

**2001 DRAFTING REQUEST**

**Bill**

Received: 03/22/2001

Received By: kuesejt

Wantcd: As time permits

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: him

This file may be shown to any legislator: NO

Drafter: kuesejt

May Contact:

Addl. Drafters:

Subject: Ethics

Extra Copies: RJM - 1  
Roth Judd - Ethics Bd - 1

Submit via email: YES

Requester's email: Rep.Gundrum@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Official action in return for contributions or services

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**Instructions:**

See attached correspondcncc file.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 05/01/2001	gilfokm 05/02/2001		_____			
/1			martykr	_____	lrb_docadmin		

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				_____	lrb_docadmin		
				_____	05/02/2001		
/2	kuesejt 05/14/2001	gilfokm 05/14/2001	martykr 05/15/2001	_____	lrb_docadmin 05/15/2001		
/3	kucscjt 11/19/2001	hhagen 11/19/2001	pgreensl 11/19/2001	_____	lrb_docadmin 11/19/2001	lrb_docadmin 12/04/2001	

FE Sent For: *none needed*

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/1		13hmk 11/19/01	martykr 05/02/2001	11/19 PJR	lrb_docadmin 05/02/2001 lrb_docadmin		
			11/19 P8				

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/1		<i>1/2-5/KMG</i> <i>1/14-01</i>	martykr 05/02/2001 <i>Xm 5/14</i>		lrb_docadmin 05/02/2001 <i>JS</i> <i>Xm 5/15</i>		

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1/1	kuesejt 5/1	1-5/Kmg 1-2-01	dm 5/2	2/5 dm 2			

FE Sent For:

<END>

19.53

**19.53 (intro.) Findings of fact and conclusions; orders and recommendations.** If the board determines that no violation of this subchapter or subch. III of ch. 13 has occurred, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the board determines that a violation of this subchapter or subch. III of ch. 13 has occurred, its findings of fact and conclusions may contain one or more of the following orders or recommendations:

19.53(6)

(6) An order requiring the accused to forfeit not more than \$500 for each violation of s. 19.43, 19.44 or 19.56 (2) or not more than \$5,000 for each violation of any other provision of this subchapter, or not more than the applicable amount specified in s. 13.69 for each violation of subch. III of ch. 13; and, if the board determines that the accused has realized economic gain as a result of the violation, an order requiring the accused to forfeit the amount gained as a result of the violation. The attorney general, when so requested by the board, shall institute proceedings to recover any forfeiture incurred under this section or s. 19.545 which is not paid by the person against whom it is assessed.

19.58

**19.58 Criminal penalties.**

19.58(1)

(1) Any person who intentionally violates this subchapter or a code of ethics adopted or established under s. 19.45 (11) (a) or (b) shall be fined not less than \$100 nor more than \$5,000 or imprisoned not more than one year in the county jail or both.

19.58(2)

(2) The penalty under sub. (1) does not limit the power of either house of the legislature to discipline its own members or to impeach a public official, or limit the power of a department to discipline its state public officials or employees.

19.58(3)

(3) In this section "intentionally" has the meaning given under s. 939.23.

**SENATE AMENDMENT 5,  
TO SENATE SUBSTITUTE AMENDMENT 2,  
TO 1999 SENATE BILL 190**

March 14, 2000 – Offered by Senators ELLIS, PANZER, RUDE and FARROW.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 2, line 9: after “financing,” insert “standards of conduct for state public  
3 officials,”.

4 **2.** Page 37, line 16: after that line insert:

5 “SECTION 105m. 19.45 (13) of the statutes is created to read:

6 19.45 (13) No member of the legislature may give, offer, or promise to give his  
7 or her vote or influence in favor of or against any measure or proposition pending or  
8 proposed to be introduced in the legislature in consideration or upon condition that  
9 any other person make a contribution or provide any service or other thing of value  
10 to or for the benefit of a candidate, political party or registrant under s. 11.05.”.

11

(END)

## Kuesel, Jeffery

---

**From:** Gundrum, Mark  
**Sent:** Monday, February 26, 2001 2:19 PM  
**To:** Kuesel, Jeffery  
**Cc:** Churchill, Jolene  
**Subject:** Campaign contributions proposal

Jeff,

I reviewed the proposal you faxed to me. Here are a couple questions:

- 1) Could a private citizen or private group file an action (I assume lawsuit) against an individual who has violated this law. I think a private citizen SHOULD be permitted to do so, or this could be a very one-sided statute if only a Democrat D.A. in Dane County decided these things or perhaps a Democrat Attorney General. A private citizen or group should have a cause of action under this. Along this vein, we may want it explicitly stated that a person may claim a frivolous action to help prevent claims being filed for wrongful purposes, like trying to get a headline in the paper a week before the election saying "Chvala Alleged to Have Sold Votes" or something like that. I know a judge could already find a frivolous claim on his own, but this is so rarely done, it would probably not be a deterrent against frivolous claims unless it was strengthened somehow. Otherwise, we may actually want to prohibit such lawsuits from being filed after the time-period for filing nomination papers and before the date of the general election when a candidate is on the ballot. If a claim is to be filed for a violation of this, it should be done because the act was wrong and should not be specifically used to try to manipulate the system for political gain.
- 2) Is the penalty in a civil case \$5000 **per violation**? It should be that **as well as** the amount of the contribution or service which was wrongfully procured.
- 3) Does this apply to STAFF of a legislator, holding (I hope) the LEGISLATOR responsible if a staffer does this stuff. It would be VERY easy otherwise for a staffer to simply be the HEAVY and demand contributions for the legislators actions on a particular matter. If this is not clear enough as written (and I am not sure it is), it should be made clearer.
- 4) What about the Executive Branch, the Governor, his Staff, Department Heads, etc., as well as other Executive offices, Dept. of Public Instruction, Attorney General, etc.? We should perhaps include the Judiciary as well if there are no clear, major separate of powers problems there. It would certainly seem that all of these entities should face the same ethical standard. They should probably be included as well.
- 5) The term "registrant under s. 11.05" -- does that, along with "candidate, political party" cover EVERY entity we need to cover to make this work?

Please feel free to e-mail me your responses or give me a call as soon as you get a chance.

## Kuesel, Jeffery

---

**From:** Gundrum, Mark  
**Sent:** Wednesday, February 28, 2001 1:30 PM  
**To:** Kuesel, Jeffery  
**Subject:** RE: Official action in return for political contributions or services

1. I agree with your suggestion of requiring petitioning of the Board first and then, if they refuse to act, allowing a private action. Please draft that. Did you have any thoughts on the time restriction (eg. not allowing such suits to be filed, eg., 120 days or so before the election where the "defendant" would most likely be on the ballot? or do you feel simply requiring initial petitioning with the Ethics Board should be sufficient? Somehow, we need to make it clear that we want fees and costs imposed against a "plaintiff" who tries to bring such an action just for political purposes.
2. Yes, please add to the \$5,000. The amount or value of the contribution or service that was wrongfully procured. In addition, is it clear it is \$5,000 PER VIOLATION. If so, we are fine; if not, could you please clarify that.
3. I agree with the idea of "agency". I assume a staffer or any obviously-designated person, even if not the staffer of the person who is "selling the vote" could fall under agency, if you can prove it. Could another person, who is not actually employed by the legislator/executive, be found to be an agent, if it could be proven that they were nothing more than a conduit for this activity, regardless of whether there was an employer/employee relationship?

-----Original Message-----

**From:** Kuesel, Jeffery  
**Sent:** Wednesday, February 28, 2001 9:46 AM  
**To:** Rep.Gundrum  
**Subject:** Official action in return for political contributions or services

Rep. Gundrum:

In answer to the questions you raised regarding 1999 LRBa1821/1:

1. If this language is inserted into s. 19.45, stats., as proposed by the senators, there is no procedure for direct citizen enforcement. Enforcement is by the ethics board or in the case of a criminal violation, by the district attorney or in an unusual situation, by the attorney general or special counsel. I think you are correct that s. 814.025, stats., relating to costs in frivolous actions, would apply to any private action, but there is no harm in cross referencing that statute if you would like to do so. There are sometimes competing considerations in determining whether to permit citizen enforcement. State or local authorities may be reluctant to proceed for political or other reasons. However, citizens may sometimes proceed without sufficient legal basis and the mere fact that a lawsuit is filed before an election can sometimes be politically useful even if it is thrown out of court after the election is held. If you permit citizen suits, you may want to consider first requiring the citizen to petition the board (or in the case of a criminal violation, the district attorney) to prosecute the violation, and if the board or district attorney fails or refuses to act, then permitting the citizen to proceed.

2. The civil penalty is a maximum of \$5,000 per violation. We could add to that the amount or value of the contribution or service that was wrongfully procured.

3. We could include a reference to an agent, and that might act as somewhat of a deterrent to evasion of the law through an intermediary, but it might still be necessary to prove that there was an agency relationship and that the agent acted within the scope of that relationship in order to hold the principal liable for a violation. In *Elections Board v. Ward*, 105 Wis.2d 543 (1982), the Supreme Court held that members of a political committee cannot be held liable for a civil violation unless it is shown that they participated in the violation. At least for criminal purposes, I think, the law is fairly well settled as to when a principal can be held criminally liable for the acts of an agent, and I don't think we can push much beyond what is permitted currently.

4. You could extend the prohibition to apply to any elective state official. However, as presently worded, the prohibition speaks to proposed legislation so we would need to broaden it if we extended the application beyond the members of the legislature and the governor and their agents. It would be a little more difficult to apply the prohibition to appointive state officials generally since they would not ordinarily be soliciting contributions unless they became candidates for elective state office. I don't think you would necessarily have a problem covering justices and judges, because justices and judges are generally subject to the same prohibitions that apply to others. However, of course, the justices and judges may be disciplined or removed for improper conduct through other means. In this connection, you might want to look at the Code of Judicial Conduct, SCR 60.06 (3), which is printed as an appendix to the statutes.

5. I think the term "registrant" should cover all political committees. You might, however, want to say "any person subject to a registration requirement" in order to include a person who was required to register but failed to do so.

*Jeffery Kuesel  
Managing Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison WI 53701-2037  
(608)266-6778  
jeffery.kuesel@legis.state.wi.us*



## Kuesel, Jeffery

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**From:** Gundrum, Mark  
**Sent:** Wednesday, February 28, 2001 1:34 PM  
**To:** Kuesel, Jeffery  
**Subject:** RE: Official action in return for political contributions or services

sorry about that, here's the rest.

4. Let's have it extend to any elected official, including judges/justices. We don't need it to explicitly extend to appointed officials if our theory of "agency" is correct. If the person is a clear conduit for this sort of thing, leading to the elected official ultimately, this would cover them I think. We do, however, definitely want it to be clear that the "conduit" or "agent" can also be held liable, civilly or criminally, if they are clearly doing this sort of thing -- along party to crime or conspiracy theories I would guess.

5. yes, let's use your suggested term of "any person subject to a registration requirement" if you think that's clearer, which it probably is.

Thanks

Mark

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5. I think the term "registrant" should cover all political committees. You might, however, want to say "any person subject to a registration requirement" in order to include a person who was required to register but failed to do so.

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## Kuesel, Jeffery

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**From:** Gundrum, Mark  
**Sent:** Sunday, March 11, 2001 11:15 PM  
**To:** Kuesel, Jeffery  
**Cc:** Judd, Roth  
**Subject:** RE: Official action in return for political contributions or services

1. All sounds good, except it would be good to have a time period, like 120 days prior to the election when claims could not be filed in circuit court. I agree with a 30 day restriction for the board to either dismiss a complaint or decide to proceed with an investigation. I don't think we should allow complaints even to be filed with the Board during the 120 days prior to the election, because it will likely be abused/used for political reasons. For all practical purposes, there really is no legislative activity of consequence going on closer than 150 days to an election (for state legislative races, that is). Therefore, if someone can't get their act together to file with the board by 121 days prior to the election, they can just wait until after the November election. If they file 121 days before, the board can proceed with an investigation as it deems appropriate or, if it feels dismissal is appropriate, the Board must dismiss within 30 days after the filing. That puts us at 90 days prior to the election. There is no reason why a citizen suit can't wait until after the election, especially since it would likely have less merit to begin with if it was dismissed by the board. If it does have merit, the board will likely pursue, regardless of when the election is.

We should reference 814.025.

2. Sounds good; but we should also include the value of the "quid pro quo". It should be clear that this is a PERSONAL FINE and may NOT be paid for with campaign funds or by some other entity/group, etc. Maybe this was answered previously, but is there any potential for criminal penalty and jail/prison time. Should there be?

3. In which case, it may even amount to a conspiracy to violate this statute or perhaps the person would be considered a party to the crime. Ok, we are probably Ok on this point.

4. All elective state officials and their agents is good. I assume that includes county elected judges? Does it also include other folks like DAs, Sheriffs, etc., as well as local officials? I would think it would be something we'd want to consider to include local folks as well. Is it any better if County Exec. Tom Ament or Milwaukee Mayor John Norquist or any other elected officials (or their agents) "sell" their votes/influence, etc.

5. That sounds good.

I am fully assuming we already have a law on the books that CLEARLY covers the situation where a person is in essence trading their votes/influence for items of *personal* gain, not just political campaign contributions?

Thank you.

-----Original Message-----

**From:** Kuesel, Jeffery  
**Sent:** Friday, March 02, 2001 4:34 PM  
**To:** Rep.Gundrum  
**Subject:** Official action in return for political contributions or services

Rep. Gundrum:

Following up on your e mail of 2/28:

1. I am not sure that requiring a petition to the ethics board before proceeding in court is sufficient to ensure that a frivolous suit will not be brought. I think the purpose is to give notice to the board so there can be coordination with any investigation the board might be doing and so that the board can frame the charges appropriately and proceed if it believes there is cause to do so. I would suggest giving the board some period, perhaps up to 30 days, to investigate and notify the petitioner that it will or will not proceed with charges. If the board refused to act sooner, I would allow the petitioner to proceed as soon as the board refuses to act. I also think it might make sense, as you suggest, to provide a closed window, which could be 120 days before an election, during which suits could not be filed against candidates at that election or their agents.

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P.O. Box 2037  
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(608)266-6778  
jeffery.kuesel@legis.state.wi.us*

## Kuesel, Jeffery

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**Subject:** RE: Official action in return for political contributions or services

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Kuesel

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**Sent:** Thursday, March 22, 2001 10:32 AM  
**To:** Kuesel, Jeffery  
**Subject:** RE: Official action in return for political contributions or services

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**From:** Kuesel, Jeffery  
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## Kuesel, Jeffery

---

**From:** Gundrum, Mark  
**Sent:** Monday, March 26, 2001 4:23 PM  
**To:** Kuesel, Jeffery  
**Cc:** Churchill, Jolene  
**Subject:** RE: Official action in return for political contributions or services

Jeff,

Let's make sure that our bill not only makes it a violation to do some official act or not do some official act in exchange for a contribution, but ALSO to do or not do some official act in exchange for a person or group NOT making a contribution to a campaign fund. It is not unheard of for leaders to sort of "threaten" either overtly or otherwise to act or not act in a certain way depending upon whether or not someone/group gives a contribution to an opposing candidate/group. For example, during the soon-to-be-forthcoming special election for Margaret Farrow's Senate Seat, Chuck Chvala could easily threaten to act or not act in some legislative manner depending upon whether a group or person contributes to the REPUBLICAN candidate for the Senate. I think we should make sure that is addressed as well.

thanks.

Mark

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**Sent:** Wednesday, March 21, 2001 9:25 AM  
**To:** Gundrum, Mark  
**Subject:** RE: Official action in return for political contributions or services

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2001

Date (time) needed

THU 5/3

LRB-2928, 1

JFK: King

BILL

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . . of the statutes; relating to: official action in return for making or withholding political contributions, services, or other things of value and providing a penalty.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: . . . . . create → anal: → title: → head

For the subheading, execute: . . . . . create → anal: → title: → sub

For the sub-subheading, execute: . . . . . create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: . . . . . create → anal: → text

INS. "KA"

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

SECTION #.



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2928/lins  
JTK.....

**SECTION 1.** 11.25 (2) (b) of the statutes is amended to read:

11.25 (2) (b) Notwithstanding par. (a), a registrant may accept contributions and make disbursements from a campaign depository account for the purpose of making expenditures in connection with a campaign for national office; for payment of civil penalties incurred by the registrant under this chapter but not under any other chapter; or for payment of the expenses of nonpartisan campaigns to increase voter registration or participation. Notwithstanding par. (a), a personal campaign committee or support committee may accept contributions and make disbursements from a campaign depository account for payment of inaugural expenses of an individual who is elected to state or local office. If such expenses are paid from contributions made to the campaign depository account, they are reportable under s. 11.06 (1) as disbursements. Otherwise, such expenses are not reportable under s. 11.06 (1). If contributions from the campaign depository account are used for such expenses, they are subject to s. 11.26.

History: 1973 c. 334; 1975 c. 93; 1979 c. 328; 1981 c. 20; 1983 a. 27, 183; 1985 a. 303 ss. 43s, 86; 1987 a. 370; 1993 a. 213.

**SECTION 2.** 19.45 (13) of the statutes is created to read:

19.45 (13) No state public official holding an elective office may, directly or by means of an agent, give, <sup>or</sup> offer, or promise to give, or withhold, <sup>or</sup> offer or promise to withhold, <sup>or</sup> his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making, or provide or refrain from providing <sup>a</sup> any service or other thing of value, to or for the benefit of a candidate, <sup>a</sup> political party, or any other person who is subject to a registration requirement under s. 11.05.

**SECTION 3.** 19.53 (6) of the statutes is amended to read:

19.53 (6) An order requiring the accused to forfeit not more than \$500 for each violation of s. 19.43, 19.44 or 19.56 (2) or not more than \$5,000 for each violation of any other provision of this subchapter, or not more than the applicable amount specified in s. 13.69 for each violation of subch. III of ch. 13; ~~and, if.~~ If the board determines that the accused has realized economic gain as a result of the violation, and the board may, in addition, order requiring the accused to forfeit the amount gained as a result of the violation, and if the board determines that the accused has violated s. 19.45 (13), the board may, in addition, order the accused to forfeit an amount equal to the amount or value of any contribution, service, or other thing of value that was wrongfully procured. The attorney general, when so requested by the board, shall institute proceedings to recover any forfeiture incurred under this section or s. 19.545 which is not paid by the person against whom it is assessed.

History: 1977 c. 277; 1983 a. 166; 1987 a. 365; 1989 a. 338; 1995 a. 27.

**SECTION 4.** 19.59 (1) (br) of the statutes is created to read:

19.59 (1) (br) No local public official holding an elective office may, directly or by means of an agent, give, <sup>or</sup> offer or promise to give, or withhold, <sup>or</sup> offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making a contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, <sup>or</sup> political party, <sup>or</sup> any other person who is subject to a registration requirement under s. 11.05.

(END)

↓  
 JWS  
 ZA

2001 BILL

Ins "KA"

1 AN ACT to create 19.45 (13) of the statutes; relating to legislative favor in  
2 return for political contributions or services.

*Analysis by the Legislative Reference Bureau*

Currently, no person may offer or give to a state public official, including a member of the legislature, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions, or judgment, or could reasonably be considered a reward for any official action or inaction on the part of the state public official.

TNS  
A

~~This bill provides, in addition, that no member of the legislature may give, offer, or promise to give his or her vote or influence in favor of or against a measure or proposition pending or proposed to be introduced in the legislature in consideration of or upon condition that any other person make a contribution or provide any service or other thing of value to or for the benefit of a candidate, political party, or registrant under the campaign finance law.~~

NOT

~~Violators are subject to a forfeiture (civil penalty) of not more than \$5,000 for each violation. Intentional violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000 or imprisonment in the county jail for not more than one year or both.~~

TNS  
B

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

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2928/lins2  
JTK.....

Bus A

This bill provides, in addition, that no state or local public official holding an elective office may, directly or by means of an agent, give, offer or promise to give, or withhold, offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making, or provide or refrain from providing any service, or other thing of value, to or for the benefit of a candidate, political party, or any other person who is subject to a registration requirement under the campaign finance law.

Violators are subject to a forfeiture (civil penalty) of not more than \$5,000 for each violation, and are also subject to a forfeiture in an amount equal to the amount or value of any contribution, service, or other thing of value that was wrongfully procured.

Bus B

The bill also provides that if the ethics board refuses or otherwise fails to authorize an investigation with respect to any violation of the prohibition created by the bill within 30 days after receiving a verified complaint alleging such a violation, the person making the complaint may bring a lawsuit to recover a forfeiture on behalf of the state. If the person making the complaint prevails, the bill provides that the court may require the defendant to pay his or her attorney fees and costs, but any forfeiture recovered must be paid to the state. If the court finds that a lawsuit was frivolous, the court must award fees and costs to the defendant. The bill provides that no lawsuit may be brought against a candidate who files a declaration of candidacy or whose name is certified to appear on the ballot at an election within 120 days of the date of that election.

the complainant's

19.535

INS 2A created

Section #. ~~19.535~~ of the statutes is ~~amended~~ to read:

① 19.535 Direct enforcement; (1) Except as provided in sub. (2), if

19.97 ~~the~~ <sup>board</sup> district attorney refuses or otherwise fails to <sup>authorize an investigation under s.</sup> commence an action to enforce this <sup>19.49(3)</sup> subchapter within <sup>30</sup> ~~30~~ days after receiving a verified complaint <sup>alleging a violation of s. 19.45(13) by that person</sup> the person making <sup>with respect</sup> such complaint <sup>to recover the forfeiture under s. 19.53(6)</sup> may bring an action <sup>the</sup> under sub. (1) <sup>to a</sup> on his or her relation in the name, and on behalf, of the <sup>violation</sup> state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees <sup>to</sup> the relator if he or she prevails, but any forfeiture recovered shall be paid <sup>of</sup> to the state. <sup>(13)</sup> ~~If the court finds in any such action that the cause of~~

~~action was frivolous as provided in s. 814.025, the court shall award costs and fees to the defendant under that section.~~

~~History: 1975 c. 426; 1981 c. 289; 1995 a. 158.~~

② No action may be commenced under sub. (1) against a candidate whose name is certified to appear on the ballot at an election based upon a complaint that is filed under sub. (1) within 120 days of <sup>the date of</sup> that election.

who files a declaration of candidacy or

**Barman, Mike**

---

**From:** Barman, Mike  
**Sent:** Wednesday, May 02, 2001 3:53 PM  
**To:** Judd, Roth  
**Subject:** LRB-2928/1 (attached)

***Mike Barman***

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703



[DNOTE]  
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2928/4 ✓  
JTK:kmg:km

WANTED TUE 5/15

**2001 BILL**

1 AN ACT to amend 11.25 (2) (b) and 19.53 (6); and to create 19.45 (13), 19.535 and  
 2 19.59 (1) (br) of the statutes; relating to: official action in return for <sup>providing</sup> making  
 3 or withholding political contributions, services, or other things of value and  
 4 providing a penalty.

***Analysis by the Legislative Reference Bureau***

Currently, no person may offer or give to a state public official, including a member of the legislature, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions, or judgment, or could reasonably be considered a reward for any official action or inaction on the part of the state public official.

This bill provides, in addition, that no state or local public official holding an elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making, or provide or refrain from providing, any ~~contribution~~ service, or other thing of value, to or for the benefit of a candidate, a political party, or any other person who is subject to a registration requirement under the campaign finance law.

Violators are subject to a forfeiture (civil penalty) of not more than \$5,000 for each violation, and are also subject to a forfeiture in an amount equal to the amount or value of any contribution, service, or other thing of value that was wrongfully

a  
political  
contribution

political

**BILL**

procured. Intentional violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000 or imprisonment in the county jail for not more than one year or both.

The bill also provides that, if the ethics board refuses or otherwise fails to authorize an investigation with respect to any violation of the prohibition created by the bill within 30 days after receiving a verified complaint alleging such a violation, the person making the complaint may bring a lawsuit to recover a forfeiture on behalf of the state. If the person making the complaint prevails, the bill provides that the court may require the defendant to pay the complainant's attorney fees and costs, but any forfeiture recovered must be paid to the state. If the court finds that a lawsuit was frivolous, the court must award fees and costs to the defendant. The bill provides that no lawsuit may be brought against a candidate who files a declaration of candidacy or whose name is certified to appear on the ballot at an election within 120 days of the date of that election.

---

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

1           **SECTION 1.** 11.25 (2) (b) of the statutes is amended to read:

2           11.25 (2) (b) Notwithstanding par. (a), a registrant may accept contributions  
3 and make disbursements from a campaign depository account for the purpose of  
4 making expenditures in connection with a campaign for national office; for payment  
5 of civil penalties incurred by the registrant under this chapter but not under any  
6 other chapter; or for payment of the expenses of nonpartisan campaigns to increase  
7 voter registration or participation. Notwithstanding par. (a), a personal campaign  
8 committee or support committee may accept contributions and make disbursements  
9 from a campaign depository account for payment of inaugural expenses of an  
10 individual who is elected to state or local office. If such expenses are paid from  
11 contributions made to the campaign depository account, they are reportable under  
12 s. 11.06 (1) as disbursements. Otherwise, such expenses are not reportable under s.  
13 11.06 (1). If contributions from the campaign depository account are used for such  
14 expenses, they are subject to s. 11.26.



**BILL**

1           **SECTION 2.** 19.45 (13) of the statutes is created to read:

2           19.45 (13) No state public official holding an elective office may, directly or by  
3 means of an agent, give, or offer or promise to give, or withhold, or offer or promise  
4 to withhold, his or her vote or influence, or promise to take or refrain from taking  
5 official action with respect to any proposed or pending matter in consideration of or  
6 upon condition that any other person make or refrain from making, or provide or  
7 refrain from providing any service or other thing of value, to or for the benefit of a  
8 candidate, a political party, or any other person who is subject to a registration  
9 requirement under s. 11.05.

10           **SECTION 3.** 19.53 (6) of the statutes is amended to read:

11           19.53 (6) An order requiring the accused to forfeit not more than \$500 for each  
12 violation of s. 19.43, 19.44 or 19.56 (2) or not more than \$5,000 for each violation of  
13 any other provision of this subchapter, or not more than the applicable amount  
14 specified in s. 13.69 for each violation of subch. III of ch. 13; ~~and, if, If~~ the board  
15 determines that the accused has realized economic gain as a result of the violation,  
16 ~~an the board may, in addition,~~ order requiring the accused to forfeit the amount  
17 gained as a result of the violation, and, if the board determines that the accused has  
18 violated s. 19.45 (13), the board may, in addition, order the accused to forfeit an  
19 amount equal to the amount or value of any <sup>political</sup> contribution, service, or other thing of  
20 value that was wrongfully procured. The attorney general, when so requested by the  
21 board, shall institute proceedings to recover any forfeiture incurred under this  
22 section or s. 19.545 which is not paid by the person against whom it is assessed.

23           **SECTION 4.** 19.535 of the statutes is created to read:

24           **19.535 Direct enforcement.** (1) Except as provided in sub. (2), if the board  
25 refuses or otherwise fails to authorize an investigation under s. 19.49 (3) with respect

**BILL**

1 to a violation of s. 19.45 (13) within 30 days after receiving a verified complaint  
2 alleging a violation of s. 19.45 (13) by that person, the person making the complaint  
3 may bring an action to recover the forfeiture under s. 19.53 (6) on his or her relation  
4 in the name, and on behalf, of the state. In such actions, the court may award actual  
5 and necessary costs of prosecution, including reasonable attorney fees, to the relator  
6 if he or she prevails, but any forfeiture recovered shall be paid to the state. If the  
7 court finds in any such action that the cause of action was frivolous as provided in  
8 s. 814.025, the court shall award costs and fees to the defendant under that section.

9 (2) No action may be commenced under sub. (1) against a candidate who files  
10 a declaration of candidacy or whose name is certified to appear on the ballot at an  
11 election based upon a complaint that is filed under sub. (1) within 120 days of the date  
12 of that election.

13 **SECTION 5.** 19.59 (1) (br) of the statutes is created to read:

14 19.59 (1) (br) No local public official holding an elective office may, directly or  
15 by means of an agent, give, or offer or promise to give, or withhold, or offer or promise  
16 to withhold, his or her vote or influence, or promise to take or refrain from taking  
17 official action with respect to any proposed or pending matter in consideration of or  
18 upon condition that any other person make or refrain from making a <sup>political</sup> contribution,  
19 or provide or refrain from providing any service or other thing of value, to or for the  
20 benefit of a candidate, a political party, or any other person who is subject to a  
21 registration requirement under s. 11.05.

22 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2928/2dn

JTK...:....

*mg*

Representative Gundrum:

*r*

*z*

This redraft corrects and standardizes the text of proposed ss. 19.45 (13) and 19.59 (1) (br), together with the description of those provisions in the analysis, in accordance with your instructions. The ethics board brought to my attention that the /1 draft did not utilize consistent terminology in these provisions.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2928/2dn  
JTK:kmg:km

May 14, 2001

Representative Gundrum:

This redraft corrects and standardizes the text of proposed ss. 19.45 (13) and 19.59 (1) (br), together with the description of those provisions in the analysis, in accordance with your instructions. The ethics board brought to my attention that the /1 draft did not utilize consistent terminology in these provisions.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**Barman, Mike**

---

**From:** System Administrator  
**To:** Rep.Gundrum  
**Sent:** Tuesday, May 15, 2001 8:59 AM  
**Subject:** Delivered: Draft review: LRB-2928/2 Topic: Official action in return for contributions or services

Your message

**To:** Rep.Gundrum  
**Subject:** Draft review: LRB-2928/2 Topic: Official action in return for contributions or services  
**Sent:** 05/15/2001 8:59 AM

was delivered to the following recipient(s):

Rep.Gundrum on 05/15/2001 8:59 AM

**Barman, Mike**

---

**From:** Barman, Mike  
**Sent:** Tuesday, May 15, 2001 8:58 AM  
**To:** Judd, Roth  
**Subject:** LRB-2928/2 (attached for your review) (from JTK)

***Mike Barman***

Mike Barman - Senior Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

## **Gretschmann, Karen**

---

**From:** Gretschmann, Karen  
**Sent:** Wednesday, July 18, 2001 10:32 AM  
**To:** Churchill, Jolene  
**Subject:** 01-2928/2



01-2928/2



01-2928/2dn

*Jolene - you should be able to open these documents in PDF format; if you are having a problem doing so, you should contact the LTSB.*

*We strongly discourage sending drafts out in this format as they can be "edited". Hope this works for you, let us know if you have any problems.*

**Karen 266-3561**

*Karen Gretschmann  
Legislative Program Assistant/Financial Specialist  
Legal Section  
Wisconsin Legislative Reference Bureau  
(608) 266-3561*



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2928/3

JTK:kmg:km  
Edmund

Wanted Mon 11/19 - 12:15 PM

2001 BILL

1 *Regenerate*  
2 AN ACT to amend 11.25 (2) (b) and 19.53 (6); and to create 19.45 (13), 19.535 and  
3 19.59 (1) (br) of the statutes; relating to: official action in return for providing  
4 or withholding political contributions, services, or other things of value and  
providing a penalty.

***Analysis by the Legislative Reference Bureau***

Currently, no person may offer or give to a state public official, including a member of the legislature, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions, or judgment, or could reasonably be considered a reward for any official action or inaction on the part of the state public official.

This bill provides, in addition, that no state or local public official holding an elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, or any other person who is subject to a registration requirement under the campaign finance law.

Violators are subject to a forfeiture (civil penalty) of not more than \$5,000 for each violation, and are also subject to a forfeiture in an amount equal to the amount



**BILL**

during the period beginning  
120 days before a general, spring,  
or special election and ending  
on the date of that election

or value of any political contribution, service, or other thing of value that was wrongfully procured. Intentional violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000 or imprisonment in the county jail for not more than one year or both.

The bill also provides that, if the ethics board refuses or otherwise fails to authorize an investigation with respect to any violation of the prohibition created by the bill within 30 days after receiving a verified complaint alleging such a violation, the person making the complaint may bring a lawsuit to recover a forfeiture on behalf of the state. If the person making the complaint prevails, the bill provides that the court may require the defendant to pay the complainant's attorney fees and costs, but any forfeiture recovered must be paid to the state. If the court finds that a lawsuit was frivolous, the court must award fees and costs to the defendant. The bill provides that no lawsuit may be brought against a candidate who files a declaration of candidacy or whose name is certified to appear on the ballot at an election within 120 days of the date of that election.

based upon such a complaint

to have his or her

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

1 SECTION 1. 11.25 (2) (b) of the statutes is amended to read:

2 11.25 (2) (b) Notwithstanding par. (a), a registrant may accept contributions  
3 and make disbursements from a campaign depository account for the purpose of  
4 making expenditures in connection with a campaign for national office; for payment  
5 of civil penalties incurred by the registrant under this chapter but not under any  
6 other chapter; or for payment of the expenses of nonpartisan campaigns to increase  
7 voter registration or participation. Notwithstanding par. (a), a personal campaign  
8 committee or support committee may accept contributions and make disbursements  
9 from a campaign depository account for payment of inaugural expenses of an  
10 individual who is elected to state or local office. If such expenses are paid from  
11 contributions made to the campaign depository account, they are reportable under  
12 s. 11.06 (1) as disbursements. Otherwise, such expenses are not reportable under s.  
13 11.06 (1). If contributions from the campaign depository account are used for such  
14 expenses, they are subject to s. 11.26.

**BILL**

1           **SECTION 2.** 19.45 (13) of the statutes is created to read:

2           **19.45 (13)** No state public official holding an elective office may, directly or by  
3 means of an agent, give, or offer or promise to give, or withhold, or offer or promise  
4 to withhold, his or her vote or influence, or promise to take or refrain from taking  
5 official action with respect to any proposed or pending matter in consideration of or  
6 upon condition that any other person make or refrain from making a political  
7 contribution, or provide or refrain from providing any service or other thing of value,  
8 to or for the benefit of a candidate, a political party, or any other person who is subject  
9 to a registration requirement under s. 11.05.

10           **SECTION 3.** 19.53 (6) of the statutes is amended to read:

11           **19.53 (6)** An order requiring the accused to forfeit not more than \$500 for each  
12 violation of s. 19.43, 19.44 or 19.56 (2) or not more than \$5,000 for each violation of  
13 any other provision of this subchapter, or not more than the applicable amount  
14 specified in s. 13.69 for each violation of subch. III of ch. 13; ~~and, if, If~~ the board  
15 determines that the accused has realized economic gain as a result of the violation,  
16 ~~an the board may, in addition,~~ order requiring the accused to forfeit the amount  
17 gained as a result of the violation, and, if the board determines that the accused has  
18 violated s. 19.45 (13), the board may, in addition, order the accused to forfeit an  
19 amount equal to the amount or value of any political contribution, service, or other  
20 thing of value that was wrongfully procured. The attorney general, when so  
21 requested by the board, shall institute proceedings to recover any forfeiture incurred  
22 under this section or s. 19.545 which is not paid by the person against whom it is  
23 assessed.

24           **SECTION 4.** 19.535 of the statutes is created to read:

**BILL**

1 **19.535 Direct enforcement.** (1) Except as provided in sub. (2), if the board  
 2 refuses or otherwise fails to authorize an investigation under s. 19.49 (3) with respect  
 3 to a violation of s. 19.45 (13) within 30 days after receiving a verified complaint  
 4 alleging a violation of s. 19.45 (13) by that person, the person making the complaint  
 5 may bring an action to recover the forfeiture under s. 19.53 (6) on his or her relation  
 6 in the name, and on behalf, of the state. In such actions, the court may award actual  
 7 and necessary costs of prosecution, including reasonable attorney fees, to the relator  
 8 if he or she prevails, but any forfeiture recovered shall be paid to the state. If the  
 9 court finds in any such action that the cause of action was frivolous as provided in  
 10 s. 814.025, the court shall award costs and fees to the defendant under that section.

11 (2) No action <sup>based upon a complaint that is filed under sub. (1)</sup> may be commenced <sup>during the period beginning 120 days before</sup> against a candidate who files  
 12 a declaration of candidacy ~~or whose name is certified to appear on the ballot at an~~  
 13 <sup>that</sup> election ~~based upon a complaint that is filed under sub. (1) within 120 days of the date~~  
 14 ~~of that election.~~ <sup>and ending on the date of that election</sup> ~~before~~

15 **SECTION 5.** 19.59 (1) (br) of the statutes is created to read:

16 19.59 (1) (br) No local public official holding an elective office may, directly or  
 17 by means of an agent, give, or offer or promise to give, or withhold, or offer or promise  
 18 to withhold, his or her vote or influence, or promise to take or refrain from taking  
 19 official action with respect to any proposed or pending matter in consideration of or  
 20 upon condition that any other person make or refrain from making a political  
 21 contribution, or provide or refrain from providing any service or other thing of value,  
 22 to or for the benefit of a candidate, a political party, or any other person who is subject  
 23 to a registration requirement under s. 11.05.

(END)

*gone  
 120 days  
 before  
 and  
 ending  
 on  
 the  
 date  
 of the  
 election*



## Barman, Mike

---

**From:** Barman, Mike  
**Sent:** Monday, November 19, 2001 11:52 AM  
**To:** Judd, Roth  
**Subject:** LRB-2928/3 (attached)



01-2928/3

**Basford, Sarah**

---

**From:** Basford, Sarah

**Sent:** Monday, November 19, 2001 12:56 PM

**To:** Churchill, Jolene

**Subject:** LRB -2928/3

We normally do not send out drafts in RTF format, for future reference. If you are having problems opening PDF files you might want to contact LTSB and have them correct that for you.

**Sarah Basford**

Program Assistant

State of Wisconsin

Legislative Reference Bureau

PH: (608) 266-3561/FAX: (608) 264-6948

[sarah.basford@legis.state.wi.us](mailto:sarah.basford@legis.state.wi.us)

*Sent as RTF*

11/19/2001

**Basford, Sarah**

---

**From:** Basford, Sarah  
**Sent:** Tuesday, November 20, 2001 1:31 PM  
**To:** Churchill, Jolene  
**Subject:** LRB -2928/3 (attached)

**Sarah Basford**  
Program Assistant  
State of Wisconsin  
Legislative Reference Bureau  
PH: (608) 266-3561/FAX: (608) 264-6948  
[sarah.basford@legis.state.wi.us](mailto:sarah.basford@legis.state.wi.us)

**Emery, Lynn**

---

**From:** Emery, Lynn  
**Sent:** Monday, December 03, 2001 11:51 AM  
**To:** Rep.Gundrum  
**Subject:** LRB-2928/3 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)  
(E-Mail: [lynn.emery@legis.state.wi.us](mailto:lynn.emery@legis.state.wi.us)) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

12/3/2001



**Emery, Lynn**

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**From:** Churchill, Jolene  
**Sent:** Tuesday, December 04, 2001 12:38 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-2928/3 Topic: Official action in return for contributions or services

It has been requested by <Churchill, Jolene> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-2928/3 Topic: Official action in return for contributions or services