

83 WisACT 166

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1983 Senate Bill 351

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1983 Wisconsin Act 166

AN ACT to amend 19.42 (2) and (7) (a) and (b), 19.42 (7m), 19.42 (8) and (10) (e), 19.43 (2), (4) and (8), 19.44 (1) (a) 2, (b) and (d) to (g) and (3), 19.45 (3), (4), (7) (a) (intro.) and (10), 19.46 (1) (c) and (2), 19.47 (5), 19.48 (4) (a), 19.49 (4), 19.50 (5), 19.52 (2), 19.53 (2) and (3) and 19.55 (1) and (2) (a); and to create 19.42 (7s) of the statutes, relating to various changes in the code of ethics for state public officials and employees (suggested as remedial legislation by the ethics board).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the ethics board, and introduced by the law revision committee under s. 13.83 (1) (c) 4, stats. After careful consideration of the provisions of this bill, the law revision committee has determined that this bill makes remedial changes in the statutes, and that these changes are desirable to maintain the accuracy and usefulness of the statutes.

SECTION 1. 19.42 (2) and (7) (a) and (b) of the statutes are amended to read:

19.42 (2) "Associated", when used with reference to an organization, includes any organization in which ~~a person~~ an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity.

(7) (a) ~~A person's~~ An individual's spouse; and

(b) ~~A person's~~ An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from ~~such person~~ the individual or from whom ~~such person~~ the individual receives, directly or indirectly, more than one-half of his or her support.

NOTE: This bill establishes consistency in the usage of the terms "person", "individual" and "organization" in the code of ethics for state public officials. The term "person" is the broadest of these terms, and refers to any legal entity. The use of the term "person" in the bill is consistent with the definition of the word in s. 990.01 (26), stats., which provides that "'person' includes all partnerships, associations and bodies politic or corporate". The term "organization" is narrower, and is defined in s. 19.42 (11), stats., as "any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic". "Individual", although not specifically defined in the current statutes or in this bill, is used consistently in this bill to refer to natural persons.

SECTION 2. 19.42 (7m) of the statutes is amended to read:

19.42 (7m) "Income" has the meaning given under section 61 of the ~~federal~~ internal revenue code.

SECTION 3. 19.42 (7s) of the statutes is created to read:

19.42 (7s) "Internal revenue code" has the meanings given under s. 71.02 (1) (a) and (2) (b).

NOTE: The term "income" is used several times in the code of ethics for state public officials. This bill clarifies the current definition of income by providing a specific cross-reference to the internal revenue code and by providing that the definition refers to the most recent version of the internal revenue code which has been adopted by the legislature for state income tax purposes.

SECTION 4. 19.42 (8) and (10) (e) of the statutes are amended to read:

19.42 (8) "Ministerial action" means an action that ~~a person~~ an individual performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the ~~person's~~ individual's own judgment as to the propriety of the action being taken.

(10) (e) ~~A person~~ An individual appointed by the governor pursuant to s. 17.20 (2) other than a trustee of any private higher educational institution receiving state appropriations.

SECTION 5. 19.43 (2), (4) and (8) of the statutes are amended to read:

19.43 (2) An official required to file shall file a statement of economic interests with the board as per the date he or she assumes office no later than 21 days following that date if ~~such person~~ the official has not previously filed a statement of economic interests with the board during that year.

(4) A candidate for state public office shall file a statement of economic interests with the board no later than the end of the 3rd day following the deadline for filing nomination papers for the office for which the ~~person is a candidate~~ seeks, or the end of the 3rd day following the deadline for filing a declaration of acceptance in the case of a write-in candidate, ~~unless the person has previously filed a statement of economic interests with the board containing information current as of, or subsequent to, December 31 of the year preceding the deadline for filing nomination papers for the office for which the person is a candidate.~~ The information contained on the statement shall be current as of December 31 of the year preceding the filing deadline. Before certifying the name of any candidate for state public office under s. 7.08 (2) (a), the elections board shall ascertain whether that candidate has complied with this subsection. If not, the elections board shall mail that candidate a notice by certified mail with return receipt requested informing the ~~person~~ candidate that his or her name will not appear on the ballot unless a statement of economic interests is filed. If the statement is not filed within 3 days after the date on which the return receipt is received, the candidate's name may not be certified for ballot placement.

(8) On its own motion or at the request of any ~~person~~ individual who is required to file a statement of economic interests, the board may extend the time for filing or waive any filing requirement if the board determines that the literal application of the filing requirements of this subchapter would work an unreasonable hardship on ~~such person~~ that individual or that the extension of the time for filing or waiver is in the public interest. The board shall set forth in writing as a matter of public record its reason for the extension or waiver.

SECTION 6. 19.44 (1) (a) 2, (b) and (d) to (g) and (3) of the statutes are amended to read:

19.44 (1) (a) 2. Any organization which is organized and operated primarily to influence voting at an election including support for or opposition to ~~a person's~~ an individual's present or future candidacy or to a present or future referendum.

(b) The identity of every organization or body politic in which the ~~person~~ individual who is required to file or ~~such person's~~ that individual's immediate family, severally or in the aggregate, owns, directly or indirectly, securities having a value of \$5,000 or more, the identity of such securities and their approximate value, except that no identification need be made of a security or issuer of a security when it is issued by any organization not

doing business in this state or by any government or instrumentality or agency thereof, or an authority or public corporation created and regulated by an act of such government, other than the state of Wisconsin, its instrumentalities, agencies and political subdivisions, or authorities or public corporations created and regulated by an act of the legislature.

(d) The real property located in this state in which the ~~person~~ individual who is required to file or such ~~person's~~ individual's immediate family holds an interest, other than the principal residence of ~~such person~~ the individual or his or her immediate family, and the nature of the interest held. ~~A person's~~ An individual's interest in real property does not include a proportional share of interests in real property if the ~~person's~~ individual's proportional share is less than 10% of the outstanding shares or is less than an equity value of \$5,000.

(e) The identity of each payer from which the ~~person~~ individual who is required to file or a member of his or her immediate family received \$1,000 or more of his or her income for the preceding taxable year, except that if the ~~person~~ individual who is required to file identifies the general nature of the business in which ~~the person~~ he or she or his or her immediate family is engaged, then no identification need be made of ~~any~~ a decedent's estate or an individual ~~person~~, not acting as a representative of an organization, unless the individual is a lobbyist as defined in s. 13.62. In addition, no identification need be made of payers from which dividends or interest, compensation or reimbursement of expenses reported under s. 19.56, and political contributions reported under ch. 11 were received.

(f) If the ~~person~~ individual who is required to file or a member of his or her immediate family received \$1,000 or more of his or her income for the preceding taxable year from a partnership, corporation electing to be taxed as a partnership under subchapter S of the federal internal revenue code or service corporation under s. 180.99 in which ~~such person~~ the individual or a member of his or her immediate family, severally or in the aggregate, has a 10% or greater interest, the identity of each payer from which the organization received \$1,000 or more of its income for its preceding taxable year, except that if the ~~person~~ individual who is required to file identifies the general nature of the business in which ~~the person~~ he or she or his or her immediate family is engaged then no identification need be made of ~~any~~ a decedent's estate or an individual, not acting as a representative of an organization, unless the individual is a lobbyist as defined in s. 13.62. In addition, no identification need be made of payers from which dividends or interest are received.

(g) The identity of each ~~person or organization~~ from which the ~~person~~ individual who is required to file received, directly or indirectly, any gift or gifts having an aggregate value of more than \$100 within the taxable year preceding the time of filing, except that the source of a gift need not be identified if the donor is the donee's parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, nephew, spouse, fiancé or fiancée.

(3) (a) ~~A person~~ An individual is the owner of a trust and the trust's assets and obligations if he or she is the creator of the trust and has the power to revoke the trust without obtaining the consent of all of the beneficiaries of the trust.

(b) ~~A person~~ An individual who is eligible to receive income or other beneficial use of the principal of a trust is the owner of a proportional share of the principal in the proportion that ~~such person's~~ the individual's beneficial interest in the trust bears to the total beneficial interests vested in all beneficiaries of the trust. A vested beneficial interest in a trust includes a vested reverter interest.

NOTE: Under the ethics code, each state public official and candidate for state public office must file a statement of economic interests with the ethics board listing the businesses, organizations and other legal entities from which

they and their families received substantial income during the preceding taxable year. However, the ethics code does not require identification of individual persons from whom the income is received. This bill provides that if the individual filing the statement of economic interests identifies the general nature of the business in which the individual or a member of his or her family is engaged, then no identification need be made of the estate of any deceased individual from which income was received. This bill makes it unnecessary to identify a decedent's estate which was indebted to a state public official or candidate for state public office, and makes it unnecessary to identify decedents' estates which are represented by lawyer-public officials.

SECTION 7. 19.45 (3), (4), (7) (a) (intro.) and (10) of the statutes are amended to read:

19.45 (3) No person ~~or organization~~ may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person ~~or organization~~, directly or indirectly, anything of value if it could reasonably be expected to influence ~~such~~ the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of ~~such~~ the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

(4) No state public official may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person ~~or organization~~, if the information has not been communicated to the public or is not public information.

(7) (a) (intro.) No state public official who is identified in s. 20.923 may represent a person ~~or organization~~ for compensation before a department or any employe thereof, except:

(10) This section does not prohibit a legislator from making inquiries for information on behalf of a person ~~or organization~~ or from representing a person ~~or organization~~ before a department if he or she receives no compensation therefor beyond the salary and other compensation or reimbursement to which the legislator is entitled by law, except as authorized under sub. (7).

SECTION 8. 19.46 (1) (c) and (2) of the statutes are amended to read:

19.46 (1) (c) If the state public official is not a legislator, a justice or a judge, ~~such person's~~ the official's superior, if any, shall assign the matter to another employe who does not have a possible conflict of interests. If the official has no immediate superior, he or she shall be guided by written advice from the board in regard to the matter. The board shall promptly review the written statement submitted by an official who has no immediate superior, and on the basis thereof and such further investigation of the matter as the board deems advisable the board shall as promptly as practicable advise such official in writing as to the course of action he or she should follow in regard to the matter. The provisions of subs. (2) and (3) concerning advisory opinions of the board apply to advice given under this paragraph.

(2) Any individual, either personally or on behalf of an organization or governmental body, may request of the board an advisory opinion regarding the propriety of any matter to which the person ~~or organization~~ is or may become a party; and any appointing officer, with the consent of a prospective appointee, may request of the board an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The board shall review a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests therefor shall be in writing. The board's deliberations and actions upon such requests shall be in meetings not open to the public. It is prima facie evidence of intent to comply with this

subchapter when a person refers a matter to the board and abides by the board's advisory opinion. The board may authorize the executive director to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. No member or employee of the board may make public the identity of the ~~person~~ individual requesting an advisory opinion or of ~~persons~~ individuals or organizations mentioned in the opinion.

SECTION 9. 19.47 (5) of the statutes is amended to read:

19.47 (5) No later than September 1 of each year, the board shall report to the legislature and the governor concerning its actions in the preceding fiscal year. Such report shall contain the names and duties of all ~~persons~~ individuals employed by the board and a summary of its determinations and advisory opinions. The board shall make sufficient alterations in the summaries to prevent disclosing the identities of ~~persons~~ individuals or organizations involved in the decisions or opinions. The report shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as it deems desirable.

SECTION 10. 19.48 (4) (a) of the statutes is amended to read:

19.48 (4) (a) Upon the expiration of 3 years after a ~~person~~ an individual ceases to be a state public official the board shall, unless the former state public official otherwise requests, destroy any statement of economic interests filed by him or her and any copies thereof in its possession.

SECTION 11. 19.49 (4) of the statutes is amended to read:

19.49 (4) As soon as it becomes apparent to the executive director that there exists probable cause for the belief that a particular person has committed a violation of this subchapter, the executive director shall apply to the board for a resolution authorizing the investigation and, if secured, shall ~~forward~~ mail a copy of the resolution to the alleged violator together with a notice informing the alleged violator that such person is the subject of the investigation authorized by such resolution and a general statement of the applicable statutes with respect to such investigation. Service of the notice is complete upon mailing.

NOTE: Under current s. 19.49 (4), stats., when the ethics board authorizes the investigation of a violation of the code of the ethics for state public officials, the executive director of the ethics board is required to "forward" a copy of the resolution of the board to the alleged violator. This bill makes it clear that the executive director is required to mail a copy of the resolution to the alleged violator, and that mailing the resolution to the violator constitutes service of the notice. The bill thereby makes it clear that personal delivery of the notice is not required.

SECTION 12. 19.50 (5) of the statutes is amended to read:

19.50 (5) To request and obtain from the department of revenue copies of state income tax returns and access to other appropriate information under s. 71.11 (44) (c) regarding all ~~persons and organizations~~ who are the subject of such investigation.

SECTION 13. 19.52 (2) of the statutes is amended to read:

19.52 (2) Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the board and who, in the opinion of the board, may be adversely affected thereby, may, upon ~~his or her~~ request of the person or a representative of the person, or upon the request of any member, appear personally before the board and testify on his or her own behalf or have a representative appear to so testify, and the board may permit any other person to appear and to testify at a hearing.

SECTION 14. 19.53 (2) and (3) of the statutes are amended to read:

19.53 (2) In the case of a legislator, a recommendation that the ~~person~~ legislator be censured, suspended, or removed from office. Such recommendation shall be made to the appropriate house.

(3) In the case of a justice or judge, a recommendation that the ~~person~~ justice or judge be reprimanded, censured, suspended or removed from office. Such recommendation shall be sent to the supreme court and to the presiding officer of each house of the legislature.

SECTION 15. 19.55 (1) and (2) (a) of the statutes are amended to read:

19.55 (1) Except as provided in sub. (2), all records in the possession of the board are open to public inspection at all reasonable times. The board shall require a ~~person~~ an individual wishing to examine a statement of economic interests or the list of persons who inspect any statements which are in the board's possession to identify himself or herself, and if the ~~person~~ individual is representing another person ~~or organization~~, the ~~person or organization~~ which he or she represents. Such identification may be provided in writing or in person. The board shall record and retain for at least 3 years information obtained by it pursuant to this subsection. No ~~person~~ individual may use a fictitious name or address or fail to identify a principal in making any request for inspection.

(2) (a) Records obtained in connection with a request for an advisory opinion other than summaries of advisory opinions that do not disclose the identity of ~~persons~~ individuals requesting such opinions ~~or organizations on whose behalf they are requested~~. The board may, however, make such records public with the consent of the ~~person or organization~~ individual requesting the advisory opinion ~~or the organization or governmental body on whose behalf it is requested~~. A person ~~or organization~~ who makes or purports to make public the substance of or any portion of an advisory opinion ~~given to such requested by or on behalf of the person or organization by the board~~ is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the board in connection with the request for an advisory opinion.

SECTION 16. **Terminology changes.** Wherever the term "person", "person's" or "persons" appears in the following sections of the statutes, the term "individual", "individual's" or "individuals" is substituted: 19.42 (4), (9), (10) (b), (13) (a) and (14), 19.43 (1), 19.44 (1) (a) (intro.) and (c) and (4), 19.45 (9m), as affected by 1983 Wisconsin Act 27, 19.48 (4) (b) and (c) and (8), 19.50 (3), 19.52 (5), 19.55 (2) (c) and 19.59 (2).

SECTION 17. **Initial applicability.** The treatment of section 19.44 (1) (e) and (f) of the statutes by this act first applies to statements of economic interests filed during the year after the year in which this act takes effect.
