



2011 SENATE BILL 446

February 8, 2012 – Introduced by Senators ERPENBACH, ELLIS, T. CULLEN, HANSEN, HOLPERIN, LASSA, WIRCH, HARSDF, RISSER, CARPENTER and C. LARSON, cosponsored by Representatives BERNARD SCHABER, POPE-ROBERTS, ROYS, CLARK, TURNER, PASCH, BERCEAU and HEBL. Referred to Committee on Transportation and Elections.

1 **AN ACT** *to amend* 11.06 (2), 11.38 (title) and 11.38 (1) (a) 1.; and *to create* 11.01
2 (12v), 11.01 (12w), 11.01 (13), 11.01 (14), 11.01 (16) (a) 3., 11.05 (3) (s), 11.06 (1)
3 (n), 11.12 (7), 11.38 (3e) and 11.38 (9) of the statutes; **relating to:** political
4 disbursements and obligations by corporations, cooperative associations, and
5 labor organizations and the scope of regulated activity and reporting of certain
6 activity under the campaign finance law.

Analysis by the Legislative Reference Bureau

Under current law, corporations and cooperatives are prohibited from making contributions or disbursements (expenditures) in campaigns for state or local office. Violators are subject to a forfeiture (civil penalty) of not more than \$500 for each violation. Intentional violators are guilty of a Class I felony, which is punishable by a fine of not more than \$10,000 or imprisonment for three and one-half years, or both, except that if a violation involves \$100 or less, the violation is punishable as a misdemeanor with a fine of not more than \$1,000 or imprisonment for not more than six months, or both. A recent decision of the U.S. Supreme Court has cast doubt about whether this law is enforceable as it applies to disbursements. See *Citizens United v. F.E.C.*, 130 S.Ct. 876 (2010).

This bill provides that if a court with jurisdiction in this state finds in a reported decision, whether or not applicable in this state, that a prohibition against the making of political expenditures by corporations or similar entities is not enforceable

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for constitutional reasons, the Government Accountability Board (GAB) must publish a finding to that effect. The bill then provides that, during a period when a finding of unenforceability is in effect, before a corporation, cooperative, or labor organization may make a disbursement or incur an obligation to make a disbursement independently of a candidate, the corporation, cooperative, or labor organization must obtain the express approval of a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization by vote of that body taken during the 365-day period preceding the date on which the disbursement is made or the obligation is incurred. The bill also requires each financial report filed by the corporation, cooperative, or labor organization that includes a report of any disbursement made, or obligation to make a disbursement incurred, by the corporation, cooperative, or labor organization independently of a candidate to also include a statement that a majority of the members of the board of directors, executive council, or other governing body of the corporation, cooperative, or labor organization has expressly voted to authorize the disbursement or obligation during the 365-day period preceding the date on which it is made or incurred.

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 bill 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. In addition, the bill 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 bill, 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.

The change in the scope of reportable activity under the bill 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.

The bill also requires a special report by any campaign finance registrant who makes or incurs an obligation to make a mass communication that becomes reportable under the bill within 60 days of a primary or other election in an amount greater than \$500 cumulatively since the date of the registrant's last report. The special report must be made within 24 hours after the date that disbursements or

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obligations that exceed \$500 cumulatively are made or incurred and must include the information that would otherwise be reported on the registrant's next regular report in the form prescribed by GAB.

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 involves less than \$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 involves more than \$100 in amount or value.

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

1 **SECTION 1.** 11.01 (12v) of the statutes is created to read:

2 11.01 (**12v**) "Mass communication" means a message that is disseminated by
3 means of one or more communications media, a mass electronic communication, a
4 mass distribution, or a mass telephoning, but not including a bona fide poll
5 conducted for the purpose of objectively identifying or collecting data concerning the
6 attitudes or preferences of electors.

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

8 11.01 (**12w**) "Mass distribution" means the distribution of 500 or more pieces
9 of substantially identical material.

10 **SECTION 3.** 11.01 (13) of the statutes is created to read:

11 11.01 (**13**) "Mass electronic communication" means the transmission of 500 or
12 more pieces of substantially identical material by means of electronic mail or
13 facsimile transmission.

14 **SECTION 4.** 11.01 (14) of the statutes is created to read:

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1 11.01 (14) "Mass telephoning" means the making of 500 or more telephone calls
2 conveying a substantially identical message.

3 **SECTION 5.** 11.01 (16) (a) 3. of the statutes is created to read:

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

9 **SECTION 6.** 11.05 (3) (s) of the statutes is created to read:

10 11.05 (3) (s) In the case of a registrant that has made a mass communication
11 identified in s. 11.01 (16) (a) 3., a report containing the information specified in s.
12 11.06 (1) with respect to any obligation to make a disbursement incurred or any
13 disbursement made for the purpose of making such a communication prior to
14 registration.

15 **SECTION 7.** 11.06 (1) (n) of the statutes is created to read:

16 11.06 (1) (n) In the case of a corporation, cooperative association organized
17 under ch. 185 or 193, or labor organization that makes disbursements or incurs
18 obligations to make disbursements without cooperation or consultation with a
19 candidate, or any authorized committee or agent of a candidate, and not in concert
20 with, or at the request or suggestion of, any candidate, or any authorized committee
21 or agent of a candidate, during a period when a finding of unenforceability under s.
22 11.38 (9) is in effect, a statement that a majority of the members of the board of
23 directors, executive council, or other governing body of the corporation, association,
24 or organization has expressly voted during the 365-day period preceding the date on

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1 which the disbursement is made or the obligation is incurred to authorize the
2 disbursement to be made or the obligation to be incurred.

3 **SECTION 8.** 11.06 (2) of the statutes is amended to read:

4 11.06 (2) DISCLOSURE OF CERTAIN INDIRECT DISBURSEMENTS. Notwithstanding
5 sub. (1), if a disbursement is made or obligation incurred by an individual other than
6 a candidate or by a committee or group which is not primarily organized for political
7 purposes, and the disbursement does not constitute a contribution to any candidate
8 or other individual, committee, or group, and the disbursement is not made or the
9 obligation is not incurred for the purpose of making a mass communication specified
10 in s. 11.01 (16) (a) 3., the disbursement or obligation is required to be reported only
11 if the purpose is to expressly advocate the election or defeat of a clearly identified
12 candidate or the adoption or rejection of a referendum. The exemption provided by
13 this subsection shall in no case be construed to apply to a political party, legislative
14 campaign, personal campaign, or support committee.

15 **SECTION 9.** 11.12 (7) of the statutes is created to read:

16 11.12 (7) If any registrant makes or incurs an obligation to make a
17 disbursement of more than \$500 cumulatively for the purpose of making a
18 communication specified in s. 11.01 (16) (a) 3. later than 60 days prior to a primary
19 or other election without cooperation or consultation with any candidate or agent or
20 authorized committee of any candidate who is supported or opposed, and not in
21 concert with or at the request or suggestion of any such candidate, agent, or
22 committee, the registrant shall, within 24 hours after making the disbursement or
23 incurring the obligation to make the disbursement, inform the appropriate filing
24 officer of the information required under s. 11.06 (1) in such manner as the board may
25 prescribe. The registrant shall also include the information in the next regular

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1 report of the registrant under s. 11.20. For purposes of this subsection,
2 disbursements and obligations cumulate beginning with the day after the last date
3 covered on the registrant's immediately preceding report and ending with the day
4 before the election. If a registrant has not filed a previous report, disbursements and
5 obligations cumulate beginning on the date of the registrant's registration. A
6 disbursement that was previously reported in a report under this subsection as
7 obligated to be made shall not be included in the cumulative total. Upon receipt of
8 a report under this subsection, the filing officer shall, within 24 hours of receipt,
9 transmit a copy of the report to all candidates for any office in support of or opposition
10 to one of whom a disbursement identified in the report is made or obligated to be
11 made.

12 **SECTION 10.** 11.38 (title) of the statutes is amended to read:

13 **11.38 (title) Contributions and disbursements by corporations and,**
14 **cooperatives and labor organizations.**

15 **SECTION 11.** 11.38 (1) (a) 1. of the statutes is amended to read:

16 11.38 (1) (a) 1. ~~No~~ Except as authorized in sub. (9), no foreign or domestic
17 corporation, or association organized under ch. 185 or 193, may make any
18 contribution or disbursement, directly or indirectly, either independently or through
19 any political party, committee, group, candidate or individual for any purpose other
20 than to promote or defeat a referendum.

21 **SECTION 12.** 11.38 (3e) of the statutes is created to read:

22 11.38 (3e) Each corporation, cooperative association organized under ch. 185
23 or 193, or labor organization that wishes to make disbursements or to incur
24 obligations to make disbursements without cooperation or consultation with a
25 candidate, or any authorized committee or agent of a candidate, and not in concert

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1 with, or at the request or suggestion of any candidate, or any authorized committee
2 or agent of a candidate, during a period when a finding of unenforceability under sub.
3 (9) is in effect may do so only if a majority of the members of the board of directors,
4 executive council, or other governing body of the corporation, association, or
5 organization expressly votes to authorize the disbursements to be made or the
6 obligations to be incurred during the 365-day period preceding the date on which the
7 disbursement is made or the obligation is incurred.

8 **SECTION 13.** 11.38 (9) of the statutes is created to read:

9 11.38 (9) If a court with jurisdiction in this state finds in a reported decision,
10 whether or not applicable in this state, that a prohibition against the making of
11 political expenditures by corporations or similar entities is not enforceable for
12 constitutional reasons, or if any such court later finds in a reported decision that such
13 a prohibition is enforceable, the board shall promptly publish a finding to that effect
14 in the Wisconsin Administrative Register. The prohibition against disbursements
15 under sub (1) (a) 1. does not apply whenever a finding of unenforceability is in effect
16 if the corporation or association making a disbursement complies with sub. (3e).

17 **SECTION 14. Initial applicability.**

18 (1) The treatment of sections 11.01 (12v), (12w), (13), (14), and (16) (a) 3. and
19 11.06 (2) of the statutes first applies with respect to contributions received,
20 disbursements made, and obligations incurred on or after the effective date of this
21 subsection.

22 (END)