



1995 ASSEMBLY BILL 780

January 11, 1996 - Introduced by Representatives GREEN, KREIBICH, GUNDERSON, FREESE, LEHMAN, GOETSCH, AINSWORTH, MUSSEY and LAZICH, cosponsored by Senators WELCH and BUETTNER. Referred to Committee on Judiciary.

1 **AN ACT to create** 801.015 of the statutes; **relating to:** requiring notice before the
2 commencement of an action.

Analysis by the Legislative Reference Bureau

Under current law, a person commences a civil action by filing a summons and complaint with the court and serving a copy of those documents on the person named as defendant within 60 days after filing the summons and complaint. This bill requires a person who intends to commence a civil action to notify the intended defendant of the specific claim against him or her at least 30 days before commencing the action. The bill requires the notice to be by 1st class mail or by delivery by a company that delivers correspondence as a business to the public. The notice must include the amount of actual damages and expenses related to the claim. The bill includes a number of exceptions to the notice requirement, including actions related to the seizure of property, to bankruptcy or receivership proceedings, to violations of state or local ordinances and to cases involving assets or a defendant that may disappear if notification is provided before the action is commenced. Under the bill, if a person fails to provide the required notice, the court may dismiss the action without prejudice and may require the plaintiff to pay the defendant's costs, including attorney fees.

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

3 **SECTION 1.** 801.015 of the statutes is created to read:
4 **801.015 Precomplaint notice required.** (1) **DEFINITIONS.** In this section,
5 “notifies” means providing written notice to a person, by 1st class mail or by delivery

1 by any company that delivers correspondence as a service to the public, at an address
2 reasonably calculated to provide actual notice to the person.

3 **(2) NOTIFICATION BEFORE COMMENCING ACTION.** (a) Except as provided under par.
4 (b) and sub. (3), no civil action may be commenced until 30 days after the person who
5 intends to commence the action notifies the intended defendant of the specific claim
6 against the intended defendant, including the amount of actual damages and ex-
7 penses related to that claim.

8 (b) If the applicable statute of limitations would expire during the 30-day peri-
9 od required under par. (a), the notification period required under par. (a) is equal to
10 the number of days remaining under the applicable statute of limitations.

11 **(3) EXCEPTIONS.** The notification period under sub. (2) is not required for any
12 of the following:

13 (a) An action to seize or forfeit assets.

14 (b) Any proceedings related to bankruptcy, conservatorship, insolvency, liqui-
15 dation or receivership.

16 (c) An action to foreclose a lien.

17 (d) An action requesting a temporary restraining order or preliminary injunc-
18 tive relief.

19 (e) An action related to the fraudulent conveyance of property.

20 (f) An action for the violation of a state statute or a county, city, village or town
21 ordinance.

22 (g) If it is reasonable to believe that the assets that are the subject to the in-
23 tended action or that would satisfy the judgment of the intended action are subject
24 to flight, dissipation or destruction.

1 (h) If it is reasonable to believe that the intended defendant is subject to flight
2 to prevent service of process in the intended action.

3 (i) If the person required to give notice under sub. (2) has made a prior attempt
4 to settle the claim through written contact with the intended defendant.

5 (j) If notice has been provided under s. 893.80 or 893.82.

6 **(4) ADDITION TO PLEADINGS.** A copy of the notice provided under sub. (2) shall
7 be filed as an appendix to the plaintiff's original complaint. If a notice is not provided
8 under sub. (2), an appendix shall be filed with the original complaint stating the rea-
9 son why notice was not provided, citing the appropriate exception under sub. (3).

10 **(5) PENALTY.** The defendant may, within 60 days after service of the complaint
11 upon the defendant, move for dismissal of the action if the plaintiff failed to comply
12 with sub. (2). If the court finds that the plaintiff failed to comply with sub. (2), the
13 court may dismiss the action without prejudice and may order the plaintiff to pay to
14 the defendant the costs of defending the action, including attorney fees.

15 **SECTION 2. Initial applicability.**

16 (1) This act first applies to causes of actions that arise on the effective date of
17 this subsection.

18 **SECTION 3. Effective date.**

19 (1) This act takes effect on the first day of the 4th month beginning after the
20 date of publication.

21 (END)