



2013 ASSEMBLY BILL 394

September 27, 2013 - Introduced by Representatives BERNIER, SANFELIPPO and KLEEFISCH, cosponsored by Senators LAZICH, VUKMIR, GROTHMAN and DARLING. Referred to Committee on Campaigns and Elections.

1 **AN ACT** *to renumber and amend* 5.85 (2) (b); *to amend* 5.85 (2) (a), 5.85 (3) and
2 7.08 (1) (a); and *to create* 5.85 (2) (b) 1. of the statutes; **relating to:** labeling
3 of duplicate ballots.

Analysis by the Legislative Reference Bureau

Current law permits an election official to create a duplicate of an elector's ballot when one of two circumstances occur: 1) the elector's original ballot is damaged or defective such that the ballot cannot be properly counted by automatic tabulating equipment; or 2) the elector has overvoted for an office by writing in votes for more candidates than the number of votes authorized to be cast. In the first circumstance, the election official duplicates the elector's ballot in its entirety. In the second circumstance, the election official duplicates the elector's original ballot but does not complete that portion of the ballot for the office for which the elector overvoted. Current law requires the election official to retain and write "Damaged Ballot" or "Overvoted Ballot" on the elector's original ballot. Current law also requires the election official to write "Duplicate Damaged Ballot" or "Duplicate Overvoted Ballot" on the duplicate ballot.

This bill requires the election officials to identify and number these ballots and duplicate ballots in that portion of the ballot for official endorsement. The bill requires the Government Accountability Board to include on each official ballot form,

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in the space for official endorsement, markings or spaces for identifying these ballots and for writing an identifying serial number.

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

1 **SECTION 1.** 5.85 (2) (a) of the statutes is amended to read:

2 5.85 (2) (a) The election officials shall examine the ballots or record of votes cast
3 for write-in votes and shall count and tabulate the write-in votes. The election
4 officials shall count write-in votes as provided in s. 7.50 (2) (d). When an electronic
5 voting system is used in which ballots are distributed to electors, before separating
6 the remaining ballots from their respective covering envelopes, the election officials
7 shall examine the ballots for write-in votes. When an elector has cast a write-in
8 vote, the election officials shall compare the write-in vote with the votes on the ballot
9 to determine whether the write-in vote results in an overvote for any office. In case
10 of an overvote for any office, the election officials shall ~~make a true duplicate ballot~~
11 ~~of all votes on the ballot except for the office that is overvoted, by using an official~~
12 ~~ballot of that kind used by the elector who voted the original ballot, and one of the~~
13 ~~marking devices so as to transfer all votes of the elector except for the office~~
14 ~~overvoted, to an official ballot of that kind used in the ward at that election. Unless~~
15 ~~election officials are selected under s. 7.30 (4) (e) without regard to party affiliation,~~
16 ~~the election officials shall consist in each case of at least one election official of each~~
17 ~~of the 2 major political parties, whenever officials of both parties are present~~ follow
18 the procedure in par. (b).

19 **SECTION 2.** 5.85 (2) (b) of the statutes is renumbered 5.85 (2) (b) 2. and amended
20 to read:

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1 5.85 (2) (b) 2. ~~Write-in votes shall be counted as provided in s. 7.50 (2) (d). The~~
2 On any original ballot upon which there is an overvote, the election officials shall be
3 clearly labeled, in the space on the ballot for official endorsement, identify the ballot
4 as an “Overvoted Ballot” and write a serial number. On the duplicate ballot produced
5 under par. (a) shall be clearly labeled subd. 1., the election officials shall, in the space
6 on the ballot for official endorsement, identify the ballot as a “Duplicate Overvoted
7 Ballot.” and write a serial number. The election officials shall place the same serial
8 number on each “Overvoted Ballot” and its corresponding “Duplicate Overvoted
9 Ballot,” commencing with number “1” and continuing consecutively for each of the
10 ballots for which a “Duplicate Overvoted Ballot” is produced in that ward or election
11 district. The election officials shall initial the “Duplicate Overvoted Ballot” ballots
12 and shall place them in the container for return of the ballots. The “Overvoted Ballot”
13 ballots and their envelopes shall be placed in the “Original Ballots” envelope.

14 **SECTION 3.** 5.85 (2) (b) 1. of the statutes is created to read:

15 5.85 (2) (b) 1. In case of an overvote for any office, the election officials shall
16 make a true duplicate ballot of all votes on the ballot except for the office that is
17 overvoted in the manner described in this subdivision. The election officials shall use
18 an official ballot of that kind used by the elector who voted the original ballot, and
19 one of the marking devices, so as to transfer all votes of the elector except for the office
20 overvoted to an official ballot of that kind used in the ward at that election. Unless
21 election officials are selected under s. 7.30 (4) (c) without regard to party affiliation,
22 whenever election officials of both of the 2 major political parties are present, the
23 election officials acting under this subdivision shall consist in each case of at least
24 one election official of each of the parties.

25 **SECTION 4.** 5.85 (3) of the statutes is amended to read:

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1 5.85 (3) The election officials shall examine the ballots to determine if any is
2 damaged or defective so that it cannot be counted by the automatic tabulating
3 equipment. If any ballot is damaged or defective so that it cannot be properly counted
4 by the automatic tabulating equipment, the election officials, in the presence of
5 witnesses, shall make a true duplicate ballot of all votes on that ballot by using one
6 of the marking devices so as to transfer all votes of the elector to an official ballot of
7 that kind used by the elector who voted the original ballot in that election. Unless
8 election officials are selected under s. 7.30 (4) (c) without regard to party affiliation,
9 whenever election officials of both of the 2 major political parties are present, the
10 election officials acting under this subsection shall consist in each case of at least one
11 election official of each of the 2 major political parties, whenever officials of both
12 parties are present. The. On any damaged or defective original ballot, the election
13 officials shall be clearly labeled, in the space on the ballot for official endorsement,
14 identify the ballot as a “Damaged Ballot” and write a serial number. On the duplicate
15 ballot so produced under this subsection, the election officials shall, in the space for
16 official endorsement, identify the ballot as a “Duplicate Damaged Ballot”, and each
17 shall bear the write a serial number. The election officials shall place the same serial
18 number which shall be placed thereon by the election officials, on each “Damaged
19 Ballot” and its corresponding “Duplicate Damaged Ballot,” commencing with
20 number “1” and continuing consecutively for the ballots of that kind each of the
21 ballots for which a “Duplicate Damaged Ballot” is produced in the ward or election
22 district. The election officials shall initial the “Duplicate Damaged Ballot” ballots,
23 and shall place them in the container for return of the ballots. The officials shall
24 place “Damaged Ballot” ballots and their envelopes in the “Original Ballots”
25 envelope.

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1 **SECTION 5.** 7.08 (1) (a) of the statutes is amended to read:

2 7.08 (1) (a) Prescribe all official ballot forms necessary under chs. 5 to 12 and
3 revise the official ballot forms to harmonize with legislation and the current official
4 status of the political parties whenever necessary. The board shall include on each
5 ballot form, in the space for official endorsement, markings or spaces for identifying
6 a ballot as an overvoted ballot, a duplicate overvoted ballot, a damaged ballot, or a
7 duplicate damaged ballot, and for writing an identifying serial number. The board
8 shall provide one copy of each ballot form without charge to each county and
9 municipal clerk and board of election commissioners. The board shall distribute or
10 arrange for distribution of additional copies. The prescribed forms shall be
11 substantially followed in all elections under chs. 5 to 12.

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(END)