

2001 ASSEMBLY BILL 877

March 4, 2002 – Introduced by Representative SCHOOFF. Referred to Committee on Labor and Workforce Development.

1 **AN ACT** *to renumber* 440.01 (1) (a), 452.01 (3j) and 452.01 (3k); *to amend* 13.48
2 (19), 16.854 (3), 23.41 (5), 50.02 (2) (b) 1., 50.36 (2) (a), 150.29 (1) and 231.20;
3 and *to create* 15.407 (7), 16.855 (14m), 66.0901 (2m), 101.12 (2m), 101.65 (1s),
4 440.08 (2) (a) 68b. and subchapter XII of chapter 440 [precedes 440.99] of the
5 statutes; **relating to:** regulating roofing contractors, creating a roofing
6 advisory council, extending the time limit for emergency rule procedures,
7 providing an exemption from emergency rule procedures, granting
8 rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

Under this bill, with certain exceptions, a person may not perform roofing contracting services, or use the title “roofing contractor” or a similar title, unless the department of regulation and licensing (DRL) has issued a license to the person. “Roofing contracting services” are defined as the construction, reconstruction, alteration, maintenance, or repair of roofs, except for roofs of farm buildings. In addition, “roofing contracting services” are defined not to include the installation of plastics, glass, or fiberglass to greenhouses or other horticultural structures. The following persons are exempt from the licensure requirement: 1) a seller of roofing materials; 2) a person who provides roofing contracting services, if the services are

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not performed by the person or the person's employees; 3) a person who performs roofing contracting services without compensation; and 4) an employee of an employer who is licensed.

An applicant for a license must satisfy certain requirements, including passing an examination approved by DRL that tests competency to perform roofing contracting services. The examination must also test knowledge of lien laws and safety requirements. An applicant must also submit evidence to DRL that the applicant has in effect public liability and property damage insurance in amounts specified in rules promulgated by DRL. Also, an applicant must submit evidence that the applicant either has worker's compensation insurance or is exempt from the requirement to have insurance by the department of workforce development. In addition, an applicant must file a \$5,000 bond with DRL.

DRL must assign a unique license number to each license that it issues. A licensee must conspicuously display the license at the licensee's principal place of business, and must affix the license number to all bids and contracts, display the license number on all vehicles used for performing roofing contracting services, and include the license number in all advertisements. A licensee must also renew the license every two years.

The bill allows DRL to take disciplinary action, including revoking or suspending a license, against a person who violates the bill's requirements, including engaging in unprofessional or unethical conduct in violation of a code of ethics established in rules promulgated by DRL. Other grounds for discipline include advertising in a false, deceptive, or misleading manner, committing gross negligence or misconduct, receiving compensation for roofing contracting services that were not performed, and grossly and knowingly overcharging for roofing contracting services. The bill also allows DRL to summarily suspend a license for up to 30 days if DRL has probable cause to believe that a violation of the bill's requirements has occurred and the suspension is necessary to protect the public health, safety, or welfare. A person who violates the bill's requirements may be fined not more than \$1,000, imprisoned for not more than nine months, or both. In addition, DRL may directly assess a forfeiture of not more than \$5,000 against an unlicensed person who performs roofing contracting services or uses a prohibited title.

The bill also creates a roofing advisory council consisting of six licensees and one public member. DRL must obtain comments from the council when DRL promulgates rules under the bill. In addition, the council is allowed to petition DRL for the adoption, amendment, or repeal of rules relating to the regulation of roofing contracting services.

Finally, the bill also does all of the following:

1. Allows a person who is aggrieved by a violation of the bill's requirements to bring an action to enjoin the violation or to recover actual damages sustained as a result of the violation.

2. Prohibits the department of administration and municipalities from entering into contracts for roofing contracting services unless the contract provides that the services will be performed by a licensee or a person exempt from licensure.

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3. Prohibits the construction of hospitals, nursing homes, and public buildings that are subject to plan review by the department of health and family services or the department of commerce unless the applicant submits satisfactory evidence that any roofing contracting services will be performed by a licensee or a person exempt from licensure.

4. Prohibits cities, villages, towns, and counties from issuing building permits unless the applicant provides satisfactory evidence that any roofing contracting services will be performed by a licensee or a person exempt from licensure.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 13.48 (19) of the statutes, as affected by 2001 Wisconsin Act 16, is
2 amended to read:

3 **13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION.** Whenever the building
4 commission determines that the use of innovative types of design and construction
5 processes will make better use of the resources and technology available in the
6 building industry, the building commission may waive any or all of s. 16.855, except
7 s. 16.855 (14m), if such action is in the best interest of the state and if the waiver is
8 accomplished through formal action of the building commission. The building
9 commission may authorize the lease, lease purchase or acquisition of such facilities
10 constructed in the manner authorized by the building commission. Subject to the
11 requirements of s. 20.924 (1) (i), the building commission may also authorize the
12 lease, lease purchase or acquisition of existing facilities in lieu of state construction
13 of any project enumerated in the authorized state building program.

14 **SECTION 2.** 15.407 (7) of the statutes is created to read:

15 **15.407 (7) ROOFING ADVISORY COUNCIL.** (a) There is created a roofing advisory
16 council in the department of regulation and licensing and serving the department in

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1 an advisory capacity. The council shall consist of the following members appointed
2 for 4-year terms:

3 1. Six persons licensed under subch. XII of ch. 440.

4 2. One public member.

5 (b) The members appointed under par. (a) 1. shall be appointed to provide
6 geographic diversity to the council.

7 **SECTION 3.** 16.854 (3) of the statutes is amended to read:

8 16.854 (3) It shall be a goal of the department, with regard to each of the
9 contracts described under sub. (2) (a), (b) and (c), to award at least 25% of the dollar
10 value of such contracts to minority businesses and at least 5% of the dollar value of
11 such contracts to women's businesses. Sections 16.85, and 16.855, except s. 16.855
12 (14m), and s. 16.87 do not apply to services provided or contracted by the department
13 under this section.

14 **SECTION 4.** 16.855 (14m) of the statutes is created to read:

15 16.855 (14m) The department may not enter into any contract for roofing
16 contracting services, as defined in s. 440.99 (1), unless the contract provides that
17 those services will be provided by a person who is licensed under subch. XII of ch. 440
18 or is exempt from licensure under that subchapter.

19 **SECTION 5.** 23.41 (5) of the statutes, as affected by 2001 Wisconsin Act 16, is
20 amended to read:

21 23.41 (5) Each contract for construction work entered into by the department
22 under this section shall be awarded on the basis of bids or competitive sealed
23 proposals in accordance with procedures established by the department. Each
24 contract for construction work shall be awarded to the lowest responsible bidder or
25 the person submitting the most advantageous competitive sealed proposal as

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1 determined by the department. If the bid of the lowest responsible bidder or the
2 proposal of the person submitting the most advantageous competitive sealed
3 proposal is determined by the department to be in excess of the estimated reasonable
4 value of the work or not in the public interest, the department may reject all bids or
5 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to
6 16.75, 16.755, 16.76, 16.767 to 16.82, and 16.855, except s. 16.855 (14m), and from
7 ss. 16.87 and 16.89, but ss. 16.528, 16.754 and 16.765 apply to the contract. Every
8 such contract involving an expenditure of more than \$60,000 is not valid until the
9 contract is approved by the governor.

10 **SECTION 6.** 50.02 (2) (b) 1. of the statutes is amended to read:

11 50.02 (2) (b) 1. The department shall conduct plan reviews of all capital
12 construction and remodeling of nursing homes to ensure that the plans comply with
13 building code requirements under ch. 101 and with life safety code and physical plant
14 requirements under s. 49.498, this chapter or under rules promulgated under this
15 chapter. If the plans involve the performance of roofing contracting services, as
16 defined in s. 440.99 (1), construction or remodeling may not commence unless the
17 applicant submits with the plans evidence satisfactory to the department that those
18 services will be performed by a person who is licensed under subch. XII of ch. 440 or
19 is exempt from licensure under that subchapter.

20 **SECTION 7.** 50.36 (2) (a) of the statutes is amended to read:

21 50.36 (2) (a) The department shall conduct plan reviews of all capital
22 construction and remodeling projects of hospitals to ensure that the plans comply
23 with building code requirements under ch. 101 and with physical plant requirements
24 under this chapter or under rules promulgated under this chapter. If the plans
25 involve the performance of roofing contracting services, as defined in s. 440.99 (1),

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1 construction or remodeling may not commence unless the applicant submits with the
2 plans evidence satisfactory to the department that those services will be performed
3 by a person who is licensed under subch. XII of ch. 440 or is exempt from licensure
4 under that subchapter.

5 **SECTION 8.** 66.0901 (2m) of the statutes is created to read:

6 **66.0901 (2m) ROOFING CONTRACTING SERVICES.** A municipality may not enter
7 into a public contract for roofing contracting services, as defined in s. 440.99 (1),
8 unless the contract provides that those services will be performed by a person who
9 is licensed under subch. XII of ch. 440 or is exempt from licensure under that
10 subchapter.

11 **SECTION 9.** 101.12 (2m) of the statutes is created to read:

12 **101.12 (2m)** If the plans specified in sub. (2) involve the performance of roofing
13 contracting services, as defined in s. 440.99 (1), construction may not commence
14 unless the designer or owner submits with the plans evidence satisfactory to the
15 department that those services will be performed by a person who is licensed under
16 subch. XII of ch. 440 or is exempt from licensure under that subchapter.

17 **SECTION 10.** 101.65 (1s) of the statutes is created to read:

18 **101.65 (1s)** May not issue a building permit unless the applicant provides
19 evidence satisfactory to the city, village, town, or county that all roofing contracting
20 services, as defined in s. 440.99 (1), will be performed by a person who is licensed
21 under subch. XII of ch. 440 or is exempt from licensure under that subchapter.

22 **SECTION 11.** 150.29 (1) of the statutes is amended to read:

23 **150.29 (1)** No person may enter into an obligation for a project described in s.
24 150.21 or engage in activities described in that section without the department's
25 prior approval. If the project involves the performance of roofing contracting

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1 services, as defined in s. 440.99 (1), the department may not approve the project
2 unless the applicant submits evidence satisfactory to the department that those
3 services will be performed by a person who is licensed under subch. XII of ch. 440 or
4 is exempt from licensure under that subchapter.

5 **SECTION 12.** 231.20 of the statutes is amended to read:

6 **231.20 Waiver of construction and bidding requirements.** In exercising
7 its powers under s. 101.12, the department of commerce or any city, village, town or
8 county may, within its discretion for proper cause shown, waive any particular
9 requirements relating to public buildings, structures, grounds, works and
10 improvements imposed by law upon projects under this chapter; the requirements
11 of s. ss. 101.12 (2m) and 101.13 may not be waived, however. If, however, the
12 prospective lessee so requests in writing, the authority shall, through the
13 participating health institution, participating educational institution or
14 participating child care provider as its agent, call for construction bids in such
15 manner as is determined by the authority with the approval of the lessee.

16 **SECTION 13.** 440.01 (1) (a) of the statutes is renumbered 440.01 (1) (aj).

17 **SECTION 14.** 440.08 (2) (a) 68b. of the statutes is created to read:

18 440.08 (2) (a) 68b. Roofing contractor: January 1 of each even-numbered year;
19 \$53.

20 **SECTION 15.** Subchapter XII of chapter 440 [precedes 440.99] of the statutes
21 is created to read:

22 **CHAPTER 440**

23 **SUBCHAPTER XII**

24 **ROOFING CONTRACTORS**

25 **440.99 Definitions.** In this subchapter:

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1 **(1)** “Roofing contracting services” means the construction, reconstruction,
2 alteration, maintenance, or repair of roofs, except for roofs of farm buildings.
3 “Roofing contracting services” do not include the installation of plastics, glass, or
4 fiberglass to greenhouses and other horticultural structures.

5 **(2)** “Roofing contractor” means a person who performs roofing contracting
6 services.

7 **440.991 License required. (1)** Except as provided in sub. (2), no person may
8 perform roofing contracting services or use the title “roofing contractor” or any other
9 title or description that represents that the person is a roofing contractor unless the
10 person is licensed under this subchapter.

11 **(2)** This subchapter does not require a license for any of the following:

12 (a) A person who sells roofing materials.

13 (b) A person who provides roofing contracting services if the services are not
14 performed by the person or the person’s employees.

15 (c) A person who performs roofing contracting services without compensation.

16 (d) An employee who performs roofing contracting services for an employer who
17 is licensed under this subchapter.

18 **440.992 Licensure requirements; renewal. (1)** The department shall issue
19 a license under this subchapter to a person who does all of the following:

20 (a) Submits an application for the license to the department on a form provided
21 by the department.

22 (b) Pays the fee specified in s. 440.05 (1).

23 (c) If the person is a business entity, submits a statement to the department
24 that the person is legally qualified to act on behalf of the business entity and
25 identifies to the department the business representatives of the business entity and

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1 the business representatives who are responsible for supervising roofing contracting
2 services performed by the business entity.

3 (d) Submits evidence satisfactory to the department that the person has in
4 effect public liability and property damage insurance in amounts specified in rules
5 promulgated by the department.

6 (e) Submits evidence satisfactory to the department that the person has
7 worker's compensation insurance or is exempted from the requirement to have such
8 insurance by the department of workforce development under s. 102.28 (2) (b) or (3).

9 (f) Executes and files with the department a bond in the amount of \$5,000.

10 (g) Passes an examination approved by the department, with the advice of the
11 roofing advisory council, that tests competency to perform roofing contracting
12 services, including knowledge of lien laws and safety requirements.

13 **(2)** The department shall assign a license number to each license issued under
14 this subchapter.

15 **(3)** The renewal dates for licenses issued under this subchapter are specified
16 under s. 440.08 (2) (a). Renewal applications shall be submitted to the department
17 on a form provided by the department and shall include the renewal fee specified in
18 s. 440.08 (2) (a) and evidence satisfactory to the department that the applicant has
19 in effect public liability and property damage insurance in amounts specified in rules
20 promulgated by the department.

21 **440.993 Display of license and license number.** A person who is issued a
22 license under this subchapter must conspicuously display the license at the person's
23 principal place of business, affix the license number to all bids and contracts for
24 roofing contracting services, display the license number on all vehicles used by

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1 person in performing roofing contracting services, and include the license number
2 in all advertisements for roofing contracting services.

3 **440.994 Rule making. (1)** The department shall promulgate rules for each
4 of the following:

5 (a) Specifying the minimum amounts of public liability and property damage
6 insurance that a person licensed under this subchapter is required to have in effect.

7 (b) Establishing a code of ethics governing the performance of roofing
8 contracting services by persons licensed under this subchapter.

9 **(2)** Before submitting any proposed rules relating to the regulation of roofing
10 contracting services to the legislative council staff under s. 227.15, the department
11 shall submit the proposed rules to the roofing advisory council for comment. The
12 council shall have 30 days to submit comments on the proposed rules to the secretary.

13 **(3)** When promulgating emergency rules under s. 227.24, the department shall
14 provide a copy of the rules to the roofing advisory council prior to publication of the
15 rules in the official state newspaper.

16 **(4)** The chairperson of the roofing advisory council, or his or her designee from
17 the council, may cochair with the secretary, or the secretary's designee, any public
18 hearing held by the department on proposed rules relating to the regulation of
19 roofing contracting services.

20 **(5)** The department shall submit to the roofing advisory council a copy of the
21 report required under s. 227.19 (2) on any proposed final rules relating to the
22 regulation of roofing contracting services. The council may prepare a dissenting
23 report stating its recommendations on the proposed final rules. Any dissenting
24 report shall be prepared within 10 days from the date of receipt of the department's
25 report, be attached to the department's report, and be sent to the presiding officer of

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1 each house of the legislature and distributed under s. 227.19 (2). The department
2 shall cause a statement to appear in the Wisconsin Administrative Register to the
3 effect that a dissenting report of the council has been submitted to the presiding
4 officer of each house of the legislature.

5 (6) The roofing advisory council may petition the department under s. 227.12
6 for the adoption, amendment, or repeal of rules relating to the regulation of roofing
7 contracting services. This subsection does not limit the rights of other persons to
8 petition the department under s. 227.12.

9 **440.995 Public record exception.** The department shall withhold from
10 public inspection any financial information submitted by a person licensed under
11 this subchapter.

12 **440.996 Disciplinary proceedings and actions.** (1) Subject to the rules
13 promulgated under s. 440.03 (1), the department may make investigations and
14 conduct hearings to determine whether a violation of this subchapter or any rule
15 promulgated under this subchapter has occurred.

16 (2) Subject to the rules promulgated under s. 440.03 (1), the department may
17 reprimand a licensee or deny, limit, suspend, or revoke a license issued under this
18 subchapter if it finds that the applicant or licensee has done any of the following:

19 (a) Made a material misstatement in an application for a license or for renewal
20 of a license or in any information submitted to the department.

21 (b) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an offense the
22 circumstances of which substantially relate to the performance of roofing contracting
23 services.

24 (c) Advertised in a manner that is false, deceptive, or misleading.

25 (d) Advertised, practiced, or attempted to practice under another's name.

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1 (e) Subject to ss. 111.321, 111.322 and 111.34, performed roofing contracting
2 services while his or her ability to practice was impaired by alcohol or other drugs
3 or physical or mental disability or disease.

4 (f) Engaged in unprofessional or unethical conduct in violation of the code of
5 ethics established in the rules promulgated under s. 440.994 (1) (b).

6 (g) Committed gross negligence or misconduct, or acted in a grossly
7 incompetent manner, in performing roofing contracting services.

8 (h) Been disciplined in another jurisdiction on grounds that are substantially
9 similar to grounds specified in this subsection.

10 (i) Received compensation for roofing contracting services that were not
11 performed.

12 (j) Grossly and knowingly overcharged for roofing contracting services or filed
13 false statements for obtaining compensation for roofing contracting services that
14 were not performed.

15 (k) Been adjudicated mentally incompetent by a court.

16 (L) Violated this subchapter or any rule promulgated under this subchapter or
17 aided another person in violating this subchapter or any rule promulgated under this
18 subchapter.

19 **(3)** The department may summarily suspend a license issued under this
20 subchapter for a period not to exceed 30 days pending hearing if the department has
21 in its possession evidence establishing probable cause to believe that the licensee has
22 violated this subchapter or a rule promulgated under this subchapter and that it is
23 necessary to suspend the license immediately to protect the public health, safety, or
24 welfare. The licensee shall be granted an opportunity to be heard during the
25 determination of whether or not probable cause exists. The department may

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1 designate any of its officers to exercise the authority granted by this subsection to
2 suspend summarily a license, for a period not exceeding 72 hours. If a license has
3 been summarily suspended by the department or any of its officers, the department
4 may, while the hearing is in progress, extend the initial period of suspension for not
5 more than an additional 30 days. If the licensee has caused a delay in the hearing
6 process, the department may subsequently suspend the license from the time that
7 the hearing is commenced until a final decision is issued or may delegate such
8 authority to the hearing examiner.

9 **440.997 Injunctive relief.** If the department has reason to believe that any
10 person is violating this subchapter or any rule promulgated under this subchapter,
11 the department, the attorney general, or the district attorney of the proper county
12 may investigate and may, in addition to any other remedies, bring an action in the
13 name and on behalf of this state to enjoin the person from the violation.

14 **440.998 Private cause of action.** A person who is aggrieved by a violation
15 of this subchapter or a rule promulgated under this subchapter may bring an action
16 to enjoin further or continuing violations or to recover actual damages sustained as
17 a result of a violation. In an action under this section, the court shall award costs
18 and reasonable attorney fees, notwithstanding s. 814.04 (1), to a party who obtains
19 injunctive relief or an award of damages.

20 **440.999 Penalties. (1)** A person who violates this subchapter or a rule
21 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned
22 for not more than 9 months or both. Each day of violation constitutes a separate
23 offense.

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1 **(2)** In addition to or in lieu of the penalties under sub. (1), the department may
2 directly assess against a person who violates s. 440.991 (1) a forfeiture of not more
3 than \$5,000.

4 **SECTION 16.** 452.01 (3j) of the statutes is renumbered 440.01 (1) (ae).

5 **SECTION 17.** 452.01 (3k) of the statutes is renumbered 440.01 (1) (ag).

6 **SECTION 18. Nonstatutory provisions.**

7 **(1) INITIAL APPOINTMENTS TO ROOFING ADVISORY COUNCIL.**

8 (a) Notwithstanding section 15.407 (7) (a) of the statutes, as created by this act,
9 the initial members of the roofing advisory council shall be appointed by the first day
10 of the 3rd month beginning after the effective date of this paragraph for the following
11 terms:

12 1. Two roofing contractor members, for terms expiring on July 1, 2005.

13 2. Two roofing contractor members, for terms expiring on July 1, 2006.

14 3. Two roofing contractor members and the public member, for terms expiring
15 on July 1, 2007.

16 (b) Notwithstanding section 15.407 (7) (a) of the statutes, as created by this act,
17 the roofing contractor members appointed under paragraph (a) are not required to
18 be licensed at the time of appointment but must have been engaged in performing
19 roofing contracting services during the 5-year period before the appointment.

20 **(2) EMERGENCY RULES.** The department of regulation and licensing may use the
21 procedure under section 227.24 of the statutes to promulgate rules required under
22 sections 440.992 (1) (d) and (3) and 440.994 (1) (a) of the statutes, as created by this
23 act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the rules may
24 remain in effect until the date on which permanent rules take effect.
25 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department

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1 is not required to provide evidence that promulgating a rule under this subsection
2 as an emergency rule is necessary for the preservation of public peace, health, safety,
3 or welfare and is not required to provide a finding of emergency for a rule
4 promulgated under this subsection.

5 (3) **CONTRACTS.** If a person is affected by a contract that is in effect on the
6 effective date of this subsection and that contains provisions that are inconsistent
7 with section 440.991 (1) of the statutes, as created by this act, then, notwithstanding
8 section 440.991 (1) of the statutes, as created by this act, the person may perform its
9 obligations, and exercise its rights, under those provisions of the contract until the
10 contract expires or is extended, modified, or renewed, whichever occurs first.

11 **SECTION 19. Initial applicability.**

12 (1) **STATE AND MUNICIPAL CONTRACTS.** The treatment of sections 16.855 (14m) and
13 66.0901 (2m) of the statutes first applies to contracts entered into on the effective
14 date of this subsection.

15 (2) **HOSPITAL, NURSING HOME, AND PUBLIC BUILDING PLANS.** The treatment of
16 sections 50.02 (2) (b) 1., 50.36 (2) (a), and 101.12 (2m) of the statutes first applies to
17 plans submitted on the effective date of this subsection.

18 (3) **BUILDING PERMITS; NURSING HOME APPROVALS.** The treatment of sections
19 101.65 (1s) and 150.29 (1) of the statutes first applies to applications submitted on
20 the effective date of this subsection.

21 **SECTION 20. Effective dates.** This act takes effect on the first day of the 10th
22 month beginning after publication, except as follows:

23 (1) **SECTION 18 (1) and (2)** of this act takes effect on the day after publication.

24

(END)