

2001 ASSEMBLY BILL 198

March 13, 2001 – Introduced by Representatives ALBERS, HUBER, VRAKAS and KRAWCZYK, cosponsored by Senators BURKE and SCHULTZ. Referred to Committee on Judiciary.

- 1 **AN ACT to repeal and recreate** 802.07 (1) of the statutes; **relating to:**
2 permissive and compulsory counterclaims in civil actions.

Analysis by the Legislative Reference Bureau

Under current law, a defendant in a civil action may counterclaim any claim that the defendant has against the plaintiff if a judgment on that claim can be granted in the action. The counterclaim may or may not diminish or defeat the recovery sought by the plaintiff, and may claim relief exceeding the amount or different in kind from the relief sought by the plaintiff. This language has been interpreted to mean that a defendant may, but is not required to, counterclaim any claim that the defendant has against the plaintiff. In *A.B.C.G. Enterprises v. Firstbank Southeast*, 184 Wis. 2d 465 (1994), the Wisconsin supreme court held that the principal of res judicata precludes a defendant who may counterclaim in a prior action, but did not, from bringing a subsequent action on that claim if the new action would nullify the judgment or impair the rights established in the prior action.

This bill would adopt the counterclaim policy in effect under the federal rules of civil procedure. Under the bill, a party would be required to counterclaim any claim that the party has against the opposing party in a civil action if the claim arises out of the occurrence that is the subject of the opposing party's claim and the claim does not require the presence of a third party over whom the court cannot acquire jurisdiction. Under the bill, the party would not be required to bring the counterclaim if, at the time that the current action was commenced, the claim was the subject of another pending action or if the opposing party brought the action by a court process that did not provide the court with personal jurisdiction on that claim.

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The bill also allows a party to plead a counterclaim against an opposing party that is not arising out of the occurrence that is the subject matter of the opposing party's claim.

For further information see the *state and local* 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.** 802.07 (1) of the statutes is repealed and recreated to read:

2 802.07 (1) COUNTERCLAIM. (a) *Mandatory counterclaim.* 1. A pleading shall
3 state as a counterclaim any claim that the party making the claim, at the time of
4 serving the pleading, has against the opposing party if all of the following conditions
5 apply:

6 a. The claim arises out of the transaction or occurrence that is the subject
7 matter of the opposing party's claim.

8 b. The claim does not require the presence of 3rd parties over whom the court
9 cannot acquire jurisdiction.

10 2. A party is not required under this paragraph to state as a counterclaim any
11 claim that meets any of the following conditions:

12 a. At the time that the action was commenced, the claim was the subject of
13 another pending action.

14 b. The opposing party brought suit upon a claim by attachment or other process
15 that did not provide the court with jurisdiction to render a personal jurisdiction on
16 the claim and the party with the claim is not stating any counterclaim under this
17 section.

