

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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January 26, 1999

Senator Baumgart:

This bill is identical to 1997 Assembly Bill 383.

“Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press.” Article I, section 3, of the Wisconsin Constitution.

I have not evaluated this draft against the free speech case law under the U.S. or Wisconsin constitutions. This draft limits advertising of lawful commercial activity, which courts have held is protected free speech. I do not know whether a court will find that this restriction is a permissible, “time, place and manner” regulation or an unconstitutional abridgement of free speech. Also, I do not know how a court would address an argument that this draft is permissible under the 21st Amendment to the U.S. Constitution, which courts have held grants states extra latitude in regulating the intoxicating liquor industry.

The only content-based restriction on lawful commercial activity of which I am aware is a limit on promotional lottery advertising under s. 565.32 (1), stats. These restrictions are authorized by article IV, section 24 (6) (a), of the Wisconsin Constitution.

This draft provides no express penalties applicable to a person or place of business that violates the prohibitions created by this draft. In the absence of an expressed penalty, a person who violates any statute may be required to forfeit \$200. Is this all right?

Paul E. Nilsen
Legislative Attorney
261-6926