

2003 SENATE BILL 96

April 2, 2003 – Introduced by Senators STEPP, LEIBHAM, A. LASEE and BROWN, cosponsored by Representatives WARD, LADWIG, MCCORMICK, VRAKAS, STONE, SUDER, AINSWORTH, OWENS, KESTELL, HAHN, FREESE, BIES, HINES, ALBERS, KREIBICH and MUSSER. Referred to Committee on Education, Ethics and Elections.

1 **AN ACT** *to amend* 11.10 (2) and 11.50 (2) (a); *to repeal and recreate* 11.50 (2)
 2 (a); *to create* 11.16 (1) (cm) and 11.50 (11) (em) of the statutes; and *to affect*
 3 2001 Wisconsin Act 109, section 9115 (2y) (b); **relating to:** use of moneys from
 4 the Wisconsin election campaign fund to make certain false representations.

Analysis by the Legislative Reference Bureau

Currently, a candidate for state office who accepts a grant from the Wisconsin election campaign fund may utilize the proceeds to purchase services from a communications medium; printing, graphic arts or advertising services; office supplies; or postage. Grant moneys may only be used to advance the candidacy of the grantee by lawful means. Currently, no person may knowingly make or publish, or cause to be made or published, a false representation pertaining to a candidate which is intended or tends to affect voting at an election.

This bill prohibits any candidate or campaign treasurer from incurring an obligation or making a disbursement (expenditure) in whole or in part derived from grant moneys for the purpose of making or publishing, or causing to be made or published, a false representation that pertains to any candidate and that is intended or tends to affect voting at the election for the office that the candidate seeks. If a candidate or campaign treasurer violates this requirement, the bill requires the Elections Board to order the campaign to repay the entire amount of the grant received by the candidate within six months of the date of the board's order. The bill permits the board to sue the candidate, the candidate's personal campaign committee, or the candidate's campaign treasurer to recover any amount due. Under

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the bill, if the board is unable to recover the entire amount due from the candidate's campaign treasury, the board may recover any deficiency from the candidate personally or, if the board cannot recover the entire amount from the candidate's campaign treasury and the candidate, from the campaign treasurer personally.

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

1 **SECTION 1.** 11.10 (2) of the statutes is amended to read:

2 11.10 (2) A candidate may remove a campaign treasurer at any time. In case
3 of the death, resignation or removal of a campaign treasurer, the candidate shall
4 designate a successor and shall file the successor's name and address with the
5 appropriate filing officer as provided in s. 11.05 (5). Until the successor's name and
6 address is filed, the candidate shall be deemed his or her own campaign treasurer.
7 If a candidate files the name of a successor and the candidate has filed an application
8 for a grant under s. 11.50, the candidate shall also file with the board a sworn
9 statement under s. 11.50 (2) (a), signed by the successor.

10 **SECTION 2.** 11.16 (1) (cm) of the statutes is created to read:

11 11.16 (1) (cm) In the event that an obligation is incurred or a disbursement is
12 made from a campaign treasury for any purpose contrary to s. 11.50 (11) (em) and the
13 obligation is incurred or the disbursement is made from grant moneys received under
14 s. 11.50, the candidate is liable for any moneys recoverable under s. 11.50 (11) (em)
15 that cannot be recovered from the campaign treasury. If the board, after reasonable
16 efforts, is unable to recover the entire amount of the moneys from the campaign
17 treasury and the candidate, and the candidate has appointed a separate campaign
18 treasurer, the board may recover any unrecovered moneys from the campaign
19 treasurer.

20 **SECTION 3.** 11.50 (2) (a) of the statutes is amended to read:

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1 11.50 (2) (a) Any individual who desires to qualify as an eligible candidate may
2 file an application with the board requesting approval to participate in the fund. The
3 application shall be filed no later than the applicable deadline for filing nomination
4 papers under s. 8.10 (2) (a), 8.15 (1), 8.20 (8) (a) or 8.50 (3) (a), no later than 4:30 p.m.
5 on the 7th day after the primary or date on which the primary would be held if
6 required in the case of write-in candidates, or no later than 4:30 p.m. on the 7th day
7 after appointment in the case of candidates appointed to fill vacancies. The
8 application shall contain a sworn statement that the candidate and his or her
9 authorized agents have complied with the contribution limitations prescribed in s.
10 11.26 and the disbursement limitations prescribed under s. 11.31 at all times to
11 which such limitations have applied to his or her candidacy and will continue to
12 comply with the limitations at all times to which the limitations apply to his or her
13 candidacy for the office in contest, unless the board determines that the candidate
14 is not eligible to receive a grant, the candidate withdraws his or her application
15 under par. (h), or par. (i) applies. The application shall also contain a sworn
16 statement, signed by the candidate and, unless the candidate is serving as his or her
17 own campaign treasurer, by the candidate's campaign treasurer, agreeing that no
18 part of the grant will be used to make or publish, or cause to be made or published,
19 a false representation that pertains to any candidate and that is intended or tends
20 to affect voting at the election for the office that the candidate seeks.

21 **SECTION 4.** 11.50 (2) (a) of the statutes, as affected by 2001 Wisconsin Act 109,
22 is repealed and recreated to read:

23 11.50 (2) (a) Any individual who desires to qualify as an eligible candidate may
24 file an application with the board requesting approval to participate in the fund. The
25 application shall be filed no later than the applicable deadline for filing nomination

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1 papers under s. 8.10 (2) (a), 8.15 (1), 8.20 (8) (a) or 8.50 (3) (a), no later than 4:30 p.m.
2 on the 7th day after the primary or date on which the primary would be held if
3 required in the case of write-in candidates, or no later than 4:30 p.m. on the 7th day
4 after appointment in the case of candidates appointed to fill vacancies. The applicant
5 shall provide, along with his or her application, an affidavit under s. 11.31 (2m) (a).
6 The application shall also contain a sworn statement that, except as authorized in
7 s. 11.26 (9m), if the candidate is able to receive the full amount of the grant, except
8 any grant provided under sub. (4) (bg) or (br), to which the candidate is entitled under
9 sub. (9), the candidate and his or her agents will not accept any contribution made
10 by a committee other than a political party committee during the campaign, and that,
11 except as provided in s. 11.29 (9m) any contributions accepted by the candidate from
12 such a committee will not exceed that amount which, when added to the amount of
13 the grant received by the candidate under sub. (9), equals the percentage specified
14 in s. 11.26 (9) (am) of the disbursement level specified in s. 11.31 (1) (a) to (de), (e),
15 or (f), as adjusted under s. 11.31 (9), for the office that the candidate seeks. In the
16 statement, the candidate shall also swear that if any unauthorized contribution has
17 been accepted, that the contribution has been or will be returned or donated as
18 provided in par. (j), and the candidate and his or her agents will not accept any
19 unauthorized contribution during the campaign. The application shall also contain
20 a sworn statement, signed by the candidate and, unless the candidate is serving as
21 his or her own campaign treasurer, by the candidate's campaign treasurer, agreeing
22 that no part of the grant will be used to make or publish, or cause to be made or
23 published, a false representation that pertains to any candidate and that is intended
24 or tends to affect voting at the election for the office that the candidate seeks.

25 **SECTION 5.** 11.50 (11) (em) of the statutes is created to read:

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1 11.50 (11) (em) No candidate or campaign treasurer may incur an obligation or
2 make a disbursement in whole or in part derived from grant moneys received under
3 this section for the purpose of making or publishing, or causing to be made or
4 published, a false representation that pertains to any candidate and that is intended
5 to or tends to affect voting at the election for the office that the candidate seeks. If
6 any candidate or campaign treasurer violates this paragraph, the board shall require
7 the candidate to repay the entire amount of the grant received under this chapter for
8 the election campaign in which the violation occurs within 6 months of the date of
9 the board's order. The board may commence a civil action against a personal
10 campaign committee, candidate, or campaign treasurer to recover any amount that
11 is not paid pursuant to an order issued under this paragraph. For purposes of this
12 paragraph, an obligation is incurred or a disbursement is made from grant moneys
13 if, immediately prior to the time the obligation is incurred or the disbursement is
14 made, the unencumbered moneys derived from private sources in the candidate's
15 campaign treasury are not at least equal to the amount of the obligation or
16 disbursement. In determining whether moneys are derived from private sources,
17 obligations are considered to be incurred and disbursements are considered to be
18 made from moneys deposited in a candidate's campaign treasury in the same order
19 that those moneys were chronologically received and earnings are considered to be
20 derived from the same sources as the principal on which they are earned.

21 **SECTION 6.** 2001 Wisconsin Act 109, section 9115 (2y) (b) is amended to read:

22 [2001 Wisconsin Act 109] Section 9115 (2y) (b) Notwithstanding section
23 990.001 (11) of the statutes, if a court finds that any part of the repeal of sections
24 11.01 (12s), 11.05 (3) (o), 11.265, 11.50 (3), and 11.50 (10) of the statutes, the
25 renumbering of sections 11.05 (2r) (title), 11.24 (2), and 11.50 (1) (a) 1. of the statutes,

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1 the renumbering and amendment of sections 11.05 (1), 11.05 (2), 11.05 (2r), 11.12 (6),
2 11.26 (9) (a), 11.31 (2m), 11.50 (1) (a) 2., 11.50 (5), 11.50 (9), 19.49 (5), 19.59 (7), and
3 71.10 (3) (a) of the statutes, the amendment of sections 5.02 (13), 5.05 (2), 7.08 (2) (c),
4 7.08 (2) (cm), 8.30 (2), 8.35 (4) (a) 1. a. and b., 8.35 (4) (c) and (d), 11.05 (3) (c), 11.05
5 (5), 11.05 (9) (b), 11.05 (12) (b), 11.05 (13), 11.06 (1) (intro.), 11.06 (1) (e), 11.06 (2),
6 11.06 (3) (b) (intro.), 11.06 (4) (b), 11.06 (5), 11.06 (7m) (a), 11.06 (7m) (b), 11.06 (7m)
7 (c), 11.07 (1), 11.07 (5), 11.09 (3), 11.10 (1), 11.12 (2), 11.12 (4), 11.12 (5), 11.14 (3),
8 11.16 (2), 11.16 (5), 11.19 (title), 11.19 (1), 11.20 (1), 11.20 (2), 11.20 (3) (a) and (b),
9 11.20 (7), 11.20 (8) (intro.), 11.20 (8) (a), 11.20 (9), 11.20 (10) (a), 11.20 (12), 11.21 (2),
10 11.21 (15), 11.21 (16), 11.22 (3), 11.23 (1), 11.23 (2), 11.26 (1) (intro.), 11.26 (2) (intro.),
11 11.26 (2) (a), 11.26 (3), 11.26 (4), 11.26 (5), 11.26 (6), 11.26 (8), 11.26 (9) (b), 11.26 (10),
12 11.26 (15), 11.26 (17) (a), 11.31 (1) (intro.), 11.31 (1) (a) to (d), 11.31 (1) (e) and (f), 11.31
13 (2), 11.31 (2m) (title), 11.31 (3), 11.38 (1) (a) 2., 11.38 (6), 11.38 (8) (b), ~~11.50 (2) (a),~~
14 11.50 (2) (b) 3. and 4., 11.50 (2) (b) 5., 11.50 (2) (c), 11.50 (2) (f), 11.50 (2) (g), 11.50 (2)
15 (h), 11.50 (2) (i), 11.50 (6), 11.50 (7) (intro.), 11.50 (8), 11.50 (10m), 11.50 (11) (e), 11.60
16 (4), 11.61 (1) (a) (by SECTION 2d), 19.53 (6), 19.59 (8) (c), 20.510 (1) (q), 25.42, 71.08
17 (1) (intro.), and 71.10 (3) (b) of the statutes, the repeal and recreation of sections 11.05
18 (9) (title) and 11.50 (4) of the statutes, the creation of sections 11.001 (2m), 11.01 (4m),
19 11.01 (12w), (13) and (14), 11.01 (16) (a) 3., 11.05 (1) (b), 11.05 (2) (b), 11.05 (3) (m),
20 11.05 (3) (r), 11.06 (1) (cm) and (dm), 11.06 (2m) (b) to (d), 11.06 (11) (bm), 11.12 (6)
21 (am), 11.12 (6) (c) and (d), 11.12 (8) and (9), 11.20 (2s), 11.20 (2t), 11.20 (8) (am), 11.24
22 (1w), 11.24 (4), 11.26 (1m), 11.26 (1t), 11.26 (2) (ae), (am), (as) and (av), 11.26 (2m),
23 11.26 (2t), 11.26 (8n), 11.26 (8r), 11.26 (9) (a) 1. to 4., 11.26 (9) (am), 11.26 (9m), 11.26
24 (10a), 11.31 (1) (de), 11.31 (2m) (a), 11.31 (3p), 11.31 (9), 11.385, 11.50 (1) (a) 1. (intro.),
25 11.50 (1) (a) 2m., 11.50 (1) (am), 11.50 (1) (bm) and (cm), 11.50 (2) (b) 6., 11.50 (2) (j),

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1 11.50 (2m), 11.50 (2s), 11.50 (2w), 11.50 (9) (b), 11.50 (14), 11.60 (3r), 19.42 (3m), (4g)
2 and (4r), 19.45 (13), 19.49 (1m), 19.49 (5) (b), 19.535, 19.59 (1) (br), 19.59 (7) (b), 19.59
3 (8) (cm) and (cn), 71.07 (6s), 71.10 (3) (ac), 71.10 (3) (d), 71.10 (4) (gw), and 806.04
4 (11m) of the statutes or SECTIONS 9115 (2v), (2x), and (2y), 9132 (4v), 9215 (3v), 9244
5 (6v), 9315 (2v) and (2w), and 9344 (2v) of this act is unconstitutional, the treatment
6 of those provisions by this act is void.

7 **SECTION 7. Nonstatutory provisions.**

8 (1) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
9 the repeal and recreation of section 11.50 (2) (a) of the statutes by this act or any part
10 of the laws specified in 2001 Wisconsin Act 109, section 9115 (2y) (b), as affected by
11 this act, is unconstitutional, the repeal and recreation of section 11.50 (2) (a) of the
12 statutes by this act is void.

13 **SECTION 8. Effective dates.** This act takes effect on the day after publication,
14 except as follows:

15 (1) The repeal and recreation of section 11.50 (2) (a) of the statutes takes effect
16 on July 1, 2003.

17 (END)