



2011 ASSEMBLY BILL 393

November 23, 2011 – Introduced by Representatives BERCEAU, BEWLEY, POCAN, HEBL, TURNER, ROYS, SINICKI, GRIGSBY and C. TAYLOR, cosponsored by Senators TAYLOR and RISSER. Referred to Committee on Election and Campaign Reform.

1 **AN ACT to repeal** 7.22 (5); **to renumber** 12.01; **to amend** 5.05 (2m) (a), 5.05 (2m)
2 (c) 11., 5.05 (2m) (c) 15., 5.05 (2m) (c) 16., 5.05 (2m) (c) 17., 12.60 (1) (a), 12.60
3 (4) and 978.05 (1); and **to create** 7.15 (1) (m) and (n), 12.01 (2), 12.10, 12.61 and
4 165.25 (12) of the statutes; **relating to:** voter intimidation or suppression,
5 authorized activities at or near polling places, and providing a penalty.

Analysis by the Legislative Reference Bureau

Currently, with certain exceptions, no person who is not acting for official purposes may post or distribute any election-related material (material that describes or purports to describe the rights or responsibilities of individuals voting or registering to vote) during polling hours on election day at a polling place, or on public property within 100 feet of an entrance to a building containing a polling place. Similar restrictions apply at the office of a municipal clerk or board of election commissioners during absentee balloting or at an alternate site where absentee balloting is being conducted. In addition, no person may use or threaten to use force to induce any person to vote or refrain from voting in an election; no person may impede the free exercise of the franchise at an election; and no person may induce or compel any elector to vote or refrain from voting for or against any candidate or question at an election.

This bill prohibits any person who is within 500 feet of a polling place on election day, with intent to intimidate, suppress, or deter a prospective voter from exercising his or her right to vote in an election, from posing as a law enforcement or

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immigration officer; falsely warning or implying that one or more law enforcement or immigration officers are present; falsely warning or implying that voting may result in incarceration; making a false statement concerning voter eligibility, concerning when, where, or how to vote in an election, or concerning the penalties for voting improperly; or interfering with, impeding, or obstructing the act of voting. The bill prohibits any person acting on behalf of this state or a county or municipal government, with intent to intimidate, suppress, or deter a prospective voter from voting in an election, from placing a traffic or pedestrian barrier or initiating a construction project on a public roadway or sidewalk within 500 feet of a polling place during the 72-hour period ending with election day, or from establishing a checkpoint at which individuals are stopped without specific cause within 500 feet of a polling place during the 48-hour period ending with election day. With certain exceptions, the bill prohibits any person, in the presence of or within view of voters who are engaged in voting at a polling place on election day, from engaging in publicly identifiable action as a law enforcement officer or private security guard or detective or purport to be doing so, or from parking or leaving in a parked position a motor vehicle that bears the markings of a law enforcement officer or private security guard or detective. The bill prohibits any person, by means of distribution, dissemination, transmission, broadcast, or posting, with intent to intimidate, suppress, or deter a prospective voter from voting in an election, from falsely warning of or implying the presence of law enforcement or immigration officers at a polling place; or from falsely warning of or implying that voting in the election may result in arrest, conviction, forfeitures, fines, or imprisonment; or that voting in the election may result in deportation, academic discipline, loss of academic standing, loss of child custody or placement, or loss of financial benefits. The bill similarly prohibits any person, by the same means, with the same intent, from falsely warning of or implying that any of the following will disqualify a voter: an outstanding parking or traffic citation; outstanding child support obligations; overdue rent; an arrest warrant; a criminal or civil arrest or conviction history, except as currently provided by law for convicted felons who have not completed their sentences; or nonresident student status at an institution of higher education. The bill prohibits any person, by means of distribution, dissemination, transmission, broadcast, or posting, from making a false statement concerning voter eligibility, concerning when, where, or how to vote in an election, or concerning the penalties for voting improperly. In addition, the bill prohibits any person, with intent to intimidate, suppress, or deter a prospective voter from exercising his or her right to vote in an election, from urging a prospective voter not to complete or return an absentee ballot. No similar provisions exist currently.

Violators are guilty of a felony and may be fined not more than \$10,000 or imprisoned for not more than three years and six months, or both. Under the bill, prosecutions of alleged violations may be brought by the district attorney for the county where a violation is alleged to occur or by the attorney general. The bill also permits an elector, after first notifying the appropriate district attorney and the attorney general, to sue for a court order to compel compliance with the provisions created by the bill. In addition, the bill permits any person who is injured by a

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violation of one of the bill's provisions to sue any alleged violator for monetary damages.

Currently, in cities over 500,000 population, the chief of police must station a police officer at polling places designated by the board of election commissioners for each election. This bill repeals that requirement.

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.** 5.05 (2m) (a) of the statutes is amended to read:

2 5.05 **(2m)** (a) The board shall investigate violations of laws administered by the
3 board and may prosecute alleged civil violations of those laws, directly or through its
4 agents under this subsection, pursuant to all statutes granting or assigning that
5 authority or responsibility to the board. Prosecution of alleged criminal violations
6 investigated by the board may be brought only as provided in par. (c) 11., 14., 15., and
7 16. and ~~s. ss. 12.60 (4) and 978.05 (1).~~

8 **SECTION 2.** 5.05 (2m) (c) 11. of the statutes is amended to read:

9 5.05 **(2m)** (c) 11. ~~If Except as provided in s. 12.60 (4), if~~ the board finds that there
10 is probable cause to believe that a violation under subd. 2. has occurred or is
11 occurring, the board may, in lieu of civil prosecution of any matter by the board, refer
12 the matter to the district attorney for the county in which the alleged violator resides,
13 or if the alleged violator is a nonresident, to the district attorney for the county where
14 the matter arises, or if par. (i) applies, to the attorney general or a special prosecutor.
15 For purposes of this subdivision, a person other than a natural person resides within
16 a county if the person's principal place of operation is located within that county. If
17 the board finds that there is probable cause to believe that a violation of s. 12.10 has

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1 occurred or is occurring, the board shall refer the matter to the district attorney for
2 the county where the violation is alleged to occur and to the attorney general.

3 **SECTION 3.** 5.05 (2m) (c) 15. of the statutes is amended to read:

4 5.05 (2m) (c) 15. Except as provided in subd. 17., if the board refers a matter
5 to the district attorney specified in subd. 11. for prosecution of a potential violation
6 under subd. 2. or 14. and the district attorney informs the board that he or she
7 declines to prosecute any alleged civil or criminal violation related to any matter
8 referred to the district attorney by the board, or the district attorney fails to
9 commence a prosecution of any civil or criminal violation related to any matter
10 referred to the district attorney by the board within 60 days of the date of the board's
11 referral, the board may refer the matter to the district attorney for another
12 prosecutorial unit that is contiguous to the prosecutorial unit of the district attorney
13 to whom the matter was originally referred. If there is more than one such
14 prosecutorial unit, the chairperson of the board shall determine the district attorney
15 to whom the matter shall be referred by publicly drawing lots at a meeting of the
16 board. The district attorney may then commence a civil or criminal prosecution
17 relating to the matter. This subdivision does not apply to alleged violations of s.
18 12.10.

19 **SECTION 4.** 5.05 (2m) (c) 16. of the statutes is amended to read:

20 5.05 (2m) (c) 16. Except as provided in subd. 17., if the board refers a matter
21 to a district attorney under subd. 15. for prosecution of a potential violation under
22 subd. 2. or 14. and the district attorney informs the board that he or she declines to
23 prosecute any alleged civil or criminal violation related to any matter referred to the
24 district attorney by the board, or the district attorney fails to commence a
25 prosecution of any civil or criminal violation related to any matter referred to the

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1 district attorney by the board within 60 days of the date of the board's referral, the
2 board may refer the matter to the attorney general. The attorney general may then
3 commence a civil or criminal prosecution relating to the matter. This subdivision
4 does not apply to alleged violations of s. 12.10.

5 **SECTION 5.** 5.05 (2m) (c) 17. of the statutes is amended to read:

6 5.05 **(2m)** (c) 17. The board is not authorized to act under subd. 15. or 16. if a
7 special prosecutor is appointed under s. 978.045 in lieu of the district attorney
8 specified in subd. 11. This subdivision does not apply to alleged violations of s. 12.10.

9 **SECTION 6.** 7.15 (1) (m) and (n) of the statutes are created to read:

10 7.15 **(1)** (m) Whenever a traffic or pedestrian barrier is placed on a public
11 roadway or sidewalk within 500 feet of a polling place during the 72-hour period
12 specified in s. 12.10 (2), provide effective notice to prospective voters by appropriate
13 means, informing them of the presence of the barrier.

14 (n) Whenever the location of a polling place is changed under s. 7.37 (1), provide
15 effective notice to prospective voters by appropriate means, informing them of the
16 changed location.

17 **SECTION 7.** 7.22 (5) of the statutes is repealed.

18 **SECTION 8.** 12.01 of the statutes is renumbered 12.01 (1).

19 **SECTION 9.** 12.01 (2) of the statutes is created to read:

20 12.01 **(2)** In this chapter:

21 (a) "Immigration officer" means an individual who has primary responsibility
22 for enforcement of the immigration laws of the United States.

23 (b) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

24 **SECTION 10.** 12.10 of the statutes is created to read:

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1 **12.10 Voter intimidation and suppression.** (1) No person, with intent to
2 intimidate, suppress, or deter a prospective voter from exercising his or her right to
3 vote in an election, may do any of the following within 500 feet of a polling place on
4 election day:

5 (a) Pose as a law enforcement officer or immigration officer. Posing may include
6 wearing a uniform that resembles a law enforcement uniform or carrying a firearm
7 or a 2-way radio.

8 (b) Falsely warn or imply that one or more law enforcement officers or
9 immigration officers are present.

10 (c) Falsely warn or imply that voting may result in incarceration.

11 (d) Make a false statement concerning voter eligibility, concerning when,
12 where, or how to vote in an election, or concerning the penalties for voting improperly.

13 (e) Interfere with, impede, or obstruct the act of voting.

14 (2) No person acting on behalf of this state or any county or municipal
15 government, with intent to intimidate, suppress, or deter a prospective voter from
16 exercising his or her right to vote at an election, may place a traffic or pedestrian
17 barrier on a public roadway or sidewalk within 500 feet of a polling place during the
18 72-hour period beginning 48 hours before and ending with election day.

19 (3) No person acting on behalf of this state or any county or municipal
20 government, with intent to intimidate, suppress, or deter a prospective voter from
21 exercising his or her right to vote in an election, may initiate a construction project
22 on a public roadway or sidewalk within 500 feet of a polling place during the 72-hour
23 period beginning 48 hours before and ending with election day.

24 (4) No person acting on behalf of this state or any county or municipal
25 government, with intent to intimidate, suppress, or deter a prospective voter from

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1 exercising his or her right to vote in an election, may establish a checkpoint at which
2 individuals are stopped without specific cause within 500 feet of a polling place
3 during the 48-hour period beginning 24 hours before and ending with election day.

4 **(5)** (a) No person in the presence of or within view of voters who are engaged
5 in voting at a polling place on election day may do any of the following:

6 1. Engage in publicly identifiable action as a law enforcement officer or private
7 security guard or detective or purport to be doing so.

8 2. Park or leave in a parked position a motor vehicle that bears the markings
9 of a law enforcement officer or private security guard or detective.

10 (b) Paragraph (a) does not apply to an individual who is engaged in the act of
11 voting.

12 (c) Paragraph (a) does not apply to an individual who is called by a municipal
13 clerk or the inspectors at a polling place to a polling place or the vicinity of a polling
14 place for the purpose of delivering ballots, assisting with the closing of a polling place,
15 preserving order, investigating a suspected violation of a law, or enforcing a law.

16 (d) Paragraph (a) does not apply to an individual who is engaged in routine
17 action to enforce or investigate an alleged violation of a law unrelated to the election
18 that is being held.

19 **(6)** No person, by means of distribution, dissemination, transmission,
20 broadcast, or posting, may falsely warn of or imply, with intent to intimidate,
21 suppress, or deter a prospective voter from exercising his or her right to vote in an
22 election, any of the following:

23 (a) The presence of law enforcement or immigration officers at a polling place.

24 (b) That voting in the election may result in arrest, conviction, forfeitures,
25 fines, or imprisonment.

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1 (c) That voting in the election may result in deportation, academic discipline,
2 loss of academic standing, loss of child custody or placement, or loss of financial
3 benefits.

4 (7) No person, by means of distribution, dissemination, transmission,
5 broadcast, or posting, may falsely warn of or imply, with intent to intimidate,
6 suppress, or deter a prospective voter from exercising his or her right to vote in an
7 election, that any of the following will disqualify an elector from voting:

8 (a) An outstanding parking or traffic citation.

9 (b) Outstanding child support obligations.

10 (c) Overdue rent.

11 (d) An arrest warrant.

12 (e) A criminal arrest or conviction history, except as provided in s. 6.03 (1) (b).

13 (f) A civil arrest or conviction history.

14 (g) Nonresident student status at an institution of higher education.

15 (8) No person, by means of distribution, dissemination, transmission,
16 broadcast, or posting, may make a false statement concerning voter eligibility,
17 concerning when, where, or how to vote in an election, or concerning the penalties
18 for voting improperly.

19 (9) No person, with intent to intimidate, suppress, or deter a prospective voter
20 from exercising his or her right to vote in an election, may urge a prospective voter
21 not to complete or return an absentee ballot.

22 **SECTION 11.** 12.60 (1) (a) of the statutes is amended to read:

23 12.60 (1) (a) Whoever violates s. 12.09, 12.10, 12.11 or 12.13 (1), (2) (b) 1. to 7.
24 or (3) (a), (e), (f), (j), (k), (L), (m), (y) or (z) is guilty of a Class I felony.

25 **SECTION 12.** 12.60 (4) of the statutes is amended to read:

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1 12.60 (4) Prosecutions under this chapter shall be conducted in accordance
2 with s. 11.61 (2), except that prosecutions for alleged violations of s. 12.10 may be
3 brought by the district attorney for the county where the violation is alleged to occur
4 or by the attorney general.

5 **SECTION 13.** 12.61 of the statutes is created to read:

6 **12.61 Voter intimidation and suppression; enforcement. (1)** Any elector
7 may sue for injunctive relief to compel compliance with s. 12.10. Before commencing
8 an action under this subsection, an elector shall file a verified complaint with the
9 district attorney for the county where the violation is alleged to occur and the
10 attorney general alleging such facts as are within his or her knowledge to show
11 probable cause to believe that a violation has occurred or is proposed to occur. If the
12 district attorney and the attorney general both refuse or otherwise fail to commence
13 an action within 10 days of the filing of the complaint, the elector may commence an
14 action. Separate from any other bond which may be required by the court, the elector
15 may be required to post a surety bond in an amount determined by the court
16 sufficient to cover the actual costs, including reasonable attorney fees, of both
17 parties. If the elector's action is not successful, he or she shall pay the costs of the
18 action.

19 **(2)** Any person who is injured by a violation of s. 12.10 may bring a civil action
20 against the alleged violator for damages resulting from the violation. If the court
21 finds that an injury resulted from the violation, the court shall award compensatory
22 damages to the injured party, plus exemplary damages of not less than \$100. The
23 court shall also award the actual and necessary costs of the action, including
24 reasonable attorney fees, to the injured party if he or she prevails.

25 **SECTION 14.** 165.25 (12) of the statutes is created to read:

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1 165.25 (12) VOTER INTIMIDATION AND SUPPRESSION. Investigate and prosecute
2 violations of s. 12.10. All expenses of the proceedings shall be paid from the
3 appropriation under s. 20.455 (1) (d).

4 **SECTION 15.** 978.05 (1) of the statutes is amended to read:

5 978.05 (1) CRIMINAL ACTIONS. Except as otherwise provided by law, prosecute
6 all criminal actions before any court within his or her prosecutorial unit and have
7 sole responsibility for prosecution of all criminal actions arising from violations of
8 chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, except actions arising from
9 violations of s. 12.10, and have sole responsibility for prosecution of criminal actions
10 arising from violations of other laws arising from or in relation to the official
11 functions of the subject of the investigation or any matter that involves elections,
12 ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of
13 ch. 19, except actions arising from violations of s. 12.10, that are alleged to be
14 committed by a resident of his or her prosecutorial unit, or if alleged to be committed
15 by a nonresident of this state, that are alleged to occur in his or her prosecutorial unit
16 unless another prosecutor is substituted under s. 5.05 (2m) (i) or this chapter or by
17 referral of the government accountability board under s. 5.05 (2m) (c) 15. or 16. For
18 purposes of this subsection, a person other than a natural person is a resident of a
19 prosecutorial unit if the person's principal place of operation is located in that
20 prosecutorial unit.

21 (END)