

2007 ASSEMBLY BILL 661

January 3, 2008 – Introduced by Representatives PARISI, POPE-ROBERTS, ALBERS, SOLETSKI, BERCEAU, HEBL, SMITH, SINICKI, A. WILLIAMS, GRIGSBY and MOLEPSKE, cosponsored by Senators RISSER, VINEHOUT and TAYLOR. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to amend* 5.05 (1) (intro.) and (c), 5.05 (2m) (c) 2. a., 5.05 (2m) (h), 5.05
 2 (2s), 5.05 (5s) (b), 5.05 (5s) (d), 5.05 (6a), 12.13 (5) (a), 20.511 (1) (be), 801.50 (5t),
 3 801.52, 971.19 (12), 971.223 (1) and 978.05 (2); and *to create* 13.42 of the
 4 statutes; **relating to:** false representations in communications with
 5 legislators, providing a penalty, and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill prohibits any person from transmitting or delivering a communication to a member of the legislature which represents that a constituent of the member supports or opposes a specific numbered introduced proposal unless the person has a written or electronic document which proves that the named constituent has taken a position in support of or in opposition to the proposal identified in the communication. Violators are subject to a forfeiture (civil penalty) of not more than \$10,000. Each day of violation constitutes a separate offense.

Currently, no similar provision exists.

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

6 **SECTION 1.** 5.05 (1) (intro.) and (c) of the statutes, as affected by 2007 Wisconsin
 7 Act 1, are amended to read:

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1 5.05 (1) GENERAL AUTHORITY. (intro.) The government accountability board
2 shall have the responsibility for the administration of chs. 5 to 12, other laws relating
3 to elections and election campaigns, subch. III of ch. 13, ~~and~~ subch. III of ch. 19, and
4 s. 13.42. Pursuant to such responsibility, the board may:

5 (c) Bring civil actions to require a forfeiture for any violation of chs. 5 to 12,
6 subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42 or a license revocation for any
7 violation of subch. III of ch. 13 for which the offender is subject to a revocation. The
8 board may compromise and settle any civil action or potential action brought or
9 authorized to be brought by it which, in the opinion of the board, constitutes a minor
10 violation, a violation caused by excusable neglect, or which for other good cause
11 shown, should not in the public interest be prosecuted under such chapter.
12 Notwithstanding s. 778.06, a civil action or proposed civil action authorized under
13 this paragraph may be settled for such sum as may be agreed between the parties.
14 Any settlement made by the board shall be in such amount as to deprive the alleged
15 violator of any benefit of his or her wrongdoing and may contain a penal component
16 to serve as a deterrent to future violations. In settling civil actions or proposed civil
17 actions, the board shall treat comparable situations in a comparable manner and
18 shall assure that any settlement bears a reasonable relationship to the severity of
19 the offense or alleged offense. Except as otherwise provided in sub. (2m) (c) 15. and
20 16. and ss. 5.08, 5.081, 19.535, and 19.59 (8), forfeiture and license revocation actions
21 brought by the board shall be brought in the circuit court for the county where the
22 defendant resides, or if the defendant is a nonresident of this state, in circuit court
23 for the county wherein the violation is alleged to occur. For purposes of this
24 paragraph, a person other than a natural person resides within a county if the
25 person's principal place of operation is located within that county. Whenever the

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1 board enters into a settlement agreement with an individual who is accused of a civil
2 violation of chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42 or who
3 is investigated by the board for a possible civil violation of one of those provisions,
4 the board shall reduce the agreement to writing, together with a statement of the
5 board's findings and reasons for entering into the agreement and shall retain the
6 agreement and statement in its office for inspection.

7 **SECTION 2.** 5.05 (2m) (c) 2. a. of the statutes, as created by 2007 Wisconsin Act
8 1, is amended to read:

9 5.05 **(2m)** (c) 2. a. Any person may file a complaint with the board alleging a
10 violation of chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42. If the
11 board finds, by a preponderance of the evidence, that a complaint is frivolous, the
12 board may order the complainant to forfeit not more than the greater of \$500 or the
13 expenses incurred by the division in investigating the complaint.

14 **SECTION 3.** 5.05 (2m) (h) of the statutes, as created by 2007 Wisconsin Act 1,
15 is amended to read:

16 5.05 **(2m)** (h) If the defendant in an action for a civil violation of chs. 5 to 12,
17 subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42 is a district attorney or a circuit
18 judge or a candidate for either such office, the action shall be brought by the board.
19 If the defendant in an action for a civil violation of chs. 5 to 12, subch. III of ch. 13,
20 ~~or~~ subch. III of ch. 19, or s. 13.42 is the attorney general or a candidate for that office,
21 the board may appoint special counsel to bring suit on behalf of the state.

22 **SECTION 4.** 5.05 (2s) of the statutes, as created by 2007 Wisconsin Act 1, is
23 amended to read:

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1 5.05 **(2s)** ETHICS AND ACCOUNTABILITY DIVISION. The ethics and accountability
2 division has the responsibility for administration of ch. 11, subch. III of ch. 13, and
3 subch. III of ch. 19, and s. 13.42.

4 **SECTION 5.** 5.05 (5s) (b) of the statutes, as affected by 2007 Wisconsin Act 1, is
5 amended to read:

6 5.05 **(5s)** (b) Investigatory records of the board may be made public in the
7 course of a prosecution initiated under chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III
8 of ch. 19, or s. 13.42.

9 **SECTION 6.** 5.05 (5s) (d) of the statutes, as created by 2007 Wisconsin Act 1, is
10 amended to read:

11 5.05 **(5s)** (d) If the board commences a civil prosecution of a person for an
12 alleged violation of chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42
13 as the result of an investigation, the person who is the subject of the investigation
14 may authorize the board to make available for inspection and copying under s. 19.35
15 (1) records of the investigation pertaining to that person if the records are available
16 by law to the subject person and the board shall then make those records available.

17 **SECTION 7.** 5.05 (6a) of the statutes, as affected by 2007 Wisconsin Act 1, is
18 amended to read:

19 5.05 **(6a)** ADVISORY OPINIONS. Any individual, either personally or on behalf of
20 an organization or governmental body, may make a written or electronic request of
21 the board for an advisory opinion regarding the propriety under chs. 5 to 12, subch.
22 III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42 of any matter to which the person is
23 or may become a party; and any appointing officer, with the consent of a prospective
24 appointee, may request of the board an advisory opinion regarding the propriety
25 under chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42 of any matter

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1 to which the prospective appointee is or may become a party. The board shall review
2 a request for an advisory opinion and may issue a formal written or electronic
3 advisory opinion to the person making the request. Except as authorized or required
4 for opinions specified in sub. (5s) (f) 2., the board's deliberations and actions upon
5 such requests shall be in meetings not open to the public. No person acting in good
6 faith upon an advisory opinion issued by the board is subject to criminal or civil
7 prosecution for so acting, if the material facts are as stated in the opinion request.
8 To have legal force and effect, each advisory opinion issued by the board must be
9 supported by specific legal authority under a statute or other law, or by specific case
10 or common law authority. Each advisory opinion shall include a citation to each
11 statute or other law and each case or common law authority upon which the opinion
12 is based, and shall specifically articulate or explain which parts of the cited authority
13 are relevant to the board's conclusion and why they are relevant. The board may
14 authorize its legal counsel to issue an informal written advisory opinion or to
15 transmit an informal advisory opinion electronically on behalf of the board, subject
16 to such limitations as the board deems appropriate. Every informal advisory opinion
17 shall be consistent with applicable formal advisory opinions issued by the board. If
18 the board disagrees with an informal advisory opinion that has been issued on behalf
19 of the board, the board may withdraw the opinion or issue a revised advisory opinion
20 and no person acting after the date of the withdrawal or issuance of the revised
21 advisory opinion is exempted from prosecution under this subsection if the opinion
22 upon which the person's action is based has been withdrawn or revised in relevant
23 degree. Except as authorized or required under sub. (5s) (f) 2., no member or
24 employee of the board may make public the identity of the individual requesting a
25 formal or informal advisory opinion or of individuals or organizations mentioned in

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1 the opinion. Any person receiving a formal or informal advisory opinion under this
2 subsection who disagrees with the opinion may request a public or private hearing
3 before the board to discuss the opinion. The board shall grant a request for a public
4 or private hearing under this subsection. After hearing the matter, the board may
5 reconsider its opinion and may issue a revised opinion to the person. Promptly upon
6 issuance of each formal advisory opinion that is not open to public access, the board
7 shall publish a summary of the opinion that is consistent with applicable
8 requirements under sub. (5s) (f).

9 **SECTION 8.** 12.13 (5) (a) of the statutes, as created by 2007 Wisconsin Act 1, is
10 amended to read:

11 12.13 (5) (a) Except as specifically authorized by law and except as provided
12 in par. (b), no investigator, prosecutor, employee of an investigator or prosecutor, or
13 member or employee of the board may disclose information related to an
14 investigation or prosecution under chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of
15 ch. 19, or s. 13.42 or any other law specified in s. 978.05 (1) or (2) or provide access
16 to any record of the investigator, prosecutor, or the board that is not subject to access
17 under s. 5.05 (5s) to any person other than an employee or agent of the prosecutor
18 or investigator or a member, employee, or agent of the board prior to presentation of
19 the information or record in a court of law.

20 **SECTION 9.** 13.42 of the statutes is created to read:

21 **13.42 False representations in communications with legislators.**

22 (1) No person may transmit or deliver a communication to a member of the
23 legislature which represents that a constituent of the member supports or opposes
24 a specific numbered introduced proposal unless the person has a written or electronic

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1 document which proves that the named constituent has taken a position in support
2 of or in opposition to the proposal that is identified in the communication.

3 **(2)** Any person who violates sub. (1) may be required to forfeit not more than
4 \$10,000. Each day of violation constitutes a separate offense.

5 **SECTION 10.** 20.511 (1) (be) of the statutes, as affected by 2007 Wisconsin Act
6 1, is amended to read:

7 20.511 **(1)** (be) *Investigations.* A sum sufficient for the purpose of financing the
8 costs of investigations authorized by the board of potential violations of chs. 5 to 12,
9 subch. III of ch. 13, ~~and~~ subch. III of ch. 19, and s. 13.42.

10 **SECTION 11.** 801.50 (5t) of the statutes, as created by 2007 Wisconsin Act 1, is
11 amended to read:

12 801.50 **(5t)** Except as otherwise provided in ss. 801.52 and 971.223 (1) and (2),
13 venue in a civil action to impose a forfeiture upon a resident of this state for a
14 violation of chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42, or for
15 a violation of any other law arising from or in relation to the official functions of the
16 subject of the investigation or any matter that involves elections, ethics, or lobbying
17 regulation under chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42,
18 shall be in circuit court for the county where the defendant resides. For purposes of
19 this subsection, a person other than a natural person resides within a county if the
20 person's principal place of operation is located within that county. This subsection
21 does not affect which prosecutor has responsibility under s. 978.05 (2) to prosecute
22 civil actions arising from violations under s. 971.223 (1).

23 **SECTION 12.** 801.52 of the statutes, as affected by 2007 Wisconsin Act 1, is
24 amended to read:

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1 **801.52 Discretionary change of venue.** The court may at any time, upon
2 its own motion, the motion of a party or the stipulation of the parties, change the
3 venue to any county in the interest of justice or for the convenience of the parties or
4 witnesses, except that venue in a civil action to impose forfeiture for a violation of chs.
5 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42 or for a violation of any
6 other law arising from or in relation to the official functions of the subject of the
7 investigation or any matter that involves elections, ethics, or lobbying regulation
8 under chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42, may be
9 changed only as provided in s. 971.223 (1) and (2) or in the same manner that is
10 authorized for a change in the venue of a criminal trial under s. 971.22. This section
11 does not apply to proceedings under ch. 980.

12 **SECTION 13.** 971.19 (12) of the statutes, as created by 2007 Wisconsin Act 1, is
13 amended to read:

14 971.19 (12) Except as provided in s. 971.223, in an action for a violation of chs.
15 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42, or for a violation of any
16 other law arising from or in relation to the official functions of the subject of the
17 investigation or any matter that involves elections, ethics, or lobbying regulation
18 under ~~subch. chs.~~ chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42, a
19 defendant who is a resident of this state shall be tried in circuit court for the county
20 where the defendant resides. For purposes of this subsection, a person other than
21 a natural person resides within a county if the person's principal place of operation
22 is located within that county.

23 **SECTION 14.** 971.223 (1) of the statutes, as created by 2007 Wisconsin Act 1, is
24 amended to read:

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1 971.223 (1) In an action for a violation of chs. 5 to 12, subch. III of ch. 13, ~~or~~
2 subch. III of ch. 19, or s. 13.42, or for a violation of any other law arising from or in
3 relation to the official functions of the subject of the investigation or any matter that
4 involves elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch.
5 13, ~~or~~ subch. III of ch. 19, or s. 13.42, a defendant who is a resident of this state may
6 move to change the place of trial to the county where the offense was committed. The
7 motion shall be in writing.

8 **SECTION 15.** 978.05 (2) of the statutes, as affected by 2007 Wisconsin Act 1, is
9 amended to read:

10 978.05 (2) FORFEITURES. Except as otherwise provided by law, prosecute all
11 state forfeiture actions, county traffic actions and actions concerning violations of
12 county ordinances which are in conformity with state criminal laws in the courts
13 within his or her prosecutorial unit and have joint responsibility, together with the
14 government accountability board, for prosecution of all forfeiture actions arising
15 from violations of chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or s. 13.42
16 and from violations of other laws arising from or in relation to the official functions
17 of the subject of the investigation or any matter that involves elections, ethics, or
18 lobbying regulation under chs. 5 to 12, subch. III of ch. 13, ~~or~~ subch. III of ch. 19, or
19 s. 13.42 that are alleged to be committed by a resident of his or her prosecutorial unit,
20 or if alleged to be committed by a nonresident of this state, that are alleged to occur
21 within his or her prosecutorial unit unless another prosecutor is substituted under
22 s. 5.05 (2m) (h) or this chapter or by referral of the government accountability board
23 under s. 5.05 (2m) (c) 15. or 16. For purposes of this subsection, a person other than

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1 a natural person is a resident of a prosecutorial unit if the person's principal place
2 of operation is located in that prosecutorial unit.

3 (END)