

1999 SENATE BILL 93

March 23, 1999 – Introduced by Senators PLACHE, CLAUSING, WIRCH, BAUMGART and MOEN, cosponsored by Representatives TRAVIS, MILLER, BOCK, J. LEHMAN, POCAN and WASSERMAN. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT** *to repeal* 11.01 (3); *to renumber* 11.002; *to amend* 11.01 (16) (a) 1., 11.06
2 (2), 11.06 (7) (a), 11.12 (6), 11.16 (1) (a) and (b) and 11.30 (2) (d); and *to create*
3 11.002 (2) and 11.60 (3n), (3p) and (3r) of the statutes; **relating to:** disclosure
4 of certain activity for the purpose of influencing elections and providing
5 penalties.

Analysis by the Legislative Reference Bureau

Currently, if any individual or organization makes expenditures, in cash or in-kind, to make a communication or to engage in some other activity for the purpose of influencing an election for state or local office, that individual or organization is potentially subject to registration and reporting requirements. If the individual is not a candidate or the organization is not a political party, political action committee or some other entity that is organized exclusively for the purpose of influencing elections, the individual is not required to register or report unless the individual or organization makes a contribution or makes expenditures, in cash or in kind, to expressly advocate the election or defeat of a candidate whose name, photograph or drawing is used or who is unambiguously referred to in the activity. If the individual or organization makes expenditures, in cash or in kind, to advocate the election or defeat of such a candidate independently of the candidate who is supported or whose opponent is opposed, the individual or organization must file an oath affirming the independence of the individual or organization before making expenditures to advocate the election or defeat of such a candidate. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for failing to register or to file reports.

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This bill changes the standard for reporting of expenditures to influence an election for state or local office, and the applicability of registration requirements resulting from those expenditures, so that registration and reporting is required if an individual or organization makes expenditures the primary purpose of which is to cause the election, defeat, recall or retention of a candidate. In determining the primary purpose of a communication, the bill provides that the proximity of the communication to an election and the audience to whom the communication is addressed shall be considered. Under the bill, violators of the registration and reporting requirements who or which make expenditures to support the election, defeat, recall or retention of a candidate independently of any candidate who is supported or whose opponent is opposed are subject to a forfeiture of treble the amount of any unreported expenditures or obligations to make expenditures, or treble the difference between the amount of any expenditure or obligation to make an expenditure that is reported and the amount of the expenditure actually made or the obligation to make an expenditure actually incurred.

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

1 **SECTION 1.** 11.002 of the statutes is renumbered 11.002 (1).

2 **SECTION 2.** 11.002 (2) of the statutes is created to read:

3 11.002 **(2)** In determining the primary purpose of a communication, the
4 proximity of the communication to an election and the audience to whom the
5 communication is addressed shall be considered.

6 **SECTION 3.** 11.01 (3) of the statutes is repealed.

7 **SECTION 4.** 11.01 (16) (a) 1. of the statutes is amended to read:

8 11.01 **(16)** (a) 1. The making of a communication the primary purpose of which
9 expressly advocates the is to cause the election, defeat, recall or retention of a clearly
10 identified candidate or a particular vote at a referendum.

11 **SECTION 5.** 11.06 (2) of the statutes is amended to read:

12 11.06 **(2)** DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
13 sub. (1), if a disbursement is made or obligation incurred by an individual other than
14 a candidate or by a committee or group which is not primarily organized for political

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1 purposes, and the disbursement does not constitute a contribution to any candidate
2 or other individual, committee or group, the disbursement or obligation is required
3 to be reported only if the primary purpose is to ~~expressly advocate~~ cause the election
4 ~~or, defeat, recall or retention~~ of a ~~clearly identified~~ candidate or the adoption or
5 rejection of a referendum. The exemption provided by this subsection shall in no case
6 be construed to apply to a political party, legislative campaign, personal campaign
7 or support committee.

8 **SECTION 6.** 11.06 (7) (a) of the statutes is amended to read:

9 11.06 (7) (a) Every committee, other than a personal campaign committee,
10 which and every individual, other than a candidate, who desires to make
11 disbursements during any calendar year, the primary purpose of which are to be used
12 is to advocate cause the election ~~or, defeat, recall or retention~~ of any ~~clearly identified~~
13 candidate or candidates in any election shall before making any disbursement,
14 except within the amount authorized under s. 11.05 (1) or (2), file with the
15 registration statement under s. 11.05 a statement under oath affirming that the
16 committee or individual does not act in cooperation or consultation with any
17 candidate or agent or authorized committee of a candidate who is supported, that the
18 committee or individual does not act in concert with, or at the request or suggestion
19 of, any candidate or any agent or authorized committee of a candidate who is
20 supported, that the committee or individual does not act in cooperation or
21 consultation with any candidate or agent or authorized committee of a candidate who
22 benefits from a disbursement made in opposition to a candidate, and that the
23 committee or individual does not act in concert with, or at the request or suggestion
24 of, any candidate or agent or authorized committee of a candidate who benefits from
25 a disbursement made in opposition to a candidate. A committee which or individual

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1 who acts independently of one or more candidates or agents or authorized
2 committees of candidates and also in cooperation or upon consultation with, in
3 concert with, or at the request or suggestion of one or more candidates or agents or
4 authorized committees of candidates shall indicate in the oath the names of the
5 candidate or candidates to which it applies.

6 **SECTION 7.** 11.12 (6) of the statutes is amended to read:

7 11.12 **(6)** If any disbursement of more than \$20 cumulatively is made to
8 ~~advocate the election or defeat of a clearly identified candidate~~ by an individual or
9 committee later than 15 days prior to a primary or election in which ~~the~~ a candidate's
10 name appears on the ballot, and the primary purpose of the disbursement is to cause
11 the election, defeat, recall or retention of that candidate, and the disbursement is
12 made without cooperation or consultation with a candidate or agent or authorized
13 committee of a candidate who is supported or opposed, and not in concert with or at
14 the request or suggestion of such a candidate, agent or committee, the individual or
15 treasurer of the committee shall, within 24 hours of making the disbursement,
16 inform the appropriate filing officer of the information required under s. 11.06 (1) in
17 such manner as the board may prescribe. The information shall also be included in
18 the next regular report of the individual or committee under s. 11.20. For purposes
19 of this subsection, disbursements cumulate beginning with the day after the last
20 date covered on the preprimary or preelection report and ending with the day before
21 the primary or election. Upon receipt of a report under this subsection, the filing
22 officer shall, within 24 hours of receipt, mail a copy of the report to all candidates for
23 any office in support of or opposition to one of whom a disbursement identified in the
24 report is made.

25 **SECTION 8.** 11.16 (1) (a) and (b) of the statutes are amended to read:

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1 11.16 (1) (a) No disbursement may be made or obligation incurred by a
2 candidate, ~~or by any other person or committee to advocate, other than by an~~
3 individual who or a committee that has filed an oath under s. 11.06 (7), the primary
4 purpose of which is to cause the election or, defeat, recall or retention of a clearly
5 identified candidate, ~~other than an individual who, or a committee which, has~~
6 registered under s. 11.05 and filed an oath under s. 11.06 (7), except by the campaign
7 treasurer of the candidate or other agent designated by the candidate and acting
8 under his or her authority.

9 (b) The treasurer of each committee and each individual who proposes to make
10 a disbursement the primary purpose of which is to advocate ~~cause~~ the election or,
11 defeat, recall or retention of a clearly identified candidate shall notify the treasurer
12 or other agent designated under par. (a) of the candidate who is supported or whose
13 opponent is opposed and obtain the authorization of the treasurer prior to making
14 the disbursement. This paragraph does not apply to an individual or committee
15 filing an oath under s. 11.06 (7) with respect to the candidate who is supported or
16 opposed.

17 **SECTION 9.** 11.30 (2) (d) of the statutes is amended to read:

18 11.30 (2) (d) In addition to the requirements of pars. (a) to (c), a committee that
19 or individual who is required to file an oath under s. 11.06 (7) shall also in every
20 communication ~~in support of or in opposition to any clearly identified~~ the primary
21 purpose of which is to cause the election, defeat, recall or retention of a candidate or
22 candidates include the words “Not authorized by any candidate or candidate’s agent
23 or committee”.

24 **SECTION 10.** 11.60 (3n), (3p) and (3r) of the statutes are created to read:

