



DWOTE
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1021/4 *2*
JTK:lmk/jf *h*
↑
keep

wanted wed 4/20

2005 BILL

ReGen

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), 13.62 (5g) and 19.42 (3m); *to repeal and*
3 *recreate* 8.30 (2); and *to create* 11.01 (1g), 11.01 (17), 11.30 (2m) and 11.59 of
4 the statutes; **relating to:** disclosures required in certain campaign
5 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. 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. *2* 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 joint fund-raising effort

BILL

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. No statement need be included 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 makes independent disbursements, the communication must also include the words "Not authorized by any candidate or candidate's agent or committee."

The current 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 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, 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. With certain exceptions, 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. The bill creates general disclosure requirements and additional disclosure requirements applicable to television or radio advertisements.

*and state or local referenda**printed or electronic*

BILL

In addition, the bill prohibits any person from misrepresenting in ^{any} an advertisement the sponsorship or authorization of the advertisement. ~~The requirements do not apply to advertisements concerning referenda.~~

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 ~~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 ^{appears} does not apply if the person purchasing the advertisement is the candidate whom the advertisement supports or that candidate's personal campaign committee; and c) 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 ^{or on the Internet} ~~an~~ ^{that appears in print media or on the Internet}

The bill provides that in ^{total} a print media advertisement, the height of all of the disclosure statements must constitute at least 5 percent 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 percent of the vertical picture height. In a radio advertisement, the disclosure statements must last at least a total of three seconds.

Additional disclosure requirements applicable to television and radio

The bill also requires a person who purchases or incurs an obligation to purchase 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 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." 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." 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

or legislative campaign committee

or legislative campaign committee

and the statement must appear for at least ~~three~~ ^{four} seconds

and if the advertisement appears in the print media or on television the purchaser's full address and the purchaser's telephone number and electronic mail address if any

or legislative campaign committee

BILL

advertisement." 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."

Under the bill a full-screen television 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 percent 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.

text

The bill retains the current exceptions for Subcommittees of personal Remedies and penalties campaign committees, joint fundraising efforts, newsletters, and persons not primarily organized

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 ninetieth 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 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. *for Political Purposes*

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.

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

BILL

1 ^X
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 ^X
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).

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

17 **8.30 (2)** If no registration statement has been filed by or on behalf of a candidate
18 for state or local office in accordance with s. 11.05 (2g) by the applicable deadline for
19 filing nomination papers by the candidate, or the deadline for filing a declaration of
20 candidacy for an office for which nomination papers are not filed, the name of the
21 candidate may not appear on the ballot. This subsection may not be construed to
22 exempt a candidate from applicable penalties if he or she files a registration
23 statement later than the time prescribed in ss. 11.01 (1r) and 11.05 (2g).

24 ^X
SECTION 4. 11.01 (1) of the statutes is renumbered 11.01 (1r).

25 ^X
SECTION 5. 11.01 (1g) of the statutes is created to read:

BILL

1

11.01 (1g) "Advertisement" means a communication in the print media, ^{that appears} or on the

Internet, or on

2

television or radio that constitutes a contribution or disbursement.

3

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

4

11.01 (17) "Print media" means billboards, cards, newspapers, newspaper

5

inserts, magazines, ^{sample ballots} mailings of more than 500 pieces of substantially identical

6

~~printed or electronic~~ material, pamphlets, fliers, or periodicals.

7

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

8

11.05 (2g) CANDIDATES AND PERSONAL CAMPAIGN COMMITTEES. Every candidate,

9

as defined in s. 11.01 (4) (1r), shall file a registration statement with the appropriate

10

filing officer giving the information required by sub. (3). If a candidate appoints

11

another person as campaign treasurer the candidate's registration statement shall

12

be cosigned by the candidate and the candidate's appointed treasurer. A candidate

13

who receives no contributions and makes no disbursements shall file such statement

14

as provided in s. 11.10 (1) but need not appoint a campaign treasurer or designate

15

a campaign depository account until the first contribution is received or

16

disbursement made.

17

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

18

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

19

11.30 (2m) (a) Except as provided in par. (f), no person may purchase or incur

20

an obligation for an advertisement unless ⁽ⁱ⁾ ~~all~~ ^{the person meets} the following ~~conditions~~ ^{requirements} are satisfied:

21

1. The advertisement includes the statement "Paid for by [name of each

22

purchaser, as indicated on the purchaser's registration statement under s. 11.05]." ^{In}

23

^{addition,} if the advertisement appears in the print media, or on television,

24

2. If the advertisement ~~is in the print media and~~ supports or opposes the ^{the}

25

nomination or election of one or more clearly identified candidates, the person states ^{advertisement} whether or not the advertisement is authorized by a candidate. The statement in the ^{shall}

^{include} the full telephone address and the purchaser's mail address, if any.

on the Internet

BILL

1 advertisement shall include the words: "Authorized by [name of candidate],

2 candidate for [name or office]" or "Not authorized by ^{any} a candidate," as applicable. ^{candidate's agents,}

3 This subdivision does not apply if the person purchasing the advertisement is the ^{or}

4 candidate whom the advertisement supports or that candidate's personal campaign ^{committee,}

5 committee.

6 3. If the advertisement ^{appears} is in the print media ^{or on the Internet} and identifies a candidate whom

7 the person is opposing, the person discloses in the advertisement the name of any

8 candidate whom the advertisement is intended to benefit. This subdivision applies

9 only if the person coordinates or consults with regard to the advertisement, or with

10 regard to the disbursement for the advertisement, with the candidate who is

11 intended to benefit therefrom.

12 (b) 1. In a ^{an} print media ^{that appears in the print media} advertisement, the height of all disclosure statements ^{or on the Internet}

13 required under par. (a) shall constitute at least 5 percent of the height of the ^{printed total}

14 space of the advertisement, except that the type may not be less than 12 points in

15 size. If a single advertisement consists of multiple pages, folds, or faces, the

16 disclosure statements required under par. (a) apply only to one page, fold, or face of

17 the advertisement.

18 2. In a television advertisement, a written disclosure statement used to comply

19 with par. (a) shall be made with letters equal to or greater than 4 percent of the

20 vertical picture height. ^{and the statement shall appear for at least 4 seconds}

21 3. In a radio advertisement, all disclosure statements, combined, that are

22 required under par. (a) shall last at least 3 seconds.

23 (c) No person may misrepresent in ^{an} ^{any} advertisement the sponsorship or

24 authorization of the advertisement.

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1 (d) In addition to the disclosure statements required under par. (a) and except
2 as provided in par. (b), a person purchasing or incurring an obligation for an
3 advertisement on television or radio that supports or opposes the nomination or
4 election of one or more clearly identified candidates shall satisfy ^{requirements} ~~all~~ the following

5 1. If the advertisement is purchased by a candidate or a candidate's personal
6 campaign committee, the advertisement shall include a statement spoken by the
7 candidate containing at least the following: "I am (or "This is") [name of
8 candidate], candidate for [name of office], and I (or "my campaign committee")
9 sponsored this advertisement." This subdivision applies only to an advertisement
10 that mentions the name of, shows the picture of, transmits the voice of, or otherwise
11 refers to a candidate for the same office as that sought by the purchasing candidate
12 or by the candidate supported by the purchasing personal campaign committee.

13 2. If the advertisement is purchased by a political party, ^{or legislative campaign committee} the advertisement
14 shall include a statement spoken by the chairperson, executive director, or treasurer
15 of the political party containing at least the following: "The [name of political
16 party] ^{or legislative campaign committee} sponsored this advertisement." The name of the ^a political party disclosed
17 under this subdivision shall be the same as the name used by the political party on
18 the ballot at the election.

19 3. If the advertisement is purchased by a committee other than a political party
20 or legislative campaign committee, the advertisement shall include a statement
21 spoken by the chief executive officer or treasurer of the committee containing at least
22 the following: "The [name of committee], a political action committee, sponsored
23 this advertisement." The name of the committee disclosed under this subdivision
24 shall be the same as the name indicated on the committee's registration statement
25 under s. 11.05.

BILL

1 4. Except as provided under subd. 1., if the advertisement is purchased by an
2 individual, the advertisement shall include a statement spoken by the individual
3 containing at least the following: "I am [individual's name], and I sponsored this
4 advertisement."

5 5. If the advertisement is purchased by a person other than a candidate, a
6 candidate's personal campaign committee, a political party, a committee other than
7 a political party or legislative campaign committee, or an individual, the
8 advertisement shall include a statement spoken by the chief executive or principal
9 decision maker of the purchaser containing at least the following: "...[Name of
10 person] sponsored this advertisement."

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

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

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

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

JWS
10-13

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

5 (c) 5

for advertisements in the print media

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

11 ~~2. An individual who purchases or incurs an obligation for an advertisement~~
 12 ~~with regard to a referendum.~~

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

JWS
10-14

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

15 11.30 (3) (b) Any person named in par. (a) is guilty of a violation of this chapter
 16 unless, before using the communications medium for political purposes other than
 17 as provided for in sub. (2) (2m), there is filed with the board a verified declaration
 18 specifically stating the communications medium in which the person has financial
 19 interest or over which the person has control and the exact nature and extent of the
 20 interest or control.
 21

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

23 **11.59 Liability for unlawful advertisements.** (1) A candidate who
 24 complies with all applicable requirements under s. 11.30 (2m) throughout the
 25 candidate's campaign, or the personal campaign committee of such a candidate, may

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1 bring an action for damages against any person who violates s. 11.30 (2m) with
2 regard to a television or radio advertisement relating to an election for the office that
3 the candidate seeks. As a condition of bringing an action under this section, a
4 candidate for state office, or the personal campaign committee of such a candidate,
5 shall complete and file with the board a notice of complaint, on a form prescribed by
6 the board, regarding a violation of s. 11.30 (2m). The notice shall be filed after the
7 airing of the advertisement, but no later than the Friday after the date of the election.
8 Any other candidate, or the personal campaign committee of such other candidate,
9 as a condition of bringing an action under this section, shall file the notice of
10 complaint during the same time period with the county clerk or, if applicable, the
11 county board of election commissioners, of any county with territory in the
12 jurisdiction or district that the candidate seeks to represent and shall publish a short
13 form notice of complaint, in the form prescribed by the board, in a newspaper having
14 general circulation in the jurisdiction or district that the candidate seeks to
15 represent. A candidate or personal campaign committee shall bring an action in
16 circuit court for the county where the notice of complaint is filed no later than the
17 90th day following the date of the election.

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

BILL

1 or rejected by the defendant. Within 5 days after the return receipt for any notice
2 mailed under this subsection is provided to the plaintiff, the plaintiff shall send a
3 copy of the notice to the board or to the county clerk or county board of election
4 commissioners of the county where the plaintiff's notice of complaint was filed.

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

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

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

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

18 13.62 (5g) "Candidate" has the meaning given under s. 11.01 ~~(1)~~ (1r).

19 **SECTION 14.** 19.42 ~~(3m)~~ ^X of the statutes is amended to read:

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

22 **SECTION 15. Nonstatutory provisions.**

23 (1) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
24 the repeal and recreation of section 8.30 (2) of the statutes by this act, or any part
25 of the laws specified in 2001 Wisconsin Act 109, section 9115 (2y) (b) is

BILL

1 unconstitutional, the repeal and recreation of section 8.30 (2) of the statutes by this
2 act is void.

3 (END)

JWS 10-6:1

Section #. 11.30 (2) (d), (e), (g), (hm) and (i) of the statutes are amended to read:

11.30 (2) (d) In addition to the requirements of pars. (a) to (c), a committee or individual required to file an oath under s. 11.06 (7) shall also in every communication in support of or in opposition to any clearly identified candidate or candidates include the words "Not authorized by any candidate or candidate's agent or committee".

History: 1973 c. 334; 1975 c. 93, 199, 224, 422; 1979 c. 328; 1983 a. 491; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1991 a. 316; 2003 a. 265.

(e) *Advertisements* Communications under this section by a personal campaign committee may identify the committee or any bona fide subcommittee thereof. ✓

History: 1973 c. 334; 1975 c. 93, 199, 224, 422; 1979 c. 328; 1983 a. 491; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1991 a. 316; 2003 a. 265.

(g) This subsection does not apply to nonadvertising material contained in a regularly published newsletter by an organization which is expressing its political views with respect to elections which are of concern to its membership, provided that distribution of such newsletter is restricted to such membership.

History: 1973 c. 334; 1975 c. 93, 199, 224, 422; 1979 c. 328; 1983 a. 491; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1991 a. 316; 2003 a. 265.

(g) (hm) Notwithstanding pars. (a) to (e), any *advertisement* communication making a solicitation on behalf of more than one candidate for a joint fund raising effort or program pursuant to an escrow agreement under s. 11.16 (5) may omit the names of the candidates or personal campaign committees assuming responsibility for the *advertisement* communication if the *advertisement* communication discloses that a joint fund raising effort or program is being conducted on behalf of named candidates.

History: 1973 c. 334; 1975 c. 93, 199, 224, 422; 1979 c. 328; 1983 a. 491; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1991 a. 316; 2003 a. 265.

(h) (i) No person may publish or disseminate, or cause to be published or disseminated any *advertisement* communication in violation of this subsection. A communications medium which in good faith relies on

MS 10-6:2

reasonable

the representations of any person who places an advertisement with ~~such~~ ^{that} medium as to the applicability of this subsection to ~~such~~ ^{that} person does not violate this paragraph as a result of publication or dissemination of that advertisement based on ~~such~~ ^{those} representations, provided that the representations are reasonable.

History: 1973 c. 334; 1975 c. 93; 199, 224, 422; 1979 c. 328; 1983 a. 491; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1991 a. 316; 2003 a. 265.

INS 10-14

Section #. 11.30 (2) (g) of the statutes is amended to read:

~~11.30 (2) (g)~~ This subsection does not apply to ^{3. An organization that disseminates} nonadvertising material ^{that expresses} contained in a regularly published newsletter by an organization which is expressing its political views with respect to elections which ^{that} are of concern to its membership, ^{if} provided that ^{the} distribution of such newsletter is restricted to such membership.

History: 1973 c. 334; 1975 c. 93, 199, 224, 422; 1979 c. 328; 1983 a. 491; 1985 a. 303; 1987 a. 370; 1989 a. 192; 1991 a. 316; 2003 a. 265.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1021/2dn

JTK.....

mk

(date)

Representative Pope-Roberts:

This draft retains the current requirement for groups and individuals that attempt to influence ballot measures to disclose their identities on advertisements. The enforceability of statutes of this type is not completely clear at this point. In *McIntyre v. Ohio Elections Commission*, 514 U.S. 344 (1995), the U.S. Supreme Court voided an Ohio law that applied disclaimer requirements to an independent citizen who spent less than \$100 from her own resources voicing her opinions on a ballot measure anonymously. [Wisconsin's current law, as well as this draft, do not apply to this type of situation.] In a later case, the Supreme Court indicated that the door to disclaimer requirements is not closed entirely: in *McConnell v. F.E.C.*, 124 S. Ct. 619 (2003), the court approved one that applied to communications that mention candidates. It will take further case law development before we can be assured to what extent disclaimer requirements in referendum campaigns may be constitutionally enforced.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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JTK:lmk:ch

April 20, 2005

Representative Pope-Roberts:

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2005 - 2006 LEGISLATURE

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wanted Fri 4/22

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ReGen

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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. 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 joint fund-raising effort

BILL

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. No statement need be included 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 makes independent disbursements, the communication must also include the words "Not authorized by any candidate or candidate's agent or committee."

The current 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 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, 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 and state or local referenda. With certain exceptions, 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 printed or electronic material, pamphlet, flier, or periodical or on television or radio, if the communication constitutes a campaign contribution or disbursement. The bill creates general disclosure requirements and additional disclosure

BILL

requirements applicable to television or radio advertisements. In addition, the bill prohibits any person from misrepresenting in any advertisement the sponsorship or authorization of the advertisement.

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]" and, if the advertisement appears in the print media or on television, the purchaser's full address and the purchaser's telephone number and electronic mail address, if any; b) if the advertisement 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 c) if the advertisement appears in the print media or on the Internet 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.

The bill provides that in an advertisement that appears in print media or on the Internet, the height of all of the disclosure statements must constitute at least 5 percent of the height of the total 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 percent of the vertical picture height and the statement must appear for at least four seconds. In a radio advertisement, the disclosure statements must last at least a total of three seconds.

Additional disclosure requirements applicable to television and radio

The bill also requires a person who purchases or incurs an obligation to purchase 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 committee") sponsored this advertisement." If the advertisement is obtained by a political party or legislative campaign committee, the advertisement must include a statement spoken by the chairperson, executive director, or treasurer of the political party or legislative campaign committee containing at least the following: "The [name of political party or legislative campaign committee] sponsored this advertisement." 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

BILL

executive officer or treasurer of the committee containing at least the following: "The [name of committee], a political action committee, sponsored this advertisement." 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." 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."

Under the bill a full-screen television 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 text other than any visual disclosure statement required by law. In addition, the image of the individual must occupy at least 50 percent 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.

The bill retains the current exceptions for subcommittees of personal campaign committees, joint fund raising efforts, news letters, and persons not primarily organized for political purposes.

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 ninetieth 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 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

BILL

report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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).

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

17 **8.30 (2)** If no registration statement has been filed by or on behalf of a candidate
18 for state or local office in accordance with s. 11.05 (2g) by the applicable deadline for
19 filing nomination papers by the candidate, or the deadline for filing a declaration of
20 candidacy for an office for which nomination papers are not filed, the name of the
21 candidate may not appear on the ballot. This subsection may not be construed to

BILL

1 exempt a candidate from applicable penalties if he or she files a registration
2 statement later than the time prescribed in ss. 11.01 (1r) and 11.05 (2g).

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

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

5 11.01 (1g) "Advertisement" means a communication that appears in the print
6 media, on the Internet, or on television or radio that constitutes a contribution or
7 disbursement.

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

9 11.01 (17) "Print media" means billboards, cards, newspapers, newspaper
10 inserts, magazines, sample ballots, mailings of more than 500 pieces of substantially
11 identical printed or electronic material, pamphlets, fliers, or periodicals.

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

13 11.05 (2g) CANDIDATES AND PERSONAL CAMPAIGN COMMITTEES. Every candidate,
14 as defined in s. 11.01 (1) (1r), shall file a registration statement with the appropriate
15 filing officer giving the information required by sub. (3). If a candidate appoints
16 another person as campaign treasurer the candidate's registration statement shall
17 be cosigned by the candidate and the candidate's appointed treasurer. A candidate
18 who receives no contributions and makes no disbursements shall file such statement
19 as provided in s. 11.10 (1) but need not appoint a campaign treasurer or designate
20 a campaign depository account until the first contribution is received or
21 disbursement made.

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

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

BILL

1 11.30 (2m) (a) Except as provided in par. (i), no person may purchase or incur
2 an obligation for an advertisement unless the person meets the following
3 requirements:

4 1. The advertisement includes the statement "Paid for by [name of each
5 purchaser, as indicated on the purchaser's registration statement under s. 11.05]."
6 In addition, if the advertisement appears in the print media, on the Internet, or on
7 television, the advertisement shall include the purchaser's full address and the
8 purchaser's telephone number and electronic mail address, if any.

9 2. If the advertisement supports or opposes the nomination or election of one
10 or more clearly identified candidates, the person states whether or not the
11 advertisement is authorized by a candidate. The statement in the advertisement
12 shall include the words: "Authorized by [name of candidate], candidate for
13 [name or office]" or "Not authorized by any candidate, candidate's agent, or
14 committee," as applicable. This subdivision does not apply if the person purchasing
15 the advertisement is the candidate whom the advertisement supports or that
16 candidate's personal campaign committee.

17 3. If the advertisement appears in the print media or on the Internet and
18 identifies a candidate whom the person is opposing, the person discloses in the
19 advertisement the name of any candidate whom the advertisement is intended to
20 benefit. This subdivision applies only if the person coordinates or consults with
21 regard to the advertisement, or with regard to the disbursement for the
22 advertisement, with the candidate who is intended to benefit therefrom.

23 (b) 1. In an advertisement that appears in the print media or on the Internet,
24 the height of all disclosure statements required under par. (a) shall constitute at least
25 5 percent of the height of the total space of the advertisement, except that the type

BILL

1 may not be less than 12 points in size. If a single advertisement consists of multiple
2 pages, folds, or faces, the disclosure statements required under par. (a) apply only to
3 one page, fold, or face of the advertisement.

4 2. In a television advertisement, a written disclosure statement used to comply
5 with par. (a) shall be made with letters equal to or greater than 4 percent of the
6 vertical picture height and the statement shall appear for at least 4 seconds.

7 3. In a radio advertisement, all disclosure statements, combined, that are
8 required under par. (a) shall last at least 3 seconds.

9 (c) No person may misrepresent in any advertisement the sponsorship or
10 authorization of the advertisement.

11 (d) In addition to the disclosure statements required under par. (a) and except
12 as provided in par. (i), a person purchasing or incurring an obligation for an
13 advertisement on television or radio that supports or opposes the nomination or
14 election of one or more clearly identified candidates shall satisfy the following
15 requirements:

16 1. If the advertisement is purchased by a candidate or a candidate's personal
17 campaign committee, the advertisement shall include a statement spoken by the
18 candidate containing at least the following: "I am (or "This is") [name of
19 candidate], candidate for [name of office], and I (or "my campaign committee")
20 sponsored this advertisement." ~~This subdivision applies only to an advertisement
21 that mentions the name of, shows the picture of, transmits the voice of, or otherwise
22 refers to a candidate for the same office as that sought by the purchasing candidate
23 or by the candidate supported by the purchasing personal campaign committee.~~

24 2. If the advertisement is purchased by a political party or legislative campaign
25 committee, the advertisement shall include a statement spoken by the chairperson,

BILL

1 executive director, or treasurer of the political party containing at least the following:
2 “The [name of political party or legislative campaign committee] sponsored this
3 advertisement.” The name of a political party disclosed under this subdivision shall
4 be the same as the name used by the political party on the ballot at the election.

5 3. If the advertisement is purchased by a committee other than a political party
6 or legislative campaign committee, the advertisement shall include a statement
7 spoken by the chief executive officer or treasurer of the committee containing at least
8 the following: “The [name of committee], a political action committee, sponsored
9 this advertisement.” The name of the committee disclosed under this subdivision
10 shall be the same as the name indicated on the committee’s registration statement
11 under s. 11.05.

12 4. Except as provided under subd. 1., if the advertisement is purchased by an
13 individual, the advertisement shall include a statement spoken by the individual
14 containing at least the following: “I am [individual’s name], and I sponsored this
15 advertisement.”

16 5. If the advertisement is purchased by a person other than a candidate, a
17 candidate’s personal campaign committee, a political party, a committee other than
18 a political party or legislative campaign committee, or an individual, the
19 advertisement shall include a statement spoken by the chief executive or principal
20 decision maker of the purchaser containing at least the following: “...[Name of
21 person] sponsored this advertisement.”

22 6. If the advertisement is televised, a full-screen picture containing an image
23 of the individual making the statement required under subds. 1. to 5., in
24 photographic form or through the actual appearance of the individual on camera,
25 shall be featured throughout the duration of the statement. The picture may not

BILL

1 contain any text other than any visual disclosure statement required by law. The
2 image of the individual shall occupy at least 50 percent of the vertical picture height
3 and nothing may block the view of the individual's face.

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

7 (e) If an advertisement that is subject to par. (d) is jointly purchased or if an
8 obligation for such an advertisement is jointly incurred, the statement required
9 under par. (d) shall name all of the purchasers but need be made by only one
10 individual. If a candidate or a candidate's personal campaign committee is one of the
11 purchasers or persons who incurs the obligation, that candidate shall be the
12 individual making the statement. If multiple candidates are the purchasers or
13 persons who incur the obligation, if a candidate and a personal campaign committee
14 of another candidate are the purchasers or persons who incur the obligation, or if the
15 personal campaign committees of multiple candidates are the purchasers or persons
16 who incur the obligation, at least one of the candidates shall be the individual
17 making the statement.

18 (f) Advertisements under this section by a personal campaign committee may
19 identify the committee or any bona fide subcommittee thereof.

20 (g) Notwithstanding pars. (a) to (e), any advertisement making a solicitation
21 on behalf of more than one candidate for a joint fund raising effort or program
22 pursuant to an escrow agreement under s. 11.16 (5) may omit the names of the
23 candidates or personal campaign committees assuming responsibility for the
24 advertisement if the advertisement discloses that a joint fund raising effort or
25 program is being conducted on behalf of named candidates.

BILL

1 (h) No person may publish or disseminate, or cause to be published or
2 disseminated any advertisement in violation of this subsection. A communications
3 medium which in good faith relies on the reasonable representations of any person
4 who places an advertisement with that medium as to the applicability of this
5 subsection to that person does not violate this paragraph as a result of publication
6 or dissemination of that advertisement based on those representations.

7 (i) Paragraphs (a), (c), and (d) do not apply to any of the following:

8 1. An individual who makes disbursements for advertisements in the print
9 media with regard to a particular election that total less than \$1,000 and that do not
10 constitute a contribution to any candidate or other individual.

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

13 3. An organization that disseminates nonadvertising material in a regularly
14 published newsletter that expresses its political views with respect to elections that
15 are of concern to its membership, if distribution of the newsletter is restricted to that
16 membership.

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

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

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

BILL**SECTION 11**

1 **11.59 Liability for unlawful advertisements.** (1) A candidate who
2 complies with all applicable requirements under s. 11.30 (2m) throughout the
3 candidate's campaign, or the personal campaign committee of such a candidate, may
4 bring an action for damages against any person who violates s. 11.30 (2m) with
5 regard to a television or radio advertisement relating to an election for the office that
6 the candidate seeks. As a condition of bringing an action under this section, a
7 candidate for state office, or the personal campaign committee of such a candidate,
8 shall complete and file with the board a notice of complaint, on a form prescribed by
9 the board, regarding a violation of s. 11.30 (2m). The notice shall be filed after the
10 airing of the advertisement, but no later than the Friday after the date of the election.
11 Any other candidate, or the personal campaign committee of such other candidate,
12 as a condition of bringing an action under this section, shall file the notice of
13 complaint during the same time period with the county clerk or, if applicable, the
14 county board of election commissioners, of any county with territory in the
15 jurisdiction or district that the candidate seeks to represent and shall publish a short
16 form notice of complaint, in the form prescribed by the board, in a newspaper having
17 general circulation in the jurisdiction or district that the candidate seeks to
18 represent. A candidate or personal campaign committee shall bring an action in
19 circuit court for the county where the notice of complaint is filed no later than the
20 90th day following the date of the election.

21 (2) The court shall award a successful plaintiff in an action under this section
22 damages equal to the total dollar amount of the television and radio advertising time
23 that was aired in violation of s. 11.30 (2m). The court shall award treble damages
24 if the plaintiff notified or reasonably attempted to notify the defendant, by 1st class
25 mail with return receipt requested, that a particular advertisement or that

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1 particular advertisements failed to comply with s. 11.30 (2m) and if, after the notice
2 or attempted notice, the advertisement continued to be aired. The court shall
3 calculate the treble damages beginning on the date on which the notice was accepted
4 or rejected by the defendant. Within 5 days after the return receipt for any notice
5 mailed under this subsection is provided to the plaintiff, the plaintiff shall send a
6 copy of the notice to the board or to the county clerk or county board of election
7 commissioners of the county where the plaintiff's notice of complaint was filed.

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

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

15 11.61 (1) (c) Whoever intentionally violates any provision of this chapter other
16 than those ~~provided~~ specified in par. (a) and s. 11.30 (2m) (d) and whoever
17 intentionally violates any provision under par. (b) where the intentional violation
18 concerns a specific figure which does not exceed \$100 in amount or value may be fined
19 not more than \$1,000 or imprisoned for not more than 6 months or both.

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

21 13.62 (5g) "Candidate" has the meaning given under s. 11.01 (~~1~~) (1r).

22 **SECTION 14.** 19.42 (3m) of the statutes is amended to read:

23 19.42 (3m) "Candidate," except as otherwise provided, has the meaning given
24 in s. 11.01 (~~1~~) (1r).

25 **SECTION 15. Nonstatutory provisions.**

Northrop, Lori

From: Youngman, Lori
Sent: Monday, May 02, 2005 1:51 PM
To: LRB.Legal
Subject: Draft review: LRB 05-1021/3 Topic: Political communication attribution requirements

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

Draft review: LRB 05-1021/3 Topic: Political communication attribution requirements