



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2011 Special Session  
Senate Bill 12**

**Senate  
Amendment 2**

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### **Current Law**

Current law provides that in certain actions, the court may grant reasonable attorney fees to a prevailing party. In addition, a court may resolve a dispute involving the reasonableness of attorney fees.

### **The Bill**

The bill lists the factors a court must consider in determining whether attorney fees are reasonable. The bill also provides that, in an action in which compensatory damages are awarded, reasonable attorney fees may not exceed three times the amount of the compensatory damages awarded. In an action in which compensatory damages are not awarded but injunctive or declaratory relief, rescission or modification, or specific performance is ordered, reasonable attorney fees must be determined according to the factors set forth in the bill.

In any action in which compensatory damages are awarded and injunctive or declaratory relief, rescission or modification, or specific performance is ordered, the court must presume that reasonable attorney fees do not exceed three times the amount of the compensatory damages awarded, but this presumption may be overcome if the court determines, after considering the factors for determining reasonable attorney fees, that a greater amount is reasonable.

### **Senate Amendment 2**

Senate Amendment 2 modifies the provision of the bill relating to limiting the amount of attorney fees to three times the amount of compensatory damages. Under the amendment, the court must *presume* that reasonable attorney fees do not exceed three times the amount of the compensatory

damages awarded but this presumption may be overcome if the court determines, after considering the factors for determining reasonable attorney fees, that a greater amount is reasonable.

The amendment also specifies that the statute relating to attorney fees created by the bill does not abrogate the rights of persons to enter into an agreement for attorney fees, and the court must presume that such an agreement is reasonable.

**Legislative History**

Senator Zipperer offered Senate Amendment 2. On October 26, 2011, the Senate Committee on Judiciary, Utilities, Commerce, and Government Operations unanimously recommended adoption of Senate Amendment 2 and recommended passage of the bill, as amended, on a vote of Ayes, 3; Noes, 2.

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