



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 171	Assembly Amendment 1
<i>Memo published:</i> January 10, 2014	<i>Contact:</i> Melissa Schmidt, Senior Staff Attorney (266-2298) Michael Queensland, Staff Attorney (266-3810)

Background on Court Jurisdiction

Subject Matter Jurisdiction

Under current law, a court may hear a civil action only if it has the authority to hear the specific type of claim brought in the case. This is referred to as “subject matter jurisdiction.” Specifically, s. 801.04 (1) provides:

A court of this state may entertain a civil action only when the court has power to hear the kind of action brought. The power of the court to hear the kind of action brought is called “jurisdiction of the subject matter”. Jurisdiction of the subject matter is conferred by the constitution and statutes of this state and by statutes of the United States; it cannot be conferred by consent of the parties. Nothing in chs. 801 to 847 affects the subject matter jurisdiction of any court of this state.

Personal Jurisdiction

Current law further provides that a court of this state having subject matter jurisdiction may render a judgment against a party personally only if there is a ground for personal jurisdiction, as set forth in the statute, and in addition, except for certain counterclaims, a summons is served upon the person pursuant to current law. [s. 801.04 (2), Stats.]

The requirement that a court have personal jurisdiction is based on the constitutional right to due process of law. Historically, presence in the territory over which the court had jurisdiction was required in order for a judgment to be binding on a person. However, in *International Shoe Co. v. Washington*, the U.S. Supreme Court interpreted the requirement of “presence” for purposes of personal jurisdiction and held that due process requires only that the defendant “have certain minimum contacts with the [forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” [326 U.S. 310, 316 (1945), citations omitted.]

Wisconsin statutes provide that a court has personal jurisdiction over a natural person who is present or domiciled in Wisconsin when the action is commenced. [s. 801.05 (1) (a) and (b), Stats.] In addition, Wisconsin, like other states, has a “long-arm statute” which provides the general basis for personal jurisdiction over a non-resident who has minimal contacts with the State of Wisconsin. Specifically, under Wisconsin law, a court has personal jurisdiction, “In any action whether arising within or without this state, against a defendant who when the action is commenced...[i]s engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.” [s. 801.05 (1) (d), Stats.]

Assembly Bill 171

Assembly Bill 171 provides that, in addition to personal jurisdiction granted under current statutes, in any action filed to obtain a domestic abuse, harassment, or child abuse TRO or injunction, the court has personal jurisdiction over the respondent if **any** of the following applies:

- The abuse or harassment alleged in the action could have an effect in Wisconsin.
- The petitioner or alleged child victim resides or is living temporarily in Wisconsin.
- Jurisdiction is otherwise permissible under the U.S. or Wisconsin Constitution.

Under the bill, a court must hear an action if it has personal jurisdiction under any of the bases described above and the respondent has been served but does not appear or does not file a response or motion asserting the defense of lack of personal jurisdiction. The bill provides that its provisions do not limit a respondent’s right to challenge personal jurisdiction on appeal.

The bill further provides that, in an action described above, the court has jurisdiction of the subject matter regardless of whether the alleged abuse or harassment occurred within Wisconsin.

Assembly Amendment 1

Assembly Amendment 1 eliminates the provision in the bill that grants personal jurisdiction in instances where “the abuse or harassment alleged in the action could have an effect in Wisconsin.” The amendment also provides that in cases where a court has personal jurisdiction, permitted by the bill, a court may allow a respondent who lives or resides in another state to testify on the record, or otherwise participate in the action, by telephone or live audiovisual means, as prescribed in s. 807.13, Stats. The request and the showing of good cause for admitting testimony by telephone or live audiovisual means may be made by telephone.

Bill History

Assembly Amendment 1 was offered on November 5, 2013, by Representative Loudenberg. On December 12, 2013, the Assembly Committee on Criminal Justice recommended adoption of Assembly Amendment 1 and passage of the bill, as amended, on a vote of Ayes, 6; Noes, 0.

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