

2003 DRAFTING REQUEST

Bill

Received: **07/22/2003**

Received By: **mlief**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **jeremy**

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.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

The time period for service of a responsive pleading

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>
/?	mlief 08/19/2003	kfollett 09/18/2003		_____			
		kfollett 09/19/2003		_____			
/1			chaugen 09/19/2003	_____	lemery 09/19/2003	sbasford 01/28/2004	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

sbasford
01/28/2004

FE Sent For:

<END>

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*req. by
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office*

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/?	mlief	11 Kjf 9/1/9	Ch 9-12	Ch 9-17 pb			

FE Sent For:

<END>

Nelson, Robert P.

From: Shepherd, Jeremy
Sent: Tuesday, July 15, 2003 4:40 PM
To: Nelson, Robert P.
Subject: Draft request - restore 20 day response to lawsuit

Mr. Nelson,

At the request of a constituent, Senator Kanavas would like to have 2001 AB 657 redrafted as a 2003 bill.

Thank you!

Jeremy Shepherd
Office of Senator Ted Kanavas
6-9174



AB-657 - Restore 20 day
storing 20 day res response time t...



**KOHNER
MANN &
KAILAS, S.C.**
ATTORNEYS AT LAW

1572 E. Capitol Drive
P.O. Box 11982
Milwaukee, WI 53211-0982
Telephone (414) 962-5110
Facsimile (414) 962-4723
Email kmksc@execpc.com

June 20, 2003

VIA FAX AND MAIL (608) 264-6914

Senator Ted Kanavas
Wisconsin State Capitol
Room 22 South
P.O. Box 7882
Madison, WI 53707-7882

RE: Proposed Legislation: Restore
the response time in a lawsuit from
45 days to 20 days

Dear Ted:

Following up your request through Jeremy, enclosed are items relating to the legislative change that we urgently support and propose:

1. Enclosed is a two-page memo to legislators and others that summarizes the main arguments for a return to the previous 20 day time deadline for response to a lawsuit Summons and Complaint.
2. Also attached is the list of the response deadlines set forth by the other states (all shorter than 45 days).
3. For historical reference, there is a memo of the Wisconsin Legislative Council, March 2, 1998, which describes the original 45 days provision.
4. Enclosed is a letter of Matt Bromley of the State Bar, May 13, 1998, which highlights how the original 45 day legislation "snuck through" as part of Assembly Bill 671 that year.
5. The 45 day provision itself was amended and cut back at the urging of the banking industry for those lawsuits that foreclose liens, "leaving the rest of us behind". The change in favor of the foreclosure lawsuits and banking industry was announced by the State Bar with the enclosed "Practice Alert" referencing the 2001 Wisconsin Act 16, the 2001 Budget Bill.
6. Also enclosed is a previous draft of our legislative proposal that we arranged through former Representative Tim Hoven, dated December 20, 2000, which if passed, would return the lawsuit deadline to respond from 45 days to 20 days except where a defendant "is an insurance company, or if any cause of action raised in the Complaint is founded in tort". (Actions against the state and actions where service is by publication



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Senator Ted Kanavas

Page 2

June 23, 2003

are left at 40 days since that is where they were before the original "45 day change".) This draft may need minor adjustment in order to take into account the language of the above mentioned 2001 Wisconsin Act 16, that changed the response time where a lien is being foreclosed, but this would be minimal since our proposed legislation here would encompass the changes that the 2001 Act already made in favor of the banking industry, and in fact would extend the benefit of that change to all of the rest of us who use the court system, retaining the 45 day period only where it was felt to be necessary, in tort or insurance litigation where pleadings often must be passed through several offices or at several locations after service of process, thus necessitating some extra time, etc.

As Steve and I mentioned when we had lunch with you on this subject, our firm is ready to unleash as many letters as possible from organizations around Wisconsin, including our clients, to legislators, committee members, in support of this proposed legislative change. We look forward to coordinating with your office in that respect.

We will also be ready to appear at any legislative committee hearing that might ultimately be scheduled on this proposal.

Very truly yours,

KOHNER, MANN & KAILAS, S.C.



David S. Chartier

DSC:jlms:Enc.

cc: Senator Mary Panzer (w/enc.)
P.O. Box 7882
Madison, WI 53707

Representative Leah Vukmir (w/enc.)
P.O. Box 8953
Madison, WI 53708

062003B/DSC

9/25

2001 - 2002 LEGISLATURE

3008
LRB-1350/1

PPN:lmg:kjf

MJL

PWF

3
2001 ASSEMBLY BILL 637

December 3, 2001 - Introduced by Representative HOVEN, cosponsored by Senator GEORGE. Referred to Committee on Judiciary.

Regenerate

1 AN ACT *to repeal* 802.06 (1m); *to amend* 66.0413 (2) (c) 1., 102.23 (1) (c), 102.835
2 (14), 108.225 (14), 125.12 (2) (d), 801.09 (2) (intro.), 801.09 (2) (a), 801.09 (2) (b),
3 801.095 (3), 801.095 (4), 802.06 (1), 802.06 (6) and 802.09 (1); and *to create*
4 102.23 (1) (cm) and 801.09 (2) (d) of the statutes; **relating to:** the time period
5 for service of a responsive pleading.

Analysis by the Legislative Reference Bureau

Under current law, a person responding to a pleading, such as a complaint, in a civil action generally has 45 days after the receipt of the pleading to respond. This 45-day time period limitation also applies to a person who is served with a petition by a building inspector that alleges that a building is a public nuisance, to complaints filed in an action to overturn a worker's compensation administrative hearing or municipality's decision regarding a license application, and to service of a levy on a party to obtain possession of property related to a worker's compensation or unemployment insurance claim. Before 1997, a party generally had 20 days after the receipt of a pleading to answer that pleading. In 2001 ~~Wisconsin Act 16, the budget act,~~ this time period was reduced to 20 days if the proceeding was to foreclose or otherwise enforce a lien or security interest.

Under this bill, the time to respond to most pleadings is 20 days. However, if the responding party is an insurance company, the time period remains at 45 days. In addition, if the defendant is the state, an office, agent or employee of the state, or a state agency, and the action involves a claim for damages resulting from actions of

ASSEMBLY BILL 657

a public employee or official acting in his or her official capacity, the response time is 45 days. Under the bill, if the cause of action raised in the original pleading is a tort, the time period for responding to a pleading is 45 days. Finally, if the service of a summons is made by publication, the bill requires the response to be made within 40 days of the publication of the summons.

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

1 SECTION 1. 66.0413 (2) (c) 1. of the statutes is amended to read:

2 66.0413 (2) (c) 1. If an owner fails to remedy or improve the defect in accordance
3 with the written notice under par. (b) within the 30-day period specified in the
4 written notice, the building inspector or other designated officer shall apply to the
5 circuit court of the county in which the building is located for an order determining
6 that the building constitutes a public nuisance. As a part of the application for the
7 order from the circuit court the building inspector or other designated officer shall
8 file a verified petition which recites the giving of written notice, the defect in the
9 building, the owner's failure to comply with the notice and other pertinent facts. A
10 copy of the petition shall be served upon the owner of record or the owner's agent if
11 an agent is in charge of the building and upon the holder of any encumbrance of
12 record under sub. (1) (d). The owner shall reply to the petition within ~~45~~ 20 days
13 following service upon the owner. Upon application by the building inspector or other
14 designated officer the circuit court shall set promptly the petition for hearing.
15 Testimony shall be taken by the circuit court with respect to the allegations of the
16 petition and denials contained in the verified answer. If the circuit court after
17 hearing the evidence on the petition and answer determines that the building
18 constitutes a public nuisance, the court shall issue promptly an order directing the
19 owner of the building to remedy the defect and to make such repairs and alterations

ASSEMBLY BILL 657

1 as may be required. The court shall set a reasonable period of time in which the
2 defect shall be remedied and the repairs or alterations completed. A copy of the order
3 shall be served upon the owner as provided in sub. (1) (d). The order of the circuit
4 court shall state in the alternative that if the order of the court is not complied with
5 within the time fixed by the court, the court will appoint a receiver or authorize the
6 building inspector or other designated officer to proceed to raze the building under
7 par. (d).

8 **SECTION 2.** 102.23 (1) (c) of the statutes is amended to read:

9 102.23 (1) (c) The Except as provided in par. (cm). the commission shall serve
10 its answer within 45 20 days after the service of the complaint, and, within the like
11 time, the adverse party may serve an answer to the complaint, which answer may,
12 by way of counterclaim or cross complaint, ask for the review of the order or award
13 referred to in the complaint, with the same effect as if the party had commenced a
14 separate action for the review thereof.

15 **SECTION 3.** 102.23 (1) (cm) of the statutes is created to read:

16 102.23 (1) (cm) If an adverse party to the proceeding brought under par. (a) is
17 an insurance company, the insurance company may serve an answer to the complaint
18 within 45 days after the service of the complaint.

19 **SECTION 4.** 102.835 (14) of the statutes is amended to read:

20 102.835 (14) ANSWER BY 3RD PARTY. Within 45 20 days after the service of the
21 levy upon a 3rd party, the 3rd party shall file an answer with the department stating
22 whether the 3rd party is in possession of or obligated with respect to property or
23 rights to property of the uninsured employer, including a description of the property
24 or the rights to property and the nature and dollar amount of any such obligation.

ASSEMBLY BILL 657

1 If the 3rd party is an insurance company, the insurance company shall file an answer
2 with the department within 45 days after the service of the levy.

3 **SECTION 5.** 108.225 (14) of the statutes is amended to read:

4 108.225 (14) ANSWER BY 3RD PARTY. Within 45 20 days after the service of the
5 levy upon a 3rd party, the 3rd party shall file an answer with the department stating
6 whether the 3rd party is in possession of or obligated with respect to property or
7 rights to property of the debtor, including a description of the property or the rights
8 to property and the nature and dollar amount of any such obligation. If the 3rd party
9 is an insurance company, the insurance company shall file an answer with the
10 department within 45 days after the service of the levy.

11 **SECTION 6.** 125.12 (2) (d) of the statutes is amended to read:

12 125.12 (2) (d) *Judicial review.* The action of any municipal governing body in
13 granting or failing to grant, suspending or revoking any license, or the failure of any
14 municipal governing body to revoke or suspend any license for good cause, may be
15 reviewed by the circuit court for the county in which the application for the license
16 was issued, upon application by any applicant, licensee or resident of the
17 municipality. The procedure on review shall be the same as in civil actions instituted
18 in the circuit court. The person desiring review shall file pleadings, which shall be
19 served on the municipal governing body in the manner provided in ch. 801 for service
20 in civil actions and a copy of the pleadings shall be served on the applicant or licensee.
21 The municipal governing body, applicant or licensee shall have 45 20 days to file an
22 answer to the complaint. Following filing of the answer, the matter shall be deemed
23 at issue and hearing may be had within 5 days, upon due notice served upon the
24 opposing party. The hearing shall be before the court without a jury. Subpoenas for
25 witnesses may be issued and their attendance compelled. The decision of the court

ASSEMBLY BILL 657

1 shall be filed within 10 days after the hearing and a copy of the decision shall be
 2 transmitted to each of the parties. The decision shall be binding unless it is appealed
 3 to the court of appeals.

4 **SECTION 7.** 801.09 (2) (intro.) of the statutes is amended to read:

5 801.09 (2) (intro.) A direction to the defendant summoning and requiring
 6 defendant to serve upon the plaintiff's attorney, whose address shall be stated in the
 7 summons, either an answer to the complaint if a copy of the complaint is served with
 8 the summons or a demand for a copy of the complaint. The summons shall further
 9 direct the defendant to serve the answer or demand for a copy of the complaint within
 10 the following periods:

11 **SECTION 8.** 801.09 (2) (a) of the statutes, ~~as affected by 2001 Wisconsin Act 16,~~
 12 is amended to read:

13 801.09 (2) (a) Except as provided in ~~par. (c)~~ ^{par. ← plain} ~~within 20 days, or~~
 14 within 45 days if the defendant is the state or an officer, agent, employee, or agency
 15 of the state in an action or special proceeding brought under s. 893.82 or 895.46,
 16 exclusive of the day of service, after the summons has been served personally upon
 17 the defendant or served by substitution personally upon another authorized to
 18 accept service of the summons for the defendant; ~~or .~~

19 **SECTION 9.** 801.09 (2) (b) of the statutes is amended to read:

20 801.09 (2) (b) Within ~~45~~ 40 days after a date stated in the summons, exclusive
 21 of such date, if no such personal or substituted personal service has been made, and
 22 service is made by publication. The date so stated in the summons shall be the date
 23 of the first required publication.

24 **SECTION 10.** 801.09 (2) (d) of the statutes is created to read:

ASSEMBLY BILL 657

1 801.09 (2) (d) Within 45 days if a party to the action is an insurance company,
2 or if any cause of action raised in the complaint is founded in tort.

3 SECTION 11. 801.095 (3) of the statutes, as affected by 2001 Wisconsin Act 10
4 is amended to read:

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This is 657
↓
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5 801.095 (3) NO PERSONAL SERVICE; COMPLAINT SERVED AT THE SAME TIME.

6 STATE OF WISCONSIN

CIRCUIT COURT : COUNTY

7
8 A. B.

9 Address

10 City, State Zip Code

File No.

11 , Plaintiff

12 vs.

SUMMONS

13 C. D.

14 Address (Case Classification Type): (Code No.)

15 City, State Zip Code

16 , Defendant

17
18 THE STATE OF WISCONSIN, To each person named above as a Defendant:

19 You are hereby notified that the Plaintiff named above has filed a lawsuit or
20 other legal action against you. The complaint, which is also served upon you, states
21 the nature and basis of the legal action.

22 Within (20) (45) 40 days after, (year), you must respond with a written
23 answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the
24 complaint. The court may reject or disregard an answer that does not follow the
25 requirements of the statutes. The answer must be sent or delivered to the court,

ASSEMBLY BILL 657

1 whose address is, and to, Plaintiff's attorney, whose address is, You may
2 have an attorney help or represent you.

3 If you do not provide a proper answer within ~~(20) (45)~~ 40 days, the court may
4 grant judgment against you for the award of money or other legal action requested
5 in the complaint, and you may lose your right to object to anything that is or may be
6 incorrect in the complaint. A judgment may be enforced as provided by law. A
7 judgment awarding money may become a lien against any real estate you own now
8 or in the future, and may also be enforced by garnishment or seizure of property.

9 Dated:, (year)

10 Signed:

11 A. B., Plaintiff

12 or

13 E. F., Plaintiff's Attorney

14 State Bar No.:

15 Address:

16 City, State Zip Code:

17 Phone No:

18 SECTION 12. 801.095 (4) of the statutes, ~~as amended by 2001 Wisconsin Act 104~~

19 is amended to read:

20 801.095 (4) ~~NO PERSONAL SERVICE, COMPLAINT NOT SERVED AT THE SAME TIME.~~ ← keep

Keep this version

Keep this version

ASSEMBLY BILL 657

1 STATE OF WISCONSIN CIRCUIT COURT : COUNTY

2 _____

3 A. B.

4 Address

5 City, State Zip Code File No.

6 , Plaintiff

7 vs. SUMMONS

8 C. D.

9 Address (Case Classification Type): (Code No.)

10 City, State Zip Code

11 , Defendant

↓
Keep

12 _____

13 THE STATE OF WISCONSIN, To each person named above as a Defendant:

14 You are hereby notified that the plaintiff named above has filed a lawsuit or
15 other legal action against you.

16 Within ~~(20) (45)~~ 40 days after, (year), you must respond with a written
17 demand for a copy of the complaint. The demand must be sent or delivered to the
18 court, whose address is, and to, Plaintiff's attorney, whose address is, You
19 may have an attorney help or represent you.

20 If you do not demand a copy of the complaint within ~~(20) (45)~~ 40 days, the court
21 may grant judgment against you for the award of money or other legal action
22 requested in the complaint, and you may lose your right to object to anything that
23 is or may be incorrect in the complaint. A judgment may be enforced as provided by
24 law. A judgment awarding money may become a lien against any real estate you own
25 now or in the future, and may also be enforced by garnishment or seizure of property.

ASSEMBLY BILL 657

Keep

1
2
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Dated:, (year)

Signed:

A. B., Plaintiff

or

E. F., Plaintiff's Attorney

State Bar No.:

Address:

City, State Zip Code:

Phone No:

10

SECTION 13. 802.06 (1) of the statutes, ~~as affected by 2001 Wisconsin Act 16,~~

is amended to read:

802.06 (1) WHEN PRESENTED. Except as ~~provided in sub. (1m)~~ or when a court dismisses an action or special proceeding under s. 802.05 (3), a defendant shall serve an answer within 45 20 days after the service of the complaint upon the defendant. ~~Except as provided in sub. (1m), if~~ If a guardian ad litem is appointed for a defendant, the guardian ad litem shall have 45 20 days after appointment to serve the answer. A party served with a pleading stating a cross-claim against the party shall serve an answer thereto within 45 20 days after the service upon the party. The plaintiff shall serve a reply to a counterclaim in the answer within 45 20 days after service of the answer. The state or an agency of the state or an officer, employee, or agent of the state shall serve an answer to the complaint or to a cross-claim or a reply to a counterclaim within 45 20 days after service of the pleading in which the claim is asserted. If any pleading is ordered by the court, it shall be served within 45 days after service of the order, unless the order otherwise directs. If a party to the action is an insurance company, or if any cause of action raised in the original pleading,

25

ASSEMBLY BILL 657

1 cross-claim, or counterclaim is founded in tort, the periods of time to serve a reply
2 or answer shall be 45 days. The service of a motion permitted under sub. (2) alters
3 these periods of time as follows, unless a different time is fixed by order of the court:
4 if the court denies the motion or postpones its disposition until the trial on the merits,
5 the responsive pleading shall be served within 10 days after notice of the court's
6 action; or if the court grants a motion for a more definite statement, the responsive
7 pleading shall be served within 10 days after the service of the more definite
8 statement.

9 SECTION 14. 802.06 (1m) of the statutes, [✓] as created by 2001 Wisconsin Act 16,
10 is repealed.

11 SECTION 15. 802.06 (6) of the statutes, [✓] as affected by 2001 Wisconsin Act 16,
12 is amended to read:

13 802.06 (6) MOTION TO STRIKE. Upon motion made by a party before responding
14 to a pleading or, if no responsive pleading is permitted upon motion made by a party
15 within ~~45~~ 20 days after the service of the pleading upon the party, ~~or within 20 days~~
16 ~~after the service if the proceeding is to foreclose or otherwise enforce a lien or security~~
17 ~~interest, or upon the court's own initiative at any time, the court may order stricken~~
18 ~~from any pleading any insufficient defense or any redundant, immaterial,~~
19 ~~impertinent, scandalous, or indecent matter. If a party to the action is an insurance~~
20 ~~company, or if any cause of action raised in the original pleading, cross-claim, or~~
21 ~~counterclaim is founded in tort, the 20-day time period under this subsection is~~
22 ~~increased to 45 days.~~

23 SECTION 16. 802.09 (1) of the statutes, [✓] as affected by 2001 Wisconsin Act 16,
24 is amended to read:

ASSEMBLY BILL 657

1 802.09 (1) AMENDMENTS. A party may amend the party's pleading once as a
2 matter of course at any time within 6 months after the summons and complaint are
3 filed or within the time set in a scheduling order under s. 802.10. Otherwise a party
4 may amend the pleading only by leave of court or by written consent of the adverse
5 party; and leave shall be freely given at any stage of the action when justice so
6 requires. A party shall plead in response to an amended pleading within ~~45~~ 20 days
7 after service of the amended pleading, ~~or within 20 days after the service if the~~
8 ~~proceeding is to foreclose or otherwise enforce a lien or security interest, unless (a):~~
9 ~~a) the court otherwise orders or (b); or b) no responsive pleading is required or~~
10 ~~permitted under s. 802.01 (1). If a party to the action is an insurance company, or~~
11 ~~if any cause of action raised in the original pleading, cross-claim, or counterclaim is~~
12 ~~founded in tort, the 20-day time period under this subsection is increased to 45 days.~~

SECTION 17. Initial applicability.

13 (1) This act first applies to actions commenced on the effective date of this
14 subsection.

SECTION 18. Effective date.

15 (1) This act takes effect on the first day of the 4th month beginning after
16 publication.

17

(END)

Don't use ~~IAS/6-5~~

Section #. 801.095 (3) of the statutes is amended to read:

801.095 (3) NO PERSONAL SERVICE; COMPLAINT SERVED AT THE SAME TIME.

STATE OF WISCONSIN CIRCUIT COURT : COUNTY

A. B.

Address

City, State Zip Code

File No.

, Plaintiff

vs.

S U M M O N S

C. D.

Address (Case Classification Type): (Code No.)

City, State Zip Code

, Defendant

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is also served upon you, states the nature and basis of the legal action.

40

X You may have an attorney help or represent you. Within (20) (45) days after, (year), you must respond with a written answer, as that term is used in of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is, and to, Plaintiff's attorney, whose address is

X If you do not provide a proper answer within (20) (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your

right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated:, (year)

Signed:

A. B., Plaintiff

or

E. F., Plaintiff's Attorney

State Bar No.:

Address:

City, State Zip Code:

Phone No:

History: 1983 a. 323; Sup Ct. Order, 171 Wis. 2d xix (1992); 1997 a. 187, 250; 1999 a. 32, 186; 2001 a. 16.

Don't use FWS 7-20

Section #. 801.095 (4) of the statutes is amended to read:

801.095 (4) NO PERSONAL SERVICE; COMPLAINT NOT SERVED AT THE SAME TIME.

STATE OF WISCONSIN CIRCUIT COURT: COUNTY

A. B.

Address

City, State Zip Code

File No.

, Plaintiff

vs.

S U M M O N S

C. D.

Address (Case Classification Type): (Code No.)

City, State Zip Code

, Defendant

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you.

X Within 40 (20) (45) days after, (year), you must respond with a written demand for a copy of the complaint. The demand must be sent or delivered to the court, whose address is, and to, Plaintiff's attorney, whose address is

X If you do not demand a copy of the complaint within (20) (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated:, (year)

Signed:

A. B., Plaintiff

or

E. F., Plaintiff's Attorney

State Bar No.:

Address:

City, State Zip Code:

Phone No:

History: 1983 a. 323; Sup Ct. Order, 171 Wis. 2d xix (1992); 1997 a. 187, 250; 1999 a. 32, 186; 2001 a. 16.