



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4700/1
MJ/TD/AG/KP/MP:all

2017 ASSEMBLY BILL 773

December 19, 2017 - Introduced by Representatives BORN, NYGREN, BALLWEG, BERNIER, R. BROOKS, DUCHOW, FELZKOWSKI, HUTTON, KITCHENS, KOOYENGA, KRUG, KULP, LOUDENBECK, MURSAU, PETERSEN, RIPP, ROHRKASTE, SPIROS, TAUCHEN, TITTL, VANDERMEER, WICHGERS and EDMING, cosponsored by Senators TIFFANY, CRAIG, DARLING, OLSEN and STROEBEL. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 426.110 (5) to (13); *to renumber* 802.06 (1), 803.08 (2), 804.01
2 (2) (e) 1., 893.93 (1) (a) and 893.93 (1) (b); *to renumber and amend* 803.08 (1)
3 and 804.09 (2) (a); *to amend* 138.04, 218.0125 (7), 218.0126, 426.110 (16),
4 628.46 (1), 801.01 (2), 804.01 (1), 804.01 (2) (e) 2., 804.01 (2) (e) 3., 804.01 (3) (a)
5 2., 804.01 (4), 804.09 (2) (b) 1., 804.12 (1) (a), 893.53, 893.89 (1) and 893.89 (3)
6 (b); and *to create* 100.56, 177.30 (6), 426.110 (4m), 802.06 (1) (b), 803.08 (1) (a)
7 to (e), 803.08 (3) to (10), 803.08 (12) to (15), 804.01 (2) (am), 804.01 (2) (bg),
8 804.01 (2) (e) 1g., 804.01 (2m), 804.01 (8), 804.09 (2) (a) 3. and 893.93 (1m)
9 (intro.) of the statutes; **relating to:** discovery of information in court
10 proceedings; procedural requirements relating to class actions; consumer
11 lawsuit lending; the statute of limitations for certain civil actions; agreements

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1 by the secretary of revenue to allow third-party audits related to unclaimed
2 property; interest rates for overdue insurance claims; and providing a penalty.

Analysis by the Legislative Reference Bureau**DISCOVERY PROCEDURES**

This bill makes certain changes to discovery procedure in court proceedings. Under the bill, the court must limit the frequency or extent of discovery if it determines that the discovery sought is cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive or that the burden or expense of the proposed discovery outweighs its likely benefit or is not proportional to the claims and defenses at issue. In addition, the bill limits the type of electronic information that can be discovered such that a court may not require a party to keep or provide the following types of electronic information: data that cannot be retrieved without substantial additional programming or without transforming it into another form before search and retrieval can be achieved; backup data that are substantially duplicative of data that are more accessible elsewhere; legacy data remaining from obsolete systems that are unintelligible on successor systems; and any other data that are not available to the producing party in the ordinary course of business and that the party identifies as not reasonably accessible because of undue burden or cost.

The bill also creates a mandatory disclosure requirement that requires a party, without awaiting a discovery request, to disclose any agreement under which any person, other than an attorney who is permitted to charge a contingent fee for representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action.

CLASS ACTIONS

This bill creates detailed procedures relating to class actions where previously Wisconsin had few procedural requirements relating to class actions. The procedures implemented in the bill closely track the federal procedures for filing and maintaining a class action, and are similar to changes proposed by the Wisconsin Judicial Council in 2017 petition number 17-03 to the Supreme Court. The bill creates prerequisites for filing a class action; differentiates between three different types of class actions that may be certified; creates requirements that the court must follow with regard to certifying a class, notifying potential class members, and entering a judgment; enumerates procedures for conducting a class action; requires the court to be involved in settling a class action; describes certain aspects of appellate procedure for a class action; requires the court to select counsel for the class in a class action; and creates a procedure for recovery of attorney fees.

CONSUMER LAWSUIT LENDING

This bill creates provisions governing consumer lawsuit lending transactions. Under the bill, a “consumer” is an individual who is or may become a plaintiff or claimant in a civil action or other proceeding (dispute). “Consumer lawsuit lending”

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means 1) providing money to a consumer, for the consumer to use for any purpose other than prosecuting the consumer's dispute, with repayment of the money conditioned on and derived from the consumer's proceeds of the dispute; or 2) purchasing from a consumer a contingent right to receive a share of the potential proceeds of the consumer's dispute. In a consumer lawsuit lending transaction, all of the following apply: 1) the lender may charge interest at a rate of no more than 18 percent per year; 2) the consumer may prepay the transaction at any time and, upon prepayment in full, is entitled to a refund of unearned interest charged; 3) the transaction term may not exceed 36 months; 4) the lender may not charge fees of more than \$360 per year; 5) the lender may not pay commissions or referral fees to attorneys or health care providers; and 6) there must be a written agreement between the lender and the consumer that contains specified information, including the interest rate and the consumer's right to receive a refund of interest charged if prepayment is made in full, as well as provisions that disclose all one-time fees charged to the consumer, disclose the amount to be received by the consumer and the amount the consumer assigns to the lender, state that the consumer has a right to cancel the agreement within five days, state that the lender has no right to make decisions or otherwise participate in the dispute, and state that the lender may be paid only from the consumer's proceeds of the dispute and is not entitled to be repaid if there are no such proceeds. A lender that violates any of these requirements or restrictions is subject to a civil forfeiture of not less than \$25 nor more than \$5,000, unless the lender establishes that the violation was the result of an unintentional good faith error and the lender had in place policies or procedures designed to achieve compliance. The Department of Trade, Agriculture and Consumer Protection has enforcement authority over violations.

The bill requires a consumer, upon commencing a lawsuit or within ten days after entering into a consumer lawsuit lending transaction, to provide the court and all parties to the lawsuit with a copy of the consumer lawsuit lending transaction agreement and any documents the consumer provided to the lender in connection with the agreement.

STATUTES OF LIMITATION

Under current law, the statute of limitations for an action for injury to character is six years. Under the bill, the statute of limitations is shortened to three years.

Under current law, the statute of limitations for an action for injury resulting from improvements to real property is ten years. Under the bill, the statute of limitations is shortened to six years.

Under current law, the statute of limitations for an action upon a liability created by statute when a different limitation is not prescribed by law and for an action for relief on the ground of fraud is six years. Under the bill, the statute of limitations is shortened to three years.

THIRD-PARTY TAX AUDITS

This bill prohibits the secretary of revenue from entering into an agreement to allow a person to engage in an audit on a contingent fee basis of another person's documents or records in order to administer the unclaimed property law or to

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purchase information arising from the audit, except for information received by the federal government.

TIMELY PAYMENT OF CLAIMS

This bill changes the interest rate that an insurer must pay for overdue insurance claims from 12 percent to the Federal Reserve Board's bank prime loan rate on January 1 of the year in which the insurer is furnished written notice of the fact of a covered loss plus 1 percent. Current law requires an insurer to promptly pay every insurance claim and, generally, a claim is considered overdue if the claim is not paid within 30 days after the insurer has written notice of the fact and amount of a covered loss.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 100.56 of the statutes is created to read:

2 **100.56 Consumer lawsuit lending. (1)** In this section:

3 (a) "Consumer" means an individual who is or may become a plaintiff or
4 claimant or demandant in any dispute.

5 (b) "Consumer lawsuit lender" means any person that engages in consumer
6 lawsuit lending.

7 (c) "Consumer lawsuit lending" means any of the following:

8 1. Providing money to any consumer, for the consumer to use for any purpose
9 other than prosecuting the consumer's dispute, with repayment of the money
10 conditioned on and derived from the consumer's proceeds of the dispute, regardless
11 of whether these proceeds result from a judgment, settlement, or other source.

12 2. Purchasing from any consumer a contingent right to receive a share of the
13 potential proceeds of the consumer's dispute, regardless of whether these proceeds
14 result from a judgment, settlement, or other source.

15 (d) "Dispute" means any of the following:

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- 1 1. Any civil action.
- 2 2. Any alternative dispute resolution proceeding.
- 3 3. Any administrative proceeding before any agency or instrumentality of the
- 4 state.

5 **(2)** (a) A consumer lawsuit lender may charge or contract for interest in a
6 consumer lawsuit lending transaction at a rate not exceeding 18 percent per year.

7 (b) A consumer lawsuit lending transaction may be prepaid by the consumer
8 at any time in whole or in part. Upon prepayment of the consumer lawsuit lending
9 transaction in full by cash, renewal, or refinancing, the consumer is entitled to a
10 refund of unearned interest charged, which shall be determined as follows:

11 1. On a consumer lawsuit lending transaction that is repayable in substantially
12 equal, successive installments at approximately equal intervals of time and the face
13 amount of which includes predetermined interest charges, the amount of the refund
14 shall be as great a proportion of the total interest charged as the sum of the balances
15 scheduled to be outstanding during the full installment periods commencing with
16 the installment date nearest the date of prepayment bears to the sum of the balances
17 scheduled to be outstanding for all installment periods of the consumer lawsuit
18 lending transaction.

19 2. On any consumer lawsuit lending transaction other than one under subd.
20 1., the amount of the refund shall not be less than the difference between the interest
21 charged and interest, at the rate contracted for, computed upon the unpaid principal
22 balances of the consumer lawsuit lending transaction from time to time outstanding
23 prior to prepayment in full.

24 **(3)** (a) The term of a consumer lawsuit lending transaction may not exceed 36
25 months.

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1 (b) The maximum total annual fee charged by a consumer lawsuit lender in a
2 consumer lawsuit lending transaction, including any underwriting fee, organization
3 fee, or other fee or charge, may not exceed \$360 per year.

4 (4) (a) A consumer lawsuit lender may not enter into a consumer lawsuit
5 lending transaction unless there is a written agreement between the consumer
6 lawsuit lender and the consumer that includes all of the following:

7 1. The rate of interest agreed upon in terms either of simple interest computed
8 on the declining principal balance or of the actual interest cost in money.

9 2. A statement that the consumer lawsuit lending transaction may be prepaid
10 in full or in part and that, if the consumer lawsuit lending transaction is prepaid in
11 full, the consumer may receive a refund of interest charged.

12 3. On the front page of the agreement, a disclosure of the amount of money to
13 be provided to the consumer and the total amount of money to be assigned by the
14 consumer to the consumer lawsuit lender, described in 6-month intervals for a total
15 period of 36 months, along with an itemization of all one-time fees to be charged to
16 the consumer.

17 4. A provision that the consumer may cancel the agreement, without penalty
18 or further obligation, within 5 business days after entering into the consumer
19 lawsuit lending transaction if, during this period, the consumer returns to the
20 consumer lawsuit lender either the lender's unnegotiated check or all money
21 provided to the consumer as well as notice of cancellation.

22 5. A provision that the consumer lawsuit lender has no right to, and will not,
23 make any decisions with respect to the conduct of the dispute or any settlement or
24 resolution of the dispute and that those decisions remain solely with the consumer
25 and the consumer's attorney.

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1 6. A provision that the consumer lawsuit lender has no right to participate in
2 the prosecution of the dispute or to obtain documents or evidence connected with the
3 dispute.

4 7. A provision that the consumer lawsuit lender accepts only an assignment of
5 an amount of the potential proceeds from the dispute and does not accept an
6 assignment of the consumer's legal claim. This provision shall also specify that the
7 consumer lawsuit lender has no right to pursue the consumer's legal claim on behalf
8 of or in lieu of the consumer.

9 8. A provision that the consumer lawsuit lender may be paid only from the
10 consumer's proceeds of the dispute. This provision shall also specify that the
11 consumer does not owe the consumer lawsuit lender anything if there is no recovery
12 by the consumer in the dispute unless the consumer violates the terms of the
13 agreement. This provision shall also specify that, if there are insufficient proceeds
14 to pay the consumer lawsuit lender in full, the consumer lawsuit lender may be paid
15 only to the extent that there are available proceeds from the dispute, unless the
16 consumer violates the terms of the agreement.

17 9. A provision that, if the consumer is represented by an attorney, any proceeds
18 from the dispute paid to the consumer lawsuit lender may be paid only from the trust
19 account of the consumer's attorney.

20 (b) Each provision or disclosure required under this subsection shall be in
21 boldface type and of a type size no smaller than 12-point, except that the provision
22 under par. (a) 8. shall be of a type size no smaller than 15-point.

23 **(5)** (a) In this subsection, "health care provider" has the meaning given in s.
24 146.81 (1), but also includes any individual licensed or certified in another state for
25 the same or equivalent profession.

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1 (b) A consumer lawsuit lender may not pay or offer to pay commissions or
2 referral fees to any attorney or employee of a law firm, or to any health care provider
3 or employee of a health care provider, for referring a consumer to the consumer
4 lawsuit lender.

5 (6) (a) Except as provided in par. (b), any consumer lawsuit lender that violates
6 this section is subject to a forfeiture of not less than \$25 nor more than \$5,000 for each
7 violation.

8 (b) It is a defense to a violation of this section if the consumer lawsuit lender
9 establishes that the violation was the result of an unintentional good faith error and,
10 at the time of the violation, the consumer lawsuit lender had in place policies or
11 procedures designed to achieve compliance with this section.

12 **SECTION 2.** 138.04 of the statutes is amended to read:

13 **138.04 Legal rate.** The rate of interest upon the loan or forbearance of any
14 money, goods, or things in action shall be \$5 upon the \$100 for one year and according
15 to that rate for a greater or less sum or for a longer or a shorter time; but parties may
16 contract for the payment and receipt of a rate of interest not exceeding the rate
17 allowed in ss. 100.56 (2) (a), 138.041 to 138.056, 138.09 to 138.14, 218.0101 to
18 218.0163, or 422.201, in which case such rate shall be clearly expressed in writing.

19 **SECTION 3.** 177.30 (6) of the statutes is created to read:

20 177.30 (6) The administrator may not enter into a contract or other agreement
21 to allow any person to engage in an audit on a contingent fee basis of another person's
22 documents or records as part of an effort to administer this chapter or to purchase
23 information or documents arising from the audit, except that this subsection does not
24 apply to information received from the federal government.

25 **SECTION 4.** 218.0125 (7) of the statutes is amended to read:

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1 218.0125 (7) A claim made by a franchised motor vehicle dealer for
2 compensation under this section shall be either approved or disapproved within 30
3 days after the claim is submitted to the manufacturer, importer or distributor in the
4 manner and on the forms the manufacturer, importer or distributor reasonably
5 prescribes. An approved claim shall be paid within 30 days after its approval. If a
6 claim is not specifically disapproved in writing or by electronic transmission within
7 30 days after the date on which the manufacturer, importer or distributor receives
8 it, the claim shall be considered to be approved and payment shall follow within 30
9 days. A manufacturer, importer or distributor retains the right to audit claims for
10 a period of one year after the date on which the claim is paid and to charge back any
11 amounts paid on claims that are false or unsubstantiated. If there is evidence of
12 fraud, this subsection does not limit the right of the manufacturer to audit for longer
13 periods and charge back for any fraudulent claim, subject to the limitations period
14 under s. 893.93 (1) (1m) (b).

15 **SECTION 5.** 218.0126 of the statutes is amended to read:

16 **218.0126 Promotional allowances.** A claim made by a franchised motor
17 vehicle dealer for promotional allowances or other incentive payments shall be either
18 approved or disapproved within 30 days after the claim is submitted to the
19 manufacturer, importer or distributor in the manner and on the forms the
20 manufacturer, importer or distributor reasonably prescribes. An approved claim
21 shall be paid within 30 days after its approval. If a claim is not specifically
22 disapproved in writing or by electronic transmission within 30 days after the date
23 on which the manufacturer, importer or distributor receives it, the claim shall be
24 considered to be approved and payment shall follow within 30 days after approval.
25 A manufacturer, importer or distributor retains the right to audit a claim for a period

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1 of 2 years after the date on which the claim is paid and to charge back any amounts
2 paid on claims that are false or unsubstantiated. If there is evidence of fraud, this
3 section does not limit the right of the manufacturer to audit for longer periods and
4 charge back for any fraudulent claim, subject to the limitations period under s.
5 893.93 ~~(1)~~ (1m) (b).

6 **SECTION 6.** 426.110 (4m) of the statutes is created to read:

7 426.110 **(4m)** Actions commenced under this section shall be conducted in
8 accordance with the procedures set forth in s. 803.08.

9 **SECTION 7.** 426.110 (5) to (13) of the statutes are repealed.

10 **SECTION 8.** 426.110 (16) of the statutes is amended to read:

11 426.110 **(16)** The administrator, whether or not a party to an action, shall bear
12 the costs of notice except that the administrator may recover such costs from the
13 defendant as ~~provided in sub. (11)~~.

14 **SECTION 9.** 628.46 (1) of the statutes is amended to read:

15 628.46 **(1)** Unless otherwise provided by law, an insurer shall promptly pay
16 every insurance claim. A claim shall be overdue if not paid within 30 days after the
17 insurer is furnished written notice of the fact of a covered loss and of the amount of
18 the loss. If such written notice is not furnished to the insurer as to the entire claim,
19 any partial amount supported by written notice is overdue if not paid within 30 days
20 after such written notice is furnished to the insurer. Any part or all of the remainder
21 of the claim that is subsequently supported by written notice is overdue if not paid
22 within 30 days after written notice is furnished to the insurer. Any payment shall
23 not be deemed overdue when the insurer has reasonable proof to establish that the
24 insurer is not responsible for the payment, notwithstanding that written notice has
25 been furnished to the insurer. For the purpose of calculating the extent to which any

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1 claim is overdue, payment shall be treated as being made on the date a draft or other
2 valid instrument which is equivalent to payment was placed in the U.S. mail in a
3 properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.
4 All overdue payments shall bear simple interest at the annual bank prime loan rate
5 of 12 percent per year as reported by the federal reserve board in federal reserve
6 statistical release H. 15 in effect on January 1 of the year in which the insurer is
7 furnished written notice of the fact of a covered loss, plus 1 percent.

8 **SECTION 10.** 801.01 (2) of the statutes is amended to read:

9 801.01 (2) SCOPE. Chapters 801 to 847 govern procedure and practice in circuit
10 courts of this state in all civil actions and special proceedings whether cognizable as
11 cases at law, in equity or of statutory origin except where different procedure is
12 prescribed by statute or rule. Chapters 801 to 847 shall be construed, administered,
13 and employed by the court and the parties to secure the just, speedy and inexpensive
14 determination of every action and proceeding.

15 **SECTION 11.** 802.06 (1) of the statutes is renumbered 802.06 (1) (a).

16 **SECTION 12.** 802.06 (1) (b) of the statutes is created to read:

17 802.06 (1) (b) Upon the filing of a motion to dismiss under sub. (2) (a) 6., a
18 motion for judgment on the pleadings under sub. (3), or a motion for more definite
19 statement under sub. (5), all discovery and other proceedings shall be stayed during
20 the pendency of the motion unless the court finds good cause upon the motion of any
21 party that particularized discovery is necessary.

22 **SECTION 13.** 803.08 (1) of the statutes, as affected by Supreme Court Order
23 15-06, is renumbered 803.08 (1) (intro.) and amended to read:

24 803.08 (1) ~~CLASS ACTIONS MAY BE MAINTAINED~~ ACTION PREREQUISITES. (intro.)
25 ~~When the question before the court is one of a common or general interest of many~~

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1 persons or when the parties are very numerous and it may be impracticable to bring
2 them all before the court, one One or more members of a class may sue or defend for
3 the benefit of the whole, ~~except that no claim may be maintained against the state~~
4 ~~or any other party under this section if the relief sought includes the refund of or~~
5 ~~damages associated with a tax administered by the state.~~ be sued as representative
6 parties on behalf of all members only if all of the following apply:

7 **SECTION 14.** 803.08 (1) (a) to (e) of the statutes are created to read:

8 803.08 (1) (a) The class is so numerous that joinder of all members is
9 impracticable.

10 (b) There are questions of law or fact common to the class.

11 (c) The claims or defenses and type and scope of injury of the representative
12 parties are typical of the claims or defenses and type and scope of injury of the class.

13 (d) The representative parties will fairly and adequately protect the interests
14 of the class.

15 (e) The members of the class are objectively verifiable by reliable and feasible
16 means without individual testimony from putative class members and without
17 substantial administrative burden.

18 **SECTION 15.** 803.08 (2) of the statutes, as created by Supreme Court Order
19 15-06, is renumbered 803.08 (11).

20 **SECTION 16.** 803.08 (3) to (10) of the statutes are created to read:

21 803.08 (3) TYPES OF CLASS ACTIONS. A class action may be maintained if sub. (1)
22 is satisfied and if the court finds that any of the following applies:

23 (a) Prosecuting separate actions by or against individual class members would
24 create a risk of one of the following:

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1 1. Inconsistent or varying adjudications with respect to individual class
2 members that would establish incompatible standards of conduct for the party
3 opposing the class.

4 2. Adjudications with respect to individual class members that, as a practical
5 matter, would be dispositive of the interests of the other members who were not a
6 party to the individual adjudications or would substantially impair or impede
7 another member's ability to protect his or her interests.

8 (b) The party opposing the class has acted or refused to act on grounds that
9 apply generally to the class, so that final injunctive relief or corresponding
10 declaratory relief is appropriate respecting the class as a whole.

11 (c) The court finds that the questions of law or fact common to class members
12 predominate over any questions affecting only individual members, and that a class
13 action is superior to other available methods for fairly and efficiently adjudicating
14 the controversy. In making this determination, the court shall consider all of the
15 following factors:

16 1. The class members' interests in individually controlling the prosecution or
17 defense of separate actions.

18 2. The extent and nature of any litigation concerning the controversy already
19 begun by or against class members.

20 3. The desirability of concentrating the litigation of the claims in the particular
21 forum.

22 4. The likely difficulties in managing a class action.

23 **(4) CERTIFICATION ORDER.** (a) *Time to issue.* At an early practicable time after
24 a person sues or is sued as a class representative, the court shall determine by order
25 whether to certify the action as a class action.

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1 (b) *Defining the class; appointing class counsel.* An order granting class
2 certification shall define the class, shall identify the class claims, issues, or defenses,
3 and shall appoint class counsel under sub. (13).

4 (c) *Altering or amending the order.* The order granting or denying class
5 certification may be altered or amended before final judgment.

6 **(5) NOTICE.** (a) For any class certified under sub. (3) (a) or (b), the court may
7 direct appropriate notice to the class.

8 (b) For any class certified under sub. (3) (c), the court shall direct to class
9 members the best notice that is practicable under the circumstances, including
10 individual notice to all members who can be identified through reasonable effort.
11 The notice shall state clearly and concisely in plain, easily understood language, all
12 of the following:

13 1. The nature of the action.

14 2. The definition of the class certified.

15 3. The class claims, issues, or defenses.

16 4. That a class member may enter an appearance through an attorney if the
17 member so desires.

18 5. That the court will exclude from the class any member who requests
19 exclusion.

20 6. The time and manner for requesting exclusion from the class.

21 7. The binding effect of a class judgment on members under sub. (6).

22 **(6) JUDGMENT.** Whether favorable or unfavorable to the class, the judgment in
23 a class action shall do all of the following:

24 (a) For any class certified under sub. (3) (a) or (b), include and describe those
25 persons who the court finds to be class members.

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1 (b) For any class certified under sub. (3) (c), include and specify or describe the
2 persons to whom the court directed notice under sub. (5) who have not requested
3 exclusion and who the court finds to be class members.

4 **(7) PARTICULAR ISSUES.** Notwithstanding ss. 805.05 (2) and 805.09 (2), when
5 appropriate, an action may be brought or maintained as a class action with respect
6 to particular issues.

7 **(8) SUBCLASSES.** When appropriate, a class may be divided into subclasses that
8 are each treated as a class under this section.

9 **(9) CONDUCTING THE ACTION.** (a) In conducting an action under this section, the
10 court may issue orders for any of the following purposes:

11 1. To determine the course of proceedings or to prescribe measures to prevent
12 undue repetition or complication in presenting evidence or argument.

13 2. In order to protect class members and fairly conduct the action, to require
14 that appropriate notice be given to some or all class members of any of the following:

15 a. Any step in the action.

16 b. The proposed extent of the judgment.

17 c. The members' opportunity to signify whether they consider the
18 representation fair and adequate, to intervene and present claims or defenses, or to
19 otherwise participate in the action.

20 3. To impose conditions on the representative parties or on intervenors.

21 4. To require that the pleadings be amended to eliminate allegations regarding
22 the representation of absent persons and to require that the action proceed
23 accordingly.

24 5. To deal with similar procedural matters.

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1 (b) An order under par. (a) may be altered or amended from time to time and
2 may be combined with an order under s. 802.10.

3 **(10) SETTLEMENT, VOLUNTARY DISMISSAL, OR COMPROMISE.** The claims, issues, or
4 defenses of a certified class may be settled, voluntarily dismissed, or compromised
5 only with the court's approval. All of the following procedures apply to a proposed
6 settlement, voluntary dismissal, or compromise:

7 (a) The parties seeking approval shall file a statement identifying any
8 agreement made in connection with the proposal.

9 (b) The court shall direct notice in a reasonable manner to all class members
10 who would be bound by the proposal.

11 (c) If the proposal would bind class members, the court may approve it only if
12 it finds after a hearing that the proposal is fair, reasonable, and adequate.

13 (d) If the class action was previously certified under sub. (3) (c), the court may
14 refuse to approve a settlement unless it affords a new opportunity to request
15 exclusion to individual class members who had an earlier opportunity to request
16 exclusion but did not do so.

17 (e) Any class member may object to the proposal if it requires court approval
18 under this subsection, and the objection may be withdrawn only with the court's
19 approval.

20 **SECTION 17.** 803.08 (12) to (15) of the statutes are created to read:

21 803.08 **(12) INTERLOCUTORY APPEAL OF CLASS CERTIFICATION.** (a) When
22 practicable after the commencement of an action brought as a class action, the court
23 shall determine by order whether it is to be so maintained. If the court finds that the
24 action should be maintained as a class action, it shall certify the action accordingly
25 on the basis of a written decision setting forth all reasons why the action may be

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1 maintained and describing all evidence in support of the determination. An order
2 under this subsection may be altered, amended, or withdrawn at any time before the
3 decision on the merits. The court may direct appropriate notice to the class.

4 (b) An appellate court shall hear an appeal of an order granting or denying class
5 action certification, or denying a motion to decertify a class action, if a notice of
6 appeal is filed within 14 days after entry of the order. During the pendency of an
7 appeal under this subsection, all discovery and other proceedings shall be stayed,
8 except that the trial court shall retain sufficient jurisdiction over the case to consider
9 and implement a settlement of the action if a settlement is reached between the
10 parties.

11 **(13) CLASS COUNSEL.** (a) Unless otherwise provided by law, a court that certifies
12 a class shall appoint class counsel. In appointing class counsel, the court shall
13 consider all of the following:

14 1. The work that counsel has done in identifying or investigating potential
15 claims in the action.

16 2. Counsel's experience in handling class actions, other complex litigation, and
17 the types of claims asserted in the action.

18 3. Counsel's knowledge of the applicable law.

19 4. The resources that counsel will commit to representing the class.

20 (b) In appointing class counsel, the court may do any of the following:

21 1. Consider any other matter pertinent to counsel's ability to fairly and
22 adequately represent the interests of the class.

23 2. Order potential class counsel to provide information on any subject pertinent
24 to the appointment and to propose terms for attorney's fees and nontaxable costs.

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1 3. Include in the appointing order provisions about the award of attorney's fees
2 or nontaxable costs under sub. (14).

3 4. Issue further orders in connection with the appointment.

4 (c) Class counsel must fairly and adequately represent the interests of the
5 class.

6 (d) When one applicant seeks appointment as class counsel, the court may
7 appoint that applicant only if the applicant is found to be adequate under pars. (a)
8 and (c). If more than one adequate applicant seeks appointment, the court shall
9 appoint the applicant best able to represent the interests of the class.

10 (e) The court may designate interim counsel to act on behalf of a putative class
11 before determining whether to certify the action as a class action.

12 **(14) ATTORNEY FEES AND NONTAXABLE COSTS.** In a certified class action, the court
13 may award reasonable attorney fees and nontaxable costs that are authorized by law
14 or by the parties' agreement. All of the following procedures apply:

15 (a) A claim for an award shall be made by motion, subject to the provisions of
16 this subsection, at a time designated by the court. Notice of the motion shall be
17 served on all parties and, for motions by class counsel, directed to class members in
18 a reasonable manner.

19 (b) A class member, or a party from whom payment is sought, may object to the
20 motion.

21 (c) The court may hold a hearing at which it finds facts and states its legal
22 conclusions regarding fees and costs, in accordance with s. 805.17 (2).

23 (d) The court may refer issues related to the amount of the award to a referee,
24 as provided in s. 805.06.

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1 **(15)** PROHIBITION OF CERTAIN CLASS ACTIONS. No claim may be maintained
2 against the state or any other party under this section if the relief sought includes
3 the refund of or damages associated with a tax administered by the state.

4 **SECTION 18.** 804.01 (1) of the statutes is amended to read:

5 804.01 **(1)** DISCOVERY METHODS. Parties may obtain discovery by one or more
6 of the following methods: depositions upon oral examination or written questions;
7 written interrogatories; production of documents or things or permission to enter
8 upon land or other property, for inspection and other purposes; physical and mental
9 examinations; and requests for admission. Unless the court orders otherwise under
10 sub. (3), and except as provided in ~~§. ss.~~ 804.015 and 804.09, the frequency of use of
11 these methods is not limited.

12 **SECTION 19.** 804.01 (2) (am) of the statutes is created to read:

13 804.01 **(2)** (am) *Limitations*. Upon the motion of any party, the court shall limit
14 the frequency or extent of discovery if it determines that one of the following applies:

15 1. The discovery sought is cumulative or duplicative, or can be obtained from
16 some other source that is more convenient, less burdensome, or less expensive.

17 2. The burden or expense of the proposed discovery outweighs its likely benefit
18 or is not proportional to the claims and defenses at issue considering the needs of the
19 case, the amount in controversy, the parties' resources, the complexity and
20 importance of the issues at stake in the action, and the importance of discovery in
21 resolving the issues.

22 **SECTION 20.** 804.01 (2) (bg) of the statutes is created to read:

23 804.01 **(2)** (bg) *Third party agreements*. Except as otherwise stipulated or
24 ordered by the court, a party shall, without awaiting a discovery request, provide to
25 the other parties any agreement under which any person, other than an attorney

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1 permitted to charge a contingent fee representing a party, has a right to receive
2 compensation that is contingent on and sourced from any proceeds of the civil action,
3 by settlement, judgment, or otherwise.

4 **SECTION 21.** 804.01 (2) (e) 1. of the statutes is renumbered 804.01 (2) (e) 1r.

5 **SECTION 22.** 804.01 (2) (e) 1g. of the statutes is created to read:

6 804.01 (2) (e) 1g. A party is not required to provide discovery of any of the
7 following categories of electronically stored information absent a showing by the
8 moving party of substantial need and good cause, subject to a proportionality
9 assessment under par. (am) 2.:

10 a. Data that cannot be retrieved without substantial additional programming
11 or without transforming it into another form before search and retrieval can be
12 achieved.

13 b. Backup data that are substantially duplicative of data that are more
14 accessible elsewhere.

15 c. Legacy data remaining from obsolete systems that are unintelligible on
16 successor systems.

17 d. Any other data that are not available to the producing party in the ordinary
18 course of business and that the party identifies as not reasonably accessible because
19 of undue burden or cost. In response to a motion to compel discovery or for a
20 protective order, the party from whom discovery is sought is required to show that
21 the information is not reasonably accessible because of undue burden or cost. If that
22 showing is made, the court may order discovery from such sources only if the
23 requesting party shows good cause, considering the limitations of par. (am). The
24 court may specify conditions for the discovery.

25 **SECTION 23.** 804.01 (2) (e) 2. of the statutes is amended to read:

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1 804.01 (2) (e) 2. If a party fails or refuses to confer as required by subd. ~~1.~~ 1r.,
2 any party may move the court for relief under s. 804.12 (1).

3 **SECTION 24.** 804.01 (2) (e) 3. of the statutes is amended to read:

4 804.01 (2) (e) 3. If after conferring as required by subd. ~~1.~~ 1r., any party objects
5 to any proposed request for discovery of electronically stored information or objects
6 to any response under s. 804.08 (3) proposing the production of electronically stored
7 information, the objecting party may move the court for an appropriate order under
8 sub. (3).

9 **SECTION 25.** 804.01 (2m) of the statutes is created to read:

10 804.01 (2m) MANDATORY DISCLOSURES. A party who has entered into a contract
11 or agreement with a consumer lawsuit lender, as defined in s. 100.56 (1) (b), shall,
12 without receiving a discovery request, provide to the court and to each party in the
13 matter that is the subject of the contract or agreement all of the following:

14 (a) *Consumer lawsuit lending contract.* A copy of the contract or agreement,
15 at the time the party files his or her initial pleading in the matter or within 10 days
16 after the contract or agreement is executed between the party and the consumer
17 lawsuit lender, whichever is later.

18 (b) *Consumer lawsuit lending documents.* All documents, not privileged, that
19 the party or the party's representative provided to the consumer lawsuit lender
20 pursuant to the contract or agreement described in par. (a). The party shall provide
21 the documents to each party at the time the party files his or her initial pleading in
22 the matter or within 10 days after he or she provides the documents to the consumer
23 lawsuit lender, whichever is later.

24 **SECTION 26.** 804.01 (3) (a) 2. of the statutes is amended to read:

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1 804.01 (3) (a) 2. That the discovery may be had only on specified terms and
2 conditions, including a designation of the time or place or the allocation of expenses;

3 **SECTION 27.** 804.01 (4) of the statutes is amended to read:

4 804.01 (4) SEQUENCE AND TIMING OF DISCOVERY. Unless the parties stipulate or
5 the court upon motion, for the convenience of parties and witnesses and in the
6 interests of justice, orders otherwise, methods of discovery may be used in any
7 sequence and the fact that a party is conducting discovery, whether by deposition or
8 otherwise, shall not operate to delay any other party's discovery.

9 **SECTION 28.** 804.01 (8) of the statutes is created to read:

10 804.01 (8) PRESERVATION OF ELECTRONICALLY STORED INFORMATION. Absent a
11 court order demonstrating that the requesting party has a substantial need for
12 discovery of the electronically stored information requested, a party is not required
13 to preserve the following categories of electronically stored information:

14 (a) Data that cannot be retrieved without substantial additional programming
15 or without transforming it into another form before search and retrieval can be
16 achieved.

17 (b) Backup data that are substantially duplicative of data that are more
18 accessible elsewhere.

19 (c) Legacy data remaining from obsolete systems that are unintelligible on
20 successor systems.

21 (d) Any other data that are not available to the producing party in the ordinary
22 course of business.

23 **SECTION 29.** 804.09 (2) (a) of the statutes is renumbered 804.09 (2) (a) (intro.)
24 and amended to read:

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1 804.09 (2) (a) (intro.) Except as provided in s. 804.015, the request may, without
2 leave of court, be served upon the plaintiff after commencement of the action and
3 upon any other party with or after service of the summons and complaint upon that
4 party, and shall meet all of the following criteria:

5 1. The request shall describe with reasonable particularity each item or
6 category of items to be inspected.

7 2. The request shall specify a reasonable time, place, and manner of making
8 the inspection and performing the related acts.

9 4. The request may specify the form or forms in which electronically stored
10 information is to be produced.

11 **SECTION 30.** 804.09 (2) (a) 3. of the statutes is created to read:

12 804.09 (2) (a) 3. The request shall be limited, unless otherwise stipulated or
13 ordered by the court in a manner consistent with s. 804.01 (2), to the following:

14 a. A reasonable number of requests, not to exceed 25 interrogatories, including
15 all subparts, and not to exceed 10 depositions, none of which may exceed 7 hours in
16 duration.

17 b. A reasonable time period of not more than 5 years prior to the accrual of the
18 cause of action.

19 **SECTION 31.** 804.09 (2) (b) 1. of the statutes is amended to read:

20 804.09 (2) (b) 1. The party upon whom the request is served shall serve a
21 written response within 30 days after the service of the request, except that a
22 defendant may serve a response within 45 days after service of the summons and
23 complaint upon that defendant. The court may allow a shorter or longer time. The
24 response shall state, with respect to each item or category, that inspection and
25 related activities will be permitted as requested, unless or state with specificity the

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1 ~~grounds for objecting to the request is objected to, in which event the reasons for~~
2 ~~objection shall be stated.~~ If objection is made to part of an item or category, the part
3 shall be specified. The response may state an objection to a requested form for
4 producing electronically stored information. If the responding party objects to a
5 requested form, or if no form was specified in the request, the party shall state the
6 form or forms it intends to use. The responding party may state that it will produce
7 copies of documents or of electronically stored information instead of permitting
8 inspection. The production shall be completed no later than the time for inspection
9 specified in the request or another reasonable time specified in the request or
10 another reasonable time specified in the response.

11 **SECTION 32.** 804.12 (1) (a) of the statutes is amended to read:

12 804.12 (1) (a) *Motion.* If a deponent fails to answer a question propounded or
13 submitted under s. 804.05 or 804.06, or a corporation or other entity fails to make a
14 designation under s. 804.05 (2) (e) or 804.06 (1), or a party fails to answer an
15 interrogatory submitted under s. 804.08, or if a party, in response to a request for
16 inspection submitted under s. 804.09, fails to produce documents or fails to respond
17 that inspection will be permitted as requested or fails to permit inspection as
18 requested, the discovering party may move for an order compelling an answer, or a
19 designation, or an order compelling inspection in accordance with the request. When
20 taking a deposition on oral examination, the proponent of the question may complete
21 or adjourn the examination before he or she applies for an order. If the court denies
22 the motion in whole or in part, it may make such protective order as it would have
23 been empowered to make on a motion made pursuant to s. 804.01 (3).

24 **SECTION 33.** 893.53 of the statutes is amended to read:

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1 **893.53 Action for injury to character or other rights.** An action to recover
2 damages for an injury to the character or rights of another, not arising on contract,
3 shall be commenced within ~~6~~ 3 years after the cause of action accrues, except where
4 a different period is expressly prescribed, or be barred.

5 **SECTION 34.** 893.89 (1) of the statutes is amended to read:

6 893.89 (1) In this section, “exposure period” means the ~~10~~ 6 years immediately
7 following the date of substantial completion of the improvement to real property.

8 **SECTION 35.** 893.89 (3) (b) of the statutes is amended to read:

9 893.89 (3) (b) If, as the result of a deficiency or defect in an improvement to real
10 property, a person sustains damages during the period beginning on the first day of
11 the ~~8th~~ 4th year and ending on the last day of the ~~10th~~ 6th year after the substantial
12 completion of the improvement to real property, the time for commencing the action
13 for the damages is extended for 3 years after the date on which the damages occurred.

14 **SECTION 36.** 893.93 (1) (a) of the statutes is renumbered 893.93 (1m) (a).

15 **SECTION 37.** 893.93 (1) (b) of the statutes is renumbered 893.93 (1m) (b).

16 **SECTION 38.** 893.93 (1m) (intro.) of the statutes is created to read:

17 893.93 (1m) (intro.) The following actions shall be commenced within 3 years
18 after the cause of action accrues or be barred:

19 **SECTION 39. Initial applicability.**

20 (1) **THIRD-PARTY AUDITS.** The treatment of section 177.30 (6) of the statutes first
21 applies to a contract or agreement that is entered into, renewed, or modified on the
22 effective date of this subsection.

23 (2) **CONSUMER LAWSUIT LENDING.** The treatment of section 100.56 of the statutes
24 first applies to consumer lawsuit lending transactions first entered into on the
25 effective date of this subsection.

ASSEMBLY BILL 773**SECTION 39**

1 (3) DISCOVERY PROCEDURES. The treatment of sections 802.06 (1) (b), 804.01 (2)
2 (am), (bg), and (e) 1g., (2m), (3) (a) 2., (4), and (8), 804.09 (2) (b) 1., and 804.12 (1) (a)
3 of the statutes, the renumbering and amendment of section 804.09 (2) (a) of the
4 statutes, and the creation of section 804.09 (2) (a) 3. of the statutes first apply to
5 actions that are filed on the effective date of this subsection.

6 (4) CLASS ACTIONS. The treatment of section 803.08 (2), (3) to (10), and (12) to
7 (15) of the statutes, the renumbering and amendment of section 803.08 (1) of the
8 statutes, and the creation of section 803.08 (1) (a) to (e) of the statutes first apply to
9 actions that are filed on the effective date of this subsection.

10

(END)