~ restraint, or any tactic of coercion or
14 intimidation in order to induce or compel any person to vote or refrain from voting
15 or to refrain from registering to vote at an election.

16 (3) No person may personally or through an agent, ~~by any use or threaten to~~
17 use force or violence or by use or threat of any act of coercion or intimidation compel,
18 induce, or prevail upon an elector either to vote or refrain from voting at any election
19 for or against a particular candidate or question at a referendum.

20 **SECTION 11.** 12.17 of the statutes is created to read:

21 **12.17 Deceptive election practices.** (1) In this section, “election-related
22 information” means information concerning any of the following:

23 (a) The date, time, place, or manner of conducting an election.

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1 (b) The qualifications for or restrictions on the eligibility of electors voting at
2 an election, including any criminal penalties associated with voting in an election or
3 a voter's registration status or eligibility.

4 (c) The explicit endorsement by any person of a candidate at an election.

5 (2) No person, whether acting under color of law or otherwise, may
6 intentionally induce another person to refrain from registering or voting at an
7 election by knowingly providing that person with false election-related information.

8 (3) Any person who is aggrieved by an alleged violation of sub. (2) may bring
9 an action for injunctive relief in circuit court for the county where the violation is
10 alleged to occur.

11 (4) Any person may file a verified complaint with the board alleging facts that
12 the person believes to constitute a violation of sub. (2). The complaint shall be filed
13 under s. 5.05 (2m) (c).

14 (5) Notwithstanding s. 5.05 (2m) (c), the board shall review each complaint
15 received under sub. (4) within 24 hours of receipt, and if the board finds that the facts
16 alleged in the complaint, if true, would constitute a violation of sub. (2), the board
17 shall investigate the complaint within 48 hours of receipt. Notwithstanding s. 5.05
18 (2m) (c) 11., if the board finds that a violation of sub. (2) has occurred or is occurring,
19 the board shall take all measures necessary to provide correct information to electors
20 who may have been deceived by the actions of the alleged violator, and shall refer the
21 matter to the appropriate authority for prosecution in accordance with ss. 5.05 (2m)
22 (i) and 12.60 (4).

23 (6) Notwithstanding s. 5.05 (2m) (c), if the board receives a complaint under
24 sub. (4) within 72 hours before an election, and the board finds that the facts alleged
25 in the complaint, if true, would constitute a violation of sub. (2), the board shall

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1 investigate the complaint and take the measures required under sub. (5)
2 immediately.

3 (7) (a) No later than 90 days after each each general election, the board shall
4 report to the chief clerk of each house of the legislature for referral to the appropriate
5 standing committees under s. 13.172 (2) concerning any complaints under sub. (4)
6 that were acted upon or referred by the board under sub. (5) during the period
7 beginning with the date of the 2nd preceding general election and ending with the
8 preceding general election. Except as provided in par. (b), the report shall include
9 a description of the alleged deceptive election practices that were the subject of each
10 complaint, any corrective measures taken by the board with regard to the subject
11 matter of the complaint, the board's evaluation of the effectiveness of those corrective
12 measures, the status of any prosecution relating to the subject matter of the
13 complaint, a compilation of the number and types of allegations made that were
14 acted upon or referred by the board under sub. (5), the locations and segments of the
15 population that were affected by the alleged deceptive election practices, and the
16 status of any investigations conducted by the board under sub. (5).

17 (b) The board may exclude from the report under par. (a) any information that,
18 if disclosed, would interfere with a pending investigation of a violation of the law.

19 (c) The board shall post a copy of each report submitted under this subsection
20 on the Internet.

21 **SECTION 12.** 12.19 of the statutes is created to read:

22 **12.19 Voter suppression.** No person may knowingly attempt to prevent or
23 deter another person from voting or registering to vote based upon fraudulent,
24 deceptive, or spurious grounds or information. A violation of this section includes:

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1 **(1)** Challenging another person's right to register or vote at an election based
2 upon information the person knows is false.

3 **(2)** Attempting to induce another person to refrain from registering or voting
4 by providing that person with information the person knows is false.

5 **SECTION 13.** 12.60 (1) (a) of the statutes is amended to read:

6 12.60 **(1)** (a) Whoever violates s. ~~12.09~~, 12.11 or 12.13 (1), (2) (b) 1. to 7. or (3)
7 (a), (e), (f), (j), (k), (L), (m), (y) or (z) is guilty of a Class I felony.

8 **SECTION 14.** 12.60 (1) (am) of the statutes is created to read:

9 12.60 **(1)** (am) Whoever violates s. 12.17 (2) with the intent to prevent any
10 person from exercising the right to vote in an election is guilty of a Class D felony.

11 **SECTION 15.** 12.60 (1) (an) of the statutes is created to read:

12 12.60 **(1)** (an) Whoever violates s. 12.09 is guilty of a Class D felony.

13 **SECTION 16.** 12.60 (1) (ap) of the statutes is created to read:

14 12.60 **(1)** (ap) Whoever violates s. 12.19 is guilty of a Class E felony.

15 **SECTION 17.** 12.60 (1) (bn) of the statutes is created to read:

16 12.60 **(1)** (bn) If a municipal clerk or executive director of a board of election
17 commissioners fails to ensure compliance with s. 5.25 (4) (b) or to post the materials
18 specified in s. 5.35 (6) (a) at each polling place located in the municipality served by
19 the clerk or executive director at any election, or the executive director of the
20 government accountability board fails to include any of the materials specified in s.
21 7.08 (3) in the election manual, the violator may be fined not more than \$10,000 or
22 imprisoned for not more than one year, or both.

23 **SECTION 18.** 939.50 (3) (d) of the statutes is amended to read:

24 939.50 **(3)** (d) For a Class D felony, a fine not to exceed \$100,000 or
25 imprisonment not to exceed 25 years, or both, except that for a violation of s. 12.09,

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1 the term of imprisonment may not exceed 3 years and for a violation of s. 12.17, the
2 term of imprisonment may not exceed 5 years.

3 **SECTION 19.** 939.50 (3) (e) of the statutes is amended to read:

4 939.50 (3) (e) For a Class E felony, a fine not to exceed \$50,000 or imprisonment
5 not to exceed 15 years, or both, except that for a violation of s. 12.19, the term of
6 imprisonment may not exceed 2 years.

7 **SECTION 20. Nonstatutory provisions.**

8 (1) STUDY OF OPTIONS FOR CORRECTIVE ACTION. The government accountability
9 board, in consultation with the department of justice and the federal election
10 assistance commission, shall study the feasibility of providing corrective information
11 that may be required under section 12.17 (5) of the statutes, as created by this act,
12 through public service announcements, other uses of broadcast media, or an
13 emergency alert system. No later than the first day of the 7th month beginning after
14 the effective date of this subsection, the board shall report its findings and
15 recommendations to the chief clerk of each house of the legislature, in the manner
16 provided under section 13.172 (2) of the statutes, for referral to the appropriate
17 standing committees of each house.

18 **SECTION 21. Effective dates.** This act takes effect on the day after publication,
19 except as follows:

20 (1) The treatment of section 7.08 (3) (d) to (g) of the statutes takes effect on
21 January 1, 2011.

22 (END)