



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0320/1
TKK:jld

2017 SENATE BILL 498

October 27, 2017 - Introduced by Senator L. TAYLOR, cosponsored by Representatives YOUNG, ANDERSON, BERCEAU, CONSIDINE and HEBL. Referred to Committee on Elections and Utilities.

1 **AN ACT** *to renumber and amend* 12.60 (4); *to amend* 12.60 (1) (a) and 978.05
2 (1); and *to create* 12.15, 12.60 (4) (b) and 165.25 (18) of the statutes; **relating**
3 **to:** deceptive election practices and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits any person from knowingly providing false election-related information to an individual with the intent to induce an individual to refrain from registering to vote or from voting at an election. The bill defines election-related information as information concerning any of the following: 1) the date, time, place, or manner of conducting an election; and 2) any qualification for or restriction on the eligibility of an elector voting at an election, including any criminal penalty associated with voting in an election or a voter's registration status or eligibility. A person who violates this provision is guilty of a Class I felony and may be subject to a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both.

Under current law, with certain exceptions, no person may post or distribute any written material that describes the rights or responsibilities of individuals voting or registering to vote at a polling place or absentee voting site during any of the following times: 1) during polling hours at a polling place; 2) while voting is underway at an absentee voting site; or 3) on public property within 100 feet of an entrance to a building containing a polling place or an absentee voting site during polling hours or while absentee voting is underway. A person who violates any of these prohibitions may be required to pay a forfeiture (civil penalty) of not more than

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\$100 for each violation. Also under current law, no person may knowingly make or publish or cause to be made or published a false representation pertaining to a candidate or referendum that is intended to affect voting at an election. A person who violates this prohibition may be fined not more than \$1,000 or imprisoned for not more than six months, or both.

The bill exempts from liability the owner, publisher, printer, agent, or employee of a newspaper or other publication, including an Internet publication, or of a radio or television station, including an Internet radio or television station, who in good faith and without knowledge of its falsity, publishes false election-related information.

The bill permits a person who believes a violation has occurred to file a verified complaint with the Elections Commission. The commission must review the complaint to determine whether the alleged facts would constitute a violation. If the commission determines that the facts, if true, would constitute a violation, the commission must investigate the complaint and, if appropriate, forward the complaint to the attorney general for prosecution. The commission must also take any action necessary to provide correct election-related information to those persons who might have received false election-related information. In lieu of prosecuting the action, the bill permits the attorney general to forward the prosecution to the district attorney for the county in which the violation is alleged to have occurred.

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

1 **SECTION 1.** 12.15 of the statutes is created to read:

2 **12.15 Deceptive election practices.** (1) In this section, “election-related
3 information” means information concerning any of the following:

4 (a) The date, time, place, or manner of conducting an election.

5 (b) Any qualification for or restriction on the eligibility of an elector voting at
6 an election, including any criminal penalty associated with voting in an election or
7 a voter’s registration status or eligibility.

8 (2) No person may knowingly provide false election-related information to an
9 individual with intent to induce an individual to refrain from registering to vote or
10 from voting at an election.

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1 **(3)** This section does not apply to the owner, publisher, printer, agent, or
2 employee of a newspaper or other publication, including a publication made
3 available over the Internet, a periodical, or a circular, or to the owner, agent, or
4 employee of a radio or television station, including a radio or television station
5 broadcast over the Internet, who in good faith and without knowledge of the falsity
6 thereof, publishes, causes to be published, or takes part in the publication of false
7 election-related information.

8 **(4)** Any person may file a verified complaint with the commission alleging the
9 facts that the person believes to constitute a violation of sub. (2). The verified
10 complaint shall be filed under s. 5.05 (2m) (c) 2. a.

11 **(5)** Notwithstanding s. 5.05 (2m) (c) 2. a., the commission shall promptly review
12 each complaint received under sub. (3). If the commission determines that the facts
13 alleged in the complaint, if true, would constitute a violation of sub. (2), the
14 commission shall promptly investigate the complaint. Notwithstanding s. 5.05 (2m)
15 (c) 11., if the commission finds that a violation of sub. (2) has occurred or is occurring,
16 the commission shall take all measures necessary to provide correct information to
17 electors who may have been deceived by the false election-related information, and
18 shall refer the matter to the attorney general for prosecution in accordance with ss.
19 5.05 (2m) (i) and 12.60 (4).

20 **SECTION 2.** 12.60 (1) (a) of the statutes is amended to read:

21 12.60 **(1)** (a) Whoever violates s. 12.09, 12.11 ~~or~~, 12.13 (1), (2) (b) 1. to 7., or (3)
22 (a), (e), (f), (j), (k), (L), (m), (y), or (z), or 12.15 is guilty of a Class I felony.

23 **SECTION 3.** 12.60 (4) of the statutes is renumbered 12.60 (4) (a) and amended
24 to read:

SENATE BILL 498**SECTION 3**

1 12.60 (4) (a) ~~Prosecutions~~ Except as provided in par. (b), prosecutions under
2 this chapter shall be conducted in accordance with s. 11.1401 (2).

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

4 12.60 (4) (b) 1. Except as provided in subds. 2. and 3., and subject to s. 5.05 (2m)
5 (i), the attorney general shall conduct prosecutions for alleged violations of s. 12.15.

6 2. Except as provided in subd. 3., if the attorney general declines to prosecute
7 an alleged violation of s. 12.15, the district attorney for the county where the
8 violation is alleged to occur shall prosecute the violation.

9 3. If the attorney general declines to prosecute an alleged violation of s. 12.15
10 in which the district attorney for the county where the violation is alleged to occur
11 or a candidate for that office is a defendant in the action, the commission may appoint
12 a special prosecutor to conduct the prosecution on behalf of the state.

13 **SECTION 5.** 165.25 (18) of the statutes is created to read:

14 165.25 (18) VOTER INTIMIDATION AND SUPPRESSION. Subject to s. 5.05 (2m) (i),
15 investigate and prosecute alleged violations of s. 12.15. If the attorney general
16 declines to prosecute an alleged violation of s. 12.15, the attorney general shall,
17 subject to s. 12.60 (4) (b) 3., refer the matter to the appropriate district attorney under
18 s. 12.60 (4) (b) 2. All expenses of the proceedings shall be paid from the appropriation
19 under s. 20.455 (1) (d).

20 **SECTION 6.** 978.05 (1) of the statutes is amended to read:

21 978.05 (1) CRIMINAL ACTIONS. Except as otherwise provided by law, prosecute
22 all criminal actions before any court within his or her prosecutorial unit and, except
23 for actions arising from violations of s. 12.15, have sole responsibility for prosecution
24 of all criminal actions arising from violations of chs. 5 to 12, subch. III of ch. 13, or
25 subch. III of ch. 19 and from violations of other laws; arising from or in relation to

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1 the official functions of the subject of the investigation or any matter that involves
2 elections, ethics, or lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or
3 subch. III of ch. 19, that are alleged to be committed by a resident of his or her
4 prosecutorial unit, or if alleged to be committed by a nonresident of this state, that
5 are alleged to occur in his or her prosecutorial unit unless another prosecutor is
6 substituted under s. 5.05 (2m) (i) or 19.49 (2) (h) this chapter; or arising by referral
7 of the elections commission under s. 5.05 (2m) (c) 15. or 16. or the ethics commission
8 under s. 19.49 (2) (b) 13. or 14. For purposes of this subsection, a person other than
9 an individual is a resident of a prosecutorial unit if the person's principal place of
10 operation is located in that prosecutorial unit.

11

(END)