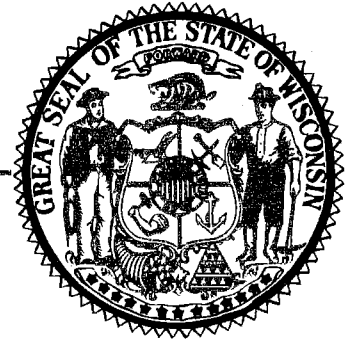


FRED A. RISSER
Wisconsin State Senator



July 16, 2019

TO: Chairman Senator David Craig and members of the Senate Committee on Insurance,
Financial Services, Government Oversight and Courts,

Thank you for holding this public hearing on Senate Bills 62 and 63, which are bipartisan versions of Assembly Bills 58 and 59 introduced in the Assembly by Representative Tusler.

These bills presented today are necessary in order to clarify two legal processes that citizens of Wisconsin use when dealing with courts and state government.

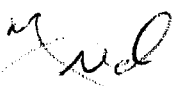
Senate Bill 62 would change the requirement for service of a notice of claim against a state officer, employee or agent from solely by certified mail to either personal service or certified mail. Adding personal service of a notice of claim is a stricter form of service than that of certified mail and is used most often for service of legal documents.

Senate Bill 63 would allow service of certain legal documents and pleadings that do not require personal service to be served by e-mail, if the parties have consented to accepting e-mail service in writing. It would also require that documents submitted to the court require an e-mail address as part of the required signature information, as well as requiring that the e-mail address be kept up-to-date.

The Assembly versions of both bills have been unanimously approved in the Assembly Committee on Judiciary.

As the Senate author of these bipartisan bills, I appreciate the Committee's consideration of SB 62 and SB 63 and would be happy to answer any questions you may have.

Most sincerely,


FRED A. RISSER
Wisconsin State Senator

FAR:ks



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

**Testimony Before the
Senate Committee
on
Insurance, Financial Services, Government Oversight and Courts
Senate Bill 62 & Assembly Bill 58
July 16, 2019**

Mr. Chairman and members of the Committee, thank you for the opportunity for a public hearing on SB 62/AB 58. Simply, this bill allows a plaintiff to personally serve a government entity instead of being required to use certified mail.

Under current law, a person may only serve notice to the State via certified mail.¹ Although certified mail successfully accomplishes service, hand-delivered personal service is just as effective, if not more so. Exclusion of personal service for a lawsuit against the state is likely a drafting error or an attempt to discourage lawsuits with this “gotcha” service provision.

This change became necessary after the 2016 Wisconsin Supreme Court case, *Sorenson v. Batchelder*.² In this case, Batchelder, a DOA employee, was driving a vehicle in his capacity as a state employee when he rear-ended Sorenson, a Wisconsin citizen. Sorenson sought compensation for both herself and her vehicle after suffering damages.

Sorenson’s attorney, who unfortunately could not be here to testify today, chose to use the most reliable type of service: personal service. Personal service is acceptable in any other situation except this one, when a claim is made against a state employee, so it is a simple mistake any attorney could easily make. Please find a letter in support of this bill from Attorney Abraham, the attorney of record in the case, included with my testimony. It turns out that, due to Capitol mail procedures, service by certified mail is impossible.

The court ultimately held that personal service does not comply with the requirements of the statute because it was not served by certified mail. Sorenson was unable to recover damages as a result of the statute.

This bill is a simple, common-sense change that prevents a minor technicality from interfering with justice and allows the use of personal service, the most reliable and common type of service.

The Wisconsin State Bar Litigation Section supports this bill.

Thank you for your time and I am happy to answer any questions.

¹ Wis. Stat. 893.82(5).

² 2016 WI 34, 368 Wis. 2d 140, 885 N.W.2d 362 (2016).

LITIGATION SECTION

To: Senate Committee on Insurance, Financial Services, Government Oversight and Courts
From: Litigation Section, State Bar of Wisconsin
Date: July 16, 2019
Re: AB 58/SB 62 – notice of claim

The Litigation Section of the State Bar of Wisconsin supports Assembly Bill 58 and Senate Bill 62, Representative Ron Tusler and Senator Fred Risser's legislation allowing a plaintiff to personally serve a government entity.

Section 893.82 sets forth a very precise method to provide notice of an injury claim to the Attorney General as a prerequisite to bringing a lawsuit. Under the current law, a written notice of claim must be sent to the office of the Attorney General in the capitol by certified mail.

AB 58 and SB 62 add personal service as a permissible method of serving the notice of claim upon the Attorney General. This legislation would be a welcome change, as the Litigation Section believes injury claims should be adjudicated on their merits and not hinge on whether a pro se litigant or an attorney used a certain form of service.

In past legal challenges, the Wisconsin Supreme Court has held that claimants must strictly comply with the notice provisions. However, certified mail is not the most common nor most reliable method of service and strict compliance with this statute creates a trap for the unwary that may leave otherwise meritorious claims dismissed on a technicality.

For these reasons, the State Bar's Litigation Section asks for your support in the passage of this legislation.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN