



2005 ASSEMBLY BILL 289

April 4, 2005 – Introduced by Representatives SCHNEIDER and LEHMAN. Referred to Committee on Campaigns and Elections.

1 **AN ACT to amend** 11.26 (1) (intro.), 11.26 (4) and 11.26 (9) (a); **to repeal and**
2 **recreate** 11.24 (4), 11.26 (1) (intro.), 11.26 (4) and 11.26 (9) (a) (intro.); **to create**
3 11.06 (1) (em) and 11.262 of the statutes; and **to affect** 2001 Wisconsin Act 109,
4 section 9115 (2y) (b); **relating to:** restriction of political contributions to certain
5 elective state officials and committees and exemption of certain candidates
6 from certain contribution limitations.

Analysis by the Legislative Reference Bureau

Under current statutes, no person may make a contribution to an incumbent partisan elective state official or his or her personal campaign or authorized support committee for the purpose of promoting his or her nomination or reelection to the office held by the official during the period from the first Monday in January of each odd-numbered year through the date of enactment of the biennial budget act. The prohibition does not apply to an incumbent against whom a recall petition is filed. This statute was enacted as part of 2001 Wisconsin Act 109. In *Wisconsin Realtors Association v. Ponto et al.*, 233 F. Supp.2d 1078 (W.D. Wis., 2002), the U.S. District Court precluded enforcement of this law.

This bill prohibits any person from making a contribution to an incumbent partisan elective state official, or candidate for partisan elective state office, or to an official's or candidate's personal campaign committee or authorized support committee, for the purpose of promoting the official's or candidate's nomination,

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election, or reelection to office during the period beginning on the day after the general election in which the office is filled and ending on May 31 of the year preceding the year in which the term of office expires. The prohibition does not apply to an incumbent official against whom a recall petition is filed or to a candidate in a recall election, nor to that official's or candidate's personal campaign or support committee. The bill also prohibits an official, candidate, or committee from accepting a contribution that is prohibited by the bill.

Currently, contributions by individuals to a candidate for state or local office are subject to limitations in specified amounts for each office. Also, the total amount or value of contributions that an individual may make to all candidates for state or local office in a calendar year is limited to \$10,000. In addition, a candidate for state or local office may not accept more than a specified amount from all committees, including political party committees. This bill provides that a candidate who is opposed by another candidate who spends more than a specified amount from personal funds may accept additional contributions from individuals and political party committees that are not subject to these limitations under certain conditions, up to a specified amount. The specified amount depends in part upon the amount of personal funds expended and that amount is modified to reflect preexisting balances in a campaign treasury before the year in which an election is held and any personal funds expended by the candidate who utilizes the authority to accept additional contributions under the bill. The bill provides that any additional contributions that are accepted must be returned to the contributors or donated to a charitable organization or the common school fund if not expended or obligated on or before the date of an election. The bill also precludes any candidate from repaying personal loans that the candidate makes to his or her campaign from certain contributions after the date of an election. In addition, the bill requires a candidate who spends personal funds exceeding a specified level to file special reports with his or her filing officer and with opposing candidates.

Violators are subject to a forfeiture (civil penalty) of treble the amount or value of any unlawful contribution. Intentional violators are guilty of a misdemeanor and may be fined not more than \$1,000 or imprisoned for not more than six months or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

1 **SECTION 1.** 11.06 (1) (em) of the statutes is created to read:

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1 11.06 (1) (em) A separate statement of all contributions returned to the
2 contributor or donated to a charitable organization or the common school fund under
3 s. 11.262 (6).

4 **SECTION 2.** 11.24 (4) of the statutes, as created by 2001 Wisconsin Act 109, is
5 repealed and recreated to read:

6 11.24 (4) (a) In this subsection:

7 1. “Authorized support committee” means a support committee authorized by
8 an individual under s. 11.05 (3) (p).

9 2. “Partisan elective state official” means an individual who holds a partisan
10 state office.

11 (b) Except as provided in par. (d), no person may make a contribution to a
12 partisan elective state official or candidate for a partisan state office or to the
13 personal campaign committee or authorized support committee of such an official or
14 candidate for the purpose of promoting that official’s or candidate’s nomination,
15 election, or reelection to office during the period beginning on the day after the
16 general election in which the office is filled and ending on May 31 of the year
17 preceding the year in which the term of office expires.

18 (c) No partisan elective state official or candidate for a partisan state office, and
19 no personal campaign committee or authorized support committee of such an official
20 or candidate, may accept a contribution that is prohibited under par. (b).

21 (d) A person may make a contribution to an official against whom a recall
22 petition has been filed or a candidate in a recall election or to the personal campaign
23 committee or authorized support committee of that official or candidate during the
24 period beginning on the date on which the petition offered for filing is filed under s.
25 9.10 (3) (b) and ending on the date of the recall election unless, in the case of a

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1 partisan elective state official, the official resigns at an earlier date under s. 9.10 (3)
2 (c).

3 **SECTION 3.** 11.26 (1) (intro.) of the statutes is amended to read:

4 11.26 (1) (intro.) ~~No~~ Except as provided in s. 11.262, no individual may make
5 any contribution or contributions to a candidate for election or nomination to any of
6 the following offices and to any individual or committee under s. 11.06 (7) acting
7 solely in support of such a candidate or solely in opposition to the candidate's
8 opponent to the extent of more than a total of the amounts specified per candidate:

9 **SECTION 4.** 11.26 (1) (intro.) of the statutes, as affected by 2001 Wisconsin Act
10 109, is repealed and recreated to read:

11 11.26 (1) (intro.) Subject to sub. (10a) and except as provided under subs. (1m),
12 (1t), (9m), and (10) and s. 11.262, no individual may make any contribution or
13 contributions to a candidate for election or nomination to any of the following offices
14 and to any individual or committee under s. 11.06 (7) acting solely in support of such
15 a candidate or solely in opposition to the candidate's opponent to the extent of more
16 than a total of the amounts specified per candidate:

17 **SECTION 5.** 11.26 (4) of the statutes is amended to read:

18 11.26 (4) ~~No~~ Except as provided in s. 11.262, no individual may make any
19 contribution or contributions to all candidates for state and local offices and to any
20 individuals who or committees which are subject to a registration requirement under
21 s. 11.05, including legislative campaign committees and committees of a political
22 party, to the extent of more than a total of \$10,000 in any calendar year.

23 **SECTION 6.** 11.26 (4) of the statutes, as affected by 2001 Wisconsin Act 109, is
24 repealed and recreated to read:

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1 11.26 (4) Subject to sub. (10a) and except as provided in s. 11.262, no individual
2 may make any contribution or contributions to all candidates for state and local
3 offices and to any individuals who or committees which are subject to a registration
4 requirement under s. 11.05, including committees of a political party, to the extent
5 of more than a total of \$10,000 in any calendar year.

6 **SECTION 7.** 11.26 (9) (a) (intro.) of the statutes, as affected by 2001 Wisconsin
7 Act 109, is repealed and recreated to read:

8 11.26 (9) (a) (intro.) Except as provided under sub. (9m) and s. 11.262, no
9 individual who is a candidate for state or local office may receive and accept more
10 than 65% of the value of the total disbursement level determined under s. 11.31 (1),
11 adjusted as provided under s. 11.31 (9), for the office for which he or she is a candidate
12 during any primary and election campaign combined from all committees subject to
13 a filing requirement, including political party committees, except as follows:

14 **SECTION 8.** 11.26 (9) (a) of the statutes is amended to read:

15 11.26 (9) (a) ~~No~~ Except as provided in s. 11.262, no individual who is a candidate
16 for state or local office may receive and accept more than 65% of the value of the total
17 disbursement level determined under s. 11.31 for the office for which he or she is a
18 candidate during any primary and election campaign combined from all committees
19 subject to a filing requirement, including political party and legislative campaign
20 committees.

21 **SECTION 9.** 11.262 of the statutes is created to read:

22 **11.262 Increased limitations in response to the use of personal funds.**

23 **(1)** In this section:

24 (a) "Authorized support committee" means a support committee authorized by
25 an individual under s. 11.05 (3) (p).

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1 (b) “Campaign” has the meaning given in s. 11.26 (17).

2 (c) “Disbursement from personal funds” means any of the following:

3 1. A disbursement made by a candidate using personal funds.

4 2. A contribution made by a candidate using personal funds, or a loan to the
5 candidate or his or her personal campaign or authorized support committee that is
6 secured using personal funds.

7 (d) “Gross receipts advantage” means any amount by which the aggregate
8 amount of 50 percent of the gross receipts of a candidate and his or her personal
9 campaign and authorized support committee, if any, during a campaign, excluding
10 contributions from personal funds, that may be disbursed in connection with the
11 campaign, determined at the end of June 30 and January 31 of the year preceding
12 the year of the election at which the candidate seeks office, exceeds the aggregate
13 amount of 50 percent of the gross receipts of any opposing candidate and his or her
14 personal campaign and authorized support committee, if any, that may be disbursed
15 in connection with the campaign, determined at the end of June 30 and January 31
16 of the year preceding the year of the election at which the candidate seeks office.

17 (e) “Opposing candidate” means a candidate whose name is certified under s.
18 7.08 (2) (a) or 8.50 (1) (d) to appear on the ballot at the same election as another
19 candidate.

20 (f) “Opposition personal funds amount” means an amount equal to any amount
21 by which the greatest aggregate amount of disbursements made by an opposing
22 candidate exceeds the aggregate amount of disbursements from personal funds
23 made by a candidate in a campaign, plus the gross receipts advantage against that
24 candidate in that campaign.

25 (g) “Personal funds” means any of the following:

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1 1. Any asset that, at the time that an individual becomes a candidate, the
2 individual has a legal right of access to or control over and with respect to which the
3 candidate had legal and rightful title or an equitable interest.

4 2. Income received during the current campaign of the candidate.

5 3. A portion of each asset that is jointly owned by a candidate and his or her
6 spouse equal to the candidate's share of the asset under the instrument or
7 conveyance of ownership, but if no share is specified, the value of 50 percent of the
8 asset.

9 (h) "Threshold amount" means the disbursement level specified under s. 11.31
10 (1) for the office that a candidate seeks.

11 (2) Subject to sub. (4), if the opposition personal funds amount with respect to
12 a candidate in a campaign exceeds the threshold amount, the limitation provided in
13 sub. (3) applies in lieu of the limitation under s. 11.26 (1).

14 (3) If this section applies to a candidate, the limitation under s. 11.26 (4) does
15 not apply with respect to any contribution made to the candidate or the candidate's
16 personal campaign or authorized support committee if the contribution is made
17 during a period in which the candidate may accept the contribution. In addition, if
18 the opposition personal funds amount is more than:

19 (a) Two times the threshold amount but not more than 4 times the threshold
20 amount, the limitations under s. 11.26 (1) are multiplied by 3.

21 (b) Four times the threshold amount but not more than 10 times the threshold
22 amount, the limitations under s. 11.26 (1) are multiplied by 6.

23 (c) Ten times the threshold amount the limitations under s. 11.26 (1) are
24 multiplied by 6 and s. 11.26 (9) does not apply to contributions made to the candidate
25 by a political party committee, except that a candidate and his or her personal

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1 campaign and authorized support committee, if any, may not accept contributions
2 from a political party committee under this paragraph exceeding any amount by
3 which the aggregate amount of the contributions accepted by the candidate and his
4 or her personal campaign and authorized support committee, if any, under this
5 subsection in that campaign exceed 110 percent of the opposition personal funds
6 amount.

7 (4) A candidate or personal campaign or authorized support committee may
8 not accept, and a political party committee may not make any contribution to a
9 candidate or candidate's personal campaign or authorized support committee that
10 is permitted under sub. (2):

11 (a) Until the candidate has received notification under sub. (8) of the
12 information required to determine the opposition personal funds amount; and

13 (b) To the extent that the contributions, when added to the aggregate amount
14 of contributions permitted under sub. (2) that have been previously accepted by the
15 candidate and his or her personal campaign and authorized support committees in
16 the campaign, exceed 110 percent of the opposition personal funds amount.

17 (5) No candidate and his or her personal campaign and authorized support
18 committee may accept any contribution permitted under sub. (2) after the date on
19 which an opposing candidate ceases to be a candidate to the extent that the amount
20 of the increase under sub. (2) in the limitations that would otherwise apply to that
21 candidate under s. 11.26 (1), (4), and (9) is attributable to the opposing candidate.

22 (6) If a candidate or his or her personal campaign or authorized support
23 committee does not expend or obligate the entire amount of additional contributions
24 received under sub. (3) on or before the date of the election at which the candidate
25 seeks office, the candidate or committee shall, no later than 50 days after the election

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1 at which the candidate sought office, return the contribution to the contributor or
2 donate the contribution to a charitable organization or the common school fund.

3 (7) No candidate who makes personal loans to his or her campaign after the
4 effective date of this subsection [revisor inserts date], may repay any portion of
5 those loans exceeding the threshold amount from contributions made to the
6 candidate or his or her personal campaign or authorized support committee after the
7 date of the election to which the campaign relates.

8 (8) (a) No later than the 16th day beginning after the day on which an
9 individual becomes a candidate in any campaign, the individual shall file with his
10 or her filing officer and with each opposing candidate, in the form and manner
11 prescribed by the board, a declaration stating the aggregate amount of
12 disbursements from personal funds that the individual intends to make or obligate
13 to make in connection with the campaign exceeding the threshold amount.

14 (b) No later than 24 hours after a candidate or his or her personal campaign
15 or authorized support committee makes or obligates to make an aggregate amount
16 of disbursements from personal funds exceeding 2 times the threshold amount in
17 connection with any campaign, the candidate shall file notification with the board
18 and with each opposing candidate, in the form and manner prescribed by the board.

19 (c) After a candidate or his or her personal campaign or authorized support
20 committee makes or obligates to make an aggregate amount of disbursements from
21 personal funds exceeding 2 times the threshold amount, the candidate shall, no later
22 than 24 hours after a candidate or his or her personal campaign or authorized
23 support committee makes or obligates to make an aggregate amount of
24 disbursements from personal funds exceeding an additional 25 percent of the

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1 threshold amount, file an additional notification with his or her filing officer and
2 with each opposing candidate, in the form and manner prescribed by the board.

3 **SECTION 10.** 2001 Wisconsin Act 109, section 9115 (2y) (b), as last affected by
4 2003 Wisconsin Act 39, is amended to read:

5 [2001 Wisconsin Act 109] Section 9115 (2y) (b) Notwithstanding section
6 990.001 (11) of the statutes, if a court finds that any part of the repeal of sections
7 11.01 (12s), 11.05 (3) (o), 11.265, 11.50 (3), and 11.50 (10) of the statutes, the
8 renumbering of sections 11.05 (2r) (title), 11.24 (2), and 11.50 (1) (a) 1. of the statutes,
9 the renumbering and amendment of sections 11.05 (1), 11.05 (2), 11.05 (2r), 11.12 (6),
10 ~~11.26 (9) (a)~~, 11.31 (2m), 11.50 (1) (a) 2., 11.50 (5), 11.50 (9), and 71.10 (3) (a) of the
11 statutes, the amendment of sections 5.02 (13), 5.05 (2), 7.08 (2) (c), 7.08 (2) (cm), 8.30
12 (2), 8.35 (4) (a) 1. a. and b., 8.35 (4) (c) and (d), 11.05 (3) (c), 11.05 (5), 11.05 (9) (b), 11.05
13 (12) (b), 11.05 (13), 11.06 (1) (intro.), 11.06 (1) (e), 11.06 (2), 11.06 (3) (b) (intro.), 11.06
14 (4) (b), 11.06 (5), 11.06 (7m) (a), 11.06 (7m) (b), 11.06 (7m) (c), 11.07 (1), 11.07 (5), 11.09
15 (3), 11.10 (1), 11.12 (2), 11.12 (4), 11.12 (5), 11.14 (3), 11.16 (2), 11.16 (5), 11.19 (title),
16 11.19 (1), 11.20 (1), 11.20 (2), 11.20 (3) (a) and (b), 11.20 (7), 11.20 (8) (intro.), 11.20
17 (8) (a), 11.20 (9), 11.20 (10) (a), 11.20 (12), 11.21 (2), 11.21 (15), 11.21 (16), 11.22 (3),
18 11.23 (1), 11.23 (2), ~~11.26 (1) (intro.)~~, 11.26 (2) (intro.), 11.26 (2) (a), 11.26 (3), ~~11.26~~
19 ~~(4)~~, 11.26 (5), 11.26 (6), 11.26 (8), 11.26 (9) (b), 11.26 (10), 11.26 (15), 11.26 (17) (a),
20 11.31 (1) (intro.), 11.31 (1) (a) to (d), 11.31 (1) (e) and (f), 11.31 (2), 11.31 (2m) (title),
21 11.31 (3), 11.38 (1) (a) 2., 11.38 (6), 11.38 (8) (b), 11.50 (2) (a), 11.50 (2) (b) 3. and 4.,
22 11.50 (2) (b) 5., 11.50 (2) (c), 11.50 (2) (f), 11.50 (2) (g), 11.50 (2) (h), 11.50 (2) (i), 11.50
23 (6), 11.50 (7) (intro.), 11.50 (8), 11.50 (10m), 11.50 (11) (e), 11.60 (4), 11.61 (1) (a) (by
24 SECTION 2d), 20.510 (1) (q), 25.42, 71.08 (1) (intro.), and 71.10 (3) (b) of the statutes,
25 the repeal and recreation of sections 11.05 (9) (title) and 11.50 (4) of the statutes, the

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1 creation of sections 11.001 (2m), 11.01 (4m), 11.01 (12w), (13) and (14), 11.01 (16) (a)
2 3., 11.05 (1) (b), 11.05 (2) (b), 11.05 (3) (m), 11.05 (3) (r), 11.06 (1) (cm) and (dm), 11.06
3 (2m) (b) to (d), 11.06 (11) (bm), 11.12 (6) (am), 11.12 (6) (c) and (d), 11.12 (8) and (9),
4 11.20 (2s), 11.20 (2t), 11.20 (8) (am), 11.24 (1w), ~~11.24 (4)~~, 11.26 (1m), 11.26 (1t), 11.26
5 (2) (ae), (am), (as) and (av), 11.26 (2m), 11.26 (2t), 11.26 (8n), 11.26 (8r), 11.26 (9) (a)
6 1. to 4., 11.26 (9) (am), 11.26 (9m), 11.26 (10a), 11.31 (1) (de), 11.31 (2m) (a), 11.31 (3p),
7 11.31 (9), 11.385, 11.50 (1) (a) 1. (intro.), 11.50 (1) (a) 2m., 11.50 (1) (am), 11.50 (1) (bm)
8 and (cm), 11.50 (2) (b) 6., 11.50 (2) (j), 11.50 (2m), 11.50 (2s), 11.50 (2w), 11.50 (9) (b),
9 11.50 (14), 11.60 (3r), 71.07 (6s), 71.10 (3) (ac), 71.10 (3) (d), 71.10 (4) (gw), and 806.04
10 (11m) of the statutes or SECTIONS 9115 (2v), (2x), and (2y), 9132 (4v), 9215 (3v), 9244
11 (6v), 9315 (2v) and (2w), and 9344 (2v) of this act is unconstitutional, the treatment
12 of those provisions by this act is void.

13 **SECTION 11. Nonstatutory provisions.**

14 (1) Notwithstanding section 990.001 (11) of the statutes, if a court finds that
15 the repeal and recreation of section 11.26 (1) (intro.), (4), and (9) (a) (intro.) of the
16 statutes by this act, or any part of the laws specified in 2001 Wisconsin Act 109,
17 section 9115 (2y) (b), as affected by this act, is unconstitutional, the repeal and
18 recreation of section 11.26 (1) (intro.), (4), and (9) (a) (intro.) of the statutes by this
19 act is void.

20

(END)