

2003 SENATE BILL 22

February 5, 2003 – Introduced by Senators REYNOLDS, HARSDORF, CARPENTER, HANSEN, A. LASEE, LAZICH, LEIBHAM, KEDZIE, WELCH, ROESSLER, PANZER, STEPP and MOORE, cosponsored by Representatives GUNDRUM, GUNDERSON, KERKMAN, FRISKE, LASSA, OLSEN, HAHN, JENSEN, STONE, LADWIG, FREESE, VRAKAS, VRUWINK, TRAVIS, AINSWORTH, PLOUFF, J. WOOD, LEMAHIEU, NASS, OTT, PETROWSKI, BIES, SHILLING, GIELOW, GARD, KREUSER, HEBL, LOEFFELHOLZ, CULLEN, ZIEGELBAUER, WARD, PETTIS, MCCORMICK, SUDER, TOWNSEND, JESKEWITZ, ZEPNICK, J. FITZGERALD, KESTELL, D. MEYER, KAUFERT, NISCHKE, MONTGOMERY, WEBER, RHOADES, LOTHIAN, VAN AKKEREN, RICHARDS and ALBERS. Referred to Committee on Education, Ethics and Elections.

1 **AN ACT** *to amend* 11.25 (2) (b); *to repeal and recreate* 19.42 (3m), (4g) and (4r),
 2 19.45 (13), 19.49 (1m), 19.49 (5) (a), 19.49 (5) (b), 19.53 (6), 19.535, 19.59 (1) (br),
 3 19.59 (7) (a), 19.59 (7) (b), 19.59 (8) (c) and 19.59 (8) (cm) and (cn) of the statutes;
 4 and *to affect* 2001 Wisconsin Act 109, section 9115 (2y) (b) and 2001 Wisconsin
 5 Act 109, section 9415 (1zx); **relating to:** official action in return for providing
 6 or withholding political contributions, services, or other things of value and
 7 providing a penalty.

Analysis by the Legislative Reference Bureau

2001 Wisconsin Act 109 made various changes to campaign finance, ethics, lobbying regulation, income tax, public broadcasting, and cable television laws. Most changes made by Act 109 take effect on July 1, 2003. Most of these changes were made nonseverable so that if a court found that any of the provisions were unconstitutional, all of the provisions would then be invalid. On December 11, 2002, in *Wisconsin Realtors Association et al. v. Ponto et al.*, Case No. 02-C-424-C, the U.S. District Court for the Western District of Wisconsin found that one provision of Act 109 is unconstitutional. While this decision is subject to appeal, it apparently precludes enforcement and administration of all affected Act 109 changes as of December 11, 2002. The Act 109 changes, however, currently remain in the statutes.

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This bill reenacts changes made by Act 109 to the ethics laws, effective on the day the bill becomes law. In the description which follows, “current law” means the law in effect before July 1, 2003.

Currently, no person may offer or give to a state public official, including a member of the legislature, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official’s vote, official actions, or judgment, or could reasonably be considered a reward for any official action or inaction on the part of the state public official.

This bill provides, in addition, that no state or local public official holding an elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of or upon condition that any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any other person who is subject to a registration requirement under the campaign finance law, or any person making a mass communication that contains a reference to a clearly identified state or local public official or a candidate for state or local public office.

Violators are subject to a forfeiture (civil penalty) of not more than \$5,000 for each violation, and are also subject to a forfeiture in an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained, or if no political contribution, service, or other thing of value was obtained, an amount equal to the maximum contribution that an individual is permitted to make to a candidate for the office sought or held by the official, whichever amount is greater. Intentional violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$5,000 or imprisonment in the county jail for not more than one year or both.

The bill also provides that, if the Ethics Board refuses or otherwise fails to authorize an investigation or a district attorney fails to initiate a prosecution with respect to any violation of the prohibition created by the bill within 30 days after receiving a verified complaint alleging such a violation, the person making the complaint may bring a lawsuit to recover a forfeiture on behalf of the state. If the person making the complaint prevails, the bill provides that the court may require the defendant to pay the complainant’s attorney fees and costs, but any forfeiture recovered must be paid to the state. If the court finds that a lawsuit was frivolous, the court must award fees and costs to the defendant. The bill provides that no complaint alleging a violation of the prohibition contained in the bill may be filed during the period beginning 120 days before a general or spring election or the date that a special election is ordered and ending on the date of that election against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election.

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

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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.** 11.25 (2) (b) of the statutes is amended to read:

2 11.25 **(2)** (b) Notwithstanding par. (a), a registrant may accept contributions
3 and make disbursements from a campaign depository account for the purpose of
4 making expenditures in connection with a campaign for national office; for payment
5 of civil penalties incurred by the registrant under this chapter but not under any
6 other chapter; or for payment of the expenses of nonpartisan campaigns to increase
7 voter registration or participation. Notwithstanding par. (a), a personal campaign
8 committee or support committee may accept contributions and make disbursements
9 from a campaign depository account for payment of inaugural expenses of an
10 individual who is elected to state or local office. If such expenses are paid from
11 contributions made to the campaign depository account, they are reportable under
12 s. 11.06 (1) as disbursements. Otherwise, such expenses are not reportable under s.
13 11.06 (1). If contributions from the campaign depository account are used for such
14 expenses, they are subject to s. 11.26.

15 **SECTION 2.** 19.42 (3m), (4g) and (4r) of the statutes, as created by 2001
16 Wisconsin Act 109, are repealed and recreated to read:

17 19.42 **(3m)** “Candidate,” except as otherwise provided, has the meaning given
18 in s. 11.01 (1).

19 **(4g)** “Clearly identified,” when used in reference to a communication
20 containing a reference to a person, means one of the following:

21 (a) The person’s name appears.

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1 (b) A photograph or drawing of the person appears.

2 (c) The identity of the person is apparent by unambiguous reference.

3 **(4r)** “Communication” means a message transmitted by means of a printed
4 advertisement, billboard, handbill, sample ballot, radio or television advertisement,
5 telephone call, or any medium that may be utilized for the purpose of disseminating
6 or broadcasting a message, but not including a poll conducted solely for the purpose
7 of identifying or collecting data concerning the attitudes or preferences of electors.

8 **SECTION 3.** 19.45 (13) of the statutes, as created by 2001 Wisconsin Act 109, is
9 repealed and recreated to read:

10 19.45 **(13)** No state public official holding an elective office may, directly or by
11 means of an agent, give, or offer or promise to give, or withhold, or offer or promise
12 to withhold, his or her vote or influence, or promise to take or refrain from taking
13 official action with respect to any proposed or pending matter in consideration of, or
14 upon condition that, any other person make or refrain from making a political
15 contribution, or provide or refrain from providing any service or other thing of value,
16 to or for the benefit of a candidate, a political party, any other person who is subject
17 to a registration requirement under s. 11.05, or any person making a communication
18 that contains a reference to a clearly identified state public official holding an
19 elective office or to a candidate for state public office.

20 **SECTION 4.** 19.49 (1m) of the statutes, as created by 2001 Wisconsin Act 109,
21 is repealed and recreated to read:

22 19.49 **(1m)** No complaint alleging a violation of s. 19.45 (13) may be filed during
23 the period beginning 120 days before a general or spring election, or during the
24 period commencing on the date of the order of a special election under s. 8.50, and

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1 ending on the date of that election, against a candidate who files a declaration of
2 candidacy to have his or her name appear on the ballot at that election.

3 **SECTION 5.** 19.49 (5) (a) of the statutes, as affected by 2001 Wisconsin Act 109,
4 is repealed and recreated to read:

5 19.49 (5) (a) Except as provided in par. (b), no action may be taken on any
6 complaint that is filed later than 3 years after a violation of this subchapter or subch.
7 III of ch. 13 is alleged to have occurred.

8 **SECTION 6.** 19.49 (5) (b) of the statutes, as created by 2001 Wisconsin Act 109,
9 is repealed and recreated to read:

10 19.49 (5) (b) The period of limitation under par. (a) is tolled for a complaint
11 alleging a violation of s. 19.45 (13) or 19.59 (1) (br) for the period during which such
12 a complaint may not be filed under s. 19.49 (1m) or 19.59 (8) (cm).

13 **SECTION 7.** 19.53 (6) of the statutes, as affected by 2001 Wisconsin Act 109, is
14 repealed and recreated to read:

15 19.53 (6) An order requiring the accused to forfeit not more than \$500 for each
16 violation of s. 19.43, 19.44, or 19.56 (2) or not more than \$5,000 for each violation of
17 any other provision of this subchapter, or not more than the applicable amount
18 specified in s. 13.69 for each violation of subch. III of ch. 13. If the board determines
19 that the accused has realized economic gain as a result of the violation, the board
20 may, in addition, order the accused to forfeit the amount gained as a result of the
21 violation. In addition, if the board determines that a state public official has violated
22 s. 19.45 (13), the board may order the official to forfeit an amount equal to the amount
23 or value of any political contribution, service, or other thing of value that was
24 wrongfully obtained. If the board determines that a state public official has violated
25 s. 19.45 (13) and no political contribution, service or other thing of value was

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1 obtained, the board may order the official to forfeit an amount equal to the maximum
2 contribution authorized under s. 11.26 (1) for the office held or sought by the official,
3 whichever amount is greater. The attorney general, when so requested by the board,
4 shall institute proceedings to recover any forfeiture incurred under this section or s.
5 19.545 which is not paid by the person against whom it is assessed.

6 **SECTION 8.** 19.535 of the statutes, as created by 2001 Wisconsin Act 109, is
7 repealed and recreated to read:

8 **19.535 Direct enforcement.** If the board refuses or otherwise fails to
9 authorize an investigation under s. 19.49 (3) with respect to a violation of s. 19.45 (13)
10 within 30 days after receiving a verified complaint alleging a violation of s. 19.45 (13),
11 the person making the complaint may bring an action to recover the forfeiture under
12 s. 19.53 (6) on his or her relation in the name, and on behalf, of the state. In such
13 actions, the court may award actual and necessary costs of prosecution, including
14 reasonable attorney fees, to the relator if he or she prevails, but any forfeiture
15 recovered shall be paid to the state. If the court finds in any such action that the
16 cause of action was frivolous as provided in s. 814.025, the court shall award costs
17 and fees to the defendant under that section.

18 **SECTION 9.** 19.59 (1) (br) of the statutes, as affected by 2001 Wisconsin Act 109,
19 is repealed and recreated to read:

20 **19.59 (1) (br)** No local public official holding an elective office may, directly or
21 by means of an agent, give, or offer or promise to give, or withhold, or offer or promise
22 to withhold, his or her vote or influence, or promise to take or refrain from taking
23 official action with respect to any proposed or pending matter in consideration of, or
24 upon condition that, any other person make or refrain from making a political
25 contribution, or provide or refrain from providing any service or other thing of value,

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1 to or for the benefit of a candidate, a political party, any other person who is subject
2 to a registration requirement under s. 11.05, or any person making a communication
3 that contains a reference to a clearly identified local public official holding an elective
4 office or to a candidate for local public office.

5 **SECTION 10.** 19.59 (7) (a) of the statutes, as affected by 2001 Wisconsin Act 109,
6 is repealed and recreated to read:

7 19.59 (7) (a) Any person who violates sub. (1) may be required to forfeit not
8 more than \$1,000 for each violation, and, if the court determines that the accused has
9 violated sub. (1) (br), the court may, in addition, order the accused to forfeit an
10 amount equal to the amount or value of any political contribution, service, or other
11 thing of value that was wrongfully obtained.

12 **SECTION 11.** 19.59 (7) (b) of the statutes, as created by 2001 Wisconsin Act 109,
13 is repealed and recreated to read:

14 19.59 (7) (b) Any person who violates sub. (1) may be required to forfeit not
15 more than \$1,000 for each violation, and, if the court determines that a local public
16 official has violated sub. (1) (br) and no political contribution, service or other thing
17 of value was obtained, the court may, in addition, order the accused to forfeit an
18 amount equal to the maximum contribution authorized under s. 11.26 (1) for the
19 office held or sought by the official, whichever amount is greater.

20 **SECTION 12.** 19.59 (8) (c) of the statutes, as affected by 2001 Wisconsin Act 109,
21 is repealed and recreated to read:

22 19.59 (8) (c) If the district attorney fails to commence an action to enforce sub.
23 (1) (a), (b), or (c) to (g) within 20 days after receiving a verified complaint or if the
24 district attorney refuses to commence such an action, the person making the

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1 complaint may petition the attorney general to act upon the complaint. The attorney
2 general may then bring an action under par. (a) or (b), or both.

3 **SECTION 13.** 19.59 (8) (cm) and (cn) of the statutes, as created by 2001
4 Wisconsin Act 109, are repealed and recreated to read:

5 19.59 **(8)** (cm) No complaint alleging a violation of sub. (1) (br) may be filed
6 during the period beginning 120 days before a general or spring election, or during
7 the period commencing on the date of the order of a special election under s. 8.50, and
8 ending on the date of that election, against a candidate who files a declaration of
9 candidacy to have his or her name appear on the ballot at that election.

10 (cn) If the district attorney refuses or otherwise fails to commence an action to
11 enforce sub. (1) (br) within 30 days after receiving a verified complaint alleging a
12 violation of sub. (1) (br), the person making the complaint may bring an action to
13 recover the forfeiture under sub. (7) on his or her relation in the name, and on behalf,
14 of the state. In such actions, the court may award actual and necessary costs of
15 prosecution, including reasonable attorney fees, to the relator if her or she prevails,
16 but any forfeiture recovered shall be paid to the state. If the court finds in any such
17 action that the cause of action was frivolous as provided in s. 814.025, the court shall
18 award costs and fees to the defendant under that section.

19 **SECTION 14.** 2001 Wisconsin Act 109, section 9115 (2y) (b) is amended to read:

20 [2001 Wisconsin Act 109] Section 9115 (2y) (b) Notwithstanding section
21 990.001 (11) of the statutes, if a court finds that any part of the repeal of sections
22 11.01 (12s), 11.05 (3) (o), 11.265, 11.50 (3), and 11.50 (10) of the statutes, the
23 renumbering of sections 11.05 (2r) (title), 11.24 (2), and 11.50 (1) (a) 1. of the statutes,
24 the renumbering and amendment of sections 11.05 (1), 11.05 (2), 11.05 (2r), 11.12 (6),
25 11.26 (9) (a), 11.31 (2m), 11.50 (1) (a) 2., 11.50 (5), 11.50 (9), ~~19.49 (5), 19.59 (7),~~ and

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1 71.10 (3) (a) of the statutes, the amendment of sections 5.02 (13), 5.05 (2), 7.08 (2) (c),
2 7.08 (2) (cm), 8.30 (2), 8.35 (4) (a) 1. a. and b., 8.35 (4) (c) and (d), 11.05 (3) (c), 11.05
3 (5), 11.05 (9) (b), 11.05 (12) (b), 11.05 (13), 11.06 (1) (intro.), 11.06 (1) (e), 11.06 (2),
4 11.06 (3) (b) (intro.), 11.06 (4) (b), 11.06 (5), 11.06 (7m) (a), 11.06 (7m) (b), 11.06 (7m)
5 (c), 11.07 (1), 11.07 (5), 11.09 (3), 11.10 (1), 11.12 (2), 11.12 (4), 11.12 (5), 11.14 (3),
6 11.16 (2), 11.16 (5), 11.19 (title), 11.19 (1), 11.20 (1), 11.20 (2), 11.20 (3) (a) and (b),
7 11.20 (7), 11.20 (8) (intro.), 11.20 (8) (a), 11.20 (9), 11.20 (10) (a), 11.20 (12), 11.21 (2),
8 11.21 (15), 11.21 (16), 11.22 (3), 11.23 (1), 11.23 (2), 11.26 (1) (intro.), 11.26 (2) (intro.),
9 11.26 (2) (a), 11.26 (3), 11.26 (4), 11.26 (5), 11.26 (6), 11.26 (8), 11.26 (9) (b), 11.26 (10),
10 11.26 (15), 11.26 (17) (a), 11.31 (1) (intro.), 11.31 (1) (a) to (d), 11.31 (1) (e) and (f), 11.31
11 (2), 11.31 (2m) (title), 11.31 (3), 11.38 (1) (a) 2., 11.38 (6), 11.38 (8) (b), 11.50 (2) (a),
12 11.50 (2) (b) 3. and 4., 11.50 (2) (b) 5., 11.50 (2) (c), 11.50 (2) (f), 11.50 (2) (g), 11.50 (2)
13 (h), 11.50 (2) (i), 11.50 (6), 11.50 (7) (intro.), 11.50 (8), 11.50 (10m), 11.50 (11) (e), 11.60
14 (4), 11.61 (1) (a) (by SECTION 2d), ~~19.53 (6), 19.59 (8) (c)~~, 20.510 (1) (q), 25.42, 71.08
15 (1) (intro.), and 71.10 (3) (b) of the statutes, the repeal and recreation of sections 11.05
16 (9) (title) and 11.50 (4) of the statutes, the creation of sections 11.001 (2m), 11.01 (4m),
17 11.01 (12w), (13) and (14), 11.01 (16) (a) 3., 11.05 (1) (b), 11.05 (2) (b), 11.05 (3) (m),
18 11.05 (3) (r), 11.06 (1) (cm) and (dm), 11.06 (2m) (b) to (d), 11.06 (11) (bm), 11.12 (6)
19 (am), 11.12 (6) (c) and (d), 11.12 (8) and (9), 11.20 (2s), 11.20 (2t), 11.20 (8) (am), 11.24
20 (1w), 11.24 (4), 11.26 (1m), 11.26 (1t), 11.26 (2) (ae), (am), (as) and (av), 11.26 (2m),
21 11.26 (2t), 11.26 (8n), 11.26 (8r), 11.26 (9) (a) 1. to 4., 11.26 (9) (am), 11.26 (9m), 11.26
22 (10a), 11.31 (1) (de), 11.31 (2m) (a), 11.31 (3p), 11.31 (9), 11.385, 11.50 (1) (a) 1. (intro.),
23 11.50 (1) (a) 2m., 11.50 (1) (am), 11.50 (1) (bm) and (cm), 11.50 (2) (b) 6., 11.50 (2) (j),
24 11.50 (2m), 11.50 (2s), 11.50 (2w), 11.50 (9) (b), 11.50 (14), 11.60 (3r), ~~19.42 (3m), (4g)~~
25 ~~and (4r), 19.45 (13), 19.49 (1m), 19.49 (5) (b), 19.535, 19.59 (1) (br), 19.59 (7) (b), 19.59~~

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1 ~~(8) (cm) and (en)~~, 71.07 (6s), 71.10 (3) (ac), 71.10 (3) (d), 71.10 (4) (gw), and 806.04
2 (11m) of the statutes or SECTIONS 9115 (2v), (2x), and (2y), 9132 (4v), 9215 (3v), 9244
3 (6v), 9315 (2v) and (2w), and 9344 (2v) of this act is unconstitutional, the treatment
4 of those provisions by this act is void.

5 **SECTION 15.** 2001 Wisconsin Act 109, section 9415 (1zx) is amended to read:

6 [2001 Wisconsin Act 109] Section 9415 (1zx) CAMPAIGN FINANCE AND RELATED
7 CHANGES. The repeal of sections 11.01 (12s), 11.05 (3) (o), 11.265, 11.50 (3), and 11.50
8 (10) of the statutes, the renumbering of sections 11.05 (2r) (title), 11.24 (2), and 11.50
9 (1) (a) 1. of the statutes, the renumbering and amendment of sections 11.05 (1), 11.05
10 (2), 11.05 (2r), 11.12 (6), 11.26 (9) (a), 11.31 (2m), 11.50 (1) (a) 2., 11.50 (5), and 11.50
11 (9), ~~19.49 (5), and 19.59 (7)~~ of the statutes, the amendment of sections 5.02 (13), 5.05
12 (2), 7.08 (2) (c), 7.08 (2) (cm), 8.30 (2), 8.35 (4) (a) 1. a. and b., 8.35 (4) (c) and (d), 11.05
13 (3) (c), 11.05 (5), 11.05 (9) (b), 11.05 (12) (b), 11.05 (13), 11.06 (1) (intro.), 11.06 (1) (e),
14 11.06 (2), 11.06 (3) (b) (intro.), 11.06 (4) (b), 11.06 (5), 11.06 (7m) (a), 11.06 (7m) (b),
15 11.06 (7m) (c), 11.07 (1), 11.07 (5), 11.09 (3), 11.10 (1), 11.12 (2), 11.12 (4), 11.12 (5),
16 11.14 (3), 11.16 (2), 11.16 (5), 11.19 (title), 11.19 (1), 11.20 (1), 11.20 (2), 11.20 (3) (a)
17 and (b), 11.20 (7), 11.20 (8) (intro.), 11.20 (8) (a), 11.20 (9), 11.20 (10) (a), 11.20 (12),
18 11.21 (2), 11.21 (15), 11.21 (16), 11.22 (3), 11.23 (1), 11.23 (2), 11.26 (1) (intro.), 11.26
19 (2) (intro.), 11.26 (2) (a), 11.26 (3), 11.26 (4), 11.26 (5), 11.26 (6), 11.26 (8), 11.26 (9)
20 (b), 11.26 (10), 11.26 (15), 11.26 (17) (a), 11.31 (1) (intro.), 11.31 (1) (a) to (d), 11.31 (1)
21 (e) and (f), 11.31 (2), 11.31 (2m) (title), 11.31 (3), 11.38 (1) (a) 2., 11.38 (6), 11.38 (8)
22 (b), 11.50 (2) (a), 11.50 (2) (b) 3. and 4., 11.50 (2) (b) 5., 11.50 (2) (c), 11.50 (2) (f), 11.50
23 (2) (g), 11.50 (2) (h), 11.50 (2) (i), 11.50 (6), 11.50 (7) (intro.), 11.50 (8), 11.50 (10m),
24 11.50 (11) (e), 11.60 (4), 11.61 (1) (a) (by SECTION 2d), ~~19.53 (6), 19.59 (8) (e)~~, 20.510
25 (1) (q), and 25.42 of the statutes, the repeal and recreation of sections 11.05 (9) (title)

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1 and 11.50 (4) of the statutes, the creation of sections 11.001 (2m), 11.01 (4m), 11.01
2 (12w), (13) and (14), 11.01 (16) (a) 3., 11.01 (17g) and (17r), 11.05 (1) (b), 11.05 (2) (b),
3 11.05 (3) (m), 11.05 (3) (r), 11.06 (1) (cm) and (dm), 11.06 (2m) (b) to (d), 11.06 (11) (bm),
4 11.12 (6) (am), 11.12 (6) (c) and (d), 11.12 (8) and (9), 11.20 (2s), 11.20 (2t), 11.20 (8)
5 (am), 11.21 (17), 11.24 (1w), 11.24 (4), 11.26 (1m), 11.26 (1t), 11.26 (2) (ae), (am), (as)
6 and (av), 11.26 (2m), 11.26 (2t), 11.26 (8n), 11.26 (8r), 11.26 (9) (a) 1. to 4., 11.26 (9)
7 (am), 11.26 (9m), 11.26 (10a), 11.31 (1) (de), 11.31 (2m) (a), 11.31 (3p), 11.31 (9),
8 11.385, 11.50 (1) (a) 1. (intro.), 11.50 (1) (a) 2m., 11.50 (1) (am), 11.50 (1) (bm) and (cm),
9 11.50 (2) (b) 6., 11.50 (2) (j), 11.50 (2m), 11.50 (2s), 11.50 (2w), 11.50 (9) (b), 11.50 (14),
10 11.60 (3r), ~~19.42 (3m), (4g) and (4r), 19.45 (13), 19.49 (1m), 19.49 (5) (b), 19.535, 19.59~~
11 ~~(1) (br), 19.59 (7) (b), 19.59 (8) (cm) and (cn),~~ and 806.04 (11m) of the statutes and
12 SECTIONS 9115 (2v) and (2w) and 9315 (2v) and (2w) of this act take effect on July 1,
13 2003.

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(END)