



1995 SENATE BILL 286

August 2, 1995 - Introduced by Senators WEEDEN, ELLIS and RUDE, by request of Governor Tommy G. Thompson. Referred to Committee on State Government Operations and Corrections.

1 **AN ACT to amend** 5.05 (1) (c), 12.60 (title), 12.60 (1) (b), 12.60 (1) (c) and 12.60
2 (4); and **to create** 5.05 (3) (d) and 12.60 (1) (bm) of the statutes; **relating to:**
3 false representations affecting elections and providing a penalty.

Analysis by the Legislative Reference Bureau

Currently, no person may knowingly make or publish, or cause to be made or published, a false representation pertaining to a candidate or referendum which is intended or tends to affect voting at an election. Violators are subject to a fine of not more than \$1,000 or imprisonment for not more than 6 months or both. The elections board is required to accept from any person a complaint alleging a violation of this and other prohibited election practices, except that the board need not investigate a complaint that is not verified (sworn) or that the board finds to be without merit. Prosecutions may be initiated by the appropriate district attorney or, in certain cases, by the attorney general.

This bill provides that the current penalty for violating the false representation statute applies only in situations where the violator acts intentionally. The bill makes violators subject, in addition, to a forfeiture (civil penalty) not exceeding \$500 for each violation in which criminal intent is not proven. The bill permits the elections board to initiate civil prosecutions where a violation concerns an election for state office or a statewide referendum, and to compromise and settle prosecutions and proposed prosecutions. The bill also requires the elections board to investigate and make a public statement concerning the truthfulness of any alleged false representation within 15 days of receipt by the board of a verified complaint alleging a violation of the law, unless the board finds the complaint to be without merit.

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

1 **SECTION 1.** 5.05 (1) (c) of the statutes is amended to read:

2 5.05 (1) (c) Bring civil actions to require forfeitures for any violation of ch. 11
3 or s. 12.05 under s. 11.60 (4). Forfeiture actions brought by the board may concern
4 only violations with respect to reports or statements required by law to be filed with
5 it, and other violations arising under elections for state office or statewide referenda.
6 The board may compromise and settle any civil action or potential action brought or
7 authorized to be brought by it under ~~ch. 11~~ s. 11.60 (4) which, in the opinion of the
8 board, constitutes a minor violation, a violation caused by excusable neglect, or
9 which for other good cause shown, should not in the public interest be prosecuted
10 under such chapter. Notwithstanding s. 778.06, an action or proposed action
11 authorized under this paragraph may be settled for such sum as may be agreed
12 between the parties. Any settlement made by the board shall be in such amount as
13 to deprive the alleged violator of any benefit of his or her wrongdoing and may
14 contain a penal component to serve as a deterrent to future violations. In settling
15 actions or proposed actions, the board shall treat comparable situations in a
16 comparable manner and shall assure that any settlement bears a reasonable
17 relationship to the severity of the offense or alleged offense. Forfeiture actions
18 brought by the board shall be brought in the circuit court for the county wherein the
19 violation is alleged to occur.

20 **SECTION 2.** 5.05 (3) (d) of the statutes is created to read:

21 5.05 (3) (d) If the board receives a verified complaint under par. (a) alleging a
22 violation of s. 12.05, the board shall investigate the complaint and make a public
23 statement concerning the truthfulness of any false representation alleged in the
24 complaint within 15 days of receipt of the complaint by the board, unless the board
25 dismisses the complaint under par. (c).

1 **SECTION 3.** 12.60 (title) of the statutes is amended to read:

2 **12.60** (title) **Penalties; enforcement.**

3 **SECTION 4.** 12.60 (1) (b) of the statutes is amended to read:

4 12.60 (1) (b) Whoever violates s. 12.03, ~~12.05~~, 12.07, 12.08 or 12.13 (3) (b), (c),
5 (d), (g), (i) or (n) to (x) may be fined not more than \$1,000, or imprisoned for not more
6 than 6 months or both.

7 **SECTION 5.** 12.60 (1) (bm) of the statutes is created to read:

8 12.60 (1) (bm) Whoever intentionally violates s. 12.05 may be fined not more
9 than \$1,000 or imprisoned for not more than 6 months or both.

10 **SECTION 6.** 12.60 (1) (c) of the statutes is amended to read:

11 12.60 (1) (c) Whoever violates s. 12.05 or 12.13 (3) (am) or (4) may be required
12 to forfeit not more than \$500.

13 **SECTION 7.** 12.60 (4) of the statutes is amended to read:

14 12.60 (4) ~~Prosecutions under Violations of this chapter shall be conducted in~~
15 ~~accordance with may be prosecuted in the manner provided in s. 11.61 (2), except that~~
16 ~~any civil violation of s. 12.05 may be prosecuted in the manner provided in s. 11.60~~
17 ~~(4).~~

18

(END)