



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0299/1
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2003 SENATE BILL 80

March 20, 2003 – Introduced by Senator RISSER, cosponsored by Representatives BERCEAU, SCHNEIDER, BOYLE, POCAN, J. LEHMAN and MILLER. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to amend* 802.06 (1); and *to create* 802.06 (6m) and 808.03 (1m) of the
2 statutes; **relating to:** creating a special motion to strike a claim in a civil action
3 that arises from the exercise of free speech or the right to petition the
4 government.

Analysis by the Legislative Reference Bureau

Current law permits a party in a civil action to move to strike a pleading that contains an insufficient defense or redundant, immaterial, impertinent, scandalous, or indecent matter.

This bill allows a defendant in a civil action to move to strike a claim that arises solely from the defendant's exercise of his or her constitutional right to free speech or to petition the government. If the defendant so moves, he or she is not required to file a responsive pleading unless the court denies the motion. Either party has the right to appeal an order granting or denying the motion to the Court of Appeals.

Finally, a party who files or opposes a motion to strike must file copies of relevant papers with the Director of State Courts, who must report to the legislature by January 1, 2005, the number of motions filed and their outcomes.

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:

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1 **SECTION 1.** 802.06 (1) of the statutes is amended to read:

2 802.06 (1) WHEN PRESENTED. Except as provided in sub. (1m) or (6m) or when
3 a court dismisses an action or special proceeding under s. 802.05 (3), a defendant
4 shall serve an answer within 45 days after the service of the complaint upon the
5 defendant. Except as provided in sub. (1m), if a guardian ad litem is appointed for
6 a defendant, the guardian ad litem shall have 45 days after appointment to serve the
7 answer. A party served with a pleading stating a cross-claim against the party shall
8 serve an answer thereto within 45 days after the service upon the party. The plaintiff
9 shall serve a reply to a counterclaim in the answer within 45 days after service of the
10 answer. The state or an agency of the state or an officer, employee, or agent of the
11 state shall serve an answer to the complaint or to a cross-claim or a reply to a
12 counterclaim within 45 days after service of the pleading in which the claim is
13 asserted. If any pleading is ordered by the court, it shall be served within 45 days
14 after service of the order, unless the order otherwise directs. The service of a motion
15 permitted under sub. (2) alters these periods of time as follows, unless a different
16 time is fixed by order of the court: if the court denies the motion or postpones its
17 disposition until the trial on the merits, the responsive pleading shall be served
18 within 10 days after notice of the court's action; or if the court grants a motion for a
19 more definite statement, the responsive pleading shall be served within 10 days after
20 the service of the more definite statement.

21 **SECTION 2.** 802.06 (6m) of the statutes is created to read:

22 802.06 (6m) MOTION TO STRIKE; OTHER. (a) Within the time required for a
23 responsive pleading, the defendant may move to strike any claim that arises solely
24 from the defendant's exercise, under either the U.S. or Wisconsin constitution, of free
25 speech or the right to petition the government.

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1 (b) The court shall schedule a hearing on the motion under par. (a) within 30
2 days after the filing of the motion and shall examine the pleadings and all supporting
3 or opposing affidavits in deciding the motion. The filing of a motion under par. (a)
4 automatically tolls the time for a responsive pleading from the date on which the
5 motion is filed until the court disposes of the motion by order. While the motion is
6 pending, all discovery is stayed.

7 (c) A party who files a motion to strike under par. (a) and a party who opposes
8 the motion shall send to the director of state courts, by mail or facsimile
9 transmission, a copy of the motion or response to the motion, a copy of any order
10 issued under par. (b), and a copy of any notice of appeal of an order issued under par.
11 (b). The director of state courts shall maintain a public record, as defined in s. 19.32
12 (2), of information transmitted under this paragraph for at least 3 years and shall,
13 by January 1, 2005, report to the legislature under s. 13.172 (2) the number of
14 motions filed under this subsection and their outcomes.

15 **SECTION 3.** 808.03 (1m) of the statutes is created to read:

16 808.03 (1m) APPEALS AS OF RIGHT; OTHER. An order entered under s. 802.06 (6m)
17 (b) may be appealed as a matter of right to the court of appeals.

18 **SECTION 4. Initial applicability.**

19 (1) This act first applies to actions commenced on the effective day of this
20 subsection.

21 (END)