



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0852/1
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2017 ASSEMBLY BILL 32

January 20, 2017 - Introduced by Representatives KESSLER, C. TAYLOR, MASON, SINICKI, BROSTOFF, BERCEAU, OHNSTAD, WACHS and SPREITZER. Referred to Committee on Judiciary.

1 **AN ACT to repeal** 801.50 (5t), 801.64, 971.19 (12) and 971.223; and **to amend**
2 5.05 (1) (c), 5.05 (2m) (a), 5.05 (2m) (c) 4., 5.05 (2m) (c) 11., 5.05 (2m) (c) 14., 5.05
3 (2m) (i), 5.08, 6.56 (4), 11.1400 (5), 11.1401 (2), 12.13 (5) (a), 19.554, 801.52,
4 971.225 (1) (intro.), 978.05 (1) and 978.05 (2) of the statutes; **relating to:** the
5 prosecution and venue for trial of certain offenses by certain state residents.

Analysis by the Legislative Reference Bureau

This bill changes the venue for trials involving violations of elections, ethics, and lobbying regulation laws.

Under current law, with limited exceptions, civil violations of elections laws and of laws related to the official functions of the subject of an investigation or any matter that relates to elections that are alleged to be committed by a resident of this state are prosecuted by the Elections Commission or by the district attorney for the prosecutorial unit (in most cases, the county) where the subject resides. Also under current law, with similar exceptions, civil violations of campaign finance, ethics, and lobbying regulation laws and of laws related to the official functions of the subject of an investigation or any matter that relates to campaign finance, ethics, or lobbying that are alleged to be committed by a resident of this state are prosecuted by the Ethics Commission or by the district attorney for the prosecutorial unit where the subject resides. With similar exceptions, civil violations of these laws by nonresidents are prosecuted by the respective commission or by the district attorney for the prosecutorial unit where an alleged violation occurs. Criminal violations of

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these laws are prosecuted solely by the same district attorney, subject to the same exceptions. With certain limited exceptions, the trial in any such civil or criminal prosecution of a resident of this state, as well as in any lobbying license revocation action brought by the Ethics Commission, is held in circuit court for the county where the subject resides. With similar exceptions, the trial in any such civil or criminal prosecution of a nonresident of this state is held in circuit court for the county where an alleged violation occurs.

This bill provides, with similar exceptions, that all such civil violations of elections laws shall be prosecuted by the Elections Commission or by the district attorney for the prosecutorial unit where an alleged violation occurs, irrespective of the residence of the defendant. The bill also provides, with similar exceptions, that all such civil violations of campaign finance, ethics, and lobbying laws shall be prosecuted by the Ethics Commission or by the district attorney for the prosecutorial unit where an alleged violation occurs, irrespective of the residence of the defendant. The bill also provides, with similar exceptions, that all such criminal violations shall be prosecuted solely by the district attorney for the prosecutorial unit where an alleged violation occurs, irrespective of the residence of the defendant. In addition, the bill provides, with limited exceptions, that the trial in any such civil or criminal prosecution, as well as in any lobbying license revocation action brought by the Ethics Commission, shall be held in circuit court for the county where the alleged violation occurs. Under the bill, the Elections Commission has no responsibility for prosecution of any violations other than violations of elections laws, and the Ethics Commission has no responsibility for prosecution of any violations other than violations of campaign finance, ethics, and lobbying regulation laws.

The bill also deletes a statutory restriction on the disclosure of certain information related to the investigation or prosecution of laws arising from or in relation to the official functions of the person who is investigated or prosecuted. Under the bill, the information may still be withheld if other laws authorize or require the information to be withheld or if the custodian can demonstrate that the public interest requires withholding.

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

1 **SECTION 1.** 5.05 (1) (c) of the statutes is amended to read:

2 5.05 (1) (c) Bring civil actions to require a forfeiture for any violation of chs. 5
3 to 10 or 12. The commission may compromise and settle any civil action or potential
4 action brought or authorized to be brought by it which, in the opinion of the
5 commission, constitutes a minor violation, a violation caused by excusable neglect,
6 or which for other good cause shown, should not in the public interest be prosecuted

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1 under such chapter. Notwithstanding s. 778.06, a civil action or proposed civil action
2 authorized under this paragraph may be settled for such sum as may be agreed
3 between the parties. Any settlement made by the commission shall be in such
4 amount as to deprive the alleged violator of any benefit of his or her wrongdoing and
5 may contain a penal component to serve as a deterrent to future violations. In
6 settling civil actions or proposed civil actions, the commission shall treat comparable
7 situations in a comparable manner and shall assure that any settlement bears a
8 reasonable relationship to the severity of the offense or alleged offense. ~~Except as~~
9 ~~otherwise provided in sub. (2m) (c) 15. and 16. and ss. 5.08 and 5.081, forfeiture~~
10 Forfeiture actions brought by the commission shall be brought in the circuit court for
11 the county where the defendant resides, or if the defendant is a nonresident of this
12 state, in circuit court for the county wherein the violation is alleged to occur. ~~For~~
13 ~~purposes of this paragraph, a person other than an individual resides within a county~~
14 ~~if the person's principal place of operation is located within that county.~~ Whenever
15 the commission enters into a settlement agreement with an individual who is
16 accused of a civil violation of chs. 5 to 10 or 12 or who is investigated by the
17 commission for a possible civil violation of one of those provisions, the commission
18 shall reduce the agreement to writing, together with a statement of the commission's
19 findings and reasons for entering into the agreement and shall retain the agreement
20 and statement in its office for inspection.

21 **SECTION 2.** 5.05 (2m) (a) of the statutes is amended to read:

22 5.05 (2m) (a) The commission shall investigate violations of laws administered
23 by the commission and may prosecute alleged civil violations of those laws, directly
24 or through its agents under this subsection, pursuant to all statutes granting or
25 assigning that authority or responsibility to the commission. ~~Prosecution of alleged~~

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1 ~~criminal violations investigated by the commission may be brought only as provided~~
2 ~~in par. (c) 11., 14., 15., and 16. and s. 978.05 (1).~~ For purposes of this subsection, the
3 commission may only initiate an investigation of an alleged violation of chs. 5 to 10
4 and 12, other than an offense described under par. (c) 12., based on a sworn complaint
5 filed with the commission, as provided under par. (c). Neither the commission nor
6 any member or employee of the commission, including the commission
7 administrator, may file a sworn complaint for purposes of this subsection.

8 **SECTION 3.** 5.05 (2m) (c) 4. of the statutes is amended to read:

9 5.05 **(2m)** (c) 4. If the commission reviews a complaint and fails to find that
10 there is a reasonable suspicion that a violation under subd. 2. has occurred or is
11 occurring, the commission shall dismiss the complaint. If the commission believes
12 that there is reasonable suspicion that a violation under subd. 2. has occurred or is
13 occurring, the commission may by resolution authorize the commencement of an
14 investigation. The resolution shall specifically set forth any matter that is
15 authorized to be investigated. To assist in the investigation, the commission may
16 elect to retain a special investigator. If the commission elects to retain a special
17 investigator, the administrator of the commission shall submit to the commission the
18 names of 3 qualified individuals to serve as a special investigator. The commission
19 may retain one or more of the individuals. If Unless another prosecutor has
20 jurisdiction to prosecute the alleged violation, if the commission retains a special
21 investigator to investigate a complaint against a person who is a resident of this state
22 alleging a violation under subd. 2., the commission shall provide to the district
23 attorney for the county in which the person resides where the violation is alleged to
24 occur a copy of the complaint and shall notify the district attorney that it has retained
25 a special investigator to investigate the complaint. ~~For purposes of this subdivision,~~

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1 ~~a person other than an individual resides within a county if the person's principal~~
2 ~~place of operation is located within that county. If another prosecutor has~~
3 ~~jurisdiction to prosecute the alleged violation, the commission shall provide the copy~~
4 ~~of the complaint and notification to that prosecutor or the person having authority~~
5 ~~to appoint that prosecutor.~~ The commission shall enter into a written contract with
6 any individual who is retained as a special investigator setting forth the terms of the
7 engagement. A special investigator who is retained by the commission may request
8 the commission to issue a subpoena to a specific person or to authorize the special
9 investigator to request the circuit court of the county in which the specific person
10 resides to issue a search warrant. The commission may grant the request by
11 approving a motion to that effect at a meeting of the commission if the commission
12 finds that such action is legally appropriate.

13 **SECTION 4.** 5.05 (2m) (c) 11. of the statutes is amended to read:

14 5.05 (2m) (c) 11. If the commission finds that there is probable cause to believe
15 that a violation under subd. 2. has occurred or is occurring, the commission may, in
16 lieu of civil prosecution of any matter by the commission, refer the matter to the
17 district attorney for the county ~~in which the alleged violator resides, or if the alleged~~
18 ~~violator is a nonresident, to the district attorney for the county where the matter~~
19 ~~arises, having jurisdiction to prosecute the alleged violation, or if subd. 16. or par. (i)~~
20 ~~applies, to the attorney general or a special prosecutor. For purposes of this~~
21 ~~subdivision, a person other than a natural person resides within a county if the~~
22 ~~person's principal place of operation is located within that county.~~

23 **SECTION 5.** 5.05 (2m) (c) 14. of the statutes is amended to read:

24 5.05 (2m) (c) 14. If a special investigator or the commission administrator, in
25 the course of an investigation authorized by the commission, discovers evidence of

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1 a potential violation of a law that is not administered by the commission arising from
2 or in relation to the official functions of the subject of the investigation or any matter
3 that involves elections, the special investigator or the administrator may present
4 that evidence to the commission. The commission may thereupon refer the matter
5 to the appropriate district attorney ~~specified, except as otherwise provided in subd.~~
6 11., or may refer the matter to the attorney general. The attorney general may then
7 commence a civil or criminal prosecution relating to the matter.

8 **SECTION 6.** 5.05 (2m) (i) of the statutes is amended to read:

9 5.05 (2m) (i) ~~If the defendant in an action for a~~ an alleged criminal violation
10 of chs. 5 to 10 or 12 ~~is~~ concerns a district attorney or a circuit judge or a candidate
11 for either such office, the action shall be brought by the attorney general. ~~If the~~
12 ~~defendant in an action for a~~ an alleged criminal violation of chs. 5 to 10 or 12 is
13 concerns the attorney general or a candidate for that office, the commission may
14 appoint a special prosecutor to conduct the prosecution on behalf of the state.

15 **SECTION 7.** 5.08 of the statutes is amended to read:

16 **5.08 Petition for enforcement.** In addition to or in lieu of filing a complaint,
17 any elector may file a verified petition alleging such facts as are within his or her
18 knowledge to indicate that an election official has failed or is failing to comply with
19 any law regulating the conduct of elections or election campaigns, other than a law
20 regulating campaign financing, or proposes to act in a manner inconsistent with such
21 a law, and requesting that an action be commenced for injunctive relief, a writ of
22 mandamus or prohibition or other such legal or equitable relief as may be
23 appropriate to compel compliance with the law. ~~The~~ Unless another prosecutor has
24 jurisdiction to prosecute the alleged failure to comply, the petition shall be filed with
25 the district attorney for the county having jurisdiction to prosecute the alleged

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1 failure to comply under s. 978.05 (1) and (2). If another prosecutor has jurisdiction
2 to prosecute the alleged failure to comply, the petition shall be filed with that
3 prosecutor or the person having authority to appoint that prosecutor. The district
4 attorney or other prosecutor may then commence the action or dismiss the petition.
5 If the district attorney or other prosecutor declines to act upon the petition or if the
6 district attorney fails to act upon the petition within 15 days of the date of filing, the
7 petitioner may file the same petition with the attorney general, who may then
8 commence the action.

9 **SECTION 8.** 6.56 (4) of the statutes is amended to read:

10 6.56 (4) After each election, the municipal clerk shall perform an audit to
11 assure that no person has been allowed to vote more than once. Whenever the
12 municipal clerk has good reason to believe that a person has voted more than once
13 in an election, the clerk shall send the person a 1st class letter marked in accordance
14 with postal regulations to ensure that it will be returned to the clerk if the elector
15 does not reside at the address given on the letter. The letter shall inform the person
16 that all registrations relating to that person may be changed from eligible to
17 ineligible status within 7 days unless the person contacts the office of the clerk to
18 clarify the matter. A copy of the letter and of any subsequent information received
19 from or about the addressee shall be sent to the district attorney for the county where
20 ~~the person resides~~ any potential violation occurs and the commission.

21 **SECTION 9.** 11.1400 (5) of the statutes is amended to read:

22 11.1400 (5) Except as otherwise provided in ss. 19.49 (2) (b) 13. and 14. and (g)
23 ~~and 19.554~~, actions under this section may be brought by the commission or, upon
24 the commission's determination of probable cause, by the district attorney for the
25 county where the defendant resides or, if the defendant is a nonresident, by the

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1 ~~district attorney for the county where the violation is alleged to have occurred. For~~
2 ~~purposes of this subsection, a person other than an individual resides within a county~~
3 ~~if the person's principal place of operation is located within that county violation is~~
4 ~~alleged to have occurred. If a violation concerns a district attorney or circuit judge~~
5 ~~or candidate for either such office, the action shall be brought by the attorney~~
6 ~~general. If a violation concerns the attorney general or a candidate for such office,~~
7 ~~the commission may appoint special counsel to bring suit on behalf of the state.~~

8 **SECTION 10.** 11.1401 (2) of the statutes is amended to read:

9 11.1401 (2) Except as otherwise provided in ss. s. 19.49 (2) (b) 13. and 14. and
10 (h) and 19.554, and only after the commission has determined probable cause, all
11 prosecutions under this section shall be conducted by the district attorney for the
12 county where the defendant resides or, if the defendant is a nonresident, by the
13 district attorney for the county where the violation is alleged to have occurred. For
14 purposes of this subsection, a person other than a individual resides within a county
15 if the person's principal place of operation is located within that county violation is
16 alleged to have occurred. In addition to the remedy provided in s. 19.49 (2) (b) 13.
17 to 15., if the district attorney refuses to act upon a sworn complaint, or fails to act
18 upon such a complaint within 60 days of the date on which the complaint is received,
19 the attorney general may then conduct the prosecution under this section. If a
20 violation concerns a district attorney or circuit judge or candidate for either such
21 office, the prosecution shall be conducted by the attorney general. If a violation
22 concerns the attorney general or a candidate for such office, the commission may
23 appoint a special prosecutor to conduct the prosecution on behalf of the state.

24 **SECTION 11.** 12.13 (5) (a) of the statutes is amended to read:

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1 12.13 (5) (a) Except as specifically authorized by law and except as provided
2 in par. (b), no investigator, prosecutor, employee of an investigator or prosecutor, or
3 member or employee of the commission may disclose information related to an
4 investigation or prosecution under chs. 5 to 10 or 12, ~~or any other law specified in s.~~
5 ~~978.05 (1) or (2)~~ or provide access to any record of the investigator, prosecutor, or the
6 commission that is not subject to access under s. 5.05 (5s) to any person other than
7 an employee or agent of the prosecutor or investigator or a member, employee, or
8 agent of the commission prior to presenting the information or record in a court of
9 law.

10 **SECTION 12.** 19.554 of the statutes is amended to read:

11 **19.554 Petition for enforcement.** In addition to or in lieu of filing a
12 complaint, any elector may file a verified petition alleging such facts as are within
13 his or her knowledge to indicate that an election official has failed or is failing to
14 comply with any law regulating campaign financing or proposes to act in a manner
15 inconsistent with such a law, and requesting that an action be commenced for
16 injunctive relief, a writ of mandamus or prohibition or other such legal or equitable
17 relief as may be appropriate to compel compliance with the law. The Unless another
18 prosecutor has jurisdiction to prosecute the alleged failure to comply, the petition
19 shall be filed with the district attorney for the county having jurisdiction to prosecute
20 the alleged failure to comply under s. 978.05 (1) and (2). If another prosecutor has
21 jurisdiction to prosecute the alleged failure to comply, the petition shall be filed with
22 that prosecutor or the person having authority to appoint that prosecutor. The
23 district attorney may then commence the action or dismiss the petition. If the district
24 attorney declines to act upon the petition or if the district attorney fails to act upon

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1 the petition within 15 days of the date of filing, the petitioner may file the same
2 petition with the attorney general, who may then commence the action.

3 **SECTION 13.** 801.50 (5t) of the statutes is repealed.

4 **SECTION 14.** 801.52 of the statutes is amended to read:

5 **801.52 Discretionary change of venue.** The court may at any time, upon
6 its own motion, the motion of a party or the stipulation of the parties, change the
7 venue to any county in the interest of justice or for the convenience of the parties or
8 witnesses, ~~except that venue in a civil action to impose a forfeiture for a violation of~~
9 ~~chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or for a violation of any other~~
10 ~~law arising from or in relation to the official functions of the subject of the~~
11 ~~investigation or any matter that involves elections, ethics, or lobbying regulation~~
12 ~~under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19, may be changed only~~
13 ~~as provided in s. 971.223 (1) and (2) or in the same manner that is authorized for a~~
14 ~~change in the venue of a criminal trial under s. 971.22.~~ This section does not apply
15 to proceedings under ch. 980.

16 **SECTION 15.** 801.64 of the statutes is repealed.

17 **SECTION 16.** 971.19 (12) of the statutes is repealed.

18 **SECTION 17.** 971.223 of the statutes is repealed.

19 **SECTION 18.** 971.225 (1) (intro.) of the statutes is amended to read:

20 971.225 (1) (intro.) In lieu of changing the place of trial under s. 971.22 (3) ~~or~~
21 ~~971.223~~, the court may require the selection of a jury under sub. (2) if:

22 **SECTION 19.** 978.05 (1) of the statutes is amended to read:

23 978.05 (1) CRIMINAL ACTIONS. Except as otherwise provided by law, prosecute
24 all criminal actions before any court within his or her prosecutorial unit ~~and have~~
25 ~~sole responsibility for prosecution of all criminal actions arising from violations of~~

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

12 **SECTION 20.** 978.05 (2) of the statutes is amended to read:

13 978.05 (2) FORFEITURES. Except as otherwise provided by law, prosecute all
14 state forfeiture actions, county traffic actions, and actions concerning violations of
15 county ordinances which are in conformity with state criminal laws in the courts
16 within his or her prosecutorial unit and have joint responsibility, together with the
17 elections commission and the ethics commission, for prosecution of all forfeiture
18 actions arising from violations of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch.
19 19 ~~and from violations of other laws arising from or in relation to the official functions~~
20 ~~of the subject of the investigation or any matter that involves elections, ethics, or~~
21 ~~lobbying regulation under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 that~~
22 ~~are alleged to be committed by a resident of his or her prosecutorial unit, or if alleged~~
23 ~~to be committed by a nonresident of this state, that are alleged to occur within his~~
24 ~~or her prosecutorial unit unless another prosecutor is substituted under s. 5.05 (2m)~~
25 ~~(h) or 19.49 (2) (g) or this chapter or by referral of the elections commission under s.~~

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SECTION 20

1 5.05 (2m) (c) 15. or 16. or the ethics commission under s. 19.49 (2) (b) 13. or 14. For
2 ~~purposes of this subsection, a person other than an individual is a resident of a~~
3 ~~prosecutorial unit if the person's principal place of operation is located in that~~
4 ~~prosecutorial unit.~~

5 (END)