

## 2005-06 SESSION

### COMMITTEE HEARING RECORDS

#### Assembly Committee on Campaigns & Elections (AC-CE)

Sample:

#### Record of Comm. Proceedings ... RCP

- 05hrAC-EdR\_RCP\_pt01a
- 05hrAC-EdR\_RCP\_pt01b
- 05hrAC-EdR\_RCP\_pt02

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

➤ \*\*

➤ Committee Hearings ... CH

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Hearing Records ... HR

➤ \*\*

➤ Miscellaneous ... Misc

➤ **05hr\_AC-CE\_Misc\_pt25**

➤ Record of Comm. Proceedings ... RCP

➤ \*\*



---

---

## WISCONSIN LEGISLATIVE COUNCIL

---

---

*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE STEPHEN FREESE

FROM: Robert J. Conlin, <sup>RJC</sup> Senior Staff Attorney

RE: 2005 Assembly Bill 435, Relating to Disclosures Required in Certain Campaign Advertisements

DATE: August 29, 2005

This memorandum briefly describes 2005 Assembly Bill 435, relating to disclosures required in certain campaign advertisements. The bill was introduced by Representatives Pope-Roberts and others and was cosponsored by Senator Lassa and others. The bill has been referred to the Assembly Committee on Campaigns and Elections, which has scheduled a public hearing on the bill for Thursday, September 1, 2005.

### Current Law

Under current law, and with limited exceptions, the source of every printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, or other communication which is paid for by or through any contribution, disbursement, or incurred obligation must clearly appear thereon. In general, the attribution statement must contain the words "paid for by" followed by the name of the committee, group, or individual who pays for or is responsible for the cost of the communication. Such a statement need not 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. If the communication is made by a committee or individual who makes independent disbursements, the statement must provide the following words: "not authorized by any candidate or candidate's agent or committee."

The requirements of current law do not apply to preparation or transmittal of personal correspondence or the production, wearing, or display of a single personal item which is not reproduced or manufactured by machine or other equipment for sale or distribution to more than one individual. In addition, the requirements do not apply to communications printed on pins, buttons, pens, balloons, nail files, and similar small items on which the information required cannot be conveniently printed. The requirements also do 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 the distribution of such newsletter is restricted to such membership.

A person that publishes or disseminates a communication that does not contain these disclosure requirements is subject to a civil forfeiture of up to \$500 per violation. If it is an intentional violation, 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.

### **The Bill**

The bill repeals these current law restrictions and instead creates new advertising requirements. Under the bill, no person may purchase or incur an obligation for an advertisement unless the person meets the requirements of the bill. An "advertisement" is defined as a communication that appears in the print media, on the Internet, or on television or radio that constitutes a contribution or disbursement. For purposes of the bill, "print media" is defined as billboards, cards, newspapers, newspaper inserts, magazines, sample ballots, mailings of more than 500 pieces of substantially identical printed or electronic material, pamphlets, flyers, or periodicals.

The requirements established by the bill for advertisements are as follows:

1. The advertisement must include the statement "paid for by...[name of each purchaser, as indicated on the purchaser's registration statement under s. 11.05]." In addition, if the advertisement appears in the print media, on the Internet, or on television, the advertisement must include the purchaser's full address and the purchaser's telephone number and electronic mail address, if any.
2. If the advertisement supports or opposes the nomination or election of one or more clearly identified candidates, the advertisement must state whether or not the advertisement is authorized by a candidate. The statement in the advertisement must include the words "authorized by [name of candidate], candidate for [name of office]" or "not authorized by any candidate, candidate's agent, or committee" as applicable. This requirement does not apply if the purchaser of the advertisement is the candidate whom the advertisement supports or the personal campaign committee of that candidate.
3. If the advertisement appears in the print media or on the Internet and identifies a candidate whom the person is opposing, the person must disclose in the advertisement the name of any candidate whom the advertisement is intended to benefit. This requirement applies only if the person purchasing the advertisement 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 from the advertisement.

The bill also establishes certain size and duration requirements for the disclosures required under the bill. For example, in an advertisement that appears in the print media or on the Internet, the bill requires that the height of all disclosure statements constitute at least 5% 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 statement need only apply to one page, fold, or face of the advertisement. Similarly, in a television advertisement, the bill requires the written disclosure to be made with letters equal to or greater than 4% of the vertical picture height and the statement must appear for at least four seconds. In a radio advertisement, all disclosure statements combined must last at least three seconds.

Additionally, the bill requires that advertisements on television or radio that support or oppose the nomination or election of one or more candidates must satisfy certain requirements. For example, if the advertisement is purchased by a candidate or a candidate's personal campaign committee, 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 purchased 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 containing at least the following: "The [name of political party or legislative campaign committee] sponsored this advertisement." The name of the political party disclosed in this requirement must be the same as the name used by the political party on the ballot at the election.

If the advertisement is purchased 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 purchased by an individual, the advertisement shall include a statement spoken by the individual containing at least the following: "I am [individual's name] and I sponsored this advertisement." Finally, if the advertisement is purchased by a person other than a candidate, a candidate's personal campaign committee, a political party, a committee other than a political party or legislative campaign committee, or an individual, the advertisement must include a statement spoken by the chief executive or the principal decision-maker of the purchaser containing at least the following: "[Name of person] sponsored this advertisement."

If the advertisement is televised, a full-screen picture containing an image of the individual making the statements required above in photographic form or through the actual appearance of the individual on camera must be featured throughout the duration of the statement. The picture may not contain any text other than any visual disclosure statement required by law. The image of the individual appearing in the advertisement must occupy at least 50% of the vertical picture height and nothing may block the view of the individual's face. Finally, if the advertisement is televised and is more than five minutes long, any statement required by the bill must be made at the beginning and at the end of the advertisement.

The bill also makes special provisions for advertisements that are jointly incurred as a result of joint fundraising efforts.

The bill prohibits any person from publishing or disseminating, or causing to be published or disseminated, an advertisement in violation of the bill but provides that a communications medium which in good faith relies on the reasonable representations of any person who places an advertisement with that medium as to the applicability of the bill's provisions to that person is not a violation as a result of publication or dissemination of that advertisement based on those representations.

The provisions of the bill generally do not apply to an individual who makes disbursements for advertisements in the print media with regard to a particular election that total less than \$1,000 and that do not constitute a contribution to any candidate or other individual. In addition, they do not apply to a person who is exempt from reporting the purchase of or obligation incurred for an advertisement if the person is not primarily organized by political purposes and the disbursement does not constitute a contribution to any candidate or other individual, committee, or group, unless it is to expressly advocate the election or defeat of a clearly identified candidate or the adoption or rejection of a referendum. Finally, the provisions of the bill do not apply to an organization that disseminates nonadvertising material in a regularly published newsletter that expresses its political views with respect to elections that are of concern to its membership, if distribution of the newsletter is restricted to that membership.

With regard to enforcement remedies, the bill provides that a candidate who complies with all applicable requirements of the bill throughout the candidate's campaign may bring an action for damages against any person who violates the provisions with regard to a television or radio advertisement relating to an election for the office that the candidate seeks. As a condition of bringing an action, a candidate for state office must complete and file with the Elections Board a notice of complaint regarding a violation of the bill. The notice must be filed after the airing of the advertisement but no later than Friday after the date of the election. Any other candidate, as a condition of bringing an action, must file the notice during the same time period with the county clerk, or if applicable, the county board of election commissioners of any county with territory in the jurisdiction or district that the candidate seeks to represent and must publish a short form notice of complaint in a newspaper having general circulation in the jurisdiction or district that the candidate seeks to represent. A candidate must bring an action in circuit court for the county where the notice of complaint is filed not later than the 90<sup>th</sup> day following the date of the election.

The court must award a successful plaintiff in such an action damages equal to the total dollar amount of the television and radio advertising time that was aired in violation of the provisions of the bill. The court must award treble damages if the plaintiff notified or reasonably attempted to notify the defendant, by first class mail with return receipt requested, that a particular advertisement or that particular advertisements failed to comply with the provisions of the bill and if, after the notice or attempted notice, the advertisement continued to be aired. The court must calculate the treble damages beginning on the date on which the notice was accepted or rejected by the defendant. Within five days after the return receipt for any notice mailed is provided to the plaintiff, the plaintiff must send a copy of the notice to the board, or to the county clerk, county board of election commissioners or the county where the plaintiff's notice of complaint was filed. A candidate and his or her personal campaign committee are jointly and severally liable for the payment of damages and any attorney fees awarded in an action under the provisions of the bill. 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 campaign depository account in paying the damages or attorney fees.

If you have any questions regarding this memorandum, please feel free to contact me at the Legislative Council staff offices.

RJC:jal:ksm