

**2005 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB725)**

Received: 01/10/2006

Received By: rnelson2

Wanted: 01/11/2006

Identical to LRB:

For: Joel Kleefisch (608) 266-8551

By/Representing: Kelly

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - civil procedure

Extra Copies:

Submit via email: YES

Requester's email: Rep.Kleefisch@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Default judgment for certain citations

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**Instructions:**

See attached

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**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>
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FE Sent For:

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**ASSEMBLY SUBSTITUTE AMENDMENT ,  
TO 2005 ASSEMBLY BILL 725**

1 **AN ACT** *to renumber and amend 778.25 (8) (a); to amend 778.25 (2) (j); and to*  
2 *create 778.25 (8) (a) 2. and 3. of the statutes; relating to: ....*

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

3 **SECTION 1.** 778.25 (2) (j) of the statutes is amended to read:

4 778.25 (2) (j) Notice that if the defendant does not make a deposit and fails to appear  
5 in court at the time fixed in the citation, the court may consider the nonappearance to be a plea  
6 of no contest and enter judgment accordingly or the court may issue a summons or an arrest  
7 warrant.

**COMMENT:** Amends notice included in the citation form to reflect the revision made by SEC. 2.

8 **SECTION 2.** 778.25 (8) (a) of the statutes is renumbered 778.25 (8) (a) 1. and amended  
9 to read:

10 778.25 (8) (a) 1. If the defendant has not made a deposit, the court may consider the  
11 nonappearance to be a plea of no contest and enter judgment accordingly or the court may issue  
12 a summons or an arrest warrant, except if the defendant is a minor the court shall proceed under  
13 s. 938.28. Chapter 938 governs taking and holding a minor in custody.

14 **SECTION 3.** 778.25 (8) (a) 2. and 3. of the statutes are created to read:

15 778.25 (8) (a) 2. If the court considers the nonappearance to be a plea of no contest and  
16 enters judgment accordingly, the court shall promptly mail a copy or notice of the judgment

1 to the defendant. The judgment shall allow the defendant not less than 20 working days from  
2 the date the judgment copy or notice is mailed to pay the forfeiture, plus costs, fees, and  
3 surcharges imposed under ch. 814.

4 3. If the court accepts the plea of no contest, the defendant may move within 90 days  
5 after the date set for appearance to withdraw the plea of no contest, open the judgment, and  
6 enter a plea of not guilty if the defendant shows to the satisfaction of the court that failure to  
7 appear was due to mistake, inadvertence, surprise, or excusable neglect. If a party is relieved  
8 from the plea of no contest, the court or judge may order a written complaint or petition to be  
9 filed. If on reopening the defendant is found not guilty, the court shall delete the record of  
10 conviction and shall order any payment made by the defendant under subd. 2. returned.

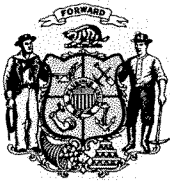
**COMMENT:** Creates subd. 3. to allow defendant to move to open judgment based on mistake, inadvertence, surprise, or excusable neglect. Corresponds to language currently included in s. 778.25 (8) (b). If this new provision is not included, it appears that s. 806.07 would apply.

11 **SECTION 4. Effective date.**

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

**COMMENT:** Delays the effective date to allow time to revise the citation form to reflect SEC. 1.

13 (END)



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBs0446/21

RPN: pg

1/11 8:30 AM

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~  
**ASSEMBLY SUBSTITUTE AMENDMENT ,**  
**TO 2005 ASSEMBLY BILL 725**

Regeh

default judgments in cases involving citations issued for certain violations

1 **AN ACT to renumber and amend 778.25 (8) (a); to amend 778.25 (2) (j); and**  
2 **to create 778.25 (8) (a) 2. and 3. of the statutes; relating to:**

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

3 **SECTION 1.** 778.25 (2) (j) of the statutes is amended to read:

4 778.25 (2) (j) Notice that if the defendant does not make a deposit and fails to  
5 appear in court at the time fixed in the citation, the court may consider the  
6 nonappearance to be a plea of no contest and enter judgment accordingly or the court  
7 may issue a summons or an arrest warrant.

8 **SECTION 2.** 778.25 (8) (a) of the statutes is renumbered 778.25 (8) (a) 1. and  
9 amended to read:

10 778.25 (8) (a) 1. If the defendant has not made a deposit, the court may consider  
11 the nonappearance to be a plea of no contest and enter judgment accordingly or the

1 court may issue a summons or an arrest warrant, except if the defendant is a minor  
2 the court shall proceed under s. 938.28. Chapter 938 governs taking and holding a  
3 minor in custody.

4 **SECTION 3.** 778.25 (8) (a) 2. ~~and~~ of the statutes <sup>15</sup> ~~are~~ created to read:

5 778.25 (8) (a) 2. If the court considers the nonappearance to be a plea of no  
6 contest and enters judgment accordingly, the court shall promptly mail a copy or  
7 notice of the judgment to the defendant. The judgment shall allow the defendant not  
8 less than 20 working days from the date the judgment copy or notice is mailed to pay  
9 the forfeiture, plus costs, fees, and surcharges imposed under ch. 814.

10 ~~3. If the court accepts the plea of no contest, the defendant may move within  
11 90 days after the date set for appearance to withdraw the plea of no contest, open the  
12 judgment, and enter a plea of not guilty if the defendant shows to the satisfaction of  
13 the court that failure to appear was due to mistake, inadvertence, surprise, or  
14 excusable neglect. If a party is relieved from the plea of no contest, the court or judge  
15 may order a written complaint or petition to be filed. If on reopening the defendant  
16 is found not guilty, the court shall delete the record of conviction and shall order any  
17 payment made by the defendant under subd. 2. returned.~~

Insert  
2-17 →

18 **SECTION 4. Effective date.**

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

21 (END)

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

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RPN:....pg

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1  
2 SECTION ~~1.~~ 778.25 (8) (b) of the statutes is amended to read:

3 778.25 (8) (b) If the defendant has made a deposit, the citation may serve as  
4 the initial pleading and the defendant shall be considered to have tendered a plea  
5 of no contest and submitted to a forfeiture, plus costs, fees, and surcharges imposed  
6 under ch. 814, not exceeding the amount of the deposit. The court may either accept  
7 the plea of no contest and enter judgment accordingly, or reject the plea and issue a  
8 summons or arrest warrant, except that if the defendant is a minor the court shall  
9 proceed under s. 938.28. Chapter 938 governs taking and holding a minor in custody.

10 (c) If the court accepts ~~the~~ a plea of no contest, the defendant may move within  
11 90 days after the date set for appearance to withdraw the plea of no contest, open the  
12 judgment, and enter a plea of not guilty if the defendant shows to the satisfaction of  
13 the court that failure to appear was due to mistake, inadvertence, surprise, or  
14 excusable neglect. If a party is relieved from the plea of no contest, the court or judge  
15 may order a written complaint or petition to be filed. If on reopening the defendant  
16 is found not guilty, the court shall delete the record of conviction and shall order the  
17 defendant's deposit returned.

**History:** 1979 c. 331, 359; 1981 c. 79 s. 18; 1981 c. 317; 1983 a. 74 ss. 30, 32; 1983 a. 336; 1985 a. 254; 1987 a. 27, 336, 399; 1989 a. 31, 121, 179; 1991 a. 134, 194; 1995 a. 77, 174, 352, 448; 1997 a. 27, 288, 290; 1999 a. 9; 2001 a. 75; 2003 a. 139, 193.