



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2665/2
JTK:wlj:rs

2011 ASSEMBLY BILL 723

March 15, 2012 – Introduced by Representatives WEININGER, NERISON and SINICKI.
Referred to Committee on Election and Campaign Reform.

1 **AN ACT** *to renumber* 11.66; *to amend* 11.30 (2) (a), 11.30 (2) (d) and 12.05; and
2 *to create* 11.30 (2) (cm), 11.30 (2) (j) and 11.66 (2) of the statutes; **relating to:**
3 false statements affecting elections and providing a penalty.

Analysis by the Legislative Reference Bureau

Currently, the person who pays or assumes responsibility for each communication made for the purpose of influencing voting at an election must ensure that the communication identifies the person (including any organization) making payment for the communication and, unless payment is made by an individual who serves as his or her own treasurer, the name of the treasurer or other authorized agent of that person. This bill provides that if the communication appears on television, that person who pays or assumes responsibility for the communication must ensure that the required information is read orally during the communication. The bill requires any person who makes, disseminates, or assumes responsibility for such a communication to ensure that if the communication makes a factual statement, it includes a corroborating source for the statement.

Currently, no person may knowingly make or publish, or cause to be made or published, a false representation pertaining to an election or referendum which is intended or tends to affect voting at an election. 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. This bill provides, in addition, that no person may knowingly make or publish, or cause to be made or published, a representation pertaining to a candidate or referendum with reckless disregard as to the truth or falsity of the

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representation if the representation is intended or tends to affect voting at an election. The same penalty applies to violators.

The bill also provides that if a candidate believes that a communication for which attribution is required by law contains false information that is intended or tends to affect voting at an election at which the candidate seeks office, the candidate may serve upon the person who pays or assumes responsibility for the communication a demand for the person to cease dissemination of the false information in the communication. If the person does not inform the candidate within 24 hours of that service that the person agrees to cease dissemination of the false information, the candidate may file a civil action in circuit court requesting such legal or equitable relief as may be appropriate. The bill directs the court to promptly set the matter for a hearing to be held within 24 hours after the action is filed and to issue a decision within 24 hours after the hearing is held. The court may then order such legal or equitable relief as it considers to be appropriate, which must include a requirement to disseminate corrective information in the same manner and to the same extent as the original dissemination was made in accordance with a specific proposed plan approved by the court. The bill also provides that if the candidate who brings the action believes that a court order issued in the action is violated, the candidate may bring suit against the alleged violator, acting on behalf of the state. If a court finds that a violation has occurred or is occurring, the court may order the violator to pay a forfeiture (civil penalty) of not more than \$100,000 for each violation. Under the bill, the court may award the actual and necessary costs of prosecution in any such action, including reasonable attorney fees, to the candidate bringing the suit if he or she prevails but any forfeiture recovered is paid to the state.

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

1 **SECTION 1.** 11.30 (2) (a) of the statutes is amended to read:

2 11.30 (2) (a) ~~The source of every~~ Each person who makes, disseminates, or

3 assumes responsibility for any printed advertisement, billboard, handbill, sample

4 ballot, television or radio advertisement, or other communication which is paid for

5 by or through any contribution, disbursement, or incurred obligation shall ensure

6 that the source of the communication is clearly appear thereon included in or on the

7 communication. If the communication includes a factual statement, the person shall

8 also ensure that the communication cites a corroborating source for the statement.

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1 This paragraph does not apply to communications for which reporting is not required
2 under s. 11.06 (2).

3 **SECTION 2.** 11.30 (2) (cm) of the statutes is created to read:

4 11.30 (2) (cm) The person who pays or assumes responsibility for each
5 communication under pars. (a) to (c) that appears on television shall ensure that the
6 disclosure of the information concerning who pays for the communication is read
7 orally during the communication.

8 **SECTION 3.** 11.30 (2) (d) of the statutes is amended to read:

9 11.30 (2) (d) In addition to the requirements of pars. (a) to ~~(e)~~ (cm), a committee
10 or individual required to file an oath under s. 11.06 (7) shall also in every
11 communication in support of or in opposition to any clearly identified candidate or
12 candidates include the words "Not authorized by any candidate or candidate's agent
13 or committee".

14 **SECTION 4.** 11.30 (2) (j) of the statutes is created to read:

15 11.30 (2) (j) If a candidate believes that a communication identified in par. (a)
16 contains false information that is intended or tends to affect voting at an election at
17 which the candidate seeks office, the candidate may by personal service upon the
18 person who pays or assumes responsibility for the communication or the person's
19 agent a demand for the person to cease dissemination of the false information in the
20 communication. If the person who pays or assumes responsibility for the
21 communication does not inform the candidate within 24 hours of that service that
22 the person agrees to cease dissemination of the false information, the candidate may
23 file a civil action requesting such legal or equitable relief as may be appropriate. The
24 court shall promptly set the matter for a hearing to be held within 24 hours after the
25 action is filed and shall issue a decision within 24 hours after the hearing is held.

ASSEMBLY BILL 723**SECTION 4**

1 The court may order such legal or equitable relief as it considers to be appropriate,
2 which shall include a requirement to disseminate corrective information in the same
3 manner as the original dissemination was made in accordance with a specific
4 proposed plan approved by the court. If the candidate who files the action believes
5 that a court order issued in that action has been violated, the candidate may bring
6 suit against the alleged violator upon his or her relation in the name, and on behalf,
7 of the state. If the court finds that a violation has occurred or is occurring, the court
8 may order the violator to forfeit not more than \$100,000 for each violation. The court
9 may award the actual and necessary costs of prosecution in any such action,
10 including reasonable attorney fees, to the relator if he or she prevails but any
11 forfeiture recovered shall be paid to the state.

12 **SECTION 5.** 11.66 of the statutes is renumbered 11.66 (1).

13 **SECTION 6.** 11.66 (2) of the statutes is created to read:

14 11.66 (2) Subsection (1) does not apply to any action brought under s. 11.30 (2)
15 (j).

16 **SECTION 7.** 12.05 of the statutes is amended to read:

17 **12.05 False and reckless representations affecting elections.** No person
18 may knowingly make or publish, or cause to be made or published, a false
19 representation pertaining to a candidate or referendum which is intended or tends
20 to affect voting at an election. No person may knowingly make or publish, or cause
21 to be made or published, a representation pertaining to a candidate or referendum
22 with reckless disregard as to the truth or falsity of the representation if the
23 representation is intended or tends to affect voting at an election.

24 (END)