

2003 DRAFTING REQUEST

Bill

Received: **09/28/2002**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Leslie Travis**

This file may be shown to any legislator: **NO**

Drafter: **mlief**

May Contact:

Addl. Drafters:

Subject: **Courts - civil procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Risser@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Civil actions related to a person's right of petition or free speech

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|------------------------|------------------------|----------------|------------------------|-----------------------|-----------------|
| /? | rnelson2 10/02/2002 | | | _____ | | | State |
| /1 | mlief 10/04/2002 | kfollett 10/11/2002 | jfrantze 10/17/2002 | _____ | sbasford 10/17/2002 | mbarman 01/24/2003 | |
| | | kfollett 10/15/2002 | | _____ | | | |

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

↳ At
Intro.

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|--------------|----------------|----------------------------------|--------------|----------------|------------------|-----------------|-----------------|
| | | 11/11 10/11 1-10/11 kmf | 10/11 | 10/11 <END> | | | |

Miller, Steve

From: Travis, Leslie
Sent: Thursday, September 26, 2002 11:35 AM
To: Miller, Steve
Subject: Anti-SLAPP legislation



Doc1.doc

Hi Steve, California has a law relating to protecting citizens rights to avoid Strategic Lawsuits Against Public Participation. Would you please have someone draft similar legislation for Wisconsin?
Thank you, Leslie

California Assembly Bill 1675

Signed by the Governor, October 10, 1999
Passed by the Assembly, September 9, 1999
Passed by the Senate, September 7, 1999
Amended in the Senate, July 12, 1999
Amended in the Senate, July 6, 1999
Amended in the Assembly, May 28, 1999

INTRODUCED BY: Committee on Judiciary:

Kuehl (Chair), Aroner, Corbett, Hertzberg, Jackson, Longville, Shelley, and
Steinberg

MARCH 16, 1999. An act to amend Sections 425.16 and 904.1 of the Code of Civil Procedure, relating to civil actions, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1675, Committee on Judiciary. Civil procedure. Existing law provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue, as specified, shall be subject to a special motion to strike, unless the court, after considering the pleadings and supporting and opposing affidavits, determines that there is a probability that the plaintiff will prevail on the claim. This bill would provide that an appeal may be taken directly from an order granting or denying such a special motion to strike to the court of appeal, as specified. The bill would also require any party who files or opposes such a special motion to strike, to promptly transmit various documents related thereto, to the Judicial Council by e-mail or fax, and would require the Judicial Council to maintain a public record of this information for at least 3 years. This bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 425.16 of the Code of Civil Procedure is amended to read:

425.16. (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. (2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination.

802.06(6)

(c) In any action subject to subdivision (b), ^{may} a prevailing defendant on a special motion to strike ~~shall be entitled~~ to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

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(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a

legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) On or before January 1, 1998, the Judicial Council shall report to the Legislature on the frequency and outcome of special motions made pursuant to this section, and on any other matters pertinent to the purposes of this section.

(j) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(k) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or fax, a copy of the endorsed-filed caption page of the motion or opposition, a copy of any related

necessary

notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

SECTION 2. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1.(a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt that is made final and conclusive by Section 1222, or (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or the superior court in a county in which there is no municipal court or the judge or judges thereof that relates to a matter pending in the municipal or superior court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

- (8) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.
- (9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.
- (10) From an order made appealable by the provisions of the Probate Code or the Family Code.
- (11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).
- (12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).
- (13) From an order granting or denying a special motion to strike under Section 425.16. (b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

SECTION 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to protect the constitutional rights of individuals to free speech, it is necessary that this act take effect immediately.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0299/1

MSL... klf King

2003 BILL

D-N

GEN

1 AN ACT ...; relating to: creating a special motion to strike a claim in a civil action
2 that arises from the exercise of free speech or the right to petition the
3 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.

LPS -
leave as
is - don't
lowercase here

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

BILL

SECTION 1

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.

History: Sup. Ct. Order, 67 Wis. 2d 585, 623 (1975); 1975 c. 218; Sup. Ct. Order, 73 Wis. 2d xxxi; Sup. Ct. Order, 82 Wis. 2d ix; 1977 c. 260; 1977 c. 447 ss. 196, 210; 1979 c. 110 ss. 51, 60 (7); 1979 c. 323 s. 33; 1981 c. 390 s. 252; Sup. Ct. Order, 112 Wis. 2d xi (1983); 1983 a. 228 s. 16; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 256; 1993 a. 213; Sup. Ct. Order No. 95-04, 191 Wis. 2d xxi (1995); 1995 a. 225, 411; 1997 a. 133, 187; 1999 a. 32; 2001 a. 16.

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 responsive pleading,~~ ^{the time required for a responsive pleading,}
 23 ~~the defendant may move to strike any claim that arises solely from the~~

BILL

1 defendant's exercise, under either the U.S. or Wisconsin constitution, of free speech
2 or the right to petition the government.

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

9 (c) A party who files a motion to strike under ~~this subsection~~ ^{par. (a)} and a party who
10 opposes the motion shall send to the Director of State Courts, by mail or facsimile
11 transmission, a copy of the motion or response to the motion, a copy of any order
12 issued under ~~this subsection~~ ^{par. (b)}, and a copy of any notice of appeal of an order issued
13 under ~~this subsection~~ ^{par. (b)}. The Director of State Courts shall maintain a public record,
14 as defined in s. 19.32 (2), of information transmitted under this paragraph for at least
15 3 years and shall, by January 1, 2005, report to the legislature under s. 13.172 (2)
16 the number of motions filed under this ~~section~~ ^{subsection} and their outcomes.

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

18 808.03 (1m) APPEALS AS OF RIGHT; OTHER. An order entered under s. 802.06 (6m) (b)
19 may be appealed as a matter of right to the court of appeals.

20 **SECTION 4. Initial applicability.**

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

23 (END)

O-Note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0299/1dn

mst: jf & King

Date

Because of the differences between California's code of civil procedure and Wisconsin's, this bill does not contain all ~~the~~ provisions of the California bill. Please review it carefully to ensure that it carries out your intent. Note that I did not include an exception for "enforcement action" (see paragraph (d) of California bill) because I do not know what actions that phrase is intended to cover.

Madelon J. Lief
Legislative Attorney
Phone: (608) 267-7380

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0299/1dn
MJL:kjf&kmg:jf

October 17, 2002

Because of the differences between California's code of civil procedure and Wisconsin's, this bill does not contain all provisions of the California bill. Please review it carefully to ensure that it carries out your intent. Note that I did not include an exception for "enforcement action" (see paragraph (d) of California bill) because I do not know what actions that phrase is intended to cover.

Madelon J. Lief
Legislative Attorney
Phone: (608) 267-7380

Barman, Mike

From: Briganti, Sarah
Sent: Friday, January 24, 2003 11:15 AM
To: LRB.Legal
Subject: Draft review: LRB-0299/1 Topic: Civil actions related to a person's right of petition or free speech.

It has been requested by <Briganti, Sarah> that the following draft be jacketed for the SENATE:

Draft review: LRB-0299/1 Topic: Civil actions related to a person's right of petition or free speech