

CHAPTER 226

AN ACT to renumber 330.30; to renumber and amend 262.10; to amend 51.02(1) (a), 62.075 (3) (intro. par.), 66.27 (2) (b), 74.11 (1), 74.12 (1), 74.13, 88.03 (3), 89.06 (4), 89.20 (2), 89.65 (5), 185.08 (4), 203.04 (2), 234.04, 247.05, 247.06 (intro. par.), 254.11 (1), 263.24, 267.06, 274.33 (3), 291.01 (2), 291.06 (1); to repeal and recreate ch. 262 (except 262.10); and to create 330.30 (2) of the statutes, relating to commencing civil actions.

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

SECTION 1. 51.02 (1) (a) of the statutes is amended to read:

51.02 (1) (a) On receipt of the application or of the report of the examining physicians, the court shall appoint a time and place for hearing the application and shall cause notice thereof to be served upon the patient \* \* \* *under s. 262.06 (1) or (2)*, which notice shall state that application has been made for the examination into his mental condition (withholding the names of the applicants) and that such application will be heard at the time and place named in the notice; but if it appears to the satisfaction of the court that the notice would be injurious or without advantage to the patient by reason of his mental condition, the service of notice may be omitted. The court may, in its discretion, cause notice to be given to such other persons as it deems advisable. If the notice is served the court may proceed to hold the hearing at the time and place specified therein; or, if it is dispensed with, at any time. The court may, by attachment for the person of the patient, cause him to be brought before the court for the hearing.

SECTION 2. 62.075 (3) (Intro. par.) of the statutes is amended to read:

62.075 (3) (intro. par.) When the owner or owners of all of the said lands of any such area \* \* \* file a verified petition in the office of the clerk of said court, setting forth the facts in accordance with subs. (1) and (2), the court shall make an order fixing the time of hearing thereof, which shall not be less than 60 nor more than 90 days thereafter, and at least 40 days prior to said time fixed, notice of hearing of such petition shall be served on such city, town or towns and all owners found in this state of any land in such area, in the manner \* \* \* *prescribed in s. 262.09 for the service of a summons*. Said notice shall be in substantially the following form:

SECTION 3. 66.27 (2) (b) of the statutes is amended to read:

66.27 (2) (b) Any such action shall be brought in a court of record in the manner provided in ch. 262. A lis pendens shall be filed as provided in s. 281.03 upon the commencement of the action. Service upon persons whose whereabouts are unknown may be made \* \* \* *in the manner prescribed in s. 262.09*.

SECTION 4. 74.11 (1), 74.12 (1) and 74.13 of the statutes are amended to read:

74.11 (1) In case the treasurer is unable to collect any tax assessed upon personal property he may in his discretion make and file with some justice of the peace of his county an affidavit showing that there is such tax

upon personal property, the amount thereof and the name of the person against whom assessed, that he has demanded payment thereof and is unable to collect the same. Such justice shall thereupon issue a summons directed to such person, commanding him to appear forthwith to answer under oath and show cause why he does not pay said tax. Such summons may be served by said treasurer or any constable in said county on the person to whom the summons is directed in the manner \* \* \* *and as required for the exercise of personal jurisdiction under ch. 262* in a civil action in a court of record; upon its appearing by the affidavit of the officer or person serving such summons that the same was duly served upon such person to whom the same was directed, and that he has failed or neglected to appear before said justice for 24 hours after the service of the summons, the said justice shall issue a warrant, directed to the sheriff \* \* \* *or any constable of the county, commanding him to forthwith arrest and bring such person before him.*

74.12 (1) In addition to the other remedies provided in this chapter an action of debt or an action of attachment shall lie in the name of the town, city or village, and, after the tax is returned as delinquent, in the name of the county, for any tax assessed against any person upon personal property remaining unpaid after February 28. Summons or warrants in such action shall issue at the request of the treasurer of the town, city, village or county as the case may be and shall be subject to all the rules of law and practice applicable to actions of debt or attachment, except that the warrant of attachment shall be issued on the making and filing of an affidavit by the proper treasurer or district attorney that such taxes are delinquent. Such summons or warrant when issued by a justice of the peace may in addition to the other methods of service provided by law in justice's court be served \* \* \* *in the manner and as required for the exercise of personal jurisdiction under ch. 262.* Such summons or warrant shall state that it is issued for the collection of a tax and judgment may be entered and execution issued as provided in this chapter. It \* \* \* *is the duty of the district attorney upon request to attend and prosecute any action or proceeding commenced under any of the provisions of this chapter for the collection of a tax.*

74.13 In addition to the other remedies provided by law for the collection of taxes against real estate, an action of debt shall lie in the name of the town, city or village, and, after the tax is returned as delinquent, in the name of the county, for any tax heretofore or hereafter levied upon and extended against the property of any public service corporation as defined in s. 184.01, which property is subject to taxation like the property of individuals, and which tax remains unpaid after \* \* \* January 31 in any year. Summons in such action shall issue at the request of the treasurer of the town, city, village or county, as the case may be; shall be served as provided in \* \* \* s. 262.06, and such action shall be subject to all of the rules of law and practice in this state applicable to actions of debt. The complaint in such action shall be served with the summons. Judgment in such action shall be entered and execution issued thereon as in other actions of debt. The judgment shall bear interest at the rate of 10 per cent per annum from the date of entry until paid.

SECTION 5. 88.03 (3) of the statutes is amended to read:

88.03 (3) Service of any notice in the manner \* \* \* *prescribed in s. 262.06*, on all owners, occupants and mortgagees of lands proposed to be drained or crossed by the drains to be constructed, at least 10 days before such hearing shall be sufficient notice.

## SECTION 6. 89.06 (4) of the statutes is amended to read:

89.06 (4) Whenever the required notice of hearing under the drainage district law has been served in the manner \* \* \* *prescribed in s. 262.06* on all interested parties at least 20 days before the time fixed for hearing, such service shall be sufficient to give the court complete jurisdiction of all such interested parties and of all lands in the district without publication, posting or mailing or other service of such notice.

## SECTION 7. 89.20 (2) of the statutes is amended to read:

89.20 (2) Thereupon unless personal service \* \* \* is obtained as provided in s. 89.06 (4), the petitioners shall cause 20 days' notice of the filing of such petition to be given (a) by posting notice thereof in 3 public places in each of the towns, portions of which are within the boundaries of the proposed district; (b) by serving or causing to be served a copy of such notice on each owner and mortgagee, of land within such proposed district residing in any county in which any land of such proposed district is situated in the manner \* \* \* *prescribed in s. 262.06*, and (c) by publishing a copy thereof at least once a week for 3 successive weeks in some newspaper published in each county in which any part of the proposed district is situated.

## SECTION 8. 89.65 (5) of the statutes is amended to read:

89.65 (5) Such order to show cause shall be served on such owner or maintainer or both, if named in the petition, \* \* \* *in the manner prescribed in s. 262.06 for the service of a summons* at least 10 days before such hearing.

## SECTION 9. 185.08 (4) of the statutes is amended to read:

185.08 (4) Service of any process, notice or demand upon a cooperative may be made as provided in s. 180.11 or \* \* \* *ch. 262*.

## SECTION 10. 203.04 (2) of the statutes is amended to read:

203.04 (2) Application for the selection of an umpire pursuant to the provisions relating to appraisals shall be made to a judge of a court of record in the state in which the property insured was located at the time of the fire, on 5 days' notice in writing, to be given by either party to the other. Such notice when served by the insured must be served \* \* \* *in the manner prescribed in s. 262.06 for the service of a summons*; and the judge shall, on proof by affidavit of the failure or neglect of said appraisers to select an umpire within the time provided in said policy, and of the service of notice aforesaid, forthwith appoint a competent and disinterested person to act as umpire in the ascertainment of the amount of said loss or damage.

## SECTION 11. 234.04 of the statutes is amended to read:

234.04 (1) Such notice may be served in the manner \* \* \* *prescribed in s. 262.06* for the service of a summons, by the lessor or any person in his behalf. In case the tenant of the demised premises cannot be found, nor any usual place of abode of said tenant and member of his family of suitable age and discretion upon whom to make such service, then such notice may be served on a person residing on the demised premises, if there be one, and if not then such notice may be served by affixing same in a conspicuous part of the premises, where it may be conveniently read; and at the expiration of the time required after the service of such notice

the landlord may re-enter, or maintain an action for the recovery of the possession thereof, or proceed in the manner prescribed by law to remove such tenant without any further or other notice to quit.

(2) In lieu of the manner provided for service of a notice under sub. (1), such notice may be served by registered mail or certified mail with return receipt requested. Proof of such service may be made by affidavit of the person mailing such notice, with a copy of the notice and said return receipt attached thereto. Service must be given in accordance with one of the provisions of \* \* \* sub. (1) or \* \* \* this subsection.

SECTION 12. 247.05 and 247.06 (intro. par.) of the statutes are amended to read:

247.05 For the purposes of annulment of marriage, jurisdiction may be acquired by publication as provided in the statutes, by personal service upon the defendant within this state, or in the manner provided in \* \* \* ch. 262 for the exercise of either personal jurisdiction or jurisdiction quasi in rem, when either party is a bona fide resident of this state at the time of the commencement of the action. When both parties are nonresidents, jurisdiction to annul a marriage contracted within the state may be acquired in the same manner provided the action is commenced within a year after such marriage.

247.06 (intro. par.) For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by publication as provided in the statutes, by personal service upon the defendant within this state, or in the manner provided in \* \* \* ch. 262 for the exercise of either personal jurisdiction or jurisdiction quasi in rem, under the following conditions;

SECTION 13. 254.11 (1) of the statutes is amended to read:

254.11 (1) By service on individuals or corporations, in the manner \* \* \* and as required for the exercise of personal jurisdiction under ch. 262. Every person serving any summons or other process of said court shall forthwith make his return thereon in writing, stating the manner and time of service, and sign his name and add, if an officer, his official title, and return the same to the clerk of said court.

SECTION 14. 262.10 of the statutes is renumbered 285.10 and amended to read:

285.10 The state may be made a party defendant in any action to quiet title under the provisions of s. 281.01 or between other parties, when necessary to the proper determination of their rights. \* \* \* The complaint shall set forth with particularity the nature of the interest or lien of the state. But no judgment for the recovery of money or personal property or costs shall be rendered in any such action against the state.

SECTION 15. Chapter 262 (except 262.10) of the statutes is repealed and recreated to read:

## CHAPTER 262.

### COMMENCING CIVIL ACTIONS.

- 262.01 Legislative intent.
- 262.02 Civil action, how commenced; service in special proceedings.
- 262.03 Definitions.
- 262.04 Jurisdictional requirements for judgments against persons, status and things.
- 262.05 Personal jurisdiction, grounds for generally.
- 262.06 Personal jurisdiction, manner of serving summons for.

- 262.07 Personal jurisdiction, grounds for without service of summons.
- 262.08 Jurisdiction in rem or quasi in rem, grounds for generally.
- 262.09 Jurisdiction in rem or quasi in rem, manner of serving summons for.
- 262.10 Summons, contents of.
- 262.11 Summons, form.
- 262.12 Summons, what must accompany.
- 262.13 Summons, filing; state tax.
- 262.14 Summons, who may serve; indorsement; return of original summons.
- 262.15 Summons, when deemed served.
- 262.16 Raising objection to personal jurisdiction; general appearance.
- 262.17 Proof of service of summons, defendant appearing in action.
- 262.18 Judgment against nonappearing defendant, proof of jurisdiction.
- 262.19 Stay of proceeding to permit trial in a foreign forum.
- 262.20 Costs on dismissal for lack of jurisdiction or stay of proceedings.

262.01 LEGISLATIVE INTENT. This chapter shall be liberally construed to the end that actions be speedily and finally determined on their merits. The rule that statutes in derogation of the common law must be strictly construed does not apply to this chapter.

262.02 CIVIL ACTION, HOW COMMENCED; SERVICE IN SPECIAL PROCEEDINGS. (1) CIVIL ACTION. A civil action in a court of record is commenced by the service of a summons or an original writ. The summons may be served in the manner provided in this chapter. The writ of habeas corpus shall be served exclusively in the manner provided in s. 292.10; otherwise the service of an original writ may be made by serving a duplicate original thereof in the manner provided in this chapter for service of a summons.

(2) SPECIAL PROCEEDINGS. Service and proof of service of any process or notice in any special proceeding may be made in the manner provided in this chapter for service of a summons.

(3) PROBATE PROCEEDINGS. Except where explicitly provided in title XXIX, no provision of this chapter shall apply to probate proceedings.

262.03 DEFINITIONS. In this chapter the following words have the designated meanings:

(1) "Person" means any natural person, partnership, association, and body politic and corporate.

(2) "Plaintiff" means the person named as plaintiff in a civil action, and where in this chapter acts of the plaintiff are referred to, the reference attributes to the plaintiff the acts of his agent within the scope of his authority.

(3) "Defendant" means the person named as defendant in a civil action, and where in this chapter acts of the defendant are referred to, the reference attributes to the defendant any person's acts for which acts the defendant is legally responsible. In determining for jurisdiction purposes the defendant's legal responsibility for the acts of another, the substantive liability of the defendant to the plaintiff is irrelevant.

262.04 JURISDICTIONAL REQUIREMENTS FOR JUDGMENTS AGAINST PERSONS, STATUS AND THINGS. (1) JURISDICTION OF SUBJECT MATTER REQUIRED FOR ALL CIVIL ACTIONS. 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 this chapter affects the subject matter jurisdiction of any court of this state.

(2) **PERSONAL JURISDICTION.** A court of this state having jurisdiction of the subject matter may render a judgment against a party personally only if there exists one or more of the jurisdictional grounds set forth in s. 262.05 or 262.07 and in addition either:

(a) A summons is served upon the person pursuant to s. 262.06; or

(b) Service of a summons is dispensed with under the conditions in s. 262.07.

(3) **JURISDICTION IN REM OR QUASI IN REM.** A court of this state having jurisdiction of the subject matter may render a judgment in rem or quasi in rem upon a status or upon a property or other thing pursuant to s. 262.08 and the judgment in such action may affect the interests in the status, property or thing of all persons served pursuant to s. 262.09 with a summons and complaint or notice of object of action as the case requires.

**262.05 PERSONAL JURISDICTION, GROUNDS FOR GENERALLY.** A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 262.06 under any of the following circumstances:

(1) **LOCAL PRESENCE OR STATUS.** In any action whether arising within or without this state, against a defendant who when the action is commenced:

(a) Is a natural person present within this state when served; or

(b) Is a natural person domiciled within this state; or

(c) Is a domestic corporation; or

(d) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

(2) **SPECIAL JURISDICTION STATUTES.** In any action which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

(3) **LOCAL ACT OR OMISSION.** In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

(4) **LOCAL INJURY; FOREIGN ACT.** In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury either:

(a) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

(b) Products, materials or things processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

(5) **LOCAL SERVICES, GOODS OR CONTRACTS.** In any action which:

(a) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff; or

(b) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant; or

(c) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value; or

(d) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on his order or direction; or

(e) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

(6) LOCAL PROPERTY. In any action which arises out of:

(a) A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this state; or

(b) A claim to recover any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this state either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

(c) A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this state at the time the defendant acquired possession or control over it.

(7) DEFICIENCY JUDGMENT ON LOCAL FORECLOSURE OR RESALE. In any action to recover a deficiency judgment upon a mortgage note or conditional sales agreement executed by the defendant or his predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

(a) In an action in this state to foreclose upon real property situated in this state; or

(b) Following sale of real property in this state by the plaintiff under ch. 297; or

(c) Following resale of tangible property in this state by the plaintiff under chs. 122 or 241.

(8) DIRECTOR OR OFFICER OF A DOMESTIC CORPORATION. In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

(9) TAXES OR ASSESSMENTS. In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state after July 1, 1960.

(10) INSURANCE OR INSURERS. In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure upon or against the happening of an event and in addition either:

(a) The person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred; or

(b) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person insured resided.

(11) PERSONAL REPRESENTATIVE. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in subs. (2) to (10) would have furnished a basis for jurisdiction over the deceased had he been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

(12) ~~JOINDER OF CAUSES IN THE SAME ACTION.~~ In any action brought in reliance upon jurisdictional grounds stated in subs. (2) to (10) there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

**262.06 PERSONAL JURISDICTION, MANNER OF SERVING SUMMONS FOR.** A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 262.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

(1) **NATURAL PERSON.** Except as provided in sub. (2), upon a natural person:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode within this state in the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), then the summons may be served by publication and mailing. Publication shall consist of publishing a copy of the summons in a newspaper, published in this state, likely to give notice to the defendant, once a week for 3 successive weeks. If the defendant's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the verified complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

(d) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(2) **NATURAL PERSON UNDER DISABILITY.** Upon a natural person under disability by serving the summons in any manner prescribed in sub. (1) upon such person under disability and, in addition, where required by par. (a) or (b), upon a person therein designated. A minor 14 years of age or older who is not mentally incompetent and not otherwise under guardianship is not a person under disability for purposes of this subsection.

(a) Where the person under disability is a minor under the age of 14 years, summons shall be served separately in any manner prescribed in sub. (1) upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian or other person having care and control of the child when service is made upon the child, then service of the summons must also be made upon a guardian ad litem who has been appointed pursuant to s. 260.23 (3).

(b) Where the person under disability is known by the plaintiff to be under guardianship of any kind, a summons shall be served separately upon his guardian in any manner prescribed in sub. (1), (5), (6) or (7). If no guardian has been appointed when service is made upon a person known to the plaintiff to be incompetent to have charge of his affairs, then service of the summons must be made upon a guardian ad litem who has been appointed pursuant to s. 260.23 (3).

(3) **STATE.** Upon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at his office in the capitol with his assistant or clerk.



(4) **OTHER POLITICAL CORPORATIONS OR BODIES POLITIC.** (a) Upon a political corporation or other body politic, by personally serving any of the specified officers, directors or agents:

1. If the action is against a county, the chairman of the county board or the county clerk;
2. If against a town, the chairman or clerk thereof;
3. If against a city, the mayor, city manager or clerk thereof;
4. If against a village, the president or clerk thereof;
5. If against a school district, school board or board of education, the president, director, secretary or clerk thereof; and
6. If against any other body politic, an officer, director or managing agent thereof.

(b) In lieu of delivering the copy of the summons to the person specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(5) **DOMESTIC OR FOREIGN CORPORATIONS, GENERALLY.** Upon a domestic or foreign corporation:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation either within or without this state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then the summons may be served upon an officer, director or managing agent of the corporation by publication and mailing as provided in sub. (1) (c).

(c) By serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(6) **PARTNERS AND PARTNERSHIPS.** A summons shall be served individually upon each general partner known to the plaintiff by service in any manner prescribed in sub. (1), (2) or (5) where the claim sued upon arises out of or relates to partnership activities within this state sufficient to subject a defendant to personal jurisdiction under s. 262.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication individually against each partner so served and is a binding adjudication against the partnership as to its assets anywhere.

(7) **OTHER UNINCORPORATED ASSOCIATIONS AND THEIR OFFICERS.** A summons may be served individually upon any officer or director known to the plaintiff of an unincorporated association other than a partnership by service in any manner prescribed in sub. (1), (2), (5) or (6) where the claim sued upon arises out of or relates to association activities within this state sufficient to subject a defendant to personal jurisdiction under s. 262.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication against the association as to its assets anywhere.

(8) **COURTS WITH LESS THAN STATE-WIDE PROCESS.** In the case of summons of a court whose process does not run throughout this state, service of the summons shall be made pursuant to the statutes of 1957, subject to any amendments made thereafter to the acts creating such courts.

**262.07 PERSONAL JURISDICTION, GROUNDS FOR WITHOUT SERVICE OF SUMMONS.** A court of this state having jurisdiction of the subject matter may, without serving a summons upon him, exercise jurisdiction in an action over a person:

- (1) Who makes a general appearance in an action pursuant to s. 262.16 (1) or who authorizes an attorney to appear in his behalf; or

(2) With respect to any counterclaim asserted against that person in an action which he has commenced in this state.

**262.08 JURISDICTION IN REM OR QUASI IN REM, GROUNDS FOR GENERALLY.** A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. A judgment in rem or quasi in rem may affect the interests of a defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to s. 262.09. Jurisdiction in rem or quasi in rem may be invoked in any of the following cases:

(1) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subsection shall apply when any such defendant is unknown.

(2) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real estate within this state.

(3) When the action is for a divorce or for annulment of marriage of a resident of this state.

(4) When the defendant has property within this state which has been attached or has a debtor within the state who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subs. (1), (2) and (3).

**262.09 JURISDICTION IN REM OR QUASI IN REM, MANNER OF SERVING SUMMONS FOR.** (1) A court of this state exercising jurisdiction in rem or quasi in rem pursuant to s. 262.08 may affect the interests of a defendant in such an action only if a summons, and a copy of the verified complaint or notice of the object of the action as required by s. 262.12 (2), have been served upon the defendant as follows:

(a) *Defendant known.* If the defendant is known, he may be served in the manner prescribed for service of a summons in s. 262.06 but service in such a case shall not bind the defendant personally to the jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(b) *Defendant unknown.* If the defendant is unknown the summons may be served by publication in a newspaper published in this state, likely to give notice to the defendant, once a week for 3 successive weeks.

(2) **COURTS WITH LESS THAN STATE-WIDE PROCESS.** In the case of summons of a court whose process does not run throughout this state, service of the summons shall be made pursuant to the statutes of 1957, subject to any amendments made thereafter to the acts creating such courts.

**262.10 SUMMONS, CONTENTS OF.** The summons shall contain:

(1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant.

(2) A direction to the defendant summoning and requiring him to serve upon the plaintiff's attorney, whose address shall be stated in the summons, either an answer to the complaint if a copy of the complaint is served with the summons or a demand for a copy of the complaint pursuant to s. 262.12 (1) (a). The summons shall further direct the defendant to serve the answer or demand for a copy of the complaint:

(a) Within 20 days, exclusive of the day of service, after the summons

CHAPTER 226

has been served personally upon the defendant or served by substitution personally upon another authorized to accept service of the summons for him; or

(b) Within 40 days after a date stated in the summons, exclusive of such date, if no such personal or substituted personal service has been made, and service is made by publication. The date so stated in the summons shall be the date of the first required publication.

(3) A notice that in case of failure to serve an answer or demand for a copy of the complaint within the time fixed by sub. (2) that judgment will be rendered against the defendant according to the demand of the complaint. The summons shall be subscribed by the plaintiff or his attorney with the addition of his post-office address, at which papers in the action may be served on him by mail. When the complaint is not served with the summons and the only relief sought is the recovery of money, whether upon tort or contract, there may, at the option of the plaintiff, be added at the foot a brief note specifying the sum to be demanded by the complaint.

(4) There may be as many separate original summonses issued as are needed for the purposes of serving the defendant.

262.11 SUMMONS, FORM.

(1) The summons shall be substantially in the following form:

----Court, ----County

A. B., Plaintiff

v.

C. D., Defendant

THE STATE OF WISCONSIN, To said defendant:

You are hereby summoned and required to serve upon ----, plaintiff's attorney, whose address is -----, [an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service] [a demand for a copy of the complaint within 20 days after service of the summons upon you, exclusive of the day of service] [an answer to the complaint which is herewith served upon you within 40 days after the ---- day of ----, A.D. 19--, exclusive of the date just stated] [a demand for a copy of the complaint within 40 days after the ---- day of ----, A.D. 19--, exclusive of the date just stated] and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint.

E. F.

Plaintiff's Attorney

P. O. Address ----, ---- County, Wis.

(2) In an action relating to real estate if any defendant is sued under a fictitious name or as an unknown owner, heir, grantee, or persons whom it may concern or other similar designation, a description of the land affected shall be given in a note at the foot of the summons.

262.12 SUMMONS, WHAT MUST ACCOMPANY WHEN SERVED.

(1) PERSONAL JURISDICTION. (a) When personal or substituted personal service is made upon the defendant within this state, a copy of the complaint may or may not be served with the summons at the plaintiff's option. If a copy of the complaint is not served, the defendant, in person or by attorney, within the time fixed in s. 262.10 (2), may demand in writing a copy of the complaint, specifying a place, embracing a post-office address, within this state where the complaint may be served and a copy of the complaint shall be served within 20 days thereafter accordingly.

(b) When personal service is made without this state upon the defendant, a copy of the verified complaint shall accompany the summons.

(c) When the summons is served by publication, only the summons need be published, but a copy of the verified complaint shall be mailed with the copy of the summons as required by s. 262.06 (1) (c).

(2) JURISDICTION IN REM OR QUASI IN REM: NOTICE OF OBJECT OF ACTION. (a) When personal or substituted personal service is made upon the defendant within or without this state, a copy of the verified complaint or a notice of the object of the action shall accompany the summons. The notice of object of action shall be subscribed by the plaintiff or his attorney and shall state the general object of the action, a brief description of all the property affected by it, if it affects specific real or personal property, the fact that no personal claim is made against such defendant, and that a copy of the complaint will be delivered personally or by mail to such defendant upon his request made within the time fixed in s. 262.10 (2). If a defendant, upon whom such notice is served, unreasonably defends the action he shall pay costs to the plaintiff.

(b) When the summons is served by publication, only the summons need be published, but a copy of the verified complaint or a notice of the object of the action shall be mailed with the copy of the summons as required by s. 262.09.

262.13 SUMMONS, FILING; STATE TAX. (1) The summons shall be filed with the clerk of the court in which the action is brought, and a state suit tax on the action paid, as follows:

(a) Where there has been personal service within or without this state upon the defendant or substituted service within this state at the defendant's usual place of abode, within 10 days after service of any pleading by defendant, or if defendant is in default, then at the time of applying for judgment.

(b) Prior to the first publication; and a verified complaint shall be filed at the same time with the summons.

(2) If the summons is not filed and suit tax paid as required by sub. (1), the action shall be dismissed on motion of any defendant unless the plaintiff immediately files the summons and pays the suit tax plus costs of motion.

262.14 SUMMONS, WHO MAY SERVE; INDORSEMENT; RETURN OF ORIGINAL SUMMONS. (1) WHO MAY SERVE. A copy of the summons, together with a copy of the complaint or notice of the object of the action, as the case may require, may be served by the sheriff of the county or his deputy within this state where the defendant may be found or by any other person not a party to the action. The person subscribing the summons may by an indorsement thereon fix a time for the service of the summons and the service shall then be made accordingly. If no such time for making service is fixed, service shall be made with reasonable diligence.

(2) INDORSEMENT ON COPY SERVED. The sheriff or person who serves a copy of the summons shall, at the time of the service, sign his name thereto and add, if a sheriff, or deputy, his official title. Failure to make the indorsement shall not invalidate a service but the server shall not collect fees for such service.

(3) RETURN OF ORIGINAL SUMMONS. The sheriff or person making the service shall, with reasonable diligence, return the original summons, with proof of service, to the person whose name is subscribed thereto.

**262.15 SUMMONS, WHEN DEEMED SERVED.** A summons is deemed served as follows:

(1) **PERSONAL OR SUBSTITUTED PERSONAL SERVICE.** A summons served personally upon the defendant or by substituted personal service upon another authorized to accept service of the summons for the defendant is deemed served on the day of service.

(2) **SERVICE BY PUBLICATION.** A summons served by publication is deemed served on the first day of required publication.

**262.16 RAISING OBJECTION TO PERSONAL JURISDICTION, GENERAL APPEARANCE.** (1) **GENERAL APPEARANCE.** An appearance of a defendant who does not object to the jurisdiction of the court over his person is a general appearance and gives the court personal jurisdiction over him.

(2) **HOW AND WHEN OBJECTION SHALL BE MADE.** An objection to the court's jurisdiction over the person is not waived because it is joined with other defenses or motions which, without such objection to jurisdiction, would constitute a general appearance. Such objection shall be raised as follows:

(a) By motion when a defect is claimed in the service of the summons without a complaint; or when the defect appears upon the face of the record other than the complaint; or in the case of a judgment on cognovit or by default;

(b) By demurrer when the defect appears upon the face of the complaint; and

(c) By answer in all other cases.

(d) In the case of a jurisdictional attack upon a judgment on cognovit or by default there shall be annexed to the motion a proposed demurrer or answer in which all defenses upon which the defendant relies shall be alleged.

(3) **JURISDICTION ISSUES TRIED TO COURT.** All issues of fact and law raised by an objection specified in sub. (2) shall be tried to the court without a jury in advance of any issue going to the merits of the case. If, after such a hearing on the objection, the court decides that it has jurisdiction, the case may proceed on the merits; if the court decides that it lacks jurisdiction, the defendant shall be given the relief required by such decision. Such decision upon a question of jurisdiction shall be by order which is appealable. The raising of such objection and the making of such a stipulation may be called a special appearance, but the effect of the objection or appearance is limited to that specified in sub. (2).

(4) **JURISDICTIONAL FACTS NOT BINDING ON MERITS OF ACTION.** The findings of fact made by the court in determining the question of personal jurisdiction over the defendant shall not be binding on the parties in the trial of the action on the merits.

(5) **OBJECTIONS TO JURISDICTION OVER PERSONS UNDER DISABILITY.** No guardian or guardian ad litem may, except as provided in this subsection, waive objection to jurisdiction over the person of the ward. If no objection to the jurisdiction of the court over the person of the ward is raised pursuant to sub. (2), the service of a demurrer, answer or motion by a guardian or guardian ad litem followed by a hearing or trial shall be equivalent to a general appearance by the ward.

(6) **WAIVER OF OBJECTION TO LACK OF PERSONAL JURISDICTION.** Except as provided in sub. (5), an objection to the jurisdiction of the court over the person is waived if not made as provided in this section.

**262.17 PROOF OF SERVICE OF SUMMONS, DEFENDANT APPEARING IN ACTION.** Where the defendant appears in the action and challenges the service of the summons upon him as provided in s. 262.16, proof of the service of the summons shall be as follows:

(1) **PERSONAL SERVICE OR SUBSTITUTED PERSONAL SERVICE.** (a) If served by the sheriff of the county or his deputy in this state where the defendant was found, by the sheriff's certificate thereof, showing place, time and manner of service; or

(b) If served by any other person, his affidavit thereof, showing place, time and manner of service; that he is an adult resident of the state of service and is not a party to the action; that he knew the person served to be the defendant mentioned in the summons and left with, as well as delivered to, him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left.

(2) **SERVICE BY PUBLICATION.** In case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and specifying the date of the first and last publication, and an affidavit of mailing of a copy of the summons, with the complaint or notice or notice of the object of the action, as the case may require, made by the person who mailed the same.

(3) **WRITTEN ADMISSION OF DEFENDANT.** The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

**262.18 JUDGMENT AGAINST NONAPPEARING DEFENDANT; PROOF OF JURISDICTION.** Where a defendant fails to appear in the action within the time fixed in s. 262.10 (2) the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by s. 262.17 and, in addition, shall require further proof as follows:

(1) **WHERE PERSONAL JURISDICTION IS CLAIMED OVER THE DEFENDANT.** Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by verified complaint which is needed to establish grounds for personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.

(2) **WHERE JURISDICTION IS IN REM OR QUASI IN REM.** Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show that the court's jurisdiction has been invoked over the status, property or thing which is the subject of the action. The court may require such additional proof as the interests of justice require.

**262.19 STAY OF PROCEEDING TO PERMIT TRIAL IN A FOREIGN FORUM.** (1) **STAY ON INITIATIVE OF PARTIES.** If a court of this state, on motion of any party, finds that trial of an action pending before it should as a matter of substantial justice be tried in a forum outside this state, the court may in conformity with sub. (3) enter an order to stay further proceedings on the action in this state. A moving party under this subsection must stipulate his consent to suit in the alternative forum and waive his right to rely on statutes of limitation which may have run in the alternative forum after commencement of the action in this state. A stay order may be granted although the action could not have been commenced in the alternative forum without consent of the moving party.

(2) **TIME FOR FILING AND HEARING MOTION.** The motion to stay the proceedings shall be filed prior to or with the answer unless the motion

is to stay proceedings on a cause raised by counterclaim, in which instance the motion shall be filed prior to or with the reply. The issues raised by this motion shall be tried to the court in advance of any issue going to the merits of the action and shall be joined with objections, if any, raised by demurrer or pursuant to s. 262.16. The court shall find separately on each issue so tried and these findings shall be set forth in a single order which is appealable.

(3) SCOPE OF TRIAL COURT DISCRETION ON MOTION TO STAY PROCEEDINGS. The decision on any timely motion to stay proceedings pursuant to sub. (1) is within the discretion of the court in which the action is pending. In the exercise of that discretion the court may appropriately consider such factors as:

(a) Amenability to personal jurisdiction in this state and in any alternative forum of the parties to the action;

(b) Convenience to the parties and witnesses of trial in this state and in any alternative forum;

(c) Differences in conflict of law rules applicable in this state and in any alternative forum; or

(d) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

(4) SUBSEQUENT MODIFICATION OF ORDER TO STAY PROCEEDINGS. Jurisdiction of the court continues over the parties to a proceeding in which a stay has been ordered under this section until a period of 5 years has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the parties to the proceedings, the court may, on motion and notice to the parties, subsequently modify the stay order and take any further action in the proceeding as the interests of justice require. When jurisdiction of the court over the parties and the proceeding terminates by reason of the lapse of 5 years following the last court order in the action, the clerk of the court in which the stay was granted shall without notice enter an order dismissing the action.

262.20 COSTS ON DISMISSAL FOR LACK OF JURISDICTION OR STAY OF PROCEEDINGS. (1) COSTS ON DISMISSAL FOR LACK OF PERSONAL JURISDICTION. If on objection of any defendant made pursuant to s. 262.16 the action is dismissed as to that defendant on the ground that the court lacks jurisdiction over his person, the court when entering judgment dismissing the action against the defendant may order the plaintiff to pay to the defendant all reasonable actual costs, disbursements and expenses of the action up to the judgment of dismissal, but the amount so recovered can in no case exceed the sum of \$500.

(2) COSTS ON STAY OF FURTHER PROCEEDINGS. Any party who obtains an order staying further proceedings in the action pursuant to s. 262.19 may recover all statutory costs and disbursements in the action up to the order for stay.

SECTION 16. 263.24 of the statutes is amended to read:

263.24 Every pleading, except a demurrer, must be verified; but the verification may be omitted when an admission of the allegations might subject the party to prosecution for felony. No pleading can be used in a criminal prosecution against the party as evidence of a fact admitted or alleged in such pleading. Where service is made either pursuant to \* \* \* ch. 262 or otherwise, no defect or irregularity in a verification shall defeat the jurisdiction of the court but shall be ground for a timely motion to strike the pleading unless amended.

## SECTION 17. 267.06 of the statutes is amended to read

267.06 The garnishee summons and complaint shall be served on the garnishee in the manner \* \* \* *and as required for the exercise of personal jurisdiction under ch. 262*; and, except where service of the summons in the main action is made without the state or by publication, also on the defendant therein, in like manner, not later than 10 days after service on a garnishee. ~~When the defendant shall have appeared in the main action by an attorney service may be made upon such attorney or upon the defendant.~~ Unless the garnishee summons and complaint \* \* \* is so served on the defendant or his attorney or the proof of service on the garnishee shows that, after due diligence, such service cannot be made within the state, the service on the garnishee shall become void.

## SECTION 18. 274.33 (3) of the statutes is amended to read:

274.33 (3) When an order grants, refuses, continues or modifies a provisional remedy or grants, refuses, modifies or dissolves an injunction, sets aside or dismisses a writ of attachment, grants a new trial or sustains or overrules a demurrer, decides a question of jurisdiction, *grants or denies a motion for stay of proceeding under s. 262.19*, determines an issue submitted under s. 263.225, or denies an application for summary judgment, but no order of the circuit court shall be considered appealable which simply reverses or affirms an order of the civil court of Milwaukee county, unless the order of the civil court grants, refuses, continues, modifies or dissolves a provisional remedy or injunction.

## SECTION 19. 291.01 (2) of the statutes is amended to read:

291.01 (2) When such person holds over without such permission after any default in the payment of rent pursuant to the agreement under which he holds and at least 3 days' notice in writing, requiring in the alternative the payment of the rent or the possession of the premises, has been served in behalf of the person entitled to such rent on the person in possession of the premises in the manner \* \* \* *prescribed in s. 262.06* for the service of a summons, and such notice may be served by the lessor or any person in his behalf. In case the tenant of the demised premises cannot be found, nor any usual place of abode of said tenant and member of his family of suitable age and discretion upon whom to make such service, then such notice may be served on a person residing on the demised premises, if ~~there~~ \* \* \* is one, and if not then such notice may be served by affixing ~~same~~ in a conspicuous part of the premises, where it may be conveniently read for at least 10 days before an action is brought for the removal of such tenant under this section.

## SECTION 20. 291.06 (1) of the statutes is amended to read:

291.06 (1) The summons and complaint shall be served at least 6 days before the return date by the sheriff or any constable of the county in which the property is located as provided \* \* \* *for the exercise of personal jurisdiction under ch. 262* but if service cannot be made under \* \* \* *that chapter*, then on a competent person at least 14 years of age residing on the rented premises.

## SECTION 21. 330.30 of the statutes is renumbered 330.30 (1).

## SECTION 22. 330.30 (2) of the statutes is created to read:



**330.30 (2)** The provisions of this section shall not apply to any person who, while out of this state, may be subjected to personal jurisdiction in the courts of this state on any of the grounds specified in s. 262.05.

**SECTION 23.** This act shall not apply to any cause of action arising prior to its effective date.

**SECTION 24.** This act shall take effect upon July 1, 1960.

Approved July 21, 1959.

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