



State of Wisconsin
2009 - 2010 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 43**

May 22, 2009 - Offered by Senator ERPENBACH.

1 **AN ACT** *to renumber and amend* 11.01 (16) (b); *to amend* 11.06 (2); and *to*
2 *create* 11.001 (1m), 11.01 (12v), 11.01 (12w), 11.01 (13), 11.01 (14), 11.01 (16)
3 (a) 3., 11.01 (16) (a) 4., 11.01 (16) (b) 2., 11.05 (3) (s) and 11.38 (1m) of the
4 statutes; **relating to:** the scope of regulated activity under the campaign
5 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 substitute amendment imposes registration and reporting requirements, in addition, upon any individual who and organization that, within 60 days of an election, makes any mass communication, including an electronic communication, a mass distribution, or a mass telephoning, that includes a reference to a candidate at that election, an office to be filled at that election, or a political party. The substitute amendment imposes registration and reporting requirements upon any individual who or organization that, at any time, makes any

mass communication that refers to a candidate for judicial office and either focuses on and takes a position for or against a judicial candidate's position on an issue or takes a position on that judicial candidate's character, qualifications, or fitness for office. The substitute amendment 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 substitute amendment, 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, cooperative's, or association's members, shareholders, or subscribers. In addition, the substitute amendment exempts from registration and reporting the cost of making a communication that 1) does not support or oppose a candidate's record on an issue; 2) does not mention an election, a candidacy, an opposing candidate, a political party, or voting by the general public; and 3) does not take a position on a candidate's or officeholder's character, qualifications, or fitness for office, and either a) focuses on and takes a position on a legislative or executive matter or issue and urges the public to adopt the position and to contact one or more public officials about the matter or issue, or b) proposes a commercial transaction, 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 substitute amendment 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.** 11.001 (1m) of the statutes is created to read:

1 11.001 **(1m)** The legislature finds and declares that the function of judges and
2 justices, who must independently apply the law, is fundamentally distinct from that
3 of elective legislative and executive branch officials who take positions on issues that
4 are influenced by, and represent the will of, their constituencies. The legislature
5 therefore finds that because it is improper for a mass communication to seek to
6 persuade a judge or justice to take a position on an issue, any such communication
7 should be deemed to have been made for a political purpose.

8 **SECTION 2.** 11.01 (12v) of the statutes is created to read:

9 11.01 **(12v)** “Mass communication” means a message that is disseminated by
10 means of one or more communications media, a mass electronic communication, a
11 mass distribution, or a mass telephoning, but not including a bona fide poll
12 conducted for the purpose of objectively identifying or collecting data concerning the
13 attitudes or preferences of electors.

14 **SECTION 3.** 11.01 (12w) of the statutes is created to read:

15 11.01 **(12w)** “Mass distribution” means the distribution of 50 or more pieces of
16 substantially identical material.

17 **SECTION 4.** 11.01 (13) of the statutes is created to read:

18 11.01 **(13)** “Mass electronic communication” means the transmission of 50 or
19 more pieces of substantially identical material by means of electronic mail or
20 facsimile transmission.

21 **SECTION 5.** 11.01 (14) of the statutes is created to read:

22 11.01 **(14)** “Mass telephoning” means the making of 50 or more telephone calls
23 conveying a substantially identical message.

24 **SECTION 6.** 11.01 (16) (a) 3. of the statutes is created to read:

1 11.01 (16) (a) 3. Except for purposes of s. 11.38 (1m), a mass communication,
2 other than a communication that is exempt from reporting under s. 11.29, that is
3 made during the period beginning on the 60th day preceding an election and ending
4 on the date of that election, and that includes a reference to a candidate whose name
5 is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot at that election,
6 a reference to an office to be filled at that election, or a reference to a political party.

7 **SECTION 7.** 11.01 (16) (a) 4. of the statutes is created to read:

8 11.01 (16) (a) 4. A mass communication that refers to a judicial office and either
9 focuses on and takes a position for or against a judicial candidate’s position on an
10 issue or takes a position on that judicial candidate’s character, qualifications, or
11 fitness for office.

12 **SECTION 8.** 11.01 (16) (b) of the statutes is renumbered 11.01 (16) (b) (intro.) and
13 amended to read:

14 11.01 (16) (b) (intro.) A “political purpose” does not include expenditures any
15 of the following:

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

19 **SECTION 9.** 11.01 (16) (b) 2. of the statutes is created to read:

20 11.01 (16) (b) 2. Unless the communication is susceptible of no reasonable
21 interpretation other than as an appeal to vote for or against a candidate whose name
22 is certified to appear on a ballot at an election, a mass communication that either
23 focuses on and takes a position on a legislative or executive issue and urges the public
24 to adopt the position and to contact one or more public officials about the issue or
25 proposes a commercial transaction and does not do any of the following:

1 a. Support or oppose a candidate's record on an issue.

2 b. Mention an election, a candidacy, an opposing candidate, a political party,
3 or voting by the general public.

4 c. Take a position on a candidate's character, qualifications, or fitness for office.

5 **SECTION 10.** 11.05 (3) (s) of the statutes is created to read:

6 11.05 (3) (s) In the case of a registrant that has made a mass communication
7 identified in s. 11.01 (16) (a) 3. or 4., a report containing the information specified in
8 s. 11.06 (1) with respect to any obligation to make a disbursement incurred or any
9 disbursement made for the purpose of making such a communication prior to
10 registration.

11 **SECTION 11.** 11.06 (2) of the statutes is amended to read:

12 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
13 sub. (1), if a disbursement is made or obligation incurred by an individual other than
14 a candidate or by a committee or group which is not primarily organized for political
15 purposes, and the disbursement does not constitute a contribution to any candidate
16 or other individual, committee, or group, and the disbursement is not made or the
17 obligation is not incurred for the purpose of making a mass communication specified
18 in s. 11.01 (16) (a) 3., the disbursement or obligation is required to be reported only
19 if the purpose is to expressly advocate the election or defeat of a clearly identified
20 candidate or the adoption or rejection of a referendum. The exemption provided by
21 this subsection shall in no case be construed to apply to a political party, legislative
22 campaign, personal campaign, or support committee.

23 **SECTION 12.** 11.38 (1m) of the statutes is created to read:

24 11.38 (1m) (a) No corporation or association specified in sub. (1) (a) 1. may
25 make a disbursement for the purpose of making a mass communication that is made

1 by means of one or more communications media, other than a communication that
2 is exempt from reporting under s. 11.29, and that:

3 1. Is made during the period beginning on the 60th day preceding an election
4 and ending on the date of that election, and that includes a reference to a candidate
5 whose name is certified under s. 7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot at
6 that election, a reference to an office to be filled at that election, or a reference to a
7 political party; or

8 2. Refers to a judicial office and either focuses on and takes a position for or
9 against a judicial candidate's position on an issue or takes a position on that judicial
10 candidate's character, qualifications, or fitness for office.

11 (b) Paragraph (a) does not apply to a mass communication that either focuses
12 on and takes a position on a legislative or executive issue and urges the public to
13 adopt the position and to contact one or more public officials about the issue or
14 proposes a commercial transaction and does not 1) support or oppose a candidate's
15 record on an issue, 2) mention an election, a candidacy, an opposing candidate, a
16 political party, or voting by the general public, or 3) take a position on a candidate's
17 character, qualifications, or fitness for office, unless the communication is
18 susceptible of no reasonable interpretation other than as an appeal to vote for or
19 against a candidate whose name is certified to appear on the ballot at an election.

20 **SECTION 13. Initial applicability.**

21 (1) The treatment of sections 11.01 (12v), (12w), (13), (14), and (16) (a) 3. and
22 4. and 11.06 (2) of the statutes, the renumbering and amendment of section 11.01 (16)
23 (b) of the statutes, and the creation of section 11.01 (16) (b) 2. of the statutes first

