

2005 DRAFTING REQUEST

Bill

Received: **11/29/2004**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Sondy Pope-Roberts (608) 266-3520**

By/Representing: **Lori Youngman**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Elections - campaign finance**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Political communication attribution requirements

Instructions:

Per 2003 AB-386, but delete p. 7, lines 9-14.

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>
/?	jkuesel 03/10/2005	lkunkel 03/14/2005		_____			Crime
/1	lemery 03/16/2005		jfrantze 03/14/2005	_____	Inorthro 03/14/2005 lemery 03/16/2005		Crime
/2	jkuesel 04/15/2005	lkunkel 04/19/2005	chaugen 04/20/2005	_____	mbarman 04/20/2005		Crime

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/3	jkuesel 04/20/2005	lkunkel 04/21/2005	rschluet 04/21/2005	_____	Inorthro 04/21/2005	Inorthro 05/02/2005	

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only

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1/1	jkuesel 3/10	1/mk 3/13	J 3/14	Jd Ch 3/14			

FE Sent For:

<END>

DNOTE

2005

2003 - 2004 LEGISLATURE

Wanted Mon 3/14

-1021/1

LRB-2153/t

JTK:kmg:pg

lmk

2003 ASSEMBLY BILL 386

June 5, 2003 - Introduced by Representatives POPE-ROBERTS, POCAN, BLACK, TRAVIS, CULLEN, BERCEAU, TAYLOR, MORRIS, HUBER, PLOUFF, J. LEHMAN, RICHARDS and SHILLING, cosponsored by Senators ERPENBACH, HANSEN, ROBSON, CARPENTER and M. MEYER. Referred to Committee on Campaigns and Elections.

LPS: PIs PwF

(regenerate)

(dn)

1 AN ACT *to repeal* 11.30 (2); *to renumber* 11.01 (1); *to amend* 7.40, 8.30 (2), 11.05

2 (2g), 11.30 (3) (b), 11.61 (1) (c) and 13.62 (5g); *to repeal and recreate* 8.30 (2)

3 and 19.42 (3m); *to create* 11.01 (1g), 11.01 (17), 11.30 (2m) and 11.59 of the

4 statutes; and *to affect* 2001 Wisconsin Act 109, section 9115 (2y) (b); **relating**

5 **to:** disclosures required in certain campaign advertisements.

Analysis by the Legislative Reference Bureau

CURRENT LAW

Current law contains several disclosure requirements with regard to advertisements and similar communications relating to campaigns for state or local office. For example, with certain exceptions, current law requires every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, or other communication that is paid for through a campaign contribution, disbursement (expenditure), or obligation to make a campaign contribution or disbursement to include a statement disclosing the source of the communication. Generally, current law requires this statement to include the words "Paid for by," followed by the name of the committee, group, or individual who pays for or reimburses the cost of the communication. If the communication is by a personal campaign committee, this statement may identify that committee or any of its bona fide subcommittees. If the communication is a solicitation on behalf of more than one candidate for a lawful joint fund-raising effort, this statement may indicate that a

ASSEMBLY BILL 386

joint fund-raising effort is being conducted on behalf of the named candidates rather than indicate the names of the candidates or personal campaign committees assuming responsibility for the communication. The statement need not be included at all if the communication is made by a person that is not primarily organized for political purposes, unless the communication constitutes an independent disbursement (generally, an expenditure made without cooperation or consultation with a candidate or candidate's personal campaign committee and made for the purpose of expressly advocating the election or defeat of a clearly identified candidate). If the communication is made by a person who has filed an oath indicating an intent to make independent disbursements, the communication must also include the words "Not authorized by any candidate or candidate's agent or committee." ✓

NO

makes

Current law contains several exceptions to these disclosure requirements. The requirements do not apply to the preparation and transmittal of personal correspondence; the production, wearing, or display of a single personal item which is not reproduced or manufactured for distribution to more than one individual; or communications printed on small items on which the disclosure information cannot be conveniently printed. In addition, the requirements do not apply to certain election-related, nonadvertising material included in an organization's newsletter, if the newsletter is distributed only to members of the organization. ✓ *current*

Current law also prohibits a person from publishing or disseminating a communication that does not comply with these disclosure requirements. However, this prohibition does not apply to a communications medium that relies in good faith on the reasonable representations of a person who places an advertisement with the medium as to the applicability of these requirements to the person. ✓

Currently, a person who violates these disclosure requirements or the prohibition on publication or dissemination is subject to a forfeiture (civil penalty) of up to \$500 per violation. In addition, depending upon the amount or value of the violation, if the violation is intentional, the person may be fined not more than \$1,000 or imprisoned for not more than six months, or both, if the violation does not exceed \$100 in amount or value, and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both, if the violation exceeds \$100 in amount or value. Currently, a private person may, under certain conditions, obtain injunctive relief to restrain violations but there is no private right of action for damages against violators. ✓

CHANGES TO CURRENT LAW**Generally**

This bill repeals these disclosure requirements and the prohibition on publication or dissemination and creates a new system of disclosure requirements applicable to elections for state or local office. The disclosure requirements under the bill apply to any person who purchases or incurs an obligation for an advertisement. Generally, an "advertisement" under this bill is a communication in a billboard, card, newspaper, newspaper insert, magazine, mailing of more than 500 pieces of substantially identical material, pamphlet, flier, or periodical or on television or radio, if the communication constitutes a campaign contribution or disbursement.

with certain exceptions, the

ASSEMBLY BILL 386

The requirements do not apply to advertisements concerning referenda.

However, the bill does not apply to certain communications that do not expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a question at a referendum (this includes what are commonly referred to as "issue ads"). The bill creates general disclosure requirements and additional disclosure requirements applicable to television or radio advertisements. In addition, the bill prohibits any person from misrepresenting in an advertisement the sponsorship or authorization of the advertisement.

(b)

The general disclosure requirements under the bill prohibit a person from purchasing or incurring an obligation for an advertisement unless: a) the advertisement includes the statement "Paid for by ... [name of each purchaser]"; b) if the advertisement supports or opposes the nomination or election of one or more clearly identified candidates, the person states in the advertisement the person's position for or against the candidate or candidates; c) if the advertisement supports or opposes a question at a referendum, the person states in the advertisement the person's position for or against the question; d) if the advertisement is in the print media and supports or opposes the nomination or election of one or more clearly identified candidates, the person states whether or not the advertisement is authorized by a candidate, except that this requirement does not apply if the person purchasing the advertisement is the candidate whom the advertisement supports or that candidate's personal campaign committee; and e) if the advertisement is in the print media and identifies a candidate whom the person is opposing, the person discloses in the advertisement the name of any candidate whom the advertisement is intended to benefit, except that this requirement applies only if the person coordinates or consults with regard to the advertisement, or with regard to the disbursement for the advertisement, with the candidate who is intended to benefit therefrom.

(c)

The bill *provides that in* establishes certain requirements with regard to the manner in which these general disclosure requirements may be satisfied. In a print media advertisement, the height of all of the disclosure statements must constitute at least 5% of the height of the printed space of the advertisement, except that the type may not be less than 12 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure statements apply only to one page, fold, or face of the advertisement. In a television advertisement, a written disclosure statement must be made with letters equal to or greater than 4% of the vertical picture height. In a radio advertisement, the disclosure statements must last at least a total of three seconds.

LFS: use 2x percent

Additional disclosure requirements applicable to television and radio *to purchase*

The bill also requires a person who purchases or incurs an obligation *to purchase* for a television or radio advertisement that supports or opposes the nomination or election of one or more clearly identified candidates to make certain additional disclosures. If the advertisement is obtained by a candidate or a candidate's personal campaign committee and mentions the name of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate, the advertisement must include a statement spoken by the candidate containing at least the following: "I am (or "This is") ... [name of candidate], candidate for ... [name of office], and I (or "my campaign

ASSEMBLY BILL 386

committee") sponsored this advertisement." If the advertisement is obtained by a political party, the advertisement must include a statement spoken by the chairperson, executive director, or treasurer of the political party containing at least the following: "The [name of political party] sponsored this advertisement

[opposing or supporting] [name of candidate] for [name of office] ✓ If the advertisement is obtained by a committee other than a political party or legislative campaign committee, the advertisement must include a statement spoken by the chief executive officer or treasurer of the committee containing at least the following:

"The [name of committee], a political action committee, sponsored this advertisement [opposing or supporting] [name of candidate] for [name of office] ✓ If the advertisement is obtained by an individual, the advertisement must include a statement spoken by the individual containing at least the following: "I am

.... [individual's name], and I sponsored this advertisement [opposing or supporting] ✓

.... [name of candidate] for [name of office] ✓ If the advertisement is obtained by any other person, the advertisement must include a statement spoken by the chief executive or principal decision maker of the person containing at least the following:

"...[Name of person] sponsored this advertisement (.... [opposing or supporting]

[name of candidate] for [name of office] ✓ If an advertisement requiring one of these additional disclosures is obtained by a person other than a candidate or the candidate's personal campaign committee, the person must characterize the advertisement as either supporting or opposing the nomination or election of one or more clearly identified candidates. ✓

~~The bill establishes certain requirements with regard to the manner in which the additional televised disclosure requirements may be satisfied. A full-screen picture containing the individual making the required statement must be featured throughout the duration of any statement of a candidate, personal campaign committee, political party, individual, or committee other than a political party or legislative campaign committee. ✓ The picture may not contain any printed material other than any visual disclosure statement required by law. ✓ In addition, the image of the individual must occupy at least 50% of the vertical picture height and nothing may block the view of the individual's face. If the advertisement is more than five minutes long, the statement must be made at the beginning and at the end of the advertisement. ✓~~

Remedies and penalties

The bill provides a candidate, or his or her personal campaign committee, with a private right of action against any person who purchases or incurs an obligation for a television or radio advertisement that violates these disclosure requirements, if the advertisement relates to an election for the office that the candidate seeks. ✓ The bill establishes filing requirements that a candidate or personal campaign committee must follow in order to bring such an action and requires the action to be brought no later than the 90th day after the election. The bill permits a successful plaintiff to receive damages equal to the total dollar amount of the television and radio advertising time that was aired in violation of these disclosure requirements, except that the damages must be increased to three times that amount in certain circumstances. ✓ Under the bill, a candidate and his or her personal campaign

ninetieth

television

percent

ASSEMBLY BILL 386

committee are jointly and individually liable for the payment of damages and any attorney fees awarded in such an action. However, if a candidate is held personally liable for the payment of damages or attorney fees or both, the candidate may not use or be reimbursed with funds from his or her personal campaign committee in paying the damages or attorney fees.

This bill also applies the civil and criminal penalties that apply to violations of the current disclosure requirements to violations of the disclosure requirements established under the bill, except that under the bill the criminal penalties do not apply to violations of the additional disclosure requirements for television and radio advertisements.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

anal
space

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

1 **SECTION 1.** 7.40 of the statutes is amended to read:

2 **7.40 Sample ballots.** Any individual, committee or candidate, at their own
3 expense, subject to limitations upon contributions and disbursements under ch. 11,
4 may print a supply of sample ballots, provided they bear on their face the information
5 required by s. 11.30 (2) and they contain all of the names shown on the official ballot.

6 **SECTION 2.** 8.30 (2) of the statutes is amended to read:

7 **8.30 (2)** If no registration statement has been filed by or on behalf of a candidate
8 for state or local office in accordance with s. 11.05 (2g) or (2r) by the applicable
9 deadline for filing nomination papers by such candidate, or the deadline for filing a
10 declaration of candidacy for an office for which nomination papers are not filed, the
11 name of the candidate may not appear on the ballot. This subsection may not be
12 construed to exempt a candidate from applicable penalties if he or she files a
13 registration statement later than the time prescribed in ss. 11.01 (1) (1r) and 11.05
14 (2g).

ASSEMBLY BILL 386

1 **SECTION 3.** 8.30 (2) of the statutes, as affected by 2001 Wisconsin Act 109, is
2 repealed and recreated to read:

3 8.30 (2) If no registration statement has been filed by or on behalf of a candidate
4 for state or local office in accordance with s. 11.05 (2g) by the applicable deadline for
5 filing nomination papers by the candidate, or the deadline for filing a declaration of
6 candidacy for an office for which nomination papers are not filed, the name of the
7 candidate may not appear on the ballot. This subsection may not be construed to
8 exempt a candidate from applicable penalties if he or she files a registration
9 statement later than the time prescribed in ss. 11.01 (1r) and 11.05 (2g). ✓

10 **SECTION 4.** 11.01 (1) of the statutes is renumbered 11.01 (1r).

11 **SECTION 5.** 11.01 (1g) of the statutes is created to read:

12 11.01 (1g) "Advertisement" means a communication in the print media or on
13 television or radio that constitutes a contribution or disbursement. ✓

14 **SECTION 6.** 11.01 (17) of the statutes is created to read:

15 11.01 (17) "Print media" means billboards, ✓ cards, ✓ newspapers, ✓ newspaper
16 inserts, ✓ magazines, ✓ mailings of more than 500 pieces of substantially identical
17 material, ✓ pamphlets, ✓ fliers, ✓ or periodicals. ✓

18 **SECTION 7.** 11.05 (2g) of the statutes is amended to read:

19 11.05 (2g) CANDIDATES AND PERSONAL CAMPAIGN COMMITTEES. Every candidate,
20 as defined in s. 11.01 (4) (1r), shall file a registration statement with the appropriate
21 filing officer giving the information required by sub. (3). If a candidate appoints
22 another person as campaign treasurer the candidate's registration statement shall
23 be cosigned by the candidate and the candidate's appointed treasurer. A candidate
24 who receives no contributions and makes no disbursements shall file such statement
25 as provided in s. 11.10 (1) but need not appoint a campaign treasurer or designate

ASSEMBLY BILL 386

1 a campaign depository account until the first contribution is received or
2 disbursement made.

3 **SECTION 8.** 11.30 ~~(2)~~ of the statutes is repealed.

4 **SECTION 9.** 11.30 (2m) of the statutes is created to read:

5 11.30 (2m) (a) Except as provided in par. (f), no person may purchase or incur
6 an obligation for an advertisement unless all of the following conditions are satisfied:

7 1. The advertisement includes the statement "Paid for by [name of each
8 purchaser, as indicated on the purchaser's registration statement under s. 11.05]."

9 ~~2. If the advertisement supports or opposes the nomination or election of one
10 or more clearly identified candidates, the person states in the advertisement the
11 person's position for or against the candidate or candidates.~~

12 ~~3. If the advertisement supports or opposes a question proposed at a
13 referendum, the person states in the advertisement the person's position for or
14 against the question.~~

15 ~~2, 3, 4~~ 4. If the advertisement is in the print media and supports or opposes the
16 nomination or election of one or more clearly identified candidates, the person states
17 whether or not the advertisement is authorized by a candidate. The statement in the
18 advertisement shall include the words: "Authorized by [name of candidate],
19 candidate for [name or office]" or "Not authorized by a candidate," as applicable. ✓
20 This subdivision does not apply if the person purchasing the advertisement is the
21 candidate whom the advertisement supports or that candidate's personal campaign
22 committee. ✓

23 ~~3, 4, 5~~ 5. If the advertisement is in the print media and identifies a candidate whom
24 the person is opposing, the person discloses in the advertisement the name of any
25 candidate whom the advertisement is intended to benefit. This subdivision applies ✓

ASSEMBLY BILL 386

1 only if the person coordinates or consults with regard to the advertisement, or with
2 regard to the disbursement for the advertisement, with the candidate who is
3 intended to benefit therefrom. ✓

4 (b) 1. In a print media advertisement, the height of all disclosure statements
5 required under par. (a) shall constitute at least ²5% ^{percent} of the height of the printed space
6 of the advertisement, except that the type may not be less than 12 [✓] points in size. If
7 a single advertisement consists of multiple pages, folds, or faces, the disclosure
8 statements required under par. (a) apply only to ^{set} ~~one~~ page, fold, or face of the
9 advertisement. ✓

10 2. In a television advertisement, a written disclosure statement used to comply
11 with par. (a) shall be made with letters equal to or greater than ²4% ^{percent} of the vertical
12 picture height.

13 3. In a radio advertisement, all disclosure statements, combined, that are
14 required under par. (a) shall last at least 3 [✓] seconds.

15 (c) No person may misrepresent in an advertisement the sponsorship or
16 authorization of the advertisement. ✓

17 (d) In addition to the disclosure statements required under par. (a) and except
18 as provided in par. (f), a person purchasing or incurring an obligation for an
19 advertisement on television or radio that supports or opposes the nomination or
20 election of [✓] one or more clearly identified candidates shall satisfy all of the following: ✓

21 1. If the advertisement is purchased by a candidate or a candidate's personal
22 campaign committee, the advertisement shall include a statement spoken by the
23 candidate containing at least the following: "I am (or "This is") [name of
24 candidate], candidate for [name of office], and I (or "my campaign committee")
25 sponsored this advertisement." This subdivision applies only to an advertisement

ASSEMBLY BILL 386

1 that mentions the name of, shows the picture of, transmits the voice of, or otherwise
2 refers to a candidate for the same office as that sought by the purchasing candidate
3 or by the candidate supported by the purchasing personal campaign committee. ✓

4 2. If the advertisement is purchased by a political party, the advertisement
5 shall include a statement spoken by the chairperson, executive director, or treasurer
6 of the political party containing at least the following: "The [name of political ✓
7 party] sponsored this advertisement [~~opposing or supporting~~] [name of candidate]
8 for [~~name of office~~]." The name of the political party disclosed under this
9 subdivision shall be the same as the name used by the political party on the ballot
10 at the election.

11 3. If the advertisement is purchased by a committee other than a political party
12 or legislative campaign committee, the advertisement shall include a statement
13 spoken by the chief executive officer or treasurer of the committee containing at least
14 the following: "The [name of committee], a political action committee, sponsored
15 this advertisement [~~opposing or supporting~~] [name of candidate] for [name of
16 office]." The name of the committee disclosed under this subdivision shall be the
17 same as the name indicated on the committee's registration statement under s.
18 11.05.

19 4. Except as provided under subd. 1., if the advertisement is purchased by an ✓
20 individual, the advertisement shall include a statement spoken by the individual
21 containing at least the following: "I am [individual's name], and I sponsored this
22 advertisement [~~opposing or supporting~~] [name of candidate] for [name of
23 office].")

24 5. If the advertisement is purchased by a person other than a candidate, a
25 candidate's personal campaign committee, a political party, a committee other than

ASSEMBLY BILL 386

1 a political party or legislative campaign committee, or an individual, the
2 advertisement shall include a statement spoken by the chief executive or principal
3 decision maker of the purchaser containing at least the following: “...[Name of
4 person] sponsored this advertisement ... [opposing or supporting] ... [name of
5 candidate] for ... [name of office].”

6 6. If the advertisement is televised, a full-screen picture containing an image
7 of the individual making the statement required under subds. 1. to 5., in
8 photographic form or through the actual appearance of the individual on camera,
9 shall be featured throughout the duration of the statement. The picture may not
10 contain any printed material other than any visual disclosure statement required by
11 law. The image of the individual shall occupy at least 50%^{of} of the vertical picture
12 height and nothing may block the view of the individual's face.

13 7. If the advertisement is televised and is more than 5 minutes long, any
14 statement required under subds. 1. to 5. shall be made at the beginning and at the
15 end of the advertisement.

16 8. If a statement is required under subds. 2. to 5., the person shall characterize
17 the advertisement as either supporting or opposing the nomination or election of one
18 or more clearly identified candidates.

19 (e) If an advertisement that is subject to par. (d) is jointly purchased or if an
20 obligation for such an advertisement is jointly incurred, the statement required
21 under par. (d) shall name all of the purchasers but need be made by only one
22 individual. If a candidate or a candidate's personal campaign committee is one of the
23 purchasers or persons who incurs the obligation, that candidate shall be the
24 individual making the statement. If multiple candidates are the purchasers or
25 persons who incur the obligation, if a candidate and a personal campaign committee

ASSEMBLY BILL 386

1 of another candidate are the purchasers or persons who incur the obligation, or if the
2 personal campaign committees of multiple candidates are the purchasers or persons
3 who incur the obligation, at least one of the candidates shall be the individual
4 making the statement.

5 (f) Paragraphs (a) and (d) do not apply to any of the following:

6 1. An individual who makes disbursements with regard to a particular election
7 that total less than \$1,000 and that do not constitute a contribution to any candidate
8 or other individual.

9 2. An individual who purchases or incurs an obligation for an advertisement
10 with regard to a referendum.

11 3. A person who is exempt from reporting the purchase of or obligation incurred
12 for an advertisement under s. 11.06 (2).

13 **SECTION 10.** 11.30 (3) (b) of the statutes is amended to read:

14 11.30 (3) (b) Any person named in par. (a) is guilty of a violation of this chapter
15 unless, before using the communications medium for political purposes other than
16 as provided for in sub. ~~(2)~~ (2m), there is filed with the board a verified declaration
17 specifically stating the communications medium in which the person has financial
18 interest or over which the person has control and the exact nature and extent of the
19 interest or control.

20 **SECTION 11.** 11.59 of the statutes is created to read:

21 **11.59 Liability for unlawful advertisements.** (1) A candidate who
22 complies with all applicable requirements under s. 11.30 (2m) throughout the
23 candidate's campaign, or the personal campaign committee of such a candidate, may
24 bring an action for damages against any person who violates s. 11.30 (2m) with
25 regard to a television or radio advertisement relating to an election for the office that

ASSEMBLY BILL 386

1 the candidate seeks. As a condition of bringing an action under this section, a
2 candidate for state office, or the personal campaign committee of such a candidate,
3 shall complete and file with the board a notice of complaint, on a form prescribed by
4 the board, regarding a violation of s. 11.30 (2m). The notice shall be filed after the
5 airing of the advertisement, but no later than the Friday after the date of the election.
6 Any other candidate, or the personal campaign committee of such other candidate,
7 as a condition of bringing an action under this section, shall file the notice of
8 complaint during the same time period with the county clerk or, if applicable, the
9 county board of election commissioners, of any county with territory in the
10 jurisdiction or district that the candidate seeks to represent and shall publish a short
11 form notice of complaint, in the form prescribed by the board, in a newspaper having
12 general circulation in the jurisdiction or district that the candidate seeks to
13 represent. A candidate or personal campaign committee shall bring an action in
14 circuit court for the county where the notice of complaint is filed no later than the
15 90th day following the date of the election.

16 (2) The court shall award a successful plaintiff in an action under this section
17 damages equal to the total dollar amount of the television and radio advertising time
18 that was aired in violation of s. 11.30 (2m). The court shall award treble damages
19 if the plaintiff notified or reasonably attempted to notify the defendant, by 1st class
20 mail with return receipt requested, that a particular advertisement or that
21 particular advertisements failed to comply with s. 11.30 (2m) and if, after the notice
22 or attempted notice, the advertisement continued to be aired. The court shall
23 calculate the treble damages beginning on the date on which the notice was accepted
24 or rejected by the defendant. Within 5 days after the return receipt for any notice
25 mailed under this subsection is provided to the plaintiff, the plaintiff shall send a

ASSEMBLY BILL 386

1 copy of the notice to the board or to the county clerk or county board of election
2 commissioners of the county where the plaintiff's notice of complaint was filed. ✓

3 (3) A candidate and his or her personal campaign committee are jointly and
4 severally liable for the payment of damages and any attorney fees awarded in an
5 action under this section. If a candidate is held personally liable for the payment of
6 damages or attorney fees or both, the candidate may not use or be reimbursed with
7 funds from his or her campaign depository account in paying the damages or attorney
8 fees. ✓

9 SECTION 12. 11.61 (1) (c) of the statutes is amended to read:

10 11.61 (1) (c) Whoever intentionally violates any provision of this chapter other
11 than those provided specified in par. (a) and s. 11.30 (2m) (d) and whoever
12 intentionally violates any provision under par. (b) where the intentional violation
13 concerns a specific figure which does not exceed \$100 in amount or value may be fined
14 not more than \$1,000 or imprisoned for not more than 6 months or both.

15 SECTION 13. 13.62 (5g) of the statutes is amended to read:

16 13.62 (5g) "Candidate" has the meaning given under s. 11.01 (1) (1r). ✓

17 SECTION 14. 19.42 (3m) of the statutes, as created by 2003 Wisconsin Act 109,
18 is ~~repealed and recreated~~ amended to read:

19 19.42 (3m) "Candidate," except as otherwise provided, has the meaning given
20 in s. 11.01 (1r):

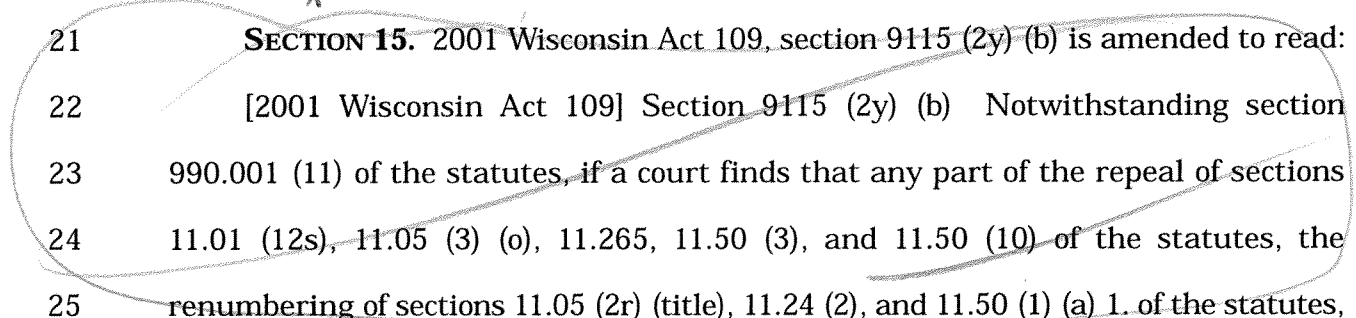
21 SECTION 15. 2001 Wisconsin Act 109, section 9115 (2y) (b) is amended to read:

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,

retain

LPS: Pls fix component

17
18
19
20



ASSEMBLY BILL 386**SECTION 15**

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),

ASSEMBLY BILL 386

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.

SECTION 16. Nonstatutory provisions.

7
8 (1) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
9 the repeal and recreation of section 8.30 (2) ~~or 19.42 (3m)~~ of the statutes by this act,
10 or any part of the laws specified in 2001 Wisconsin Act 109, section 9115 (2y) (b) as
11 affected by this act, is unconstitutional, the repeal and recreation of sections 8.30 (2)
12 and 19.42 (3m) of the statutes by this act is void.

13 **SECTION 17. Effective dates.** This act takes effect on the day after publication,
14 except as follows:

15 (1) The treatment of section 19.42 (3m) of the statutes and the repeal and
16 recreation of section 8.30 (2) of the statutes take effect on July 1, 2003, or on the day
17 after publication, whichever is later.

18 (END)

(d-n)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

-1021/d/dn
LRB-2153/1dn
JTK:kmg:pg
Imk

April 23, 2003

(date)

NOA
Representative Pocari

Lope Roberts
This draft is based upon North Carolina law.

1. The North Carolina law requires any televised disclosures to be 32 scan lines in size. Federal law requires televised sponsor disclosures to be at least 4% of the vertical picture height. See 47 CFR 73.1212. Currently, analog television broadcasts use 525 scan lines, while HDTV broadcasts use between 720 and 1,080 scan lines. Although a 32-scan-line image constitutes at least 4% of the vertical picture height of an analog television broadcast, it does not constitute at least 4% of the vertical picture height of an HDTV broadcast. This draft uses the federal standard of 4% rather than the North Carolina standard of 32 scan lines, so that the draft remains consistent with the federal law as HDTV broadcasts become more prevalent. See proposed s. 11.30 (2m) (b) 2. ✓

Also, the televised sponsor disclosure required under federal law must last at least 4 seconds. Do you want to include a similar requirement in this draft? ✓

2. The definition of "print media" under proposed s. 11.01 (17) does not specifically include sample ballots, even though sample ballots in some cases are regulated as campaign advertisements under current law. See ss. 11.01 (4m) and 11.30 (2) (a), stats. Please let me know if you would like to make any change to the definition of "print media." ✓

3. Several other provisions of current law are not incorporated into this draft and, thus, would be eliminated if this draft becomes law. Please review s. 11.30 (2) (d), (e), (g), (hm), and (i), stats., and let me know if you would like to preserve any of these provisions. ✓ Also, please note that current law, with certain exceptions, requires disclosure with every communication that is paid for by or through a contribution, disbursement, or incurred obligation. This draft only applies if the communications are made in print media [as defined in proposed s. 11.01 (17)] or on television or radio. In this way, the draft is narrower in scope than the current disclosure law under s. 11.30 (2), stats. Please let me know if the scope of this draft is inconsistent with your intent.

4. This draft also raises two constitutional issues. First, by requiring certain persons to affirmatively state in their advertisements their position for or against a particular candidate or question presented at a referendum, the draft may compel speech in violation of the First Amendment. See *North Carolina Right to Life v. Leake*, 108 F. Supp. 2d 498 (E.D.N.C. 2000) (enjoining enforcement of a similar provision in North Carolina law). While compelled sponsorship disclosures are likely constitutional, see

these ways

and the draft does not apply to communications relating to referenda

provisions. Also, please note that current law, with certain exceptions, requires disclosure with every communication that is paid for by or through a contribution, disbursement, or incurred obligation. This draft only applies if the communications are made in print media [as defined in proposed s. 11.01 (17)] or on television or radio. In this way, the draft is narrower in scope than the current disclosure law under s. 11.30 (2), stats. Please let us know if the scope of this draft is inconsistent with your intent.

11. This draft also raises three constitutional issues. First, by requiring certain persons to affirmatively state in their advertisements their position for or against a particular candidate or question presented at a referendum, the draft may compel speech in violation of the First Amendment. See *North Carolina Right to Life v. Leake*, 108 F. Supp. 2d 498 (E.D.N.C. 2000) (enjoining enforcement of a similar provision in North Carolina law). While compelled sponsorship disclosures are likely constitutional, see *FEC v. Public Citizen, Inc.*, 2001 U.S. App. LEXIS 21692 (11th Cir.) and *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 648 (6th Cir. 1997), cert. denied, 118 S. Ct. 162 (1997), the courts may be less willing to uphold a requirement that a person voice a particular opinion. However, please note that currently there is no court decision on this issue that is binding in Wisconsin. It is possible that, if presented with the issue, a court with jurisdiction over Wisconsin would uphold a requirement of this type.

Second, like our current disclosure law, this draft requires disclosures to be made in certain communications relating to referenda. Although the U.S. Supreme Court has not addressed the issue, at least one federal district court has held that disclosure requirements that apply to communications relating to referenda are invalid under the First Amendment. See *Yes for life Political Action Committee v. Webster*, 84 F. Supp. 2d 150 (D. ME 2000).

4. Finally, please note that many requirements under this draft are not uniform and, as a result, the requirements may violate the Equal Protection Clause. For example, the content of the televised disclosures required under this draft is not uniform. Compare proposed s. 11.30 (2m) (d) 5. to proposed s. 11.30 (2m) (d) 1. to 4. Also, the full-screen picture requirement under proposed s. 11.30 (2m) (d) 6. does not apply to persons required to disclose information under proposed s. 11.30 (2m) (d) 5. Furthermore, the content of the required radio disclosures is not uniform as compared with the content of the televised disclosure statements. Compare proposed s. 11.30 (2m) (d) 1. to 5. with proposed s. 11.30 (2m) (e) 1. to 5. ~~It is unclear what the rational basis is for these differing treatments.~~ If there is no rational basis, then these differing treatments would be susceptible to challenge under the Equal Protection Clause. You may want to treat these disclosures uniformly, except where it is rational to do otherwise (for example, it would be rational to specify image size in the context of televised disclosure statements but not radio disclosure statements).

raise an issue

may not be clear

mic

there is arguably a rational basis for doing

me
Please feel free to contact ~~us~~ if you would like to discuss any of these items.

~~Robert J. Marchant
Legislative Attorney
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E-mail: robert.marchant@legis.state.wi.us~~

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1021/1dn
JTK:lmk:jf

March 14, 2005

Representative Pope Roberts:

1. This draft is based upon North Carolina law. The North Carolina law requires any televised disclosures to be 32 scan lines in size. Federal law requires televised sponsor disclosures to be at least 4% of the vertical picture height. See 47 CFR 73.1212. Currently, analog television broadcasts use 525 scan lines, while HDTV broadcasts use between 720 and 1,080 scan lines. Although a 32-scan-line image constitutes at least 4% of the vertical picture height of an analog television broadcast, it does not constitute at least 4% of the vertical picture height of an HDTV broadcast. This draft uses the federal standard of 4% rather than the North Carolina standard of 32 scan lines, so that the draft remains consistent with the federal law as HDTV broadcasts become more prevalent. See proposed s. 11.30 (2m) (b) 2.

Also, the televised sponsor disclosure required under federal law must last at least 4 seconds. Do you want to include a similar requirement in this draft?

2. The definition of "print media" under proposed s. 11.01 (17) does not specifically include sample ballots, even though sample ballots in some cases are regulated as campaign advertisements under current law. See ss. 11.01 (4m) and 11.30 (2) (a), stats. Please let me know if you would like to make any change to the definition of "print media."

3. Several other provisions of current law are not incorporated into this draft and, thus, would be eliminated if this draft becomes law. Please review s. 11.30 (2) (d), (e), (g), (hm), and (i), stats., and let me know if you would like to preserve any of these provisions. Also, please note that current law, with certain exceptions, requires disclosure with every communication that is paid for by or through a contribution, disbursement, or incurred obligation. This draft only applies if the communications are made in print media [as defined in proposed s. 11.01 (17)] or on television or radio and the draft does not apply to communications relating to referenda. In these ways, the draft is narrower in scope than the current disclosure law under s. 11.30 (2), stats. Please let me know if the scope of this draft is inconsistent with your intent.

4. Finally, please note that many requirements under this draft are not uniform and, as a result, the requirements may raise an equal protection issue. For example, the content of the televised disclosures required under this draft is not uniform. Compare proposed s. 11.30 (2m) (d) 5. to proposed s. 11.30 (2m) (d) 1. to 4. Also, the full-screen

picture requirement under proposed s. 11.30 (2m) (d) 6. does not apply to persons required to disclose information under proposed s. 11.30 (2m) (d) 5. Furthermore, the content of the required radio disclosures is not uniform as compared with the content of the televised disclosure statements. Compare proposed s. 11.30 (2m) (d) 1. to 5. with proposed s. 11.30 (2m) (e). The rational basis for these differing treatments may not be clear. If there is no rational basis, then these differing treatments would be susceptible to challenge under the Equal Protection Clause. You may want to treat these disclosures uniformly, except where there is arguably a rational basis for doing otherwise.

Please feel free to contact me if you would like to discuss any of these items.

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