



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 4
[2015 Assembly Bill 10]

**Jurisdiction in Matters Relating to
Restraining Orders and Injunctions**

2015 Wisconsin Act 4 relates to jurisdiction in matters relating to domestic abuse restraining orders and injunctions, child and at-risk adult abuse restraining orders and injunctions, and harassment restraining orders and injunctions.

SUBJECT MATTER JURISDICTION

Background on 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.

The Act

Act 4 provides that a court has jurisdiction of the subject matter to entertain actions for restraining orders or injunctions in cases of domestic abuse, child abuse, or harassment, regardless of whether the alleged abuse or harassment occurred within Wisconsin.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

PERSONAL JURISDICTION

Background on Personal Jurisdiction

Current law 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.]

In determining whether a court has personal jurisdiction, Wisconsin courts use a two-step analysis. First, the court must determine whether the defendant is subject to jurisdiction under Wisconsin’s long-arm statute. Second, if the statutory requirements are satisfied, the court must consider whether the exercise of jurisdiction comports with constitutional due process. The plaintiff has the burden of establishing that constitutional and statutory requirements for personal jurisdiction are satisfied. [*Kopke v. A. Hartrodt S.R.L.*, 2001 WI 99.]

The Act

Act 4 provides additional statutory means for a court to find personal jurisdiction in actions for restraining orders or injunctions in cases of domestic abuse, child abuse, individuals-at-risk, or harassment. Specifically, the Act provides a court personal jurisdiction over a person who is in another state if any of the following apply:

1. An act or threat of the respondent that occurred outside Wisconsin is part of an ongoing pattern of harassment that has an adverse effect on the petitioner or a member of the petitioner’s family or household if, while the petitioner or a member of the petitioner’s family or household resides in Wisconsin, the respondent communicated with the petitioner or his or her family or indicated a threat to the petitioner or to a member of his or her family or household.

2. The petitioner or a member of the petitioner's family or household has sought safety or protection in Wisconsin as a result of the respondent's actions or threats if, while the petitioner or a member of the petitioner's family or household resides in Wisconsin, the respondent communicated with the petitioner or his or her family or indicated a threat to the petitioner, or a member of his or her family or household.
3. Jurisdiction is otherwise permissible under the constitution of the United States or of the State of Wisconsin.

If a court has personal jurisdiction on any of the grounds listed above and a respondent has been served but does not appear or file a response or motion asserting the defense of lack of personal jurisdiction, the Act requires the court to hear the action.

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