

2009 ASSEMBLY BILL 63

February 17, 2009 – Introduced by Representatives DEXTER, HEBL, CULLEN, ZIGMUNT, SHERMAN, BARCA, HINTZ, BLACK, HILGENBERG, MASON, TOLES, HIXSON, POPE-ROBERTS, POCAN and KAUFERT, cosponsored by Senators ERPENBACH, KREITLOW, ELLIS, VINEHOUT, HANSEN, RISSER, LEHMAN, HOLPERIN, HARSDORF, CARPENTER, COWLES and ROBSON. Referred to Committee on Elections and Campaign Reform.

1 **AN ACT to renumber and amend** 11.01 (16) (b); **to amend** 11.06 (2); and **to**
2 **create** 11.01 (16) (a) 3., 11.01 (16) (b) 2. and 11.05 (3) (s) of the statutes; **relating**
3 **to:** the scope of regulated activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

Currently, individuals who accept contributions, organizations that make or accept contributions, and individuals who or organizations that incur obligations or make disbursements for the purpose of influencing an election for state or local office are generally required to register with the appropriate filing officer and to file financial reports with that officer, regardless of whether they act in conjunction with or independently of any candidate who is supported or opposed.

With certain exceptions, this bill imposes registration and reporting requirements, in addition, upon any individual who and organization that, within 60 days of an election and by means of communications media, makes any communication that includes a reference to a candidate at that election, an office to be filled at that election, or a political party. The bill also requires an individual who or organization that becomes subject to a registration requirement by making such a communication to report, upon registration, the information that would have been required to be reported if the individual or organization had been registered with respect to any obligation incurred or disbursement made for the purpose of making such a communication prior to registration. The bill, however, does not require registration and reporting if the communication is made by a corporation, cooperative, or nonpolitical voluntary association and is limited to the corporation's,

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cooperative's, or association's members, shareholders, or subscribers. In addition, the bill exempts from registration and reporting the cost of making a communication that 1) does not mention an election, candidacy, opposing candidate, political party, or voting by the general public; and 2) does not take a position on a candidate's or officeholder's character, qualifications, or fitness for office, and either a) focuses on a legislative or executive matter or issue and urges a candidate to take a particular position or action with respect to the matter or issue or urges the public to contact a candidate with respect to the matter or issue, or b) proposes a commercial transaction, such as the purchase of a book, video, or other product or service, unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate for state or local office whose name is certified to appear on the ballot at the election.

The change in the scope of reportable activity under the bill also applies to contribution and disbursement (spending) limitations and restrictions by causing reportable "contributions," "obligations," and "disbursements" to include the cost of all reportable communications.

Violators of registration and reporting requirements are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. In addition, any person who is delinquent in filing a report is subject to a forfeiture of not more than \$50 or 1 percent of the annual salary of the office for which a candidate is being supported or opposed, whichever is greater, for each day of delinquency. Intentional violators of the registration requirements and persons who intentionally file false reports or statements 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 people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 11.01 (16) (a) 3. of the statutes is created to read:
2 11.01 **(16)** (a) 3. A communication that is made by means of one or more
3 communications media, other than a communication that is exempt from reporting
4 under s. 11.29, that is made during the period beginning on the 60th day preceding
5 an election and ending on the date of that election, and that includes a reference to
6 a candidate whose name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on
7 the ballot at that election, a reference to an office to be filled at that election, or a
8 reference to a political party.

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1 **SECTION 2.** 11.01 (16) (b) of the statutes is renumbered 11.01 (16) (b) (intro.) and
2 amended to read:

3 11.01 **(16)** (b) (intro.) A “political purpose” does not include expenditures any
4 of the following:

5 1. An expenditure made for the purpose of supporting or defending a person
6 who is being investigated for, charged with or convicted of a criminal violation of state
7 or federal law, or an agent or dependent of such a person.

8 **SECTION 3.** 11.01 (16) (b) 2. of the statutes is created to read:

9 11.01 **(16)** (b) 2. A communication that does not mention an election, candidacy,
10 opposing candidate, political party, or voting by the general public, and does not take
11 a position on a candidate’s or officeholder’s character, qualifications, or fitness for
12 office, and either a) focuses on a legislative or executive matter or issue and urges
13 a candidate to take a particular position or action with respect to the matter or issue
14 or urges the public to contact a candidate with respect to the matter or issue or b)
15 proposes a commercial transaction, such as the purchase of a book, video, or other
16 product or service, unless the communication is susceptible of no reasonable
17 interpretation other than as an appeal to vote for or against a candidate for state or
18 local office whose name is certified to appear on the ballot at the election.

19 **SECTION 4.** 11.05 (3) (s) of the statutes is created to read:

20 11.05 **(3)** (s) In the case of a registrant that has made a communication
21 identified in s. 11.01 (16) (a) 3., a report containing the information specified in s.
22 11.06 (1) with respect to any obligation to make a disbursement incurred or any
23 disbursement made for the purpose of making such a communication prior to
24 registration.

25 **SECTION 5.** 11.06 (2) of the statutes is amended to read:

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1 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
2 sub. (1), if a disbursement is made or obligation incurred by an individual other than
3 a candidate or by a committee or group which is not primarily organized for political
4 purposes, ~~and the disbursement does not constitute a contribution to any candidate~~
5 ~~or other individual, committee, or group, and the disbursement is not made or the~~
6 ~~obligation is not incurred for the purpose of making a communication specified in s.~~
7 ~~11.01 (16) (a) 3., the disbursement or obligation is required to be reported only if the~~
8 ~~purpose is to expressly advocate the election or defeat of a clearly identified~~
9 ~~candidate or the adoption or rejection of a referendum. The exemption provided by~~
10 ~~this subsection shall in no case be construed to apply to a political party, legislative~~
11 ~~campaign, personal campaign, or support committee.~~

SECTION 6. Initial applicability.

12 (1) The treatment of section 11.01 (16) (a) 3. of the statutes, the renumbering
13 and amendment of section 11.01 (16) (b) of the statutes, and the creation of section
14 11.01 (16) (b) 2. of the statutes first apply with respect to reporting periods that begin
15 on or after the effective date of this subsection.
16

17 (END)