

1 **AN ACT** *to amend* 757.91 of the statutes; **relating to:** equally divided decisions of the
2 supreme court in cases of judicial misconduct or permanent disability.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft, relating to equally divided decisions of the supreme court in cases of judicial misconduct or permanent disability, was prepared for the Joint Legislative Council's Special Committee on Judicial Discipline and Recusal.

3 **SECTION 1.** 757.91 of the statutes is amended to read:

4 **757.91 Supreme court; disposition.** The supreme court shall review the findings of
5 fact, conclusions of law and recommendations under s. 757.89 and determine appropriate
6 discipline in cases of misconduct and appropriate action in cases of permanent disability. The
7 rules of the supreme court applicable to civil cases in the supreme court govern the review
8 proceedings under this section. If any decision of the supreme court in a case of misconduct
9 or permanent disability is equally divided, the findings of fact, conclusions of law, and
10 recommendations of the panel, if a panel hearing is held under s. 757.89, or the jury verdict
11 and recommendations, if a jury hearing is held under s. 757.89, are binding.

NOTE: Article VII, Section 11 of the Wisconsin Constitution provides that justices and judges are subject to reprimand, censure, suspension, removal for cause or for disability, by the Wisconsin supreme court pursuant to procedures established by the legislature.

The judicial commission is charged with investigating the alleged misconduct or permanent disability of a judge. If the judicial commission finds probable cause that a judge is engaging or has engaged in misconduct, it files a formal complaint with the supreme court. If the judicial commission finds probable cause that a judge has a permanent disability, it files a petition with the supreme court. [s. 757.85, Stats.]

After the judicial commission finds probable cause of misconduct or permanent disability and before it files a complaint or petition, the matter is heard by a panel consisting of either 3 court of appeals judges or 2 court of appeals judges and one reserve judge or by a jury. If the hearing is by panel, the panel makes findings of fact, conclusions of law, and recommendations for appropriate discipline for misconduct or appropriate action for permanent disability, and the findings, conclusions, and recommendations are filed with the supreme court. If the hearing is by jury, the presiding judge instructs the jury regarding the law relating to judicial misconduct or permanent disability, and the presiding judge files the jury verdict and his or her recommendations for appropriate discipline or action with the supreme court. [ss. 757.87 and 757.89, stats.]

The supreme court reviews the findings of fact, conclusions of law, and recommendations for appropriate discipline as action submitted following the hearing and determines appropriate discipline or action. [s. 757.91, stats.]

This SECTION provides that if any decision of the supreme court in a case of judicial misconduct or permanent disability is equally divided, the decision of the panel or jury is binding.